control arms

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SCOPE: transfers and transactions to be covered by an Arms Trade Treaty

The scope of an Arms Trade Treaty (ATT) should include (a) the types of equipment defined as conventional arms and (b) the various forms of international transfer and the types of associated transactions that enable such transfers. This paper deals with (b).

For an ATT to be effective, it must be comprehensive and require States to considerably improve common international standards to regulate the international transfer of conventional arms. The absence of comprehensive controls and common standards has been shown in practice to contribute to violent conflicts, serious violations of international human rights law and international humanitarian law, crime and terrorism, thereby undermining peace, security and sustainable development.

To avoid the creation of loopholes, the definition of international transfer in an ATT should include a broad definition of *the forms of transfer and types of transactions* integral to such transfers. The term "international transfers" means the transfer, shipment or other movement, of whatever form, of arms from or across the territory of a State. An international arms transfer may also occur without the movement of equipment across State frontiers if a State, or its agent, is granted title and control over the equipment in the territory of the supplier State.

1. What States want excluded from the scope

The Group of Governmental Experts (GGE) on an ATT in its report of August 2008 indicated that an ATT should not include:

- Internal transfers
- National ownership provisions
- National constitutional protections on private ownership within that State's territory

2. Forms of international transfer that should be covered

In the GGE on the ATT, concerns were shared that conventional arms from illegal re-export, illicit brokering, unlicensed production and unlicensed transfers (exports and imports), as well as insecure weapons storage and transportation "… could be used for terrorist acts, organized crime and criminal activities." (paragraph 13 of the GGE report), i.e. these need to be brought under effective control.

A large majority of States during the UN Secretary General's consultation on an ATT in 2007 expressed the view that the scope of an ATT should include:

- imports
- exports
- re-exports
- temporary transfers
- transhipments (from one carrier to another)
- in transit between an exporting and importing state
- re-transfers[1]

3. Types of transfer that should be covered

To be comprehensive and effective, the ATT should apply to all aspects of the international arms trade including government-sanctioned transfers and commercial trade in conventional arms. This trade includes:

- state-to-state transfers;
- state-to-private end-user transfers;
- commercial sales;
- leases;
- transfers of licensed foreign arms production and technology for this purpose; [2]
- loans or gifts or aid or any other form of transfer of material goods or credit or expertise.

4. Types of transactions that should be covered

Transactions that facilitate international transfers of conventional arms should also be covered by an ATT. Such transactions may include brokering, dealing, transportation, logistics, finance and technical expertise.[3] International transfers of conventional arms, ammunition and associated materiel are often conducted through intricate arrangements involving complex transportation routes and opaque financial transactions. These can have a profound destabilizing effect and have been an important factor in violations of international law including UN arms embargoes with grave consequences for international peace and security, economic and social development and the safety of civilians.

Transactions that are essential for arranging an international transfer of conventional arms or ammunition may include, payments, rewards and benefits for:

- brokering
- acting as an agent,
- providing technical assistance, training, maintenance and upgrades,
- transport, freight forwarding, and storage,
- finance and insurance,
- security services.

5. Conclusion

To avoid the creation of loopholes that would be exploited by unscrupulous arms suppliers and dealers, the forms of transfer covered by the ATT should include a broad definition of the types of transfers including: arms imports, exports, re-exports, temporary transfers, transhipments, re-transfers, state-to-state transfers; state-to-private end-user transfers; commercial sales; leases; transfers of licensed foreign arms production and technology for this purpose; and loans, gifts or aid; or any other form of transfer of material goods or credit or expertise. The regulation of transactions that should be covered by the ATT include transactions by dealers or agents in such arms sales, arms brokers, as well as those providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services integral to making international transfers of such arms.

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[1] It is not clear if the term "re-transfer" is needed if the definition includes "re-export". In the 2001 UN Program of Action on the illicit trade in small arms and light weapons, Member States included as one of their aims "promoting responsible action by States with a view to preventing the illicit export, import, transit and retransfer of small arms and light weapons." [Section II, paragraphs 2, 11, 12 and 13]. The Guidelines for Implementation of the Nairobi Protocol define "international arms transfers" to include "export, transit and brokered transactions" of small arms and light weapons [Chapter 2]; Provisions of other international standards also refer to the states' obligations to prevent the diversion, re-sale and re-export of arms contrary to international law and standards are directly relevant to states' obligations to control the transhipment of arms and arms in transit.

[2] According to the UN Disarmament Commission's Guidelines on International Arms Transfers endorsed by the General Assembly in 1996, "all arms-transfer agreements and arrangements, in particular between Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons. In this context, a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion" [paragraph 33].

[3] For example, the UN Group of Governmental Experts on the Prevention of Illicit Brokering of Small Arms and Light Weapons its report of September 2007 recognized the need to control such activities; the report describes a broker in conventional arms transfers as "a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction for such a transfer in return for some form of benefit, whether financial or otherwise". See also Amnesty International, *Dead on Time*, 2006, and *Blood at the Crossroads*, 2008.