

Child's drawing with Arabic script: "Janjaweed and soldiers in West Sudan and other areas." © Human Rights Watch

Back to Basics

TRANSFER CONTROLS IN GLOBAL PERSPECTIVE

INTRODUCTION

In December 2006 a large majority of UN member states voted to begin a process that could lead to the adoption of a legally binding Arms Trade Treaty (ATT). This capped a year marked by other important achievements, notably the adoption of *The Geneva Declaration on Armed Violence and Development* (*Geneva Declaration*, 2006), and a major disappointment, the 2006 UN Programme of Action Review Conference (Review Conference).¹ Although their focus has narrowed following the failure of the Review Conference to reach a substantive outcome, UN member states are now attending to fundamentals.

Much of the illicit small arms trade depends, in fact, on the control—or lack of control—of legal transfers. As they grapple with the specifics of the transfer controls issue, states are moving towards a clearer understanding of their core commitments within the UN small arms framework. Key challenges include clarifying existing responsibilities, deciding whether and how to address the question of transfers to non-state actors, and developing means of effectively implementing transfer licensing criteria.

This chapter takes stock of the latest developments in the global small arms process, with a specific focus on new initiatives and continuing debates relating to transfer controls. Its principal conclusions include the following:

- The failure of the Review Conference to reach a substantive outcome derived from a broad range of factors, notably the inability of the UN small arms process to accommodate aspects of the issue falling outside of the traditional arms control/disarmament paradigm.
- The global small arms process is fragmenting. While not a problem as such, this does pose certain risks, such as inconsistency among measures and the possible neglect of the universal framework provided by the UN.
- States' existing obligations in relation to small arms transfers are extensive. Relevant, binding legal norms include direct limitations on certain transfers, as well as the rule holding states 'complicit' in violations of international law committed with arms that they transfer notwithstanding a known (or knowable) risk of misuse.
- While the question of banning arms transfers to non-state actors (NSAs) remains controversial, only NSAs that are *not authorized* to import arms by the state where they are located are, in fact, a major concern.
- Guidelines identifying factors to be considered as part of arms transfer licensing decisions can help states ensure that these are systematic, rigorous, and objective.

The chapter is divided into two parts. The first provides an overview of recent activity at the global level—in particular the 2006 Review Conference—while the second focuses on the issue of transfer controls. The transfer control sections include brief descriptions of the latest initiatives, as well as an exploration of key questions and challenges arising in this area.

GLOBAL UPDATE

This part of the chapter reviews key developments in global measures in 2006 and early 2007, focusing firstly on the 2006 Review Conference and then briefly recapping some of the other main initiatives. As we will see, the UN, long the leading standard setter at the global level, now has competition.

A collision of interests: the 2006 UN Review Conference

For the UN small arms process, the key event on the 2006 calendar was the first Review Conference for the *UN Programme of Action (Programme)*. As specified in the *Programme* and repeated in the mandate conferred by the UN General Assembly, the Review Conference was 'to review progress made in the implementation of the Programme of Action' (UNGA, 2001b, para. IV.1.a; 2003, para. 1).

The two-week session of the Review Conference's Preparatory Committee (PrepCom), held from 9 to 20 January 2006, made clear that there was no consensus on how to interpret that mandate, nor on most of the specific issues states brought to the table. While the PrepCom, under the chairmanship of Ambassador Sylvester Rowe of Sierra Leone, adopted several decisions and recommendations of an organizational nature, it forwarded no substantive recommendations, let alone draft text, to the Review Conference.² During the period following the PrepCom, the conference president-designate, Ambassador Prasad Kariyawasam of Sri Lanka, held a series of informal consultations with UN member states and produced two versions of a draft Review Conference outcome document (Sri Lanka, 2006a; 2006b).

The Review Conference was held at UN headquarters in New York from 26 June to 7 July 2006. No meetings were held on 4 July, the US national holiday. Over half of the remaining nine days were devoted to organizational matters, high-level statements by and exchanges of views among states, and statements from civil society and international organizations. On one estimate, this left the conference only 20 hours to negotiate the outcome document (Prins, 2006, p. 117). In an effort to make up additional time, informal negotiating sessions were held until late in the evening on 5 and 6 July. During the two weeks, Conference President Kariyawasam issued several new versions of his draft outcome document (Sri Lanka, 2006c–g). In an effort to secure agreement on a limited number of points in the conference's last hours, he proposed adoption of the *Draft Declaration* (Sri Lanka, 2006h).

There were a few silver linings to the Review Conference.

At the end of the day, the Review Conference reached no substantive agreement of any kind. This included the question of post-conference follow-up, which was left dangling.³ The failure of states to wrestle some minimum outcome from the Review Conference process was deeply disappointing to many. Nevertheless, there were a few silver linings.

States, international organizations, and civil society exchanged much information on *Programme* implementation at the Review Conference. Although this was far removed from the systematic review (and evaluation) of implementation that many wanted, it did constitute a small step in that direction.

Perhaps more importantly, the event sparked renewed national and international attention to the small arms issue. Civil society and, to some extent, the media were mobilized. Governments were also obliged to focus on the small arms issue as they prepared their ministers or other 'high-level' representatives for the event. At the beginning and end of the conference, states repeatedly expressed their renewed commitment to the *Programme*. They also seemed to agree that, while significant progress had been made in implementing the *Programme*, much more needed to be done.

Moreover, as disappointing as the non-result was, as Conference President Kariyawasam pointed out at the very end of the conference, it at least preserved the status quo.⁴ Much of the language discussed during the last week of the conference represented a step back from existing provisions in the *Programme* (UNGA, 2001b) and *International Tracing Instrument* (UNGA, 2005a; 2005e),⁵ underlining their ‘extreme vulnerability’⁶ to a process that seemed increasingly counter-productive. In an interesting twist of fate, the Review Conference, seen by many as a chance to ‘fix’ the *Programme*, ‘renewed appreciation for this often maligned document’ (Buchanan, 2006, p. 3). The Review Conference also steeled the resolve of many diplomats to achieve rather better results at the autumn 2006 session of the General Assembly’s First Committee (see text below).

However one assesses the Review Conference, there can be little doubt that it represented a lost opportunity to advance the cause of effective *Programme* implementation and, however modestly, strengthen the UN’s existing normative framework for small arms. Yet, given the forces at play, it is hard, in retrospect, to see how anything substantive could have emerged from the Review Conference process.

States came to that process with conflicting interpretations of the mandate, a broad and diverse set of interests, and, in many cases, an acute aversion to compromise. Any structure would have had difficulty coping with such tensions. The task was certainly beyond the means of the Review Conference, which relied on consensus for its decisions. The following sub-sections explore, in greater detail, the difficult mix of factors contributing to the failure of the Review Conference.⁷

Much of the language discussed during the last week represented a step back from the existing *Programme*.

Conflicting objectives. Up to the final stages of negotiations on the *Programme* in July 2001, the draft language concerning the review conference included a mandate to ‘examine ways to strengthen and develop measures contained’ in the *Programme* (Small Arms Survey, 2002, pp. 227–28). This text was not retained in the final version of the provision, which, like the General Assembly resolution that convened the 2006 Review Conference, simply indicated that states would ‘review progress made in the implementation of the Programme of Action’ (UNGA, 2001b, para. IV.1.a; 2003, para. 1).

In 2006, many states were eager to ‘strengthen and develop’ various aspects of the *Programme*, even championing issues that had been excluded from it due to a lack of consensus, such as transfers to NSAs, or others that had attracted relatively little attention in 2001, such as ammunition. Other states, however, insisted that there could be no discussion of any ‘new issues’, i.e. those not already explicitly included in the *Programme*. These states, moreover, tended to cling to a literal interpretation of the mandate. In their view, the Review Conference should concentrate on a review of *Programme* implementation, not the development of new norms. Whatever space for compromise that might have existed between these two camps was squeezed by the sheer number of issues the pro-norm group brought to the table.

A complex issue. Quite a few of the ‘new issues’ states promoted, such as development, human rights, or gender, are dealt with in other UN forums; many arms control diplomats have trouble grasping their relationship to small arms.⁸ Although the *2005 World Summit Outcome* document underlines the ‘interlinked and mutually reinforcing’ nature of development, peace, security, and human rights (UNGA, 2005b, para. 9),⁹ this understanding has yet to influence the mechanisms employed to address the small arms issue within the UN, which remains confined to the General Assembly’s First Committee (Disarmament and International Security).

At the Review Conference, some countries, in particular European Union (EU) states, sought to break down such barriers, while others, such as the United States, insisted on maintaining them. In practical terms, the number of

issues being debated before and during the Review Conference became a problem, for the simple reason that time was relatively short and many states were in no mood to compromise.

Political will. Many observers singled out the United States as the main author of the Review Conference ‘melt-down’ (IANSA, 2006b). As discussed below, the United States made no secret of its willingness to block consensus on a number of issues it considered vital (its so-called ‘redlines’). These included issues, such as global follow-up, that were crucial components of any minimally useful outcome document. This approach suited a number of states that had equally strong views on certain issues, but did not need to subvert or block the conference, so long as this was being done for them by the United States.

The prevailing mood favoured pulling things apart.

Yet, while some of this resistance was hidden, a good deal was apparent.¹⁰ The Review Conference arguably set a new standard among small arms conferences for displays of diplomatic ill-will. The prevailing mood favoured pulling things apart, thwarting compromise, and sticking to established positions (or even hardening them). Many of the countries that suffer disproportionately from the small arms problem remained quiet, while some states took the opportunity to attack the United States. Overall, there was little or no substantive discussion. Politics prevailed and the search for compromise foundered. All of which was completely incompatible with a process based on consensus.¹¹

The consensus-based approach. From the beginning, UN small arms negotiators have preferred a consensus-based approach. This was important for many states because of the issue’s (perceived) implications for national security. It also had the undeniable advantage of strengthening a process that, to date, has evolved within a political—as opposed to legal—framework.¹² This practice came under considerable strain during the UN tracing negotiations (Batchelor and McDonald, 2005). It had met with even rougher treatment at the 2005 and 2006 sessions of the General Assembly First Committee. At the Review Conference, an increasing number of states seemed prepared to use (and abuse) the rule to their advantage. As explained below, this led to its abandonment at the 2006 session of the First Committee.

Time. As noted earlier, states had very little time to negotiate a conference outcome document. The failure of the PrepCom to reach any substantive agreement made the task considerably more difficult, notwithstanding the informal consultations Conference President Kariyawasam undertook during the period bridging the PrepCom and the Review Conference.

Much of the time initially set aside for negotiations at the Review Conference was gobbled up by the ‘high-level segment’, as 116 states took the floor to outline their policies and practices on small arms.¹³ Relatively few of these statements, however, were designed to feed into the negotiations. When negotiations got under way in earnest, in the second (and last) week of the conference, some states had difficulty receiving timely instructions from their capitals on the issues under debate.

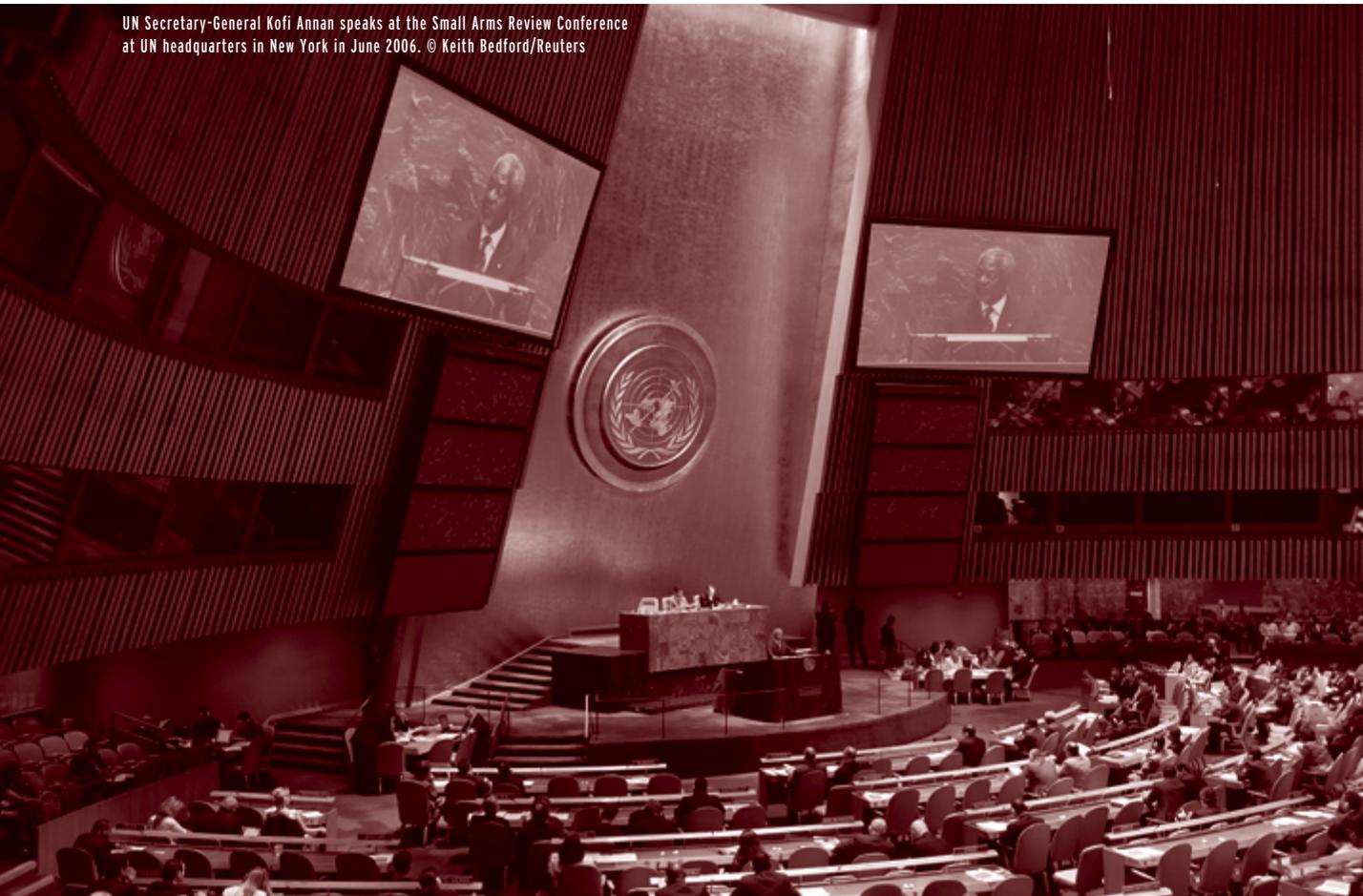
Process. The conference president, Prasad Kariyawasam, was ‘in a difficult situation’.¹⁴ Too much firmness, and he risked provoking a backlash; not enough, and states would run away with the process. Facilitators were appointed to broker consensus on the three main sections of the draft outcome document.¹⁵ The range of outstanding issues was broad, however, and differences at the end of the first week, when the facilitators submitted their initial proposals to the conference president, remained deep.

A brief experiment with rolling text early in the second week proved disastrous, as states blanketed the provisions of the draft text with their preferred language. Conference President Kariyawasam then returned to his earlier practice of issuing new versions of his draft outcome document based on continuing discussions. Some conference participants, interviewed by the Small Arms Survey, felt that the conference president should have asserted more control and provided clearer guidance during the conference. Others noted that the extreme tensions in play rendered any form of 'direction' difficult.

Venue. Not for the first time, some stakeholders wondered if the result would have been different had Geneva (the home of many arms control processes), rather than New York, been the venue of the Review Conference. Geneva-based diplomats, by and large, tend to have a better understanding of small arms issues than their New York counterparts. The latter, in contrast, are well versed—arguably too well versed—in the hard political issues that tend to dominate the UN New York agenda. In fact, at the Review Conference it often appeared that the differences among countries were more political than substantive in nature.

In its immediate aftermath, many dismissed the Review Conference as a colossal waste of time and resources. Certainly, it appeared that the limits of UN norm-building had been reached. Yet, although it was difficult to find much of value in the Review Conference rubble, some of the debates undoubtedly helped to identify the most promising terrain for future normative work, within or outside the UN. The issue of transfer controls was prominent among these.

UN Secretary-General Kofi Annan speaks at the Small Arms Review Conference at UN headquarters in New York in June 2006. © Keith Bedford/Reuters



Good, bad, and ugly: Review Conference debates

In order to ascertain progress made at the Review Conference in various issue areas, including the question of obstacles to consensus, the Small Arms Survey solicited the views of key actors in the process. Unless otherwise noted, the following sections rely on this study.¹⁶ The discussion begins with a consideration of transfer controls, including transfers to NSAs, before turning to some of the other issues debated at the conference. Since no outcome document was agreed, many states never indicated their final position on the subjects under discussion. The following analysis can therefore provide only a tentative account of the state of play in the areas under review.

Transfer controls

As described below, the United Kingdom has championed the cause of small arms transfer controls since early 2003. At the Review Conference it led efforts to secure agreement on some significant elaboration of the *Programme of Action's* basic, national-level commitment, namely:

To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade (UNGA, 2001b, para. II.11).

Also under discussion were measures designed to enhance multilateral coordination on small arms transfers, including information exchange.

Many of the conference participants interviewed by the Small Arms Survey claimed that states reached consensus on such issues before the end of the meeting. A few others, however, questioned this. It is, in fact, impossible to know the truth of these claims. States that remained opposed to language on transfer controls could have concealed their opposition so long as there was no agreement on a text (a final outcome document) within which to anchor such language. Moreover, the Survey found some discrepancy in texts that members of different delegations claimed reflected final consensus.

The UK led efforts to secure some significant elaboration of the Programme's basic transfer controls commitment.

One of these texts was a UK proposal discussed in the late-night negotiating session of 6–7 July and incorporated in the draft text that the conference president issued the following morning, on the last day of the conference. States would have agreed, at the national level:

To ensure effective control on the import, export, transfer and re-transfer of small arms and light weapons in accordance with national laws and practices and according to States' existing responsibilities under relevant international law including their obligations under the UN Charter and any other relevant international treaties to which they are party, as well as to apply an end user certificate and authentication process, with a view to avoiding their diversion into the illicit trade (Sri Lanka, 2006g, para. II.6).¹⁷

While its references to the UN Charter and international treaty law helped clarify the phrase 'relevant international law', found in paragraph II.11 of the *Programme*, overall this text represented a step back from paragraph II.11. The phrase 'in accordance with national laws and practices' conflicts with the commitment states have made in the *Programme* to abide by 'relevant international law' when exporting small arms and light weapons. In essence, 'national laws and practices' would have trumped 'relevant international law'. This problem was noticed by some, though not all, delegations.¹⁸

Such language, if it had consensus support, at least meant the end of opposition to any discussion of legal transfers. In the months preceding, and again during, the Review Conference, some states argued that legal transfers were beyond the scope of the *Programme*, which, they claimed, covered only ‘illicit’ small arms and light weapons. In fact, the *Programme* regulates many legal activities, such as international arms transfers and brokering, in order to prevent legal weapons from becoming illicit. Paragraph II.11 is just one example of this approach.¹⁹

A more tangible gain of the Review Conference was consensus—or at least widespread agreement—on the need for further consideration of global measures. China had previously resisted this, preferring to keep all transfers-related initiatives at the regional or sub-regional levels. Paragraph II.25 of the conference president’s 7 July draft text is modest, aiming only at an exchange of views at the global level; there is no commitment to develop global transfers guidelines, still anathema to several states. The draft also puts rather more emphasis on regional—as opposed to global—practices and measures (Sri Lanka, 2006g, para. II.21).

Those states that appeared most sceptical about international transfer controls at the Review Conference included China, Cuba, Egypt, India, Iran, Israel, Pakistan, the Russian Federation, and Venezuela. The US position was unclear.²⁰

End-user certification

The issue of end-user certification was largely uncontroversial. States seemed to understand its importance in preventing weapons diversion. A US proposal to broaden the term ‘end-user certificate’, used in the *Programme* (UNGA, 2001b, para. II.12), to ‘end-user certification process’²¹ probably enjoyed consensus support. Yet, the establishment of a UN Group of Governmental Experts (GGE) on the subject met with opposition and was deleted from later draft outcome documents. Despite broad acceptance of the concept, there was little substantive discussion of end-user certification at the Review Conference. Without a structure, such as a GGE, that would allow states to develop the issue further, it may not progress much at the global level.

States seemed to understand the importance of end-user certification in preventing weapons diversion.

Transfers to non-state actors

Along with the regulation of civilian possession, the issue of a ban on small arms transfers to NSAs nearly broke the back of the July 2001 UN Small Arms Conference (Small Arms Survey, 2002, p. 220). Before the 2006 Review Conference, many of the states that wanted strong language on the NSA issue hoped that the United States, which had adamantly opposed this in 2001, would soften its position, especially in the light of recent General Assembly resolutions that encourage UN member states ‘to ban the transfer of man-portable air defence systems [MANPADS] to non-State end-users’, excepting ‘agents authorized by a Government’ (UNGA, 2004, para. 5; 2005c, para. 5).

Yet, in 2006 the issue remained a ‘redline’ for the United States, and it firmly opposed any consideration of the NSA question by the Review Conference. A few other states also expressed opposition to the creation of a specific framework for such transfers, while, on the other side of the divide, sub-Saharan African states, joined by Israel and a few others, pushed for significant measures.

Conference President Kariyawasam offered language that sought to define a middle ground. States would have agreed:

To continue exchanging views on the policies, practices and considerations related to the transfer of small arms and light weapons to actors not authorized by the recipient State, with a view to developing common understandings or measures, taking into account the different contexts and approaches of States (Sri Lanka, 2006e, para. II.26).

Yet, the United States and supporters maintained their opposition to any consideration of the issue, and there was little or no discussion of substance at the conference.

Other issues

Ammunition. Ammunition was one of the issues that bedevilled the UN tracing negotiations in 2004–05 (Small Arms Survey, 2006, pp. 102–03), and it remained contentious at the 2006 Review Conference. The EU and many other states sought to secure a place for ammunition in the conference outcome document, arguing, in some cases, that it was implicitly addressed in parts of the existing *Programme*. A few other states, most prominently the United States, indicated they would not accept any reference to ammunition in the conference outcome document.

In line with the recommendation agreed, by consensus, at the end of the UN tracing negotiations, Conference President Kariyawasam's final draft outcome document proposed dealing with ammunition as part of a separate UN process.²² This too, however, was resisted by the United States.

Appropriate use/human rights. All references to human rights were purged from the *Programme* as a result of opposition from a number of states, including China, when the document was negotiated in July 2001 (Small Arms Survey, 2002, p. 221). Some states hoped to change this during the Review Conference process, pushing specifically for a reference to UN standards governing the use of force and firearms by law enforcement officials.²³ While included in Conference President Kariyawasam's pre-conference draft outcome documents,²⁴ the issue fell by the wayside soon after the Review Conference started. Those states that were opposed to human rights language expressed this indirectly, insisting, for example, on a narrow interpretation of *Programme* scope that would limit its application to the *trade in illicit* small arms and light weapons—not the use of legally procured weapons.²⁵ In this case, too, there was little or no discussion of substance.

The regulation of civilian possession was another 2001 controversy that was revisited in 2006.

Civilian possession. The regulation of the civilian possession of small arms was another 2001 controversy²⁶ that was revisited in 2006. Some states, such as Mexico, as well as most civil society groups, pushed hard to get language in the final outcome document in 2006. Overall, it appeared that, since 2001, there was increased understanding of the importance of regulating civilian access in order to prevent the misuse of weapons and their diversion to the illicit market.

The issue, however, cuts quite close to the core of national sovereignty and, moreover, constitutes a red flag for the influential, US-based National Rifle Association (NRA).²⁷ True to 2001 form, the United States, with some support, insisted there could be no discussion of civilian weapons at the Review Conference. Attempts to find a compromise led nowhere, though attention was drawn to the use of the word 'possession' in the existing *Programme*. Arguably, the latter already applies, to a limited extent, to civilian possession.²⁸

Demand. Although the document, as a whole, focuses on the supply of small arms, the *Programme* does mention the issue of demand in its preamble (UNGA, 2001b, para. I.7). The challenge, five years after its adoption, was to flesh out the concept and, above all, operationalize it. Yet the 2006 Review Conference made no progress towards this end. Conference participants and observers interviewed by the Small Arms Survey offered several explanations for this. Firstly, it appears that many diplomats, especially those based in New York, are unfamiliar with the issue and do not understand its policy implications. Recent research on demand issues²⁹ has yet to filter through. Secondly, the compartmentalized nature of the committee system within the UN General Assembly undoubtedly impairs consideration of an issue that exemplifies the cross-cutting, multi-dimensional nature of the small arms problem. Finally, many

developing countries associate the demand question with state—as opposed to individual or community—demand, any discussion of which they oppose. These factors helped push the issue quickly and quietly off the Review Conference table.

Development. To the surprise of many, language linking small arms and development proved highly controversial at the Review Conference. While some developing countries supported proposals made by the EU along such lines, many others initially opposed them—whether because of concerns over conditionality, possible substitution, or a loss of control over national priority setting. Among the opponents, Barbados, representing Caribbean Community states, was especially vocal. The United States also resisted the linkage on the grounds that development was not an arms control issue and should therefore be addressed in other forums. Compromise text that mentioned plans or strategies³⁰ drawn up by recipient states themselves appeared to rally most—perhaps all³¹—of the sceptics by the end of the conference:

*Noting the steps taken by the developed countries to provide development assistance towards efforts aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, States and appropriate international and regional organizations are encouraged to support such efforts, upon request and in accordance with overall national priorities and practices, and, where appropriate, to assist in their continued integration into relevant national and local plans and strategies.*³²

Follow-up. At the end of the Review Conference, the United States stood alone in its opposition to any form of global follow-up to the *Programme*. This was a hardening of its position. In its high-level statement at the beginning of the conference, the United States indicated that it would ‘not commit to another Review Conference’, but left open the possibility of ‘follow-on actions that are focused, practical, and intended to strengthen the implementation of the Program of Action’ (US, 2006).³³

No other state disputed, at least openly, the importance of global follow-up to *Programme* implementation.³⁴ Many states argued that the 2003 and 2005 Biennial Meetings of States (BMSs) had been unproductive and needed revamping, although there was some disagreement on this point. In his draft outcome documents, Conference President Kariyawasam rejected the term ‘BMS’ in favour of ‘Action Implementation Meeting’. His 27 June text stated, moreover, that the chair’s report of such meetings ‘can serve as a basis for further recommendations by the General Assembly, if appropriate, on implementation of the Programme of Action’ (Sri Lanka, 2006c, para. IV.3). Yet, the conference did not grapple with the details of a more practical, problem-solving approach to *Programme* follow-up.

The conference did not grapple with the details of a more practical, problem-solving approach to *Programme* follow-up.

Gender/age considerations. In this area as well, the diplomatic community mostly failed to respond to the latest research—in this case, illustrating the differential impact of weapons on society. States were comfortable with the themes of child soldiers and the protection of women, but did not understand the practical implications gender and age distinctions have for small arms policy and programmes. The conference president’s drafts reflected this, dropping, at an early stage, references to ‘women and men’ in favour of ‘women’ alone.³⁵ By the end of the Review Conference, gender and age had largely faded from view as states wrestled over other issues.

MANPADS. Israel, with support from the United States, pushed hard at the Review Conference for language on MANPADS. Somewhat surprisingly, given the existence of two General Assembly resolutions on the issue (UNGA, 2004; 2005c), this was resisted by several Non-Aligned Movement states, in particular Egypt and Iran. Officially, these

countries opposed ‘singling out’ a particular weapon system for special treatment, yet most observers point to other factors. The common, US–Israeli front on MANPADS may have triggered the reflexive opposition of some states, while others could have been seeking a bargaining chip, especially vis-à-vis the United States. More fundamentally, some countries in the Muslim Middle East are reportedly concerned that the transfer of MANPADS—and eventually other light weapons—to governments could be restricted.

Victim assistance. The issue of victim assistance was discussed at the PrepCom and figured in the two draft texts Conference President Kariyawasam circulated during the period preceding the Review Conference (Sri Lanka, 2006a, para. I.16; 2006b, para. I.10). At the conference itself, however, it met with relative indifference and some suspicion. The issue was unfamiliar to most states, while others were wary of the potential financial implications of recognizing a new—and potentially very broad—category of victims.³⁶

UN General Assembly First Committee 2006

The 2006 session of the UN General Assembly’s First Committee³⁷ offered an opportunity to pick up some of the pieces left by the Review Conference, including the question of *Programme* follow-up. In the event, states seized the opportunity, and several important resolutions were adopted, providing, among other things, for a continuation of the *Programme* process. At the same time, however, the committee’s 2006 session confirmed and amplified the recent trend away from consensus adoption of the small arms resolutions.

The 2006 session of the General Assembly’s First Committee adopted several important resolutions.

The principal resolution on small arms, termed ‘omnibus resolution’, was adopted by a margin of 176 votes to 1 (the United States).³⁸ Most significantly, Resolution 61/66 provides for the continuation of the *Programme* process, with the convening of another BMS in 2008 (UNGA, 2006c, para. 4). Despite broad dissatisfaction with the 2003 and 2005 BMSs, the First Committee took no steps to ensure that the 2008 BMS will do more to bolster *Programme* implementation. Several states remain uncomfortable with new approaches to *Programme* follow-up.³⁹ It remains to be seen whether the committee can achieve more in this regard at its 2007 session.

A second resolution on the issue of ‘conventional ammunition stockpiles in surplus’ provided for a process of consultation and—‘no later than 2008’—the establishment of a group of governmental experts (UNGA, 2006d, paras. 5, 7). It was adopted by 175 votes, with 1 state voting against (the United States) and 1 abstaining (Japan).⁴⁰ The 2006 resolution on the Arms Trade Treaty or ATT (UNGA, 2006e), like that on ammunition stockpiles, targeted not only small arms and light weapons, but all conventional weapons. It was adopted by 153 votes, with 1 vote against (the United States) and 24 abstentions,⁴¹ and is discussed in more detail below. The First Committee also articulated next steps for the implementation of the *International Tracing Instrument* (UNGA, 2005a; 2005e), calling on states to provide the UN with critical information needed for weapons tracing and deciding that the first meeting on *Tracing Instrument* implementation would be held within the framework of the 2008 BMS (UNGA, 2006c, paras. 3, 5).

Overall, the 2006 session of the First Committee successfully put the UN small arms process back on track, yet this achievement was diminished somewhat by the loss of consensus support for critical elements of this process.

Other UN Initiatives

Independently of the 2006 First Committee, several other UN initiatives on small arms progressed in the latter part of 2006 and early 2007. These included the GGE on brokering, due to report to the UN Secretary-General in mid-2007 (UNGA, 2005d), as well as efforts by the UN Office on Drugs and Crime (UNODC) to advance implementation of

the *UN Firearms Protocol* (UNGA, 2001a).⁴² Several weeks after the 2006 Review Conference, the UN Sub-Commission on the Promotion and Protection of Human Rights endorsed the *Principles on the Prevention of Human Rights Violations Committed with Small Arms*, developed by Special Rapporteur Barbara Frey (UNGA HRC, 2006),⁴³ transmitting them to the Human Rights Council for consideration and possible adoption.

Non-UN initiatives⁴⁴

For a time, the UN had a monopoly on the development of small arms norms at the global level. The *Programme of Action* (UNGA, 2001b) and *UN Firearms Protocol* (UNGA, 2001a) provided the key frameworks. Yet, UN pre-eminence in global standard setting, already eroding before 2006,⁴⁵ declined further in June 2006 with the adoption of *The Geneva Declaration on Armed Violence and Development* (*Geneva Declaration*, 2006).

A number of governments, international organizations, and NGOs had stressed the relationship between armed violence and development well before this.⁴⁶ Crucially, the links among development, peace, security, and human rights were spelled out in the *2005 World Summit Outcome* document (UNGA, 2005b, para. 9).⁴⁷ In the same year, the Development Assistance Committee of the Organization for Economic Co-operation and Development agreed that official development assistance could be used for conflict prevention and peace-building activities, including measures to tackle small arms proliferation.⁴⁸

The Geneva Ministerial Summit, convened in June 2006 by Switzerland and the United Nations Development Programme, sought to generate international support for a set of practical commitments that would reduce the negative impact of armed violence on socioeconomic and human development. While the resulting *Geneva Declaration* (2006), adopted by 42 states⁴⁹ and 17 international organizations and NGOs, can hardly lay claim to universality, it is a global initiative, since participating states come from all regions of the world.

A core group of like-minded states⁵⁰ was established in November 2006 to promote the implementation of the *Geneva Declaration* and develop follow-up activities. The core group has drafted an Action Plan, which will be submitted to *Geneva Declaration* states later in 2007. Regional meetings are planned for South America and the Caribbean, Africa, and Asia in 2007–08. Progress made in the implementation of the *Geneva Declaration* is to be reviewed at a ministerial meeting, scheduled for June 2008.

The global small arms process is fragmenting.

Variable geometry in global measures

The global small arms process, centred on the UN and the *Programme of Action*, is fragmenting. Some of the latest initiatives apply to the full UN membership, while others involve a narrower group of states. At the same time, not all UN initiatives have the support of all UN member states. The United States has broken ranks over the issue of *Programme* follow-up. The United States and other leading exporters, such as China and the Russian Federation, appear sceptical about the merits of an ATT.

While it makes sense for some states, such as those endorsing the *Geneva Declaration*, to move forward at a faster pace on issues of interest to them, the current cracks in the UN's universal framework for small arms are cause for concern. Consensus support lends important strength to the political norms contained in the *Programme* and *International Tracing Instrument*. US backing for the UN small arms process, while clearly useful, will not make or break the regime; yet there is a risk of it unravelling if other states follow the US example and opt out as well, whether wholly or partially.

Fragmentation also raises the prospect of inconsistency or incoherence among different initiatives. The problem is not that some states undertake measures that require more of them than the common minimum standards set out in the *Programme* and *International Tracing Instrument*. A problem arises, rather, where by complying with one norm, states breach a second.⁵¹ In this regard, it is especially important that standards developed in relation to all conventional weapons—e.g. as part of the UN ATT or ammunition initiatives—do not conflict with those applicable to small arms and light weapons.

Last, but not least, even assuming the needs of consistency are met as states push forward on various fronts, it is crucial that the universal framework provided by the *Programme* not be left too far behind. Many of the common minimum standards found in the *Programme* are quite basic. Paragraph II.11 concerning transfer licensing has attracted attention for this reason. Moreover, even from a narrow arms control/disarmament perspective, critical gaps remain in the UN small arms framework, such as specific norms for ammunition.

SPOTLIGHT ON TRANSFER CONTROLS

While several multilateral instruments of the past decade regulate the licensing and conduct of weapons transfers, only the *UN Programme of Action*, specific to small arms, is of universal scope (UNGA, 2001b, sec. II, paras. 11–15).⁵² There are few comparable standards covering the broader range of conventional weapons.⁵³ Yet, precisely because *Programme* norms in this area are relatively open-ended, the subject of arms transfer controls has risen to the top of the UN agenda. The question of a prohibition on arms transfers to non-state actors, first discussed at the 2001 UN Small Arms Conference, also remains important to many states. This part of the chapter will review recent initiatives in these areas and, above all, explore in some depth relevant concepts and debates.

The subject of arms transfer controls has risen to the top of the UN agenda.

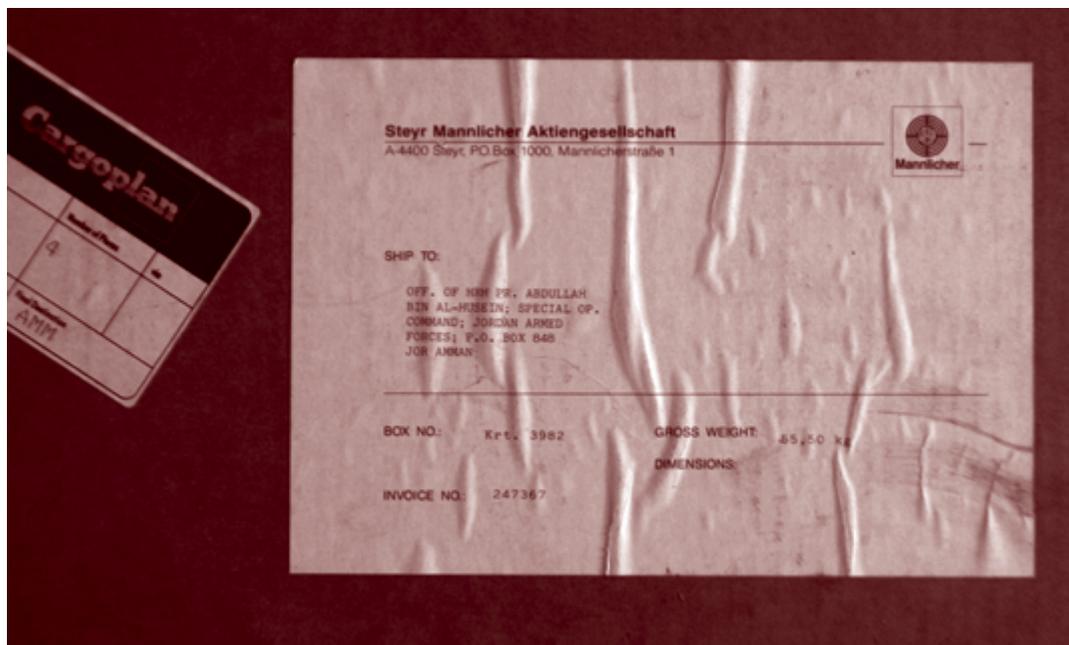
While strengthened measures to prevent the diversion of weapons to unintended recipients, such as end-user certification, appear to have fairly broad support, the next steps at the global level are unclear. The latest initiatives on transfer controls focus on licensing decisions—specifically, the criteria and guidelines to be used in deciding whether to transfer arms to specific end users. This chapter also concentrates on these issues.

New initiatives⁵⁴

Civil society has led efforts to develop global principles for arms transfers. Although some states, such as Costa Rica and Mali, were early converts, most governments have prioritized the issue only recently. Some of these initiatives have been developed with small arms and light weapons in mind, while others encompass the full range of conventional weapons.

Civil society initiatives

An important starting point for civil society initiatives was the formal launch, in May 1997, of the *International Code of Conduct on Arms Transfers* by Nobel Peace Prize laureates (*Nobel Laureate Code*, 1997). It was followed, in 2000, by the Framework Convention on International Arms Transfers (Framework Convention).⁵⁵ Modelled on components of the *Nobel Laureate Code* (1997) and the *EU Code of Conduct* (EU, 1998), it was drafted by a group of civil society organizations in collaboration with legal experts at Cambridge University. In contrast to the *Nobel Laureate Code*, which, in some areas, reached well beyond the status quo,⁵⁶ the Framework Convention sought to codify states' existing



The shipping label on a box of guns from an Austrian manufacturer, found by US troops in the private arms collection of Odai Hussein, son of Saddam Hussein, in Baghdad in April 2003. © John Moore/AP Photo

obligations under international law, drawing on the UN Charter (UN, 1945) and other sources. The term ‘framework’ anticipated the development of related, but separate protocols covering various issues. Although the original draft applied to all conventional weapons, it was refined to focus on small arms and light weapons after the adoption of the *Programme* in July 2001.

A Steering Committee was established in 1999 to shape the initiative’s strategic direction.⁵⁷ As of 2003, the Framework Convention became known as the Arms Trade Treaty (ATT).⁵⁸ The Control Arms Campaign⁵⁹ was launched in October 2003 in order to increase awareness and pressure governments on transfer control issues, in particular the ATT. After the UK government swung its support behind a legally binding treaty covering all conventional weapons in March 2005 (see below), the civil society initiative was again recast. The initial emphasis on a specific text gave way to the promotion of general principles designed to underpin an eventual instrument. The latest version of the *Global Principles*, issued by the ATT Steering Committee in March 2007, apply to all conventional arms, as well as their ammunition. They are equally applicable to the narrower category of small arms and light weapons (ATT SC, 2007).

In the period 2003–05, the Biting the Bullet Project⁶⁰ led a series of discussions involving governments, international organizations, and civil society designed to develop shared understandings in relation to small arms transfer guidelines, as well as restrictions on transfers to NSAs. The outcomes of the Small Arms Consultative Group Process include concrete proposals for transfer guidelines, which, reflecting the approach taken by the civil society ATT initiative, are addressed not only to exporting states, but also to importing and transit states (BtB, 2006b).

Government initiatives

Following the adoption of the *Programme* in July 2001, government initiatives on transfer controls targeted small arms and light weapons. More recently, they have also encompassed the full range of conventional arms. The UK

government's Transfer Controls Initiative (TCI), launched at a conference at Lancaster House in London in January 2003 (UK, 2003), is situated within the *Programme's* small arms framework. The Lancaster House conference, with participation from around the world, was followed by a series of meetings designed to build support for strengthened controls within different regions, as well as to ensure that regional perspectives were reflected in the initiative.

The TCI returned to the global stage in April 2006 when Kenya and the UK convened a meeting in Nairobi of nine other states from various regions, along with representatives of civil society. This meeting resulted in the adoption of *Suggested Common Guidelines* designed to elaborate upon the *Programme's* basic commitments on transfer controls (*Nairobi Guidelines*, 2006). Participants hoped these would be used as the basis for further negotiations, but in the event, as noted earlier, relatively little progress was made on transfer controls at the 2006 Review Conference. There did, however, appear to be widespread agreement—even consensus—on the need for further consideration of global measures. An informal global meeting on *Programme*-related issues, including transfer controls, to be convened in Geneva by Canada and Switzerland at the end of August 2007, offers an initial opportunity to pursue these discussions.

As governments
wrestle with the
transfer controls
issue, they confront
some basic questions
and challenges.

Since 2005, in parallel with the TCI, the UK has supported—indeed, promoted—an initiative covering all conventional arms. In contrast to the TCI, it aims at the negotiation of a legally binding treaty. Like the civil society initiative on transfer controls, it has been labelled the Arms Trade Treaty (ATT). In 2006, Argentina, Australia, Costa Rica, Finland, Japan, Kenya, and the United Kingdom joined forces to draft the UN General Assembly ATT resolution, mentioned earlier (UNGA, 2006e). It provides for the establishment of a group of governmental experts with a mandate 'to examine, commencing in 2008, the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms' (UNGA, 2006e, para. 2).

Resolution 61/89 also requests the UN Secretary-General 'to seek the views of Member States' on these issues (UNGA, 2006e, para. 1). A deadline of 30 April 2007 was set for written submissions by governments, with the Secretary-General then reporting to the General Assembly during its 62nd session (2007–08). The report of the planned group of governmental experts is to be prepared for the General Assembly's 63rd session (2008–09).

Key challenges

As governments wrestle with the transfer controls issue, they confront some basic questions and challenges: how to elaborate upon the *Programme of Action's* basic norms; whether and how to address the question of transfers to non-state actors; and how to apply licensing criteria effectively.

'Existing responsibilities . . .'⁶¹

As outlined above, as of April 2007 the *Programme* is the only universal instrument that establishes standards for the transfer of small arms and light weapons. Paragraph II.11 of the *Programme* usefully points out that national export licensing decisions must be 'consistent with the existing responsibilities of States under relevant international law' (UNGA, 2001b). This, however, begs the question. What are these 'existing responsibilities'? What international law is 'relevant'? Government officials responsible for arms licensing decisions, along with their national legislatures, need more specific guidance than that provided by paragraph II.11. The *Nairobi Guidelines*, *Global Principles*, and other initiatives described previously in the chapter are designed to address this need. They are based on certain principles of international law, which, however translated, will be crucial to any common interpretation of paragraph II.11 that UN member states may, in future, agree upon.

The two principal sources of international law are treaty and custom. Treaties bind states that are party to them, whereas customary international law binds all states.⁶² As we will see, many of the international legal norms that are most relevant to international arms transfers are customary in nature, applicable to all states. Others, including UN Security Council arms embargoes, derive from the UN Charter (UN, 1945)—a treaty, yet of near-universal application.

Box 4.1 Complicity in violations of international law

The relationship between arms exporting and importing states is not simply a matter of policy or ethics; it is, in fact, defined by law. Rules drafted by the International Law Commission (ILC)⁶³ specify when states incur legal responsibility as a result of assistance they give to a second state in its commission of an internationally wrongful act.⁶⁴

Article 16

Aid or assistance in the commission of an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State (UNGA ILC, 2001).

While the UN General Assembly took note of the ILC articles and commended them to the attention of governments, it did not formally adopt them. Nor have they been incorporated in any legally binding instrument. In early 2007, however, in its judgement in the Bosnian genocide case, the International Court of Justice (ICJ) indicated that Article 16 reflects customary international law (ICJ, 2007, para. 420), meaning that it legally binds all states. This is an important development, since, before the ICJ ruling, the principle's status had been unclear.

Article 16(b) limits the scope of the rule to those cases where both assisting and assisted states are subject to the same primary rule of international law. This would exclude a treaty that the assisted—but not assisting—state is party to. It has little or no application to international arms transfers, as virtually all of the relevant primary rules form part of customary international law, binding on all states. There are many primary rules that apply to non-state actors as well as states, including international humanitarian and international human rights norms. It therefore seems reasonable also to apply the complicity rule where the assisted entity (i.e. the arms recipient) is a non-state actor.

The practical application of the rest of Article 16 raises more complex questions. What 'knowledge' must the assisting state have if it is to be considered complicit in the commission of an internationally wrongful act? What counts as 'aid or assistance'? At this relatively early stage in the interpretation and application of the rule, there are no definite answers. In his commentary on Article 16, the ILC's last Special Rapporteur on state responsibility asserted that 'the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so' (Crawford, 2002, p. 149). Yet, this interpretation is at odds with the text of Article 16 and would, moreover, render its application extremely difficult.

If one focuses on the text of Article 16, one must conclude that the assisting state does not have to *intend* to facilitate the commission of the internationally wrongful act. Under the terms of that Article 16, it must simply have 'knowledge of the circumstances' of the act (UNGA ILC, 2001, art. 16(a)). This would include, for example, knowledge that a state receiving transferred weapons has a poor human rights record. It is unclear whether the assisting state must actually know of such circumstances or could instead be presumed to know—specifically where a problem, though not actually known, could easily be ascertained by the exporting state. This latter interpretation would obviously enhance the effectiveness of the rule.

Article 16 provides little guidance on the question of what would qualify as 'aid or assistance'. More specifically, do transferred weapons need to be used in actual violations of international law before the transferring state becomes complicit in these? In discussing 'complicity in genocide', which it acknowledged was 'similar' to the concept of 'aid or assistance' mentioned in Article 16, the ICJ referred to 'the provision of means to enable or facilitate the commission of the crime' (ICJ, 2007, para. 419). This hints at a relatively accommodating standard: the assistance would not have to be essential to the commission of the wrongful act, but merely 'facilitate' it in some less direct sense.⁶⁵

The ICJ has stated that the complicity rule is customary international law, applicable to all states. While its exact contours have yet to be defined, if exporting states wish to remain well beyond the reach of the rule, they would be well advised not to transfer arms if they know (or should know) of circumstances creating a significant risk that these weapons will be used for violations of international law.

Whether they take the form of custom or treaty, ‘primary rules’ of international law establish substantive obligations for states, while ‘secondary rules’ specify the conditions under which the primary rules are breached, as well as the legal consequences of such breaches (Cassese, 2005, p. 244). Secondary rules include those governing state responsibility—in particular the concept of complicity, relevant to all arms exporting states (Box 4.1).

Direct limitations on arms transfers. Many primary rules of international law limit or prohibit the transfer of arms in specific circumstances. Mandatory UN Security Council arms embargoes, legally binding on all UN member states (UN, 1945, art. 25),⁶⁶ offer one prominent example. Certain principles of the UN Charter—for example, that of non-intervention in the internal affairs of another state—also serve as direct restraints on international arms transfers.⁶⁷ Certain rules of international humanitarian law (IHL) also limit the right of states to transfer arms. These include the rule requiring parties to an armed conflict to distinguish between combatants and civilians, and, by extension, prohibiting the use of weapons intrinsically incapable of doing so (*Add. Protocol I*, 1977, arts. 48, 51(2), 52(2); *Add. Protocol II*, 1977, art. 13(2)); and the rule prohibiting the use of weapons that ‘cause superfluous injury or unnecessary suffering’ (*Add. Protocol I*, 1977, art. 35(2)). While both prohibitions concern weapons use, not transfer, they are clearly incompatible with a right of transfer. Both rules are customary in nature (ICJ, 1996, paras. 78–79).

Limitations based on likely use. Other restrictions on international arms transfers derive from the risk that such weapons will be used for violations of primary international rules. An arms exporting state would be considered ‘complicit’ in such violations if it knew (or ought to have known) of circumstances creating such a risk (Box 4.1).

The ‘existing responsibilities of States under relevant international law’ are, in fact, extensive. Relevant primary rules include UN Charter and customary rules relating to the use of force and non-intervention; IHL;⁶⁸ international human rights law; as well as the crime of genocide, crimes against humanity, and war crimes. Focusing, purely for purposes of illustration, on international human rights law, the norms most relevant to international arms transfers (and possible misuse) are those enshrining the right to life (UNGA, 1948, art. 3; 1966, art. 6), and the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (UNGA, 1948, art. 5; 1966, art. 7). These rules, too, are customary in nature, legally binding on all states.

This chapter will not offer a complete enumeration of international norms that are directly or indirectly applicable to international arms transfers, as this can be found elsewhere (Gillard, 2000; ATT SC, 2007). For our purposes, it is sufficient to note that the ‘existing responsibilities of States under relevant international law’ are, in fact, extensive. States commit an ‘internationally wrongful act’ if they transfer small arms in violation of a direct limitation on such transfers (e.g. an arms embargo). They are probably also in breach of their international obligations if they transfer arms even though they know (or should know) of circumstances creating a significant risk that these weapons will be used for violations of international law (e.g. human rights norms); they are ‘complicit’ in such violations. While the scope and application of the complicity rule is not yet settled, at a minimum one would have to conclude that transfers of this kind are of questionable legality and thus irresponsible (TRANSFERS).

Non-state actors⁶⁹

Several regional instruments incorporate the principle of a ban on small arms transfers to NSAs (OAU, 2000, para. 4(i); EU, 2002, art. 3(b); ECOWAS, 2006, art. 3(2)). UN Security Council Resolution 1373, adopted just after the 11 September 2001 terrorist attacks on the United States, takes the same approach with respect to ‘the supply of weapons to terrorists’ (UNSC, 2001, para. 2(a)).⁷⁰ International concern about the potential for terrorist or insurgent use of

MANPADS has prompted a range of regional and global measures, including two UN General Assembly resolutions (UNGA 2004; 2005c), that similarly aim to curtail and control the supply of these weapons to NSAs.⁷¹

Nevertheless, as described earlier in the chapter, the question of banning the transfer of all small arms and light weapons to NSAs, deeply divisive when the *Programme of Action* was adopted in July 2001, remained so at the 2006 Review Conference. In part, this can be attributed to differences in the nature of the perceived threat. MANPADS concerns mostly stem from fears of diversion, while proposals to ban the transfer of all small arms and light weapons to NSAs are more often motivated by the prospect of their deliberate transfer to rebel groups.

The Small Arms Consultative Group Process (CGP), mentioned earlier, examined the NSA transfer issue in depth from 2003 to 2005. The following text is informed, to a large extent, by the CGP's discussions and conclusions.⁷²

What are NSAs? This seemingly simple question accounts for much of the polarization of the NSAs issue. During the 2001 UN Small Arms Conference, some states feared that any commitments relating to NSAs would impinge upon legitimate civilian possession and trade in firearms. Yet, those states seeking strong language on NSAs had different actors in mind: rebel groups, and criminal and terrorist organizations.

A wide variety of NSAs acquire, use, and misuse small arms and light weapons. Their relationships with states range from legally authorized extensions of the state security sector to insurgent forces seeking to overthrow the established government. They include:

- *Armed rebel groups, 'freedom fighters', paramilitaries, or warlords;*
- *Paramilitaries and other NSAs closely associated with state agencies;*
- *Civilian militia including communal groups and militias, civil defence forces, vigilante groups;*
- *Terrorists and terrorist organisations;*
- *Criminals and criminal groups, including black market arms traders;*
- *Political parties and associated political groups;*
- *Private military companies;*
- *Private security companies, and other private companies with their own security staff;*
- *Arms traders: domestic legal retail markets, traders and wholesalers, arms brokers, and front companies;*
- *Civil institutions, such as museums;*
- *Civilians: sports shooters, hunters, gun collectors, holders of guns for personal protection (BtB, 2006a, p. 3).*

Only some of these actors are a concern for states; they may or may not pose a significant risk of small arms diversion or misuse. National policy clearly needs to be sensitive to such differences, yet it is important to note that simple disaggregation of actor types, though useful, does not yield a neat separation of problematic and unproblematic NSAs. A more policy-relevant distinction is that between those NSAs authorized to import arms by the government on whose territory they are located and those who have no such authorization.

Within the CGP, transfers to authorized NSAs, including authorized civilians, were not seen as a major source of concern. By contrast, arms flows to unauthorized NSAs were associated with adverse impacts on internal and international security, and a relatively high risk of weapons misuse and diversion. Such transfers also raise concerns surrounding sovereignty.

These considerations explain why most governments support a ban on any transfer to an unauthorized NSA. Some governments, however, maintain that in certain exceptional cases, such a transfer would be justified. Discussions

Only some non-state actors are a concern for states.

within the CGP consequently focused on two policy options: a total ban on transfers to unauthorized NSAs and a presumption of non-transfer with an international framework that would allow for 'hard case' exceptions. A third option is to address NSA transfer concerns through regular licensing systems and principles. Rigorous transfer licensing systems could, arguably, remove the need for separate measures on NSAs.

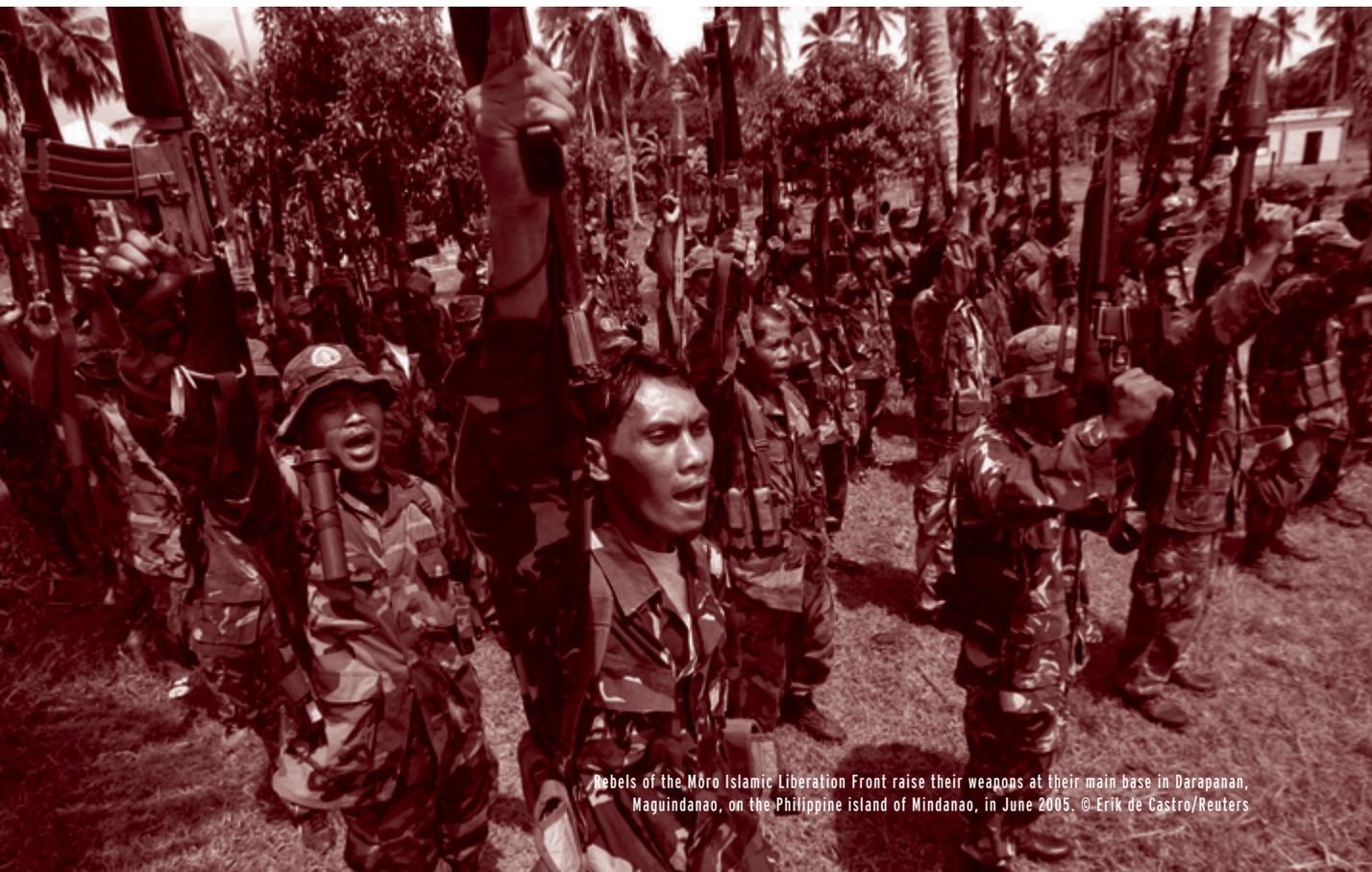
The CGP explored at some length the 'hard cases' that might offer grounds for an exceptional transfer of small arms to an unauthorized NSA (the second policy option). Four elements were identified that, in combination, could provide such justification. These relate to the context of the transfer, the motivations for it, the characteristics of the NSA, and the potential effectiveness of the transfer in achieving legitimate aims.

In the view of the CGP, only two contexts might yield a 'hard case', specifically where the territory to which arms were to be sent was:

- experiencing civil war or internal armed conflict; or
- experiencing large-scale oppression or genocide.

The only legitimate motivations would be to:

- protect vulnerable communities or populations from imminent or ongoing attack, violent oppression, or genocide;
- promote a relatively desirable peace settlement (e.g. by preventing an unjust victory by better-armed forces); or
- support international peace operations or humanitarian interventions (e.g. by providing small arms to NSAs working directly under instruction from the international operations/interventions).



Rebels of the Moro Islamic Liberation Front raise their weapons at their main base in Darapanan, Maguindanao, on the Philippine island of Mindanao, in June 2005. © Erik de Castro/Reuters

Only NSAs with certain characteristics would be considered potentially legitimate recipients of small arms. Such NSAs should:

- command substantial legitimacy and internal support among the population of the relevant state;
- have unselfish aims consistent with the motivations underlying the proposed transfer;
- have demonstrated commitment and capacity to use the supplied arms effectively and with appropriate restraint;
- be unlikely to misuse the arms supplied to them on a substantial scale; and
- have a credible commitment and capacity to control the transferred arms effectively, including relatively safe and secure storage, and low risk of re-export or diversion to unauthorized uses or users.

Even if these elements of a hard case were present, any decision to supply small arms would need to be informed by an assessment of the transfer's potential effectiveness. It would have to have a reasonable prospect of achieving its aims and would normally be part of a package of other measures, including efforts to reduce risks of diversion. Some CGP participants also argued that states transferring arms to NSAs should accept responsibility for their misuse and, moreover, take action to prevent such misuse. A final conclusion was that any transfer of arms to NSAs, even in hard cases, should not replace more robust and effective international responses (BtB, 2006a; Bourne, 2007).

In practice, very few situations would satisfy this four-part test. The international community's response to the Rwandan genocide was largely ineffectual. A non-state actor, the Rwandan Patriotic Front (RPF), put an end to a genocide that was being perpetrated by the Rwandan government and allied militia. Yet, there is no evidence that the RPF needed additional supplies of arms or ammunition, or that such supplies would have enhanced its capacity or resolve to protect civilian populations (Bourne, 2007). While the Rwandan genocide offers a compelling example of a situation in which, one might think, a transfer of arms to an NSA would be justified, the facts of the case leave the question open.⁷³

The fight against international terrorism would also seem to offer promising ground for hard case exceptions. In the weeks following the 11 September terrorist attacks, the United States and allied states gave the Northern Alliance arms and direct military support in its successful fight against Afghanistan's Taliban government. Nevertheless, it appears that it was the direct military support—not the (additional) weapons—that was the key to the Northern Alliance's success against the Taliban. It is debatable, moreover, whether this case belongs under the NSA rubric, as the international community had progressively withdrawn its recognition of the Taliban government as a result of its support for and protection of al Qaeda (Bourne, 2007).

Independent observers have also reported that both the RPF and Northern Alliance committed serious violations of international humanitarian law, including revenge killings of civilians and the summary execution of prisoners (HRW, 1999; 2002).

This brief consideration of two cases cannot settle the question of whether arms transfers to NSAs are ever justified. Yet it demonstrates the practical difficulty of meeting the criteria discussed by the CGP. Arguments favouring the exceptional transfer of weapons to NSAs tend to emphasize the context and motivation underlying such transfers. Often overlooked are the practical hurdles exporters face in ensuring that recipient NSAs act responsibly and that transferred weapons are effective in achieving their (legitimate) aims. Although the CGP has helped clarify some of the issues surrounding the NSA transfer question, the latter's complexity probably precludes an early end to the current diplomatic stalemate.

The question of whether arms transfers to non-state actors are ever justified remains unresolved.

The challenge of implementation⁷⁴

As indicated earlier, the 'existing responsibilities of States under relevant international law' are extensive. Despite the controversies that surround attempts to spell them out at the global level, there is, in reality, no escape. Key legal norms governing non-intervention, the non-use of force, the conduct of armed conflict, and human rights are customary in nature, applicable to all states. In the context of arms transfer licensing, these norms apply where the recipient is a state; many also apply where the recipient is an (unauthorized) NSA. Whatever the outcome of discussions on global criteria, arguably the critical challenge is the effective implementation of such principles.

The question of how to apply arms transfer criteria has received limited attention to date, even though they are increasingly part of national (and regional) control frameworks. In some cases, their application is relatively straightforward—as when determining, for example, whether a recipient is subject to an arms embargo. Yet, when the

Box 4.2 Applying IHL criteria

Whether within the framework of a regional instrument or independently, many states have agreed to take the recipient's respect for IHL into account in their arms transfer decisions. The specific wording used to formulate such criteria varies, but most stipulate that arms transfers should not be authorized if there is a 'serious', 'clear', or 'likely' risk that transferred weapons or material would be used to commit violations of IHL.

These terms raise difficult questions of interpretation. When does a risk become 'serious' or 'clear' or 'likely'? What time period is relevant to an assessment of potential future misconduct? Isolated examples of past violations may not provide sufficient grounds for concern. Yet, if there is evidence of a pattern of violations, or if no steps have been taken to prevent violations from recurring, there may well be a problem. The degree to which past behaviour is indicative of present or future conduct is also highly dependent on such developments as changes in government or to the country's political system.

Factors that are not directly related to a recipient's compliance with IHL may also be relevant when determining whether transferred weapons might be used for IHL violations. These include the security situation in the recipient state, the stability of its government, and its record of respect for human rights. Equally important is the possibility of diversion to other destinations where arms could be used for violations of IHL. Important considerations therefore include previous known or suspected cases of diversion involving the recipient, the quality of stockpile management and security for transferred arms, and control over re-exports.

The ICRC has distilled these and other factors in the form of nine key indicators (ICRC, 2007):

- Whether a recipient which is, or has been, engaged in an armed conflict has committed serious violations of IHL;
- Whether a recipient which is, or has been, engaged in an armed conflict has taken all feasible measures to prevent violations of IHL, or cause them to cease, including by punishing those responsible for serious violations;
- Whether the recipient has made a formal commitment to apply the rules of IHL and taken appropriate measures for their implementation;
- Whether the recipient state has in place the legal, judicial and administrative measures necessary for the repression of serious violations of IHL;
- Whether the recipient disseminates IHL, in particular to the armed forces and other arms bearers, and has integrated IHL into its military doctrine, manuals, and instructions;
- Whether the recipient has taken steps to prevent the recruitment of children into the armed forces or armed groups and their participation in hostilities;
- Whether accountable authority structures exist with the capacity and will to ensure respect for IHL;
- Whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
- Whether the recipient maintains strict and effective control over its arms and military equipment and their further transfer (ICRC, 2007).

Each indicator is accompanied by a checklist of questions for arms licensing officials (ICRC, 2007).

recipient's likely use of transferred arms is at issue, the assessment is more complex. By developing regulations or guidelines for the application of certain arms transfer criteria, states can facilitate licensing decisions.

Guidelines that identify specific factors to be considered when making assessments can contribute to more consistent implementation of arms transfer criteria adopted at the national, regional, or global level. They can also be a helpful tool for government officials involved in arms transfer decisions. With the increased number of criteria and instruments to be taken into account, the task of export-licensing officials has become more complex, yet it cannot be assumed that they will be experts in the range of areas they need to assess.

For this reason, in 2003 the EU Working Party on Conventional Arms Exports (COARM) began to develop best practice for the interpretation of the eight criteria in the *EU Code of Conduct* (EU, 1998). Of these criteria, best practices have so far been developed for the five criteria related to human rights, internal situation, regional stability, risk of diversion, and sustainable development (EU, 2006). As of early 2007, work on the last three was under way. The International Committee of the Red Cross (ICRC) has also produced a set of guidelines to assist states in their assessment of a recipient's compliance with the rules regulating the conduct of armed conflict, i.e. IHL (ICRC, 2007) (see Box 4.2).

While these evaluations will always involve an element of subjective judgement, guidelines such as those developed by COARM and the ICRC can help states to take a more systematic, rigorous, and objective approach to arms transfer licensing. They can also encourage decision-makers to articulate the risks they believe are associated (or not) with specific transfers.

CONCLUSION

Six years on from the adoption of the *UN Programme of Action*, the UN small arms process remains alive and relatively well—though somewhat resistant to those aspects of the issue falling outside of the traditional arms control/disarmament paradigm. A smaller group of states, from all parts of the world, are pushing ahead on the issue of armed violence and development (*Geneva Declaration*, 2006), putting a more intricate—and potentially more dynamic—stamp on global small arms activity. While the fragmentation of the global process is not a problem as such, it does carry certain risks. These include inconsistency among measures, as well as the possible neglect of the universal framework provided by the UN.

For the moment, despite the loss of consensus support for important elements of the process, UN member states are forging ahead on several fronts, including that of transfer controls. Championed by civil society at an early stage, governments are now prioritizing this issue. Key challenges include unpacking the *Programme's* basic commitments on transfer controls, deciding whether and how to address the question of transfers to non-state actors, and developing means of effectively implementing transfer licensing criteria.

As the chapter describes, in the area of transfer controls states' 'existing responsibilities . . . under relevant international law' (UNGA, 2001b, para. II.11) are extensive. Relevant legally binding norms include direct limitations on certain arms transfers, as well as the rule holding states 'complicit' in violations of international law that are committed with arms they transfer to others, notwithstanding a known (or knowable) risk of misuse (see the section on 'Existing responsibilities . . .', above). Whatever the outcome of discussions on global criteria, arguably the critical challenge is the implementation of such principles. Guidelines identifying factors to be considered when deciding whether or

not to authorize a particular transfer can help states take a more systematic, rigorous, and objective approach to these decisions.

In short, UN member states have much to consider as they attempt to come to terms, collectively, with their 'existing responsibilities . . . under relevant international law'. This includes the risk that the UN small arms process, recently revived, could again fade if the current focus on core transfer control commitments proves to be superficial. ■

LIST OF ABBREVIATIONS

ATT	Arms Trade Treaty	ILC	International Law Commission
BMS	Biennial Meeting of States (<i>UN Programme of Action</i>)	MANPADS	man-portable air defence system
CGP	Small Arms Consultative Group Process	NRA	National Rifle Association
COARM	European Union Working Party on Conventional Arms Exports	NSA	non-state actor
EU	European Union	PrepCom	Preparatory Committee (UN Programme of Action Review Conference)
Framework Convention	Framework Convention on International Arms Transfers	<i>Programme</i> Review Conference	<i>UN Programme of Action</i> 2006 UN Programme of Action Review Conference
GGE	Group of Governmental Experts	RPF	Rwandan Patriotic Front
ICJ	International Court of Justice	TCI	Transfer Controls Initiative
ICRC	International Committee of the Red Cross	UNODC	United Nations Office on Drugs and Crime
IHL	international humanitarian law		

ENDNOTES

- 1 The full, official name of the conference was the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNGA, 2006b).
- 2 For more information on the PrepCom, see IANSA (2006a) and UNGA (2006a).
- 3 In the *Programme*, states recommended that the UN General Assembly convene a review conference in 2006, as well as biennial meetings to consider *Programme* implementation (no dates specified) (UNGA, 2001b, para. IV.1). Pursuant to these recommendations, the General Assembly convened Biennial Meetings of States in July 2003 and July 2005, along with the 2006 Review Conference. It made no provision for post-2006 follow-up, as the Review Conference was expected to decide this question.
- 4 'We haven't lost anything', Conference President Kariyawasam said in remarks made at the conference's closing session.
- 5 In relation to transfer controls, see the text below.
- 6 Remarks by a participant in a Geneva Forum meeting, held on the margins of the Review Conference on 6 July 2006.
- 7 This analysis draws on the Small Arms Survey study described in greater detail in the 'Review Conference Debates' section, below.
- 8 For more on these issues, see Small Arms Survey (2003, ch. 4; 2004, ch. 7; 2006, ch. 12).
- 9 See also UNGA (2005b, paras. 6, 12, 72).
- 10 See the 'Review Conference Debates' section, below, for more information on national positions.
- 11 Concerning the failure of (and opportunities for) disarmament diplomats to actively seek and develop compromise solutions in such negotiations, see Prins (2006).
- 12 Both the *Programme* (UNGA, 2001b) and the *International Tracing Instrument* (UNGA, 2005a; 2005e) are expressions of political commitment ('politically binding').

- 13 This number includes statements made by permanent observers to the UN. Some of the statements were given on behalf of regional or other groups of states. Text, and in some cases video, is available at <<http://www.un.org/events/smallarms2006/mem-states.html>>
- 14 Remarks of one conference participant, interviewed by the Small Arms Survey in December 2006.
- 15 Colombia acted as facilitator for section II (national, regional, and global measures), Switzerland for section III (international cooperation and assistance), and Japan for section IV (follow-up).
- 16 Eighteen participants in, or close observers of, the Review Conference process participated in the study (11 from government, 3 from international organizations, 4 from civil society). In relation to 12 different issue areas, they were asked to identify: (1) how close states came to reaching agreement on the issue; (2) the substance of any agreement or understanding; and (3) the main obstacles to progress. Participants were also asked for their general impressions of the conference, including those factors they thought had contributed to the failure to reach agreement on an outcome document. Participants responded in writing, or during in-person or phone interviews. Individual responses are confidential.
- 17 See also Sri Lanka (2006g, paras. II.5, II.21, II.25).
- 18 See Kidd (2006). Several participants in the Survey's study of the Review Conference also expressed concern about, or otherwise noted, this problem.
- 19 In relation to international transfers and brokering, see also UNGA (2001b, paras. II.2, 12–14).
- 20 See Kidd (2006).
- 21 This broader term would encompass other safeguards, such as delivery verification. For more on post-delivery controls applicable to man-portable air defence systems, see Small Arms Survey (2005, pp. 134–36).
- 22 See Sri Lanka (2006g, para. IV.4) and Small Arms Survey (2006, p. 102).
- 23 For more, see Small Arms Survey (2004, ch. 7).
- 24 See, for example, Sri Lanka (2006b, paras. I.3, II.22).
- 25 The phrase 'in All Its Aspects', included in the title of the *Programme*, was a key element of the bargain struck in July 2001 between those states that preferred a more comprehensive treatment of the small arms problem and those more comfortable with a narrower approach tied to the 'illicit trade'.
- 26 See Small Arms Survey (2002, pp. 223–24).
- 27 The influence of the NRA in Washington was reflected in the composition of the US delegation to the Review Conference; see Stohl (2006).
- 28 See UNGA (2001b, para. II.3).
- 29 See, for example, Centre for Humanitarian Dialogue (2005, theme 6) and Small Arms Survey (2006, ch. 6).
- 30 The word 'development' was omitted in the final version.
- 31 The US position, in particular, remained unclear.
- 32 One of two versions of substantially identical text retained at the end of the conference by key participants in the small arms–development debate.
- 33 Some conference participants interviewed by the Survey said that US diplomats had indicated, in advance of the conference, that the United States would not accept *any form* of global follow-up. This was not, however, the message that it relayed in its high-level statement at the beginning of the meeting.
- 34 Israel did, however, indicate that its support for follow-up would depend on the content of the conference outcome document.
- 35 See Sri Lanka (2006a, para. I.18; 2006b, para. II.25). Young men are the principal victims and perpetrators of small arms violence worldwide; see Small Arms Survey (2004, ch. 6; 2006, ch. 12).
- 36 Instruments relating to anti-personnel landmines and explosive remnants of war provide for victim assistance. For more information, see Brinkert (2006).
- 37 The First Committee on Disarmament and International Security meets annually, in October, for a 4–5 week session. It negotiates and drafts the resolutions that are formally adopted by the General Assembly as a whole in December. For more on the committee's 2006 session, see Parker (2007).
- 38 All voting results reported here were derived from the Reaching Critical Will Web site: <<http://www.reachingcriticalwill.org/political/1com/1com06/res/resindex.html>>
- 39 Interview with First Committee participant, 7 November 2006.
- 40 On the separate vote concerning para. 7 alone (the establishment of a GGE), both Japan and the United States voted no.
- 41 Those countries that abstained included major small arms exporters, such as China, Iran, Israel, and the Russian Federation (2004 data). For more information on these exporters, see Annexe 3 (TRANSFERS) at <<http://www.smallarmssurvey.org/yearb2007.html>>. Most Arab states also abstained on the ATT vote. Separate votes on paras. 2 and 3 followed these same trends. For more on the ATT vote, see <<http://www.reachingcriticalwill.org/political/1com/1com06/res/resindex.html>>

- 42 In consultation with experts from states, inter-governmental organizations, and civil society, UNODC is developing guidelines designed to assist states parties in implementing the provisions of the *UN Firearms Protocol*. An initial expert working group meeting was held in November 2006, in Vienna. A draft of the guidelines is scheduled for completion by the end of 2007. Source: written correspondence with UNODC (16 March 2007).
- 43 For the reports of Special Rapporteur Frey, see the University of Minnesota Web site: <<http://www1.umn.edu/humanrts/demo/subcom.html>>
- 44 This section is based on Dreyer (2007).
- 45 See, for example, WA (2002).
- 46 See, for example: Small Arms Survey (2003, ch. 4); <<http://www.bradford.ac.uk/acad/cics/projects/arms/AVPI/>>
- 47 See also paras. 6, 12, and 72.
- 48 For more information, see <<http://www.hdcentre.org/OECD-DAC>>
- 49 As of April 2007, 8 additional states have formally endorsed the *Geneva Declaration*, bringing the total number of participating countries to 50.
- 50 As of April 2007, the members of the core group were Canada, Finland, Guatemala, Kenya, Morocco, the Netherlands, Norway, Switzerland, Thailand, and the United Kingdom. The group is coordinated by Switzerland.
- 51 There would be inconsistency, for example, if (hypothetical) instrument A required states to paint all weapons for export red, while instrument B required them to paint the same weapons green. It would be impossible to comply with both commitments.
- 52 Regional instruments that establish criteria for transfer licensing decisions include EU (1998), OSCE (2000, sec. III.A), and SICA (2005). At the international level, the Wassenaar Arrangement has adopted a set of *Best Practice Guidelines* for small arms transfers (WA, 2002), yet membership in the organization is not universal.
- 53 See China et al. (1991); UNGA (1996).
- 54 This section is based on Stevenson (2007).
- 55 Since 2003, the original text of the Framework Convention (more recently called the ATT) has been redrafted several times. It is no longer circulating due to the new emphasis on the *Global Principles* (ATT SC, 2007).
- 56 See *Nobel Laureate Code* (1997, arts. 5, 7–10).
- 57 The current members of the ATT Steering Committee are listed at <<http://www.armstradetreaty.com/att/aboutus.php>>
- 58 This is distinct from the UN ATT initiative, discussed elsewhere in the chapter (UNGA, 2006e).
- 59 The Control Arms campaign is jointly run by Amnesty International, the International Action Network on Small Arms (better known as IANSA), and Oxfam.
- 60 International Alert, Saferworld, and the University of Bradford.
- 61 This section is based on Hasan (2007).
- 62 For more, see Small Arms Survey (2003, pp. 216–18).
- 63 In 1947, the UN General Assembly established the ILC with a mandate for the progressive development and codification of international law in accordance with Article 13(1)(a) of the UN Charter (UN, 1945). The ILC dealt with the topic of state responsibility from 1949 until 2001, when it adopted its articles on *Responsibility of States for Internationally Wrongful Acts* (UNGA ILC, 2001).
- 64 An ‘internationally wrongful act’ is an action or omission, attributable to a state, that ‘[c]onstitutes a breach of an international obligation’ of that state (UNGA ILC, 2001, art. 2).
- 65 Clapham (2006, p. 263) comes to a similar conclusion in relation to corporations.
- 66 See also Small Arms Survey (2004, pp. 263–65).
- 67 The principle of non-intervention is expressed in Article 2(1) (as a corollary of the principle of the independence and equality of states) and in Article 2(7) (in relation to the UN itself) of the UN Charter (UN, 1945). It is part of customary international law, and is thus applicable to all states (ICJ, 1986, para. 202).
- 68 Note that under IHL, states also have an obligation ‘to ensure respect’ for IHL by the parties to an armed conflict. This means that third states have a responsibility not to encourage a party to an armed conflict to violate IHL, not to take action that would assist in such violations, and to take appropriate steps to cause such violations to cease; see ICRC (2003, pp. 48–52).
- 69 This section is based on Bourne (2007).
- 70 See also paras. 3(a) and 4. Pursuant to para. 6 of the resolution, the Security Council established a Counter-Terrorism Committee; see <<http://www.un.org/sc/ctc>>
- 71 See also Small Arms Survey (2005, ch. 5).
- 72 For more, see BtB (2006a) and Bourne (2007).
- 73 For more on the Rwandan case, see Bourne (2007).
- 74 This section is based on Waszink with ICRC (2007).

BIBLIOGRAPHY

- Add. Protocol I (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [Protocol II])*. 1977. Adopted 8 June.
<<http://icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fd125641e0052b079>>
- Add. Protocol II (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts [Protocol III])*. 1977. Adopted 8 June.
<<http://icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545>>
- ATT SC (Arms Trade Treaty Steering Committee). 2007. *Compilation of Global Principles for Arms Transfers*. Revised and updated.
<<http://web.amnesty.org/library/Index/ENGPOL340032007?open&of=ENG-366>>
- Batchelor, Peter and Glenn McDonald. 2005. 'Too Close for Comfort: An Analysis of the UN Tracing Negotiations.' *Disarmament Forum*, Vol. 4/2005–1/2006, pp. 39–47. Geneva: United Nations Institute for Disarmament Research. <<http://www.unidir.org/pdf/articles/pdf-art2429.pdf>>
- Bourne, Mike. 2007. *Transfers to Non-State Actors*. Unpublished background paper. Geneva: Small Arms Survey.
- Brinkert, Kerry. 2006. 'Successful Implementation of Protocol V.' *Journal of Mine Action*. Winter.
<<http://maic.jmu.edu/journal/10.2/focus/brinkert/brinkert.htm>>
- BTB (Biting the Bullet Project). 2006a. *Developing International Norms to Restrict SALW Transfers to Non-State Actors*. January.
<http://www.smallarmssurvey.org/files/portal/issueareas/measures/t_control.html>
- . 2006b. *Developing International Guidelines for National Controls on SALW Transfers*. March.
<http://www.smallarmssurvey.org/files/portal/issueareas/measures/t_control.html>
- Buchanan, Cate. 2006. 'The UN Review Conference on Small Arms Control: Two Steps Backwards?'
<http://www.hdcentre.org/datastore/Small%20arms/ISS_Article.pdf>
- Cassese, Antonio. 2005. *International Law*, 2nd edn. Oxford: Oxford University Press.
- Centre for Humanitarian Dialogue. 2005. *Missing Pieces: Directions for Reducing Gun Violence through the UN Process on Small Arms Control*. Geneva: Centre for Humanitarian Dialogue. <<http://www.hdcentre.org/Missing%20Pieces>>
- China, France, Union of Soviet Socialist Republics, United Kingdom, and United States. 1991. *Guidelines for Conventional Arms Transfers*. London. 18 October. <http://www.sipri.org/contents/expcon/unp5_london91.html>
- Clapham, Andrew. 2006. *Human Rights Obligations of Non-State Actors*. Oxford: Oxford University Press.
- Crawford, James. 2002. *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*. Cambridge: Cambridge University Press.
- Dreyer, Ronald. 2007. *The Geneva Declaration on Armed Violence and Development*. Unpublished background paper. Geneva: Small Arms Survey.
- ECOWAS (Economic Community of West African States). 2006. *ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*. Adopted in Abuja, Nigeria, 14 June. <<http://www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF>>
- EU (European Union). 1998. *European Union Code of Conduct on Arms Exports ('EU Code of Conduct')*. 8 June. Reproduced in UN doc. A/CONF.192/PC/3 of 13 March 2000. <<http://www.smallarmssurvey.org/files/portal/issueareas/measures/reg.html#eu>>
- . 2002. *Council Joint Action of 12 July 2002 on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons and Repealing Joint Action 1999/34/CFSP*.
<<http://www.smallarmssurvey.org/files/portal/issueareas/measures/reg.html#eu>>
- . 2006. *User's Guide to the EU Code of Conduct on Arms Exports*. 10713/06 of 20 June.
<<http://register.consilium.europa.eu/pdf/en/06/st10/st10713.en06.pdf>>
- Geneva Declaration (The Geneva Declaration on Armed Violence and Development)*. 2006. Adopted in Geneva, 7 June.
<<http://www.smallarmssurvey.org/files/portal/issueareas/measures/inter.html#oin>>
- Gillard, Emanuela. 2000. 'What's Legal? What's Illegal?' In Lora Lumpe, ed. *Running Guns: The Global Black Market in Small Arms*. London: Zed Books, pp. 27–52.
- Hasan, Sahar. 2007. *Transfer Controls: Legal Aspects*. Unpublished background paper. Geneva: Small Arms Survey.
- HRW (Human Rights Watch). 1999. *Leave None to Tell the Story: Genocide in Rwanda*. New York: Human Rights Watch. March.
<<http://hrw.org/reports/1999/rwanda/>>
- . 2002. *World Report 2002: Afghanistan*. <<http://hrw.org/wr2k2/asia1.html>>
- IANSA (International Action Network on Small Arms). 2006a. *Global Action to Stop Gun Violence: PrepCom for the Review Conference, 9–20 January 2006. Report*. <<http://www.iansa.org/un/review2006/documents/PrepCom-report.pdf>>
- . 2006b. 'UN Arms Talks Meltedown: Conference Allows Global Gun Crisis to Continue.' Press release. New York. 7 July.
- ICJ (International Court of Justice). 1986. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Judgment of 27 June (Merits). *ICJ Reports (1986)*. <<http://www.icj-cij.org/docket/index.php?p1=3>>

- . 1996. *Legality of the Threat or Use of Nuclear Weapons*. Advisory Opinion of 8 July. *ICJ Reports (1996I)*.
<<http://www.icj-cij.org/docket/index.php?p1=3>>
- . 2007. *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. Judgement of 26 February. <<http://www.icj-cij.org/docket/files/91/13685.pdf>>
- ICRC (International Committee of the Red Cross). 2003. *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. Report 03/IC/09. Geneva: ICRC. <[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDCC/\\$File/IHLcontemp_armedconflicts_FINAL_ANG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDCC/$File/IHLcontemp_armedconflicts_FINAL_ANG.pdf)>
- . 2007. *Arms Transfer Decisions: Applying International Humanitarian Law Criteria. A Practical Guide*. (This is a working title at time of writing.) Geneva: ICRC.
- Kidd, Richard. 2006. Interview by *Arms Control Today*. 11 August. <http://www.armscontrol.org/interviews/20060811_Kidd.asp>
- Nairobi Guidelines (Suggested Common Guidelines for National Controls Governing Transfers of Small Arms and Light Weapons)*. 2006. Nairobi, 21 April. Reproduced in UN doc. A/CONF.192/2006/RC/WP.2 of 22 June. <<http://www.un.org/events/smallarms2006/documents.html>>
- Nobel Laureate Code (International Code of Conduct on Arms Transfers)*. 1997. Formally launched in New York, 29 May. Reproduced in UN doc. A/54/766-S/2000/146 of 24 February 2000.
- OAU (Organization of African Unity). 2000. *Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons*. Adopted in Bamako, Mali, 1 December. SALW/Decl. (I). <<http://www.smallarmssurvey.org/files/portal/issueareas/measures/reg.html>>
- OSCE (Organization for Security and Co-operation in Europe). Forum for Security Co-operation. 2000. *OSCE Document on Small Arms and Light Weapons*. FSC.DOC/1/00. Adopted 24 November. <http://www.osce.org/documents/fsc/2000/11/1873_en.pdf>
- Parker, Sarah. 2007. *Moving ahead on Small Arms Control: A Focus on the 2006 Session of the UN First Committee*. Geneva: Centre for Humanitarian Dialogue. January. <<http://www.hdcentre.org/datastore/Small%20arms/UN%20Process/2006FirstCommittee.pdf>>
- Prins, Daniël. 2006. 'Engineering Progress: A Diplomat's Perspective on Multilateral Disarmament.' In J. Borrie and V. Martin Randin, eds. *Thinking outside the Box in Multilateral Disarmament and Arms Control Negotiations*. Geneva: United Nations Institute for Disarmament Research.
- SICA (Central American Integration System). 2005. *Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Material*. Adopted in León, Nicaragua, 2 December. Reproduced in UN doc. A/CONF.192/2006/RC/WP.6 of 30 June 2006. <<http://www.un.org/events/smallarms2006/pdf/rc.wp.6-e.pdf>> Spanish original available at: <<http://www.iansa.org/regions/camerica/documents/code-of-conduct-on-arms-transfers-dec05.pdf>>
- Small Arms Survey. 2002. *Small Arms Survey 2002: Counting the Human Cost*. Oxford: Oxford University Press.
- . 2003. *Small Arms Survey 2003: Development Denied*. Oxford: Oxford University Press.
- . 2004. *Small Arms Survey 2004: Rights at Risk*. Oxford: Oxford University Press.
- . 2005. *Small Arms Survey 2005: Weapons at War*. Oxford: Oxford University Press.
- . 2006. *Small Arms Survey 2006: Unfinished Business*. Oxford: Oxford University Press.
- Sri Lanka. 2006a. *President's Non-Paper for Informal Consultation Purposes: The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: A Strategy for Further Implementation*. Part I, 27 February; Part II, 21 March; Part III, 27 March.
- . 2006b. *President's Non-Paper for Informal Consultation Purposes: The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: A Strategy for Further Implementation*. 18 May.
- . 2006c. *President's Non-Paper*. 27 June, 17h00.
- . 2006d. *President's Non-Paper*. 3 July, 12h00.
- . 2006e. *Informal Consultations*. 5 July, 19h44.
- . 2006f. *Informal Consultations*. 6 July, 19h12.
- . 2006g. *Informal Consultations*. 7 July, 08h41.
- . 2006h. *Draft Declaration*. 7 July (issued subsequent to Sri Lanka, 2006g).
- Stevenson, Chris. 2007. *Transfer Controls: New Initiatives*. Unpublished background paper. Geneva: Small Arms Survey.
- Stohl, Rachel. 2006. 'Power of NRA Showcased in U.S. Delegation to Small Arms Conference.' Press information. Center for Defense Information. 26 June. <http://www.cdi.org/friendlyversion/printversion.cfm?documentID=3562&from_page=../program/document.cfm>
- UK (United Kingdom). 2003. *Implementing the UN Programme of Action: Strengthening Export Controls*. Chairman's Conference Summary. Lancaster House, London, 14–15 January.
- UN (United Nations). 1945. *Charter of the United Nations and Statute of the International Court of Justice* ('UN Charter'). Adopted in San Francisco, 26 June. Entered into force on 24 October. <<http://www.un.org/aboutun/charter/index.html>>
- UNGA (United Nations General Assembly). 1948. *Universal Declaration of Human Rights*. Adopted and proclaimed by Resolution 217A (III) of 10 December. <<http://www.unhchr.ch/udhr/>>
- . 1966. *International Covenant on Civil and Political Rights*. Adopted by Resolution 2200A (XXI) of 16 December. Entered into force on 23 March 1976. Reproduced in General Assembly Official Records, Twenty-first Session, Supplement No. 16 (A/6316). <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm>

- . 1996. *Guidelines for International Arms Transfers in the Context of General Assembly Resolution 46/36 H of 6 December 1991*. A/51/182 of 1 July, pp. 64–70. <<http://disarmament.un.org/undiscom.htm>>
- . 2001a. *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime ('UN Firearms Protocol')*. Adopted 31 May. Entered into force 3 July 2005. A/RES/55/255 of 8 June. <http://www.undcp.org/pdf/crime/a_res_55/255e.pdf>
- . 2001b. *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects ('UN Programme of Action')*. 20 July. A/CONF.192/15. <http://www.smallarmssurvey.org/resources/2001_un_conf.htm>
- . 2003. *The Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. Resolution 58/241 of 23 December. A/RES/58/241 of 9 January 2004.
- . 2004. *Prevention of the Illicit Transfer and Unauthorized Access to and Use of Man-Portable Air Defence Systems*. Resolution 59/90 of 3 December. A/RES/59/90 of 17 December.
- . 2005a. *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons ('International Tracing Instrument')*. A/60/88 of 27 June (Annex). <<http://disarmament2.un.org/cab/salw-oewg.html>>
- . 2005b. *2005 World Summit Outcome*. Incorporated in Resolution 60/1 of 16 September. A/RES/60/1 of 24 October. <<http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>>
- . 2005c. *Prevention of the Illicit Transfer and Unauthorized Access to and Use of Man-Portable Air Defence Systems*. Resolution 60/77 of 8 December. A/RES/60/77 of 11 January 2006.
- . 2005d. *The Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. Resolution 60/81 of 8 December. A/RES/60/81 of 11 January 2006.
- . 2005e. *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*. Decision No. 60/519 of 8 December. A/60/463, para. 95 (16 November 2005). A/60/PV.61, p. 41 (*Official Records*, 8 December 2005).
- . 2006a. *Report of the Preparatory Committee for the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. A/CONF.192/2006/RC/1 of 26 January. <[http://www.un.org/events/smallarms2006/pdf/RC-1%20\(E\).pdf](http://www.un.org/events/smallarms2006/pdf/RC-1%20(E).pdf)>
- . 2006b. *Report of the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. A/CONF.192/2006/RC/9 of 12 July. <<http://www.un.org/events/smallarms2006/pdf/rc.9-e.pdf>>
- . 2006c. *The Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. Resolution 61/66 of 6 December. A/RES/61/66 of 3 January 2007.
- . 2006d. *Problems Arising from the Accumulation of Conventional Ammunition Stockpiles in Surplus*. Resolution 61/72 of 6 December. A/RES/61/72 of 3 January 2007.
- . 2006e. *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms*. Resolution 61/89 of 6 December. A/RES/61/89 of 18 December.
- . HRC (Human Rights Council). Sub-Commission on the Promotion and Protection of Human Rights. 2006. *Principles on the Prevention of Human Rights Violations Committed with Small Arms*. Adopted 24 August. A/HRC/Sub.1/58/L.11/Add.1 of 24 August. <<http://daccessdds.un.org/doc/UNDOC/LTD/G06/137/29/PDF/G0613729.pdf?OpenElement>>
- . ILC (International Law Commission). 2001. *Responsibility of States for Internationally Wrongful Acts*. Adopted by the ILC at its 53rd session. Reproduced in UN doc. A/RES/56/83 of 28 January 2002 (Annex). <<http://daccessdds.un.org/doc/UNDOC/GEN/N01/477/97/PDF/N0147797.pdf?OpenElement>>
- UNSC (United Nations Security Council). 2001. Resolution 1373 (2001) of 28 September. S/RES/1373 (2001) of 28 September.
- US (United States of America). 2006. 'Remarks at UN Review Conference on the Illicit Trade in Small Arms and Light Weapons.' Statement by Robert G. Joseph, Under Secretary for Arms Control and International Security. USUN Press Release No. 137 (06). 27 June. <<http://www.state.gov/u/us/rm/68537.htm>> Video available at: <<http://www.un.org/events/smallarms2006/mem-states060627.html>>
- WA (Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies). 2002. *Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)*. 12 December. <http://www.wassenaar.org/docs/best_practice_salw.htm>
- Waszink, Camilla with ICRC (International Committee of the Red Cross). 2007. *Putting Arms Transfer Criteria into Practice: Assessing the Recipient's Compliance with International Humanitarian Law*. Unpublished background paper. Geneva: Small Arms Survey.

ACKNOWLEDGEMENTS

Principal authors

Glenn McDonald, Sahar Hasan, and Chris Stevenson

Contributors

Mike Bourne, Ronald Dreyer, and Camilla Waszink/ICRC