

# STRENGTHENING EMBARGOES AND ENHANCING HUMAN SECURITY

# EMBARGOES AND ENHANCING HUMAN SECURITY



BRIEFING 17

## **BITING THE BULLET**

## **I**NTERNATIONAL **A**LERT

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International Alert is a UK-based non-governmental organisation committed to the just and peaceful transformation of violent conflicts. IA seeks to identify and address the root causes of conflict and to contribute to the creation of sustainable peace by working with partner organisations in order to influence policies and practices at local, national, regional and global levels. IA's Security and Peacebuilding Programme works on security sector reform and the need for restraint and transparency with regard to the transfer and use of small arms.



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The Centre for International Co-operation and Security (CICS) is a centre for academic and applied research with extensive expertise in small arms and related issues. It is based at the Department of Peace Studies at the University of Bradford, which is internationally recognised as a leading research and teaching centre in the areas of peace and conflict studies.

This briefing was written by Elizabeth Kirkham and Catherine Flew. Thanks go to Gilbert Barthe, Matias Capapelo and Chris Lindborg for their work on the case studies. Thanks also to Archana Patel for her assistance in editing the briefing.

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By Elizabeth Kirkham and Catherine Flew

This briefing in the Biting the Bullet series is sponsored by the  
Canadian Department of Foreign Affairs and International Trade



Department of Foreign Affairs  
and International Trade

Ministère des Affaires étrangères  
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# Executive Summary

Arms embargoes are one of the principal tools of states in seeking to prevent, limit and bring an end to armed conflict and human rights abuses. Despite the frequency with which arms embargoes have been imposed, there are significant problems with their implementation. Pressure is therefore growing for the international governmental community to act in order to ensure that the political commitment embodied by the imposition of arms embargoes is matched by the commitment to ensure their rigorous enforcement and to achieve enhanced human security on the ground.

## *The effects of arms embargoes*

The imposition of arms embargoes is fundamentally linked to efforts to enhance human security and, if implemented in the spirit and to the letter by all states, they could make a significant difference to the lives of millions of people who are suffering. The challenge is to develop an international regime which is politically, institutionally, and practically equipped for effective implementation of international arms embargoes and which will progressively establish a culture of enforcement.

## *Enforcement, oversight and monitoring of UN arms embargoes*

The various UN Expert Panel investigations into violations of UN arms embargoes have shown that there are many reasons why UN and other embargoes are failing to relieve the suffering, or to enhance the security, of civilian populations in war-torn regions. The first three case studies in this briefing aim to illustrate these points. Case studies four to eight show that the challenges to the implementation of arms embargoes also lie in the range of political and strategic options chosen by the governments of countries lying thousands of miles away from the conflict and devastation.

## *Case Study 1: Violations of the sanctions against UNITA*

On its own, the tightening of controls on the sale of Angolan diamonds has had a very limited impact since adjacent countries have issued friendly national paperwork to facilitate undercover UNITA diamond sales. The lack of national and international controls governing the activities of arms brokering and transportation agents, the poor enforcement of export controls in supplier countries, and weaknesses in international end-use certification requirements have also allowed UNITA to gain access to the arms they needed to sustain their insurgency. There is a need to improve the legal system and the levels of transparency, integrity, control and capacity of the Angolan government itself, of UNITA-friendly countries and in countries with diamond markets and countries with arms production facilities.

## *Case Study 2: The impact of the arms embargo on human security in Angola*

The struggle for power involving the three liberation movements, namely FNLA, MPLA and UNITA, created an enabling environment for the start of an arms race and catapulted Angola into one of the most brutal conflicts in African history. This resulted in the inculcation of a culture of violence, the collapse of the rule of law, the breakdown of community structures and the destruction of essential means of economic production. The arms embargo did little to prevent UNITA accessing the weapons it required, whilst throughout the country, arms were

distributed to civilians by both the government and UNITA without any controls. The accessibility of firearms to large sectors of the population presents an enormous challenge for peace, stability, democracy and development in Angola.

### *Case Study 3: The impact of arms embargoes – a view from a UN Expert*

In an effort to increase the pressure on some rogue states, arms embargoes have been coupled with more wide-ranging economic sanctions. However, recognising the devastating effects of economic sanctions on civilian populations, the international community is now placing increased emphasis on so-called "smart sanctions", targeting the assets and procurement channels of rogue leaders. Arms embargoes are a useful component of any regime based on "smart sanctions" since they do not have negative repercussions, in humanitarian terms, for the general population of the target state. At the same time, an effective strategy for addressing weapons availability in regions of tension and conflict must involve continuous diplomatic efforts, coupled with assistance for the effective enforcement of export controls, and support for sustainable development in conflict-affected regions.

### *Case Study 4: Arms embargoes and the international community's obligation to act to prevent internationally wrongful acts e.g. genocide*

To respond to an unfolding crisis such as the slaughter in Rwanda by belatedly imposing an arms embargo, and then to fail to take adequate steps to effectively monitor and enforce it, represents a disastrous failure on the part of the international community. It is clear that the imposition of an arms embargo is not always an appropriate or adequate response to the threat or outbreak of armed conflict. Indeed to rely consistently on the imposition of an arms embargo for the safeguarding of human security, when the protagonists to a conflict are already armed to the teeth, is clearly an untenable position.

### *Case Study 5: Arms embargoes and the link to the exploitation of human and natural resources*

Bringing peace and stability to West Africa is dependent on breaking the cycle whereby rebel groups and rogue governments have access to natural resources and exploit these resources to pay for arms which are in turn used to maintain control of areas rich in natural resources. The recent imposition of sanctions against the Liberian timber industry is a positive step; it is likely, however, that the ten-month moratorium on the purchase of timber from Liberia will need to be extended for some considerable time.

### *Case Study 6: Arms transfers to non-state actors in embargoed territory*

It appears that the current "War on Terrorism" is unfortunately being used in some quarters as a rationale for providing arms and military training to governments and non-state actors that do not respect or ensure respect for international humanitarian law. All states should be wary of supporting those who do not abide by internationally recognised standards of behaviour, since there is ample evidence from the recent past to show that such regimes and groups can themselves become a major threat to international peace and security.

### *Case Study 7: Licensed production overseas and the impact on arms embargoes*

The currently unregulated nature of licensed production deals poses a serious threat to the effective implementation of multilateral arms embargoes since it allows companies to establish arms production facilities in countries that are either not party to an embargo, or have lax export controls and/or enforcement practices. The regulation of licensed production deals is an urgent priority for states wishing to prevent the proliferation of arms in regions of conflict and human rights abuse.

### *Case Study 8: Problems with the national implementation of international embargoes*

There are states that do not feel a sense of obligation to enforce international norms and agreements, and a number of countries that may be considered beyond the influence of conventional diplomacy, to whom the offering of incentives or assistance for compliance with international arms embargoes would be unthinkable. Where there is evidence of persistent and wilful breaching of UN arms embargoes, the international community may have little option other than to impose so-called "secondary sanctions" against the regime.

### *Strengthening arms embargoes: priority areas for attention*

Despite the daunting nature of these challenges, it is clear that there are a number of important priorities that must be tackled by states if they are to continue to rely on arms embargoes as a principal tool in efforts to shape the world order. Recommendations are made for urgent international action in the following areas.

- Implementing UN embargoes in national legislation
- Tackling corruption and poor enforcement of export controls
- Addressing the weakness of current end-user requirements
- Enhancing controls on licensed production overseas
- Regulating arms brokering and transportation agents
- Enhancing capacity and enforcement of air traffic control regulations
- Developing a consistent approach to arms embargoes and non-state actors
- Intervening to prevent genocide
- Extending sanctions beyond the arms embargo
- Using secondary sanctions
- Establishing a common military list for UN embargoes
- Employing embargoes as a preventive tool
- Establishing a dedicated Sanctions Unit

The UN PoA, the Implementation of Embargoes and the Enhancement of Human Security

The range of measures set out in the UN Small Arms Programme of Action is such that, if implemented in spirit and letter, they would undoubtedly have a major impact upon the global illicit trade and misuse of SALW. Indeed many of these measures are extremely pertinent to ongoing efforts to strengthen arms embargoes. Recommendations as regards priority areas for attention are elaborated upon under the following headings:

- Laws, regulations and controls relating to the production, import, export, transit or retransfer of SALW
- Removing weapons from society
- Marking, tracing, record-keeping and transparency
- Information-sharing, co-operation and assistance
- Stockpile management
- Public awareness

### *Conclusion*

The implementation of many of the measures set out in Sections 3 and 4 above will pose a major challenge to states. The sharing and provision of technical and financial assistance will thus be key to making progress on many fronts with the onus on states with experience of implementing particular measures to share their knowledge and expertise with other states. Agreeing the modalities of, and establishing the structures for, providing the requisite assistance is therefore a major priority for the first Biennial Meeting of States.

## Acronyms and Abbreviations

<b>DDA</b>	UN Department for Disarmament Affairs
<b>DDR</b>	Disarmament, Demobilisation and Reintegration
<b>DPKO</b>	United Nations Department of Peacekeeping Operations
<b>DRC</b>	Democratic Republic of Congo
<b>ECOWAS</b>	Economic Community of West African States
<b>EU</b>	European Union
<b>EUC</b>	End-user certificates
<b>FAR</b>	Rwandan Armed Forces
<b>FNLA</b>	National Angolan Liberation Front
<b>FRY</b>	Federal Republic of Yugoslavia
<b>ICAO</b>	International Civil Aviation Organisation
<b>LPO</b>	Licensed Production Overseas
<b>MKEK</b>	The Mechanical and Chemical Industries Corporation
<b>MONUA</b>	United Nations Observer Mission
<b>MPIGO</b>	Popular Movement for the Ivorian Great West
<b>MPJ</b>	Movement for Justice and Peace
<b>MPLA</b>	People's Movement for the Liberation of Angola
<b>NGO</b>	Non-Governmental Organisation
<b>OAS</b>	Organisation of American States
<b>OSCE</b>	Organisation for Security and Co-operation in Europe
<b>RPF</b>	Rwandan Patriotic Force
<b>RUF</b>	Revolutionary United Front
<b>SFR</b>	Socialist Federal Republic of Yugoslavia
<b>SADC</b>	Southern African Development Community
<b>SALW</b>	Small arms and light weapons
<b>UK</b>	United Kingdom
<b>UNAMIR</b>	United Nations Assistance Mission for Rwanda
<b>UNDP</b>	United Nations Development Programme
<b>UNITA</b>	National Union for the Total Independence of Angola
<b>UN PoA</b>	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects
<b>UNSC</b>	United Nations Security Council
<b>US</b>	United States

# Introduction

Arms embargoes are one of the principal tools of states in seeking to prevent, limit and bring an end to armed conflict and human rights abuses. Recourse to embargoes has been increasingly a feature of international relations in the past decade or more as states have sought to respond to perceived crises by limiting or halting the flow of arms into particular countries or sub-regions. Despite the frequency with which arms embargoes have been imposed, there are significant problems with their implementation as a number of recent governmental and non-governmental studies have shown. Pressure is therefore growing for the international governmental community to act in order to ensure that the political commitment embodied by the imposition of arms embargoes is matched by the commitment to ensure their rigorous enforcement and to achieve enhanced human security on the ground.

Increasing the effectiveness of arms embargoes is a specific aim of the United Nations Programme of Action for Preventing and Combating the Illicit Trade in Small Arms and Light Weapons in All Its Aspects<sup>1</sup> which specifically calls upon states "To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations".<sup>2</sup> Accordingly, within the context of the implementation of the UN PoA, the overall aim of this paper is to explore ways in which the international community can act in order to strengthen the impact of arms embargoes and enhance human security. It will begin by examining the purposes, processes and effects relating to arms embargoes, with particular attention to those agreed at international (UN) level, and by highlighting issues of concern in each regard. An overview of the main issues and challenges facing implementation of arms embargoes will include the elaboration of three case-study examples showing the impact of UN arms embargoes on the availability of arms and on human security and a further five that illustrate the dilemmas faced by states in seeking to implement arms embargoes. Priority areas for attention in any international effort to strengthen the effectiveness of arms embargoes will be followed by more extensive proposals for enhancing international embargo regimes within the context of implementing the UN PoA.

Whilst it is recognised that the UN PoA contains measures that relate only to the illicit trade in small arms and light weapons (SALW), if implemented fully, many of these would serve to strengthen the international apparatus of control, information exchange and provision of assistance relating to arms proliferation and misuse as a whole. In turn, this would greatly enhance the implementation of UN arms embargoes. Therefore, as well as providing an opportunity for reviewing progress on implementing the PoA, the first Biennial Meeting of States in July 2003 is clearly a major opportunity for states to address a number of the pressing challenges facing states in the implementation of UN embargoes.



# 1 Experience with Arms Embargoes

## Current and recent arms embargoes

Arms embargoes place total or partial restrictions on the trade in some or all types of weapons with a particular end-user, usually either a national government, or a non-government group that is posing an armed threat to a government. Embargoes can be imposed by national governments, regional groupings or the international community, in response to serious crises such as the outbreak of conflict (both inter- and intra-state), military *coups d'états*, the gross violation of human rights, or the perceived existence of a terrorist threat.

Whilst arms embargoes are potentially a very useful tool with which states can put pressure on renegade governments and groups, the enforcement of embargoes often leaves much to be desired. Sadly, as will be shown below, the demonstration of political will that is encapsulated by the agreement of an arms embargo by a group of states is rarely matched by a comparable commitment to ensure its effective implementation.

At the international level, Article 41 of the United Nations Charter confers upon the Security Council (UNSC) the power to call for a "complete or partial interruption of economic relations...and the severance of diplomatic relations" in response to a threat to or breach of the peace or an act of aggression.<sup>3</sup> This has led to the UNSC establishing restrictions on the trade in arms with 14 governmental and non-governmental entities since 1990.<sup>4</sup>

The existence or impending threat of violent conflict is the principal rationale for the imposition of UN embargoes. These are seldom imposed solely on human rights grounds owing to the extreme sensitivity of some UN Member States as regards the concept of human rights and its application. Accordingly, despite the egregious level of abuses being suffered by the populations of countries such as Burma/Myanmar and Zimbabwe, a UN arms embargo has yet to be imposed. Human rights concerns have, nevertheless, been a motivation for several regional embargoes, notably those imposed by the EU against China (since 1990)<sup>5</sup> following the massacre of pro-democracy demonstrators in Tiananmen Square, against Nigeria (from 1995 to 1999)<sup>6</sup> owing to the serious human rights abuses of the Abacha regime, and Burma/Myanmar (since 1990),<sup>7</sup> the population of which is suffering serious repression at the hands of a military junta. The bloodshed in East Timor which reached a peak in August 1999 was also the spur for a six-month EU arms embargo imposition against the Indonesian government;<sup>8</sup> however this limited act was seen by many NGO commentators as very much a case of "too little too late".<sup>9</sup>

Other regional organisations which have imposed arms embargoes include the Organisation for Security and Co-operation in Europe (OSCE) which imposed an embargo against Armenia and Azerbaijan in 1993 owing to the dispute over the enclave of Ngorny Karabakh.<sup>10</sup> The Economic

Community of West African States (ECOWAS) has incorporated the principle of the arms embargo in its Moratorium on the Import, Export and Production of Small Arms and Light Weapons. Agreed in October 1998 and renewed in 2001 the intention behind the Moratorium was to bring a halt to the movement of small arms within and across the West African sub-region. As well as banning the import, export and manufacture of small arms by West African states, the Moratorium has also led to suppliers such as the Wassenaar states voluntarily agreeing not to export SALW to the region. Despite the existence of the Moratorium and the widespread international support for its objectives it has, unfortunately, done little to stem the illicit flow of arms across the region and to prevent or reduce the intensity of the conflicts.

Individual states can impose an arms embargo against other states or non-state actors as they see fit. The UK has an arms embargo on Iran<sup>11</sup> and also applies restrictions on exports to other countries: for example it will not grant export licenses for new military or dual use equipment for those countries intervening in the Democratic Republic of Congo (Angola, Burundi, Namibia, Rwanda, Uganda and Zimbabwe) where there is a clear risk that it would be used in the DRC.<sup>12</sup> The US also imposes unilateral embargoes and restrictions on arms transfers, which are listed in the Federal Register.<sup>13</sup> It currently has restrictions in place relating to, amongst others, Cuba, Liberia and Cyprus. Human rights concerns are often the motivation for national embargoes, including that imposed by the US on the former Zaire in 1993,<sup>14</sup> whilst Italy is prevented from selling arms to any country that is criticised by the UN for having a poor human rights record.<sup>15</sup>

## The varying status and scope of arms embargoes

The majority of UN embargoes have been legally binding upon all states parties.<sup>16</sup> However, voluntary embargoes have also been agreed in the case of Azerbaijan and Armenia (1993), Yemen (1994), Afghanistan (1996) and Ethiopia and Eritrea (1999).<sup>17</sup> In the case of EU embargoes, since the development of the Common Security and Foreign Policy, which was established under the Maastricht Treaty in 1993, all have been passed as "Common Positions" and are therefore legally binding.<sup>18</sup> However EU embargoes developed before this date, such as that imposed on China in 1989,<sup>19</sup> are not legally binding. Likewise the OSCE embargo imposed on Armenia and Azerbaijan in 1992 is politically rather than legally binding.

Although still vague, the description of the types of equipment covered by UN Arms embargoes has evolved over the past decade. The embargo imposed on Somalia in 1992, for example, required that all states "immediately implement a general and complete embargo on all deliveries of weapons and military equipment...until the Security Council decides otherwise". However, in recent years more detail and specificity has been added with the typical requirement that "all states shall prevent the sale or supply to [name of embargoed party] by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned." In addition some of the most recent resolutions have also included a prohibition on the transfer of "police" equipment. Despite this development, arms embargoes are still criticised as being vague in their definition of "arms" with no internationally agreed comprehensive list of military equipment available for states to refer to in their

implementation of UN embargoes. This presents the danger that states will interpret differently the exact scope of equipment to be embargoed in each case.

This is also a failing of some regional embargoes. The OSCE embargo against Armenia and Azerbaijan, for example, is very vague and simply calls for an embargo on 'all deliveries of weapons and munitions.'<sup>20</sup> This leaves it open to exporters to define what classifies as weapons and munitions and there is considerable scope for the spirit of the embargo to be abused. EU embargoes are slightly more explicit in terms of what they cover: 'weapons designed to kill and their ammunition, weapon platforms, non-weapon platforms and ancillary equipment' and 'spare parts, repairs, maintenance and transfer of military technology.' However even this most commonly used definition in these embargoes still leaves a lot of scope for EU governments to adopt their own interpretation of the exact goods and services to be covered. This is all the more puzzling when it is considered that the EU has a common list of military equipment adopted in conjunction with the EU Code of Conduct.

It is also worth noting that the majority of UN arms embargoes form part of a wider regime of sanctions, for example a ban on the trade in specific commodities such as oil (UNITA and Sierra Leone), diamonds (UNITA and the RUF) and timber (Liberia). The Libyan embargo of 1992 was noteworthy for its comprehensive aircraft and air-travel sanctions, whilst the freezing of assets and a general ban on the foreign travel of sanctioned governments and non-government entities are increasingly being tied in with UN arms embargoes and are a feature of those currently in place against the Liberian regime, the RUF and UNITA.

## The effects of arms embargoes

As mentioned above, the primary purpose of an arms embargo is to restrict or deny access to military equipment by a specific government or non-government group. In doing so, the aim is to curtail the ability of the target, for example, to prosecute a conflict or to commit breaches of human rights and international humanitarian law. At the same time, the intention is to bring about a more permanent change in the behaviour of the target, such as by encouraging them to seek a negotiated settlement to a dispute or to abide by an existing political agreement. Thus the imposition of arms embargoes is fundamentally linked to efforts to enhance human security and, if implemented in the spirit and to the letter by all states, they could make a significant difference to the lives of millions of people who are suffering.

Ultimately, however, the actual effects of arms embargoes often fall short of those intended, for several reasons. Firstly, by the time an embargo is in place often the protagonists within a conflict are already in possession of large quantities of arms. At the same time, many conflict zones are saturated with weapons, and so arms – and particularly small arms – are readily available. Secondly, despite the imposition of an international arms embargo, protagonists are usually able to secure supplies of arms on the illicit market with a range of actors – suppliers, brokers, transportation agents – willing to run significant risks in providing arms, often for lucrative rewards (see Section 2).

Generally when the behaviour of a target improves, or there is a material change in the circumstances which led to the imposition of the embargo, the sanctions are lifted or modified. This

has happened in a number of cases in recent years. In the case of Yugoslavia the UN sanctions were lifted with the removal from power of the regime of Slobodan Milosevic; in the case of Libya, the sanctions were lifted when the two suspects in the bombing of Pan Am flight 103 were handed over; and in the case of Rwanda, once the genocidal reign of the Hutu government was over, the embargo was modified so that it would apply only to the rebels who backed the 1994 genocide. Despite their often limited impact, when seeking to put pressure on one or more parties to bring an end to an armed conflict, arms embargoes and related sanctions are nevertheless one of the few options available to the international community. Moreover whilst the political will of states to ensure full implementation of embargoes can be readily questioned, the international governmental community shows even less of an appetite for taking more proactive steps to bring an end to some of the world's most violent and protracted conflicts. The challenge is therefore to develop an international regime which is politically, institutionally, and practically equipped for effective implementation of international arms embargoes and which will progressively establish a culture of enforcement.

### **UN embargoes – an imperfect solution**

As mentioned above, UN embargoes are most often imposed in response to a threat to the peace, however, just as in the case of human rights abuses, agreement as to what actually constitutes a breach of the peace is not always easily reached amongst the five Permanent Members of the Security Council, let alone the wider Security Council membership of fifteen states. Thus, despite the existence of 22 active armed conflicts around the world,<sup>21</sup> there are only six UN arms embargoes currently in force.<sup>22</sup> Indeed, it has been noted, that there is a potential conflict of interest within the UN system in that the Five Permanent Members of the Security Council (P5) are also the five largest arms producers. This could mean that the P5 may be disinclined to support the passing of UN embargoes in every conceivable instance for fear of jeopardising valuable contracts.<sup>23</sup>

At the same time, UN embargoes are often criticised as being "too little too late" with arms embargoes typically only imposed following a prolonged period of tension during which protagonists have often procured sufficient arms for them to be able to prosecute a war regardless of the imposition of a UN arms embargo - as in the case of Ethiopia and Eritrea in 2000.<sup>24</sup> Worse still is the case of Rwanda, where a UN embargo was only imposed in May 1994 when the genocide had been underway for several weeks and many thousands of people had already been slaughtered.

### **Enforcement, oversight and monitoring of UN arms embargoes**

Regardless of how well-conceived and precisely-defined embargoes are, their implementation is in practice dependent on the rigour with which they are enforced by states, including the extent to which states are prepared to act against individuals and companies based in their territory who are known to be culpable in the breaching of arms embargoes. In some cases, such as that of the UN arms embargo put in place against Serbia and Montenegro between 1998 and 2001, enforcement left much to be desired,<sup>25</sup> whilst the earlier embargo which was imposed upon all parties during the Bosnian conflict in the early 1990's, was flouted by both Bosnian Muslim and Serb sympathisers alike.<sup>26</sup> The lack of consistent political will to ensure the effective enforcement of arms embargoes can be attributed to a variety of *realpolitik* motivations: from the maintenance of traditional alliances,

to the perception that one party to a conflict is in some way "in the right" and therefore deserving of support, to the desire on the part of some states to ensure that the balance of power does not shift towards a particular faction. However, even where the majority of Member States adhere to the spirit and the letter of a UN arms embargo resolution, lax export controls, poor enforcement of national regulations and corruption can often mean that embargoes are circumvented by actors who are willing to run albeit significant risks for often substantial material rewards (see Section 2 below). The implementation of each UN arms embargo is monitored primarily through the establishment of a designated Sanctions Committee. Working under the auspices of the Security Council, Sanctions Committees are usually tasked with seeking information from UN Member States. This information concerns the implementation of the embargo, gathering information on potential violations of the embargo and reporting on them to the Security Council, considering requests for exemptions, and setting out guidelines for implementation.<sup>27</sup> Despite the centrality of their role, it has been argued that Sanctions Committees have a patchy record in terms of monitoring and assisting compliance with relevant UN Resolutions.<sup>28</sup> Notwithstanding efforts to enhance the work of such Committees<sup>29</sup> it has been argued that the range of tasks involved in assessing and promoting compliance with UN embargoes remains beyond them and that a permanent solution, backed by significantly increased resources, needs to be found (See Section 3 below).<sup>30</sup>

The notable failure of UN arms embargoes to prevent flows of arms to protagonists in a number of recent conflicts has prompted the UN Security Council to pass resolutions establishing a series of independent Panels of Experts in order to investigate violations of the sanctions against UNITA (Angola)<sup>31</sup> and the RUF (Sierra Leone);<sup>32</sup> although there is no arms embargo against the DRC a Panel of Experts has nonetheless been established to investigate the illegal exploitation of natural resources in the Congo.<sup>33</sup> In addition there was an international Commission of Inquiry into the genocide in Rwanda, which also investigated the way in which the Hutu militias were able to secure weapons and materiel used in the 1994 genocide. These Panels of Experts have performed an invaluable role in highlighting the ways in which UN Sanctions are abrogated and in identifying the primary culprits in this so-called "sanctions-busting". The UN Panels of Experts have also put forward a series of recommendations for measures to be adopted at national, regional and international level that would enhance implementation of these and future UN sanctions regimes (see Sections 2 & 3 below).



## 2 Challenges to the Implementation of UN Embargoes

### A: An Assessment of the Impact of UN Arms Embargoes

The various UN Expert Panel investigations have shown that there are many reasons why UN and other embargoes are failing to achieve the desired results and doing little to enhance the security of civilian populations in war-torn regions. The following three case studies aim to illustrate these points and in doing so to highlight the need for urgent action on the part of the international community in order to increase the effectiveness of current and future arms embargoes. Case Study 1 elaborates on the experience and findings of the UN Panel tasked with investigating breaches of the sanctions against UNITA. Case Study 2 gives an illustration of how, despite the decade-long imposition of an arms embargo against UNITA, security for the ordinary person in Angola has remained a distant prospect. Case Study 3 constitutes an overview of the general impact of arms embargoes drawing on the experience of monitors and experts charged with overseeing a range of recent sanctions.

#### **Case Study 1: Violations of the sanctions against UNITA** by Gilbert Barthe<sup>34</sup>

##### **The origin of sanctions against UNITA**

Angola has suffered from civil war since 1975 and, as a result, the military struggle on the battlefield has, for many years, dictated the life of the population. Elections were organized in 1992 and were won by the MPLA, led by Eduardo Dos Santos. However, UNITA, led by Jonas Savimbi refused to respect the result of the elections and hostilities resumed prompting the Security Council to threaten UNITA with sanctions on arms deliveries and the provision of petroleum.

In 1994, while continuing to rearm heavily, UNITA signed the Lusaka Peace Accord. Sanctions, which increased in scope with each subsequent UNSC Resolution, were used in order to try to force UNITA to abandon their insurgency and to demobilize within a specified time frame. However by the mid to late 1990s it had become obvious to the Security Council that the sanctions were not being respected or enforced by some countries and that Savimbi's continuing access to diamond fields meant that UNITA was able to sell diamonds to finance the purchase of military equipment through a network of arms brokers and transporters.

##### **Expanding the scope of the sanctions**

On 12 June 1998, the Security Council passed Resolution 1173, demanding that by 23 June UNITA co-operate in the extension of state administration to cities under its control. Failure to comply would lead to the seizure of UNITA financial assets abroad, a prohibition on both the import of Angolan diamonds not covered by a government certificate, and a prohibition on the sale or supply of mining equipment, as well as a ban on the sale or supply of vehicles and spare parts into UNITA-held territories.

During 1998 and early 1999, despite reinforced UN sanctions and the presence of a UN Mission, MONUA, UNITA was able to expand its control over two thirds of Angola. At the same time, a UK-based NGO Global Witness shocked the international business community with the publication, in December 1998, of a 15 page report entitled *A Rough Trade: The Role of Diamond Companies and Governments in the Angolan Conflict*,<sup>35</sup> which described how lead companies were financing the war on both UNITA and the Government's sides by dealing in

diamonds and petroleum. The report also implicated certain countries that were involved in laundering UNITA diamonds and channelling them towards diamond markets where the origin of such diamonds were not adequately scrutinized by the relevant authorities.

### **Launching the UN Panel investigations**

On 29 January 1999, by way of a letter addressed to the UNSC, the Angolan government accused some Zambian officials and other individuals of supporting UNITA. This claim was denied by the Zambian government. On 9 March, Angola sent a letter containing more accusations to the Sanction Committee. Subsequently, Ambassador Robert Fowler, Chairman of the Sanction Committee on Angola, presented to the UNSC the idea of forming two Expert Panels in order to examine the allegations of sanctions violations and to make recommendations for enhancing the effectiveness of the sanctions. On 7 May 1999, the Security Council decided to form these two Expert Panels with a view to firstly investigating reports concerning breaches of the sanctions imposed against UNITA, secondly to identify parties aiding and abetting the violation of these sanctions, and thirdly to recommend measures to end such violations and improve the implementation of the sanctions. One Panel was entrusted with investigating UNITA diamonds, finances, travel, representation and petroleum purchases and a second one with sources of military support. Based on the interconnectedness of the areas to be examined, the Panels decided to amalgamate its two components and to function as a single Panel.

On 10th March 2000, the Panels of Experts produced a UN report S/2000/203, known as the Fowler Report. Although almost entirely based on the declarations of four UNITA defectors, which included some debatable statements, much of the information contained in the Fowler Report was confirmed with more detail by the Final Report of the Monitoring Mechanism on Angola Sanctions, published on 21 December 2000. This had been established the previous April in order to follow up on leads contained in the Fowler report.<sup>36</sup>

### **The findings of the Panel and Monitoring Mechanism**

The reports from the Expert Panel (Fowler Report) and of the Monitoring Mechanism highlighted the direct roles played by Togo, Burkina Faso and Mobutu's Zaire in helping UNITA. The report also highlighted the role played by supplier countries, arms brokering agents and diamond revenue in helping UNITA circumvent UN sanctions.

#### ***End-user certification***

According to the Fowler Report, Zaire's role in assisting UNITA to acquire new weaponry began in 1994 when Mobutu agreed to help and put Savimbi in contact with his primary weapons broker, Imad Bakir. Planes began arriving in Zaire from Eastern Europe carrying arms and military equipment. The packaging of the military cargo was changed in Zaire to give it the appearance of being food or clothing supplies. Until May 1997 UNITA used Zaire as a base for stockpiling arms, since brokers working for UNITA were able to use Zairian end-user certificates. Mobutu was paid for these services in diamonds and cash. Burkina Faso played a similar role in facilitating arms transfers to UNITA through the provision of end-user certificates and allowing its territory to be used as a transshipment point for arms bound for the Angolan rebels. Despite this, Savimbi harboured concerns regarding the reliability of Zaire and so approached Togo President Eyadema in order to obtain his support. An agreement reached saw Togo retaining 20% of the transiting arms, in return for the offer of end-user certificates and transit facilities. Togo's support seemed only to have materialised towards the end of the Mobutu regime in 1997 when Togolese end user certificates were presented to Imad Bakir and subsequent arms supplies were flown directly to the UNITA base in Andulo, Angola. However, the Monitoring Mechanism on UNITA sanctions mentioned in its final Report of December 2000 that "18 end-user certificates that surfaced in Bulgaria featuring Togo as the country of origin were forged, the two certificates that surfaced in Romania featuring Togo as country of origin were forged".<sup>37</sup> The Togolese government in fact admitted as much, having issued an end-user certificate to one UNITA representative in July 1997, which clearly served as a model for the forgeries.

#### ***Arms brokering and transportation***

Years of civil war have decimated all parts of Angola's transport infrastructure leaving air transportation as the primary means for UNITA to bring arms into the country. The arms embargo against UNITA meant, however, that obtaining new supplies of weapons

was a complex task involving a range of actors including pilots, brokers and other middlemen who operated on the outer limits of legality by circumventing national laws and ignoring international norms and regulations. According to the Monitoring Mechanism Report, a company called Air Cess, owned by the notorious arms broker Victor Bout, was capable of co-ordinating such a range of activities and actors and served as a regular supplier of arms to UNITA in the late 1990s. Air Cess aircraft typically combined shipments of arms with that of other types of cargo so as to provide cover for the transport of the weapons. Such aircraft would divert from their "legitimate" route to deliver arms to UNITA before continuing on to their final destination. Moreover, the ease with which such operators could conduct their illicit flights has been greatly enhanced by the use of "flags of convenience" whereby aircraft are nominally registered in a country where few, if any, of the required checks are made on the activities or air-worthiness of the aircraft.

### ***Diamond revenue***

Throughout the 1990s the use of diamonds or diamond revenue by UNITA to purchase military equipment became more and more obvious. In this regard, the imposition of new UN sanctions in 1998, tied to the introduction of a Governmental certification system to legitimise the export and sale, by the state, of Angolan diamonds, should have been the ultimate measure aimed at curbing the potential for UNITA to circumvent the sanctions. The blocking of their diamond sales should have rendered it impossible for UNITA to buy arms, to move and sustain troops, and for UNITA officials to travel and deposit cash in bank accounts or invest in real estate abroad.

However, it became obvious that despite the increasing level of restrictions imposed, UNITA's diamonds were finding their way into the international market, by two primary means: firstly, the direct hand-over of diamonds by UNITA to arms brokers and to friendly government leaders, often when travelling by private plane; secondly, the sale of UNITA diamonds by middlemen to government-licensed diamond buying companies and their presentation for government certification. The licensed buying offices operating in the formal and informal sectors were subsidiaries of well-known international diamond operators or joint-ventures with Angolan counterparts.

### **The need for international action**

On its own, the tightening of controls on the sale of Angolan diamonds has had a very limited impact since adjacent countries producing diamonds of the same characteristics have issued friendly national paperwork to facilitate undercover UNITA diamond sales. At the same time, the lack of national and international controls governing the activities of arms brokering and transportation agents, the poor enforcement of export controls in supplier countries, and weaknesses in international end-user certification requirements have allowed UNITA to gain access to the arms they need to sustain their insurgency, despite the ever-increasing scope of UN sanctions.

The question of how to improve the effectiveness of the sanctions against UNITA therefore implies the need for global measures. At a basic level there is a need to improve levels of transparency, integrity, control, capacity and the legal system of the Angolan government itself as well as UNITA-friendly countries. Similar measures are needed in countries with diamond markets and countries with arms production facilities.

## **Case Study 2: The impact of the arms embargo on human security in Angola by Matias Capapelo<sup>38</sup>**

Angola has been at war from the inception of independence in 1975. The struggle for power involving the three liberation movements, namely FNLA, MPLA and UNITA created an enabling environment for the start of an arms race and catapulted the country into one of the most brutal conflicts in African history.

This state of affairs resulted in the inculcation of a culture of violence, the collapse of the rule of law, breakdown of community structures and the destruction of essential means of economic production. The cost in human lives and the number of direct and indirect victims of

the war points to an alarming trend which at its fruition could lead to the devastation of the civilian population, since they are, in most instances, the main casualties during military confrontation.

The arms embargo against UNITA coupled with the intensity and brutality of the conflict made it much easier for the ordinary person to access small arms. For many years the arms embargo did little to prevent UNITA accessing the weapons it required, whilst throughout the country, arms were distributed to civilians by both the government and UNITA, without any controls, to fight the enemy. This uncontrolled availability and accessibility of firearms by large sectors of the population presents an enormous challenge for peace, stability, democracy and development in Angola.

From a human security perspective it is evident that these weapons have contributed to much suffering and pain for the majority of Angolans. The availability of weapons in Angola also resulted in an increased level of political, criminal and domestic violence. This was primarily because many people used the acquisition of these weapons as tools to promote their social and economic well being since their possession, for many, symbolized respect and authority. The economic, political and criminal aspects of small arms abuse thus make it imperative that the human security perspective of the problem is addressed.

A recent survey in three capital cities of Angola, Luanda, Malanje and Huambo, by the NGO Angola 2000 produced very insightful results which emphasized the need to act immediately to reduce the suffering of the Angolan people. Seven out of every 10 respondents surveyed were under the impression that banditry activities in these three cities have increased. About the same number of people were under the impression that violence has increased, whilst 80 percent of respondents were concerned that firearms were scattered all over Angola.

Whilst it can be argued that the presence of these weapons of war is not the primary cause of violence, they do facilitate easy recourse to such means in order to engage in criminal activity and to settle disputes. The presence of firearms also hampers the good work of many on the ground in Angola as they continue to struggle to move their nation forward.

### **Case Study 3: The impact of arms embargoes – a view from a UN Expert by Gilbert Barthe**

#### **The role and functioning of the UN Panels of Experts**

Since 1996, the UN Security Council has increasingly relied upon investigative Expert Panels to monitor the implementation of sanctions, with two exceptions being those sanctions imposed against former Yugoslavia and those imposed against Iraq, both of which involved impressive numbers of monitors or inspectors.

Expert Panels consist mostly of 4-10 experts mandated for six months to investigate possible sanctions violations and to make recommendations on how to improve the sanctions' efficiency or compliance from countries. The findings in the various Panels' Reports depend a great deal on the collaboration the Panel received from countries, in terms of information sharing and access for the verification of information. Since Experts do not have power to demand co-operation, and in view of the limited time over which they are mandated to operate, the identification of independent sources of information is not easily achieved. As a result, the Panels' Reports can be considerably affected by the level of input and the collaboration received from countries. Governments aiding or abetting sanctions violations can considerably delay the investigations of UN Panels, in the hope that this will prevent in-depth investigation. Panels of Experts also have to rely on government for any field or border visit, and therefore evidence of sanctions busting can be easily concealed and witnesses briefed before interacting with the Panel.

### **The impact of the Panel investigations**

Some Panels were, nevertheless, able to disclose to the public some very shocking practices from UN member states in relation to the implementation of sanctions. The Report from the Expert Panel on UNITA sanctions ("Fowler Report") and the three reports from the Expert Panels on the illegal exploitation of natural resources in the DRC, published in March 2001, November 2001 and November 2002, created serious controversy at the time of their publication due to their direct and, to differing extents, accusative reporting style. Strong Reports have usually led to strong denials and counter-accusations, and to characteristic inaction from the Security Council in terms of implementing their recommendations. Following the initial reports of both the UNITA and DRC Panels, the Council seemed to have hidden its lack of consensus on the Reports' findings behind a mandate for the renewal of the said Panels. The Panels were then sent back to consolidate their findings and reply to corporate or government complaints that they had generated.

Some UN member-states, such as the UK and Belgium have chosen to display more courage than the Council as a whole, and have strengthened their national laws or initiated their own investigations against their own citizens or companies reported to have violated UN sanctions. In most cases, it has been very difficult for such countries to gather enough evidence to prosecute the culprits, as the level of proof required in order to be cited in a UN investigative report, in general amounts to corroborated information rather than conclusive proof.

### **The costs and benefits of on-site monitoring**

The monitoring of sanctions on the ground by permanent sanctions monitoring missions certainly have yielded more results over the longer term, but this has been achieved at the cost of expensive surveillance operations reaching up to a thousand monitors on the ground over several years. In the case of the Sanctions against Yugoslavia, monitors witnessed the illegal export of almost 1 million litres of fuel per day from a neighbouring country in breach of UN sanctions. Despite constant pressure at governmental level, action to halt these breaches (such as sporadic seizure operations undertaken by police financial units) had a very limited effect, as most of the smugglers were operating for well-armed mafia groups. Furthermore, if tanker trucks are able to pass easily and "off-the record" across borders in breach of UN sanctions, one can easily imagine that it would not be difficult to smuggle arms the same way, possibly even in the same tankers as the fuel. The challenges to effective implementation of arms embargoes are compounded by the fact that many countries under arms embargo are located in the developing world, and almost none of their neighbours possess the physical capacity, not to mention the will, to inspect thoroughly, the content of their export deliveries at the border or at airports.

### **Some reasons for non-compliance with UN sanctions**

#### ***The role of the arms broker***

The experience of the UN Panels of Experts, amongst others, shows that when arms embargoes are imposed against specific countries this does not make the supply of arms impossible, only more difficult. Once under embargo, governments or rebel groups that could previously travel to the producing countries and place direct orders for arms and materiel now have to rely on brokers and other indirect channels which often impact heavily on the price paid for the goods. In such cases, brokers become the most powerful actors in the transaction. Governments and groups involved in conflict, whether under, or free from, sanctions often having a pressing need for new supplies of arms and no time for prior weapons inspection. In these instances, they have often been cheated by brokers on the quality-price relationship of the deliveries. A government under sanction can therefore expect to pay up to double the price for arms compared with a purchase made in a time of commercial freedom. This increase will accrue from the broker's cut, the longer and indirect transport route, and the obtaining of fake documentation. Brokers perform a range of valuable functions for embargoed entities since they can also arrange for the transportation of the arms and offer barter-trade opportunities; often they can become the trusted logistical partner of representatives of such governments and non-government groups.

Most countries have difficulty in prosecuting arms brokers, due to the fact that brokering is the least visible part of an arms deal, and that the physical trail of the arms delivery does not usually pass through the country where the brokering took

place. Few Western countries have adequate laws in this respect whilst the level of readiness is even lower in the Developing World. In situations where a broker's activities come under investigation, and particularly if their operations become threatened, they will tend to move their base to another country.

#### ***The abuse of end-user certificates***

In most countries, the end-user certificate lays the basis for the provision of an export licence for the shipment of controlled goods, and it appears that, in the vast majority of cases, supplier countries do not see any reason to be suspicious about the form of such certificates, especially when authorising exports from their national arms production capacity.

Nevertheless, end-user certificates were described by the UNITA Sanctions Monitoring Mechanism Report in paragraph 30 in the following terms: "The Mechanism has noted that the end-user certificate comes under the format of mere administrative correspondence on an official letterhead paper containing no security features other than the official seal, coat of arms and signature of the issuing authority".<sup>39</sup> Indeed, an experienced arms broker, in full knowledge of the real destination of the transaction, will offer their suppliers the cover of a front end-user certificate from a country not under sanctions, obtained against cash or other favour. Suppliers can in this case justify the shipment, and the cargo can easily divert, unrecorded, from its legal route, often during its transit by air. If investigators don't have access to the arms at their final destination, the case has virtually no chance of being revealed.

#### ***An affinity with the embargoed entity***

Countries under sanctions are mostly located in the Developing World, whose borders were defined by outsiders in the 19th Century, with little consideration to the traditional tribal demarcations or affinities between people. In most cases of countries or groups under embargo, at least one of the neighbouring countries is likely to consider itself a "brother" of the country or group under embargo. Occasionally it can only require one government minister to originate from the border region in order for support to be given to the circumvention of sanctions. An understanding of the neighbour country or group's cause, and the sharing of the feeling of victimisation can often be sufficient for undermining the will to enforce, at the regional level, sanctions imposed by geographically remote states.

#### ***Corruption***

Such feelings of brotherhood with the target of the sanctions can also be enhanced by financial compensation or the existence of mutual financial benefits. Sanctions against Yugoslavia, Iraq, Sierra Leone, Nigeria and UNITA all had the potential to be violated by at least one of their neighbours, since most of them are in the lower half, or even worse not even part, of the Corruption Perceptions Index 2002 issued by Transparency International<sup>40</sup> indicating the perception of high levels of corruption in these countries. The need to diffuse such behaviour places a premium on the UNSC conducting a more inclusive diplomatic policy at the global level in order to convince, rather than force, such countries to value and support global efforts to promote human security.

#### ***Enhancing capacity for the enforcement of export controls***

Support for the common cause alone is not, however, sufficient for the effective enforcement of sanctions, particularly where countries lack the proper means to control the movement of cargo through or over their territory. In the case of the sanctions against former Yugoslavia, adherence on the part of some neighbouring countries was highly dependent upon the provision of information, advice, training and expertise, special control procedures and equipment for monitoring cargo shipments. Computerized registration and monitoring of vessel, truck and train movements were put in place progressively over more than two years, thereby increasing, considerably, the impact of the sanctions. In Albania, an Oil Pre-Verification System was initiated in late 1994, whereby incoming tanker vessels could not offload their fuel before all end-consignees were verified by both the authorities and the international Sanctions Assistance Mission. Inspections at the recipient's facility were also carried out to ascertain whether the amount of fuel ordered was in line with their storage and distribution capacity. On the Danube, cargo barges transiting through FRY were inspected, registered and sealed in the neighbouring country before entering FRY, with an expected arrival time given to the

first station after the FRY where seals were also checked. Such assistance amounted to an unprecedented level of support for the implementation of sanctions in countries bordering a targeted entity and could serve as a model for addressing persistent violations of sanctions in the future.

### **Arms embargoes and human security**

Arms embargoes are usually imposed on countries when the level of crime and violence has already reached uncontrollable levels, and when arms availability is already overwhelming. Small arms have a life expectancy of around 40 years, more than a significant section of the population in most countries under embargo. Moreover, having filtered through despite an embargo, weapons will often be used in banditry and violent crime for many years after the conflict has subsided.

Where an embargoed government or group seeks new weaponry, there is usually little difficulty in procuring such supplies and in sustaining the level of killing and destruction. For example, the former Zaire (now the Democratic Republic of the Congo) has, for more than 10 years, been under arms embargo from the European Union and other Western suppliers. Brokers were one of only a few options available for the late President Laurent Kabila to acquire weapons after the Ugandan and Rwandan troops that helped bring him to power in 1996-1997, before being expelled in early-mid 1998, re-entered the DRC for a second time in August 1998 in an attempt to oust him. However, Laurent Kabila allegedly signed secret commercial contracts to both obtain arms from China in exchange for cobalt, and to receive weapons and military training from North Korea in exchange for uranium.<sup>41</sup> At the same time weapons supplies were brought in for the rebel groups created by Uganda and Rwanda to fight against Laurent Kabila. Ultimately, the level of violence that has been committed against the population of this country has contributed to the death of more than 4 million people since 1998.

Under such circumstances, one can only conclude that arms embargoes on their own have little impact on the safety of the population, since they do little to prevent flows of arms into conflict zones. Indeed, as long as the purchaser has sufficient finances or access to valuable resources to purchase weapons at a premium price, and providing neighbouring countries lack the will and capacity to monitor traffic leaving or transiting their territory, arms embargoes will have virtually no impact on the availability of arms in a conflict zone. However, if one of these variables ceases to exist in the favour of the embargoed party - for example should access to finances or resources be interdicted - then the availability of new supplies of arms will decrease.

### **The emergence of "smart sanctions"**

In an effort to increase the pressure on some target states, arms embargoes have been coupled with more wide-ranging economic sanctions, as in the case of Iraq and the Former Republic of Yugoslavia. However, the international community has begun to recognise the devastating effects of economic sanctions on civilian populations, and is now placing increased emphasis on so-called "smart sanctions", targeting the assets and procurement channels of rogue leaders. According to the definition endorsed by the Stockholm Process, smart sanctions include "restrictions on the delivery of arms, financial assets, travel, flight connections, particular goods and services (certain natural resources and processed commodities such as diamonds, oil, timber, arms, spare parts for particular products) and on international representation."<sup>42</sup> This corresponds exactly with the scope of the sanctions against UNITA from 1998 onwards. As such, although ineffective when employed as a stand-alone measure, arms embargoes should be considered a useful component of any regime based on "smart sanctions", since they do not have negative repercussions in humanitarian terms, for the general population of the target state.

At the same time, it should be recognised that sanctions alone have little prospect of achieving resolution of conflict and that an effective strategy for addressing weapons availability in regions of tension and conflict cannot rely on punitive measures alone. It must involve continuous diplomatic efforts, coupled with assistance for the effective enforcement of export controls, and support for sustainable development in conflict-affected regions. This would reduce the need for arms on the part of both the government and the general population.

The above case studies clearly demonstrate the myriad challenges facing the international community in seeking to reduce conflict and devastation through the imposition of arms embargoes. However, whilst extremely burdensome, the challenges that need to be met go beyond the problems faced in enforcing arms embargoes on the ground where communications are often poor and the regulatory infrastructure is non-existent. In fact, the challenges to the implementation of arms embargoes also lie in the range of political and strategic options chosen by governments of countries lying thousands of miles away from the conflict and devastation. The following five case studies aim to illustrate some of the issues and dilemmas facing states in seeking to bring about international peace and security through the imposition of arms embargoes.

## **B: The Political and Strategic Issues Facing States in Relation to Arms Embargoes**

### **Case Study 4: Arms embargoes and the international community's obligation to act to prevent internationally wrongful acts e.g. genocide**

As mentioned in Section 1, arms embargoes have often been criticised as being too little too late since they are often imposed following a prolonged period of tension during which time warring factions have planned their campaign and built up stores of weapons and materiel. Moreover, in situations where a civilian population is under attack with little or no means of defending themselves, a blanket arms embargo can deny the persecuted a means of defending themselves. Such circumstances have become all too frequent in the latter part of the 20th Century and are borne out by the fact that civilians have accounted for 90% of conflict-related deaths since 1990.<sup>43</sup> Despite this, the response by the international community to the targeting of civilians in conflict has too often been muted and ineffectual. The tragedy of Rwanda, highlighted in the case study below, is a clear illustration of the international community's shocking lack of conviction in a time of crisis.

#### **Rwanda 1994**

Between 1990 and 1993, during fighting between the Rwandan government and the Rwandan Patriotic Force (RPF), the influx of arms from Egypt, France, South Africa, Uganda and others contributed to the severity of the conflict and the level of civilian casualties and also diverted funds in Rwanda away from the provision of vital services. There was no concerted international effort to halt the flow of weapons to the region and the arms that were amassed during this period contributed to the genocide that occurred between April and June 1994, when hundreds of thousands of civilians were killed. On 17 May 1994, the Security Council passed Resolution 918, establishing an arms embargo that prohibited the sale of all weapons and related material to Rwanda. However, the embargo came too late to stop the genocide, which was already underway. Moreover, the willingness of some states to violate the embargo and the failure of the UN to ensure its effective enforcement meant that the supply of arms to the perpetrators of violence continued even after the embargo was imposed. According to Human Rights Watch, France was one country that did not suspend its arms shipments following the imposition of the embargo but rather diverted them to Goma airport in Zaire, where no UN embargo monitors were deployed.<sup>44</sup>

In July 1994 the Rwandan Patriotic Force took power in Rwanda and many of the former Rwandan Armed Forces (FAR) which had taken part in the genocide fled over the border into Zaire, taking their weapons with them. Whilst in Zaire, these forces built up their military infrastructure, aided by several countries.<sup>45</sup> In June 1995 the Security Council passed Resolution 997, to affirm that the embargo applied to the supply of arms and related material to former Rwandan forces wherever they were located.

It is clear from the above that to respond to an unfolding crisis such as the slaughter in Rwanda by belatedly imposing an arms embargo, and then to fail to take adequate steps to effectively monitor and enforce it, represents a disastrous failure on the part of the international community on several levels. At the same time, moreover, it is clear that the imposition of an arms embargo is not always an appropriate or adequate response to the threat or outbreak of armed conflict. Indeed to rely consistently on the imposition of an arms embargo for the safeguarding of human security, when the protagonists to a conflict are already armed to the teeth, is clearly an untenable position.

In May 1994 General Romeo Dallaire, head of UNAMIR, the international peace-keeping force in Rwanda had warned of the impending slaughter and argued to the UN that a force of 5000 thousand troops would be sufficient to prevent widespread killing.<sup>46</sup> It is a travesty that neither General Dallaire's warning nor his advice was heeded. The international community should ensure that this is never again repeated and should stand ready to fulfil their moral and legal obligation to prevent genocide - as set out in the Convention for the Prevention and Punishment of the Crime of Genocide, which was adopted by the UN General Assembly on 9 December, 1948.

### **Case Study 5: Arms embargoes and the link to the exploitation of human and natural resources**

The illicit arms trade and the trafficking of weapons in contravention of international embargoes is inextricably linked to the exploitation of human and natural resources. For example, in Angola, the exploitation of oil for many years funded the government war effort, whilst the exploitation of diamonds funded the arms procurement and military operations of the UNITA rebels; likewise, in Sierra Leone, the RUF rebels were able to secure their own survival through the harvesting and sale of Sierra Leonean diamonds. In Cambodia, moreover, for years, the Khmer Rouge rebels were able to sustain their insurgency through illegal logging operations; only when pressure was brought to bear upon the Thai authorities to desist from trading with the Khmer Rouge did their resistance to the Phnom Penh government begin to wane.<sup>47</sup> In other less resource-rich regions, such as the Balkans, Caucasus and Central Asia the waging of war has gone hand-in-hand with trafficking in illegal drugs and other contraband. The exploitation of human resources has also been a marked feature of conflicts around the world with the enforced conscription of civilians and, in particular, the use of child soldiers, by the RUF, UNITA, the Lords Resistance Army (Southern Sudan) and the Khmer Rouge.

#### **Liberia 2001-3**

The extent to which the exploitation of natural resources sustains and perpetuates conflict and degrades human security becomes clear from an examination of the causes of conflict and instability in and around Liberia in West Africa. A number of the rebel groups that are, or have been, operating in the sub-region are typically made up of 90% of mercenaries, mainly from Liberia.<sup>48</sup> Two such groups – the Movement for Justice and Peace (MPJ) and the Popular Movement for the Ivorian Great West (MPIGO) – operating in the west of the Côte d'Ivoire are paid to undertake their insurgent activities and are provided with weapons and materiel through Liberian logging activities. These activities gained increasing importance to the Liberian regime after the imposition of a ban on their diamond trade by virtue of UNSC Resolution 1343 of 6 May 2001. Indeed, in recent months Liberian logging companies have become a fulcrum for the illicit arms trade, for state corruption and for paramilitary operations and were directly involved in the shipment of arms to both the government in Monrovia and the rebel factions it has spawned.<sup>49</sup> In recognition of this, on 6 May 2003 the Security Council passed Resolution 1478, which, in addition to extending existing sanctions,

imposed an embargo on Liberian timber. This calls on states "to prevent, for a period of 10 months starting on July 7 [2003], the import of all round logs and timber products originating in Liberia."<sup>50</sup> The logging companies employ only a few thousand Liberians and the lack of regulation and accountability surrounding Liberian logging operations means that the ordinary Liberian accrues little or no benefit from the exploitation of their country's valuable natural resource. Nevertheless, the Security Council indicated that by September 7 2003 it would "consider how best to minimize any humanitarian or socio-economic impact" of the logging sanctions, "including the possibility of allowing timber exports to resume in order to fund humanitarian programmes."<sup>51</sup> According to Global Witness, "this is a victory for the people of Liberia, as the new timber ban will severely restrict the Liberian government's access to weapons imports; prevent the abuse of timber revenue by rebel groups...and curtail the disastrous humanitarian consequences of the industry."<sup>52</sup> The Security Council must ensure that the timber ban comes into full effect and that the Panel of Experts appointed to investigate compliance with the new Resolution does so effectively.

The calamitous events in West Africa over the past decade are clearly illustrative of the damage that can be caused by murderous insurgents backed by a corrupt and despotic regime with access to valuable natural resources. Bringing peace and stability to this region is thus dependent on breaking the cycle whereby rebel groups have access to natural resources and exploit these resources to pay for arms which are in turn used to maintain control of areas rich in natural resources.

The recent imposition of sanctions against the Liberian timber industry is an encouraging development since it is a recognition of the fact that, in order to be effective, arms embargoes need to be coupled with measures that address the target's ability to procure and pay for arms on the illicit market; the imposition of these sanctions is also a positive demonstration of the UN's willingness to heed the warnings and advice of experts from outside its immediate sphere. To have a lasting impact on the situation in West Africa, however, it is likely that the ten-month moratorium on the purchase of timber from Liberia will need to be extended for some considerable time, until there is evidence of a permanent change in the nature and actions of the Monrovia-based government.

## **Case Study 6: Arms transfers to non-state actors in embargoed territory**

Another challenge facing the international community in the quest for global peace and security relates to the dangers of the selective embargo where one protagonist is singled out as the target of an arms embargo and arms supplies continue to the opposing party, not because it is perceived to be a responsible actor, but rather because it is seen as the lesser of two evils. Unfortunately this situation has arisen on a number of occasions over the last two decades, including, for example, US support, in the 1980s, for the mujahedein fighting the Soviet Army in Afghanistan. This involved the provision of Stinger missiles, a number of which are now unaccounted for and are thought to be in the hands of terrorists.<sup>53</sup> The imposition, in late 2001, of a selective arms embargo against the Taliban which allowed the continuing provision of arms and military equipment to the opposing Northern Alliance is a worrying demonstration of the failure of states to learn the lessons of the past, particularly given the latter's very poor record of human rights violations and breaches of international humanitarian law. However, it should also be recognised that a comprehensive embargo, applying to all parties in the Afghan conflict, would have required very rigorous monitoring to ensure that it did not simply freeze the existing military balance in favour of the Taliban.

## Afghanistan 2001

Despite a Security Council statement in 1999 calling for an immediate cessation of outside military assistance to all military factions in Afghanistan,<sup>54</sup> the UN arms embargo imposed in December 2000 applied only to areas under Taliban control and thus allowed the US and others to arm the Northern Alliance as a means by which to pursue their political aim of removing the Taliban from power.<sup>55</sup> Indeed, according to the Russian Minister of Defence, Russia had been "rendering assistance continuously to the Northern Alliance since 1996", and this assistance continued in military form in 2001.<sup>56</sup> Russia supplied this military aid in spite of a 1999 agreement by the 'Six plus two contact group', consisting of Afghanistan's neighbours plus Russia and the US, "not to provide military support to any Afghan party." This agreement, known as the Tashkent Declaration, also called upon "the international community to take identical measures to prevent the delivery of weapons to Afghanistan."<sup>57</sup>

The US has also provided arms to the Northern Alliance as part of a large-scale increase in military assistance to various parties around the world in the context of the 'war on terror' after 11 September 2001.<sup>58</sup> In mid-October 2001 Rumsfeld announced that the US military had supplied anti-Taliban forces with food, ammunition and air support,<sup>59</sup> but the provision of this support is particularly worrying given that, throughout the civil war in Afghanistan the Northern Alliance was responsible for serious violations of human rights and international humanitarian law, including summary executions, indiscriminate air raids and widespread rape.<sup>60</sup> The EU also altered its policy in relation to the Northern Alliance in late 2001, by reinterpreting the EU arms embargo on Afghanistan of December 1996, which to that point applied to the whole country, to apply to Taliban controlled areas only. This in spite of a commitment contained in the EU Joint Action of 1998 to encourage all countries to supply arms only to governments.<sup>61</sup>

The international community's attitude towards non-state actors is both confusing and confused with the question of whether to lend support driven by political imperatives that are often peculiar to a particular country's situation or the prevailing international climate. The current "War on Terrorism" unfortunately appears to be used in some quarters as a rationale for providing arms and military training to governments and non-state actors that, by any objective appraisal, would not be considered as fulfilling the international legal obligation to respect and ensure respect for international humanitarian law. All states should be wary of supporting those who do not abide by internationally recognised standards of behaviour, since there is ample evidence from the recent past to show that such regimes and groups can themselves become a major threat to international peace and security.

## Case Study 7: Licensed production overseas and the impact on arms embargoes

Licensed production overseas (LPO) is the practice by which one company allows and enables a second company in another country to manufacture its products under license. During such agreements the licensee may receive a range of support from the licensing company: component parts, machine tools, blue prints, technical drawings and designs, whilst technical personnel such as engineers may also be seconded. LPO and the associated transfer of arms production technology means that new companies and countries can now initiate arms production where none had previously taken place. Crucially, the proliferation of such LPO has not been met with the parallel development of effective controls.

### UK/Germany-Turkey 1999

The Anglo-German company Heckler and Koch has engaged in a number of LPO arrangements with the state owned Turkish arms manufacturer MKEK. In 1998, for example, Heckler and Koch won an \$18 million 10 year contract for the licensed production of 200,000 HK 5.56mm assault rifles in Turkey. While several states had previously refused direct arms supplies

to Turkey due to serious human rights concerns, this local production of H&K small arms allows the provisioning of the Turkish military and security forces.

However, not only has licensed production allowed Turkey to equip its own police and military but MKEK has also boosted its own export market and counts countries like Kuwait, Burundi, Libya, Pakistan, Tunisia and Indonesia amongst its clients.

In a UK TV documentary programme broadcast on 9 December 1999, MKEK revealed that it had shipped a consignment of 500 MP5 submachine guns to the Indonesian police in August – September 1999.<sup>62</sup> This was at a time when widespread human rights abuses were being committed in East Timor by anti-independence paramilitaries allegedly with the complicity of the Indonesian security forces. On 16 September 1999, as the human rights situation was deteriorating, the EU instituted a comprehensive arms embargo.

This embargo meant that neither Heckler and Koch in Germany nor the UK would have been allowed to export MP5s to Indonesia. However since Turkey was not an EU member and was not covered by the embargo, little could be done to stop MKEK from producing H&K small arms under license, and from continuing to supply these weapons to the Indonesian security forces.

The currently unregulated nature of licensed production deals poses a serious threat to the effective implementation of multilateral arms embargoes on a number of levels. Firstly, as the above case clearly shows, in situations where a regional arms embargo is in place, for example involving EU member states, there is little to prevent EU based companies who have subsidiaries abroad or licensed production agreements with companies outside the EU, from moving arms production overseas from where they can supply an embargoed entity. Secondly, as the H&K example also illustrates, licensed production deals involving Western-based companies are sometimes established with companies in countries which have little compunction with regard to supplying arms to countries in conflict zones and with serious human rights problems, thereby greatly increasing the risk that arms will either be misused or will be transhipped to embargoed entities. The regulation of licensed production deals is an urgent priority for states wishing to prevent the proliferation of arms in regions of conflict and human rights abuse. Whilst efforts have been made to address this issue at EU level, unfortunately, as yet, little progress has been made.

### **Case Study 8: Problems with the national implementation of international embargoes**

The evolution of international arms embargoes and sanctions over the past quarter of a century has seen an increasing emphasis placed upon measures that target regimes or groups but which have minimal impact on the civilian population. It is nevertheless a truism that the effectiveness of such sanctions are only as good as the capacity and the will of states to implement them. Most of the cases of embargo busting referred above, have typically involved a complex network of actors with a number of independent entities, such as arms brokering and transport agents, making the crucial links between suppliers and recipients. However, cases of straight state-to-state interaction do exist, although these can be difficult to track and verify since secrecy is a powerful motive. In late 2002, however, news emerged of a major potential breach of the UN Sanctions against Iraq involving the authorities of the Republika Srpska.

The anomalous situation of the Republika Srpska – which is part of Bosnia-Herzegovina but maintains close ties and an affinity with the Former Republic of Yugoslavia – has clearly contributed to the intended breach of the Sanctions against Iraq. Whilst the Republika Srpska authorities should have considered themselves to be bound by sanctions on Iraq, it appears that official corruption, coupled with a lack of motivation as regards abiding by international laws and norms, were considerable factors in the agreement to transfer arms and provide technical assistance in breach of the UN sanctions against Iraq.

## Republika Srpska 2001

by Chris Lindborg<sup>63</sup>

On 12 October 2002, NATO peacekeepers in Bosnia-Herzegovina uncovered a contract linking the Orao Company in the Republika Srpska with the export to Iraq of military technology,<sup>64</sup> despite a UN arms embargo on Iraq that had been in effect since 1990.<sup>65</sup>

The \$8.5 million contract with the Al-Bashair Trade Company in Baghdad<sup>66</sup> stipulated that Yugoimport, a Yugoslav<sup>67</sup> government-run company, deliver to Iraq weapons parts from Orao, and that Orao's employees repair Iraqi MiG fighter jets between October 2000 and 2005.<sup>68</sup> Yugoimport was apparently the logical choice for Orao because it had a history of weapons trading with Iraq that goes back decades to the era of President Josip Broz Tito. Moreover, the United Nations had approved Yugoimport's presence in Iraq during the embargo period because it was a major supplier of grain in Iraq's "oil-for-food" program.<sup>69</sup> Additional documents revealed stipulations for maintaining secrecy about the business to ensure that UN weapons inspectors did not discover the origin of the military assistance.<sup>70</sup>

In response to the problem, the FRY government in late October 2002 ordered Yugoimport to immediately close its office in Baghdad.<sup>71</sup> In the same month, Bosnia-Herzegovina's Council of Ministers decided to require that the issuing of permits for exporting and importing arms and military equipment come under the exclusive powers of the Ministry of Foreign Trade and Economic Relations.<sup>72</sup> A database to facilitate the control of arms imports and exports is to be created.<sup>73</sup>

Despite the actions of the Bosnian government, the pattern exhibited during the initial investigation into the Orao affair nevertheless revealed obduracy on the part of Republika Srpska officials. The Republika Srpska Defence Ministry was originally tasked with investigating the suspected Iraq deal, but in early September 2002, the Ministry claimed it had found no evidence of such activity which was also denied by Orao. Even after the peacekeepers' discovery in October 2002 the Republika Srpska authorities submitted a report on the matter which failed to satisfy leaders in NATO and the UN because it failed to state clearly who was responsible for the scandal.

Numerous officials were fired or transferred to other positions because of the scandal, but observers say that deeper reform, including increased transparency and democratic oversight of the military and the defence industry, is needed in the corruption-plagued and cash-strapped FRY and Republika Srpska to prevent these types of violations from happening in the future.<sup>74</sup>

The above example illustrates the types of challenges facing the effective implementation of arms embargoes in states that perhaps do not feel a sense of obligation to enforce international norms and agreements. Moreover, there are a number of countries that are regarded widely as "pariah" states, which may be considered beyond the influence of conventional diplomacy, and to whom the offering of incentives or assistance for compliance would be unthinkable. In such cases, where there is evidence of persistent and wilful breaching of UN arms embargoes, the international community may have little option other than to impose so-called "secondary sanctions" against the regime. Whilst such measures were called for in the Fowler Report and have been imposed in the case of Liberia, UN member states have thus far appeared somewhat reluctant to move down this path.



## 3 **Strengthening Arms Embargoes: Priority Areas for Attention.**

The case studies in the previous Section and the discussion of UN embargoes in Section 1 give an indication of the myriad range and extent of the challenges facing the international community in constructing an effective arms embargo regime. Despite the daunting nature of these challenges, it is clear that there are a number of important priorities that must be tackled by states if they are to continue to rely on arms embargoes as a principal tool in efforts to shape the world order. The first Biennial Meeting of States in July 2003 represents an important opportunity for states to make progress on addressing many of these challenges.

### **A. Strengthening national implementation of arms embargoes**

#### **Implementing UN embargoes in national legislation**

Although in principle, all UN member states are compelled to adhere to binding UN embargoes, this is not always borne out in practice. Whilst breaches can be committed by states, whether deliberately, mistakenly, or through neglect, sanctions-busting is most often committed by individuals and companies who are well acquainted with the techniques and methods of illicit arms trafficking. In such circumstances states are most often guilty of neglect in that they are failing to enforce their export control regulations properly. In cases where an individual or company is found to have broken a binding UN embargo, which has international legal force, it should be possible to prosecute them. However traffickers and sanctions-busters often evade justice by operating from countries that have not implemented embargoes in their national legislation and where it is therefore difficult to bring criminal charges against the offender.

**All states should ensure that binding UN embargoes are enacted through their national legislation in order to ensure that breaches are criminalized, thereby enabling the prosecution of sanctions-busters.**

#### **Tackling corruption and poor enforcement of export controls**

The case-study examples above and the various Reports of UN Panels of Experts have highlighted the extent to which corruption at all levels in government and a failure to fully implement arms transfer control regulations is a major factor in allowing the illicit arms trade to flourish. Those governments that take a proactive stance in efforts to root out corruption should be considered a priority in the provision of international development assistance. An international pool of technical expertise should be available to assist those who express a desire to improve the effectiveness of their export control system.

**All UN Member States should reaffirm their commitment to tackling corruption and to implementing effective controls on the import, export, transit and retransfer of SALW. Assistance should be available to all those who show resolve in addressing these issues.**

## Addressing the weakness of current end-user requirements

The use of forged or false end-user certification is one of the primary means of procuring arms on the illicit market. The first case study on Angola illustrates how the use of false end-user certification was a key factor in allowing UNITA access to arms and materiel. The vulnerability of current end-user certification practices to forgery and abuse has long been a source of concern to arms control analysts. The reliance on paper forms of end-user certification along with the large-scale failure of most states to take steps to verify certificates and to monitor the shipment and ultimate end-use of exported arms represent significant weaknesses. Indeed, the efforts of the various UN Panels of Experts and investigative work undertaken by NGOs and others has highlighted the fact that there is little in current end-user arrangements to deter unscrupulous individuals, companies and governments from breaching end-user assurances and re-exporting arms to embargoed parties. Accordingly, end-user certification requirements need to be significantly strengthened with the certificates themselves taking the form of a legally binding commitment, on the part of the recipient, to notify the exporting country if they intend to re-export the arms, and not to use them for proscribed purposes (such as to abuse human rights or commit breaches of international humanitarian law). Beyond this, the certificates should carry the serial numbers of the weapons to be transferred, and details of the physical means used to export the arms and the route along which they will be transported. For their part the licensing government should reserve the right to conduct follow-up checks to ensure that the arms, once exported, are being used in accordance with the export licence application. Finally, those governments that are found to persistently provide false end-user assurances should also be subject to sanctions.

**Governments should adopt a system whereby end-user certificates take the form of a legally-binding commitment between the licensing government and the licensee.**

**Governments should reserve the right to conduct follow-up checks on the use of arms once exported. Governments that repeatedly breach end-user assurances should be subject to an arms embargo.**

## Enhancing controls on licensed production overseas

As illustrated by the case study on the Anglo-German company Heckler and Koch, the current lack of controls on licensed production overseas represents a weakness in terms of the effective implementation of arms embargoes. All governments should require companies seeking to conclude LPO or overseas co-production arrangements to apply for a licence before any deal is concluded. Government licenses should not be granted in cases where an export license application for a direct weapons transfer would be refused, where the recipient state cannot demonstrate sufficient accountability in terms of exports and end-use control, or to states with a record of violating UN and other arms embargoes. Where regional, for example EU, embargoes are in place, governments should make particular efforts to prevent weapons produced under license in countries outside the EU from being exported to countries adjacent to, or covered by, the embargo.

**Governments should require companies to apply for a license before establishing licensed production or co-production facilities overseas and licenses should be refused in cases where there is a likelihood that weapons will be exported to conflict and human rights crisis-zones or to destinations covered by arms embargoes.**

## Regulation of arms brokering and transportation agents

Numerous studies and reports over the past five years have highlighted the involvement of arms brokering and transportation agents in driving the illicit arms trade. The fact that arms brokering and transportation agents have been fuelling conflict and instability around the world is now well established. The above case studies on Angola is clearly illustrative of the pivotal role played by a handful of unscrupulous individuals who are willing to run significant risks for substantial material reward. These individuals have been able to act with relative impunity owing to the complete absence, in most states, of regulations governing their activities. Although the need to regulate arms brokering agents has been highlighted by a number of regional and international agreements e.g. the SADC Firearm Protocol,<sup>75</sup> the UN Firearms Protocol<sup>76</sup> and the UN Programme of Action, provisions have tended to take the form of a recommendation rather than a requirement to act. As a result, little progress has been made on a global scale and arms brokering and transportation agents can conduct their business from most countries without fear of prosecution. Moreover, whilst steps have been taken in some countries (such as the UK) to tackle the problem of arms brokering, the equally serious problem of the unregulated transportation of arms has yet to be widely recognised and addressed.

All governments should establish controls on arms brokering and transportation agents avoiding loopholes that can allow easy circumvention. Accordingly, such controls should incorporate an element of extraterritoriality and should require nationals who are arms brokering and transportation agents to register as such and to apply for a licence for each transaction they undertake. These controls should operate regardless of where the arms are being sourced from and delivered to, and regardless of where the deal is actually conducted. Governments should also refrain from selling arms to arms brokering agents and other middlemen as final end-users. An international instrument on arms brokering and transportation remains, moreover, a pressing priority for the international community.

**All governments should introduce controls, including registration and licensing, on nationals who are arms brokering and transportation agents. An international convention should be negotiated in order to ensure high common standards of control.**

## Enhancing capacity and enforcement of air traffic control regulations

Closely related to the development of regulations on arms brokering and transportation is the need to enhance the capacity of air traffic control infrastructure in much of the developing world, whilst at the same time ensuring more rigorous enforcement of current air traffic regulations. Indeed, the lack of capacity for air traffic monitoring across sub-Saharan Africa was highlighted in particular in the Report of the Angola Monitoring Mechanism and the UN Panel Report on Sierra Leone. The Sierra Leone Panel, for example, found there to be a total lack of government oversight of airspace across West Africa due to an absence of even basic infrastructure in the sub-region.<sup>77</sup> Enhancing the capacity of states to monitor aircraft entering their airspace, combined with improved regional and sub-regional information exchange on the movement of suspect aircraft, would enhance the ability of states to prevent and combat the movement of arms and other illicit goods by air. In terms of enforcing current air traffic regulations, action is required on the part of national governments since the International Civil Aviation Organisation

has no power to enforce current regulations which, in any case, relate primarily to the economic and safety considerations of air freight transportation. Thus, whilst an aircraft flying into a country without the approval of the government is breaking international regulations, these regulations will only be effective if enforced at the national level and this is particularly difficult for governments in some war torn regions that do not have full control of their territory. Moreover the difficulty of enforcing international regulations on air traffic is compounded by the widespread use by illicit traffickers of "flags of convenience", where aircraft are nominally registered in a country where there is little or no enforcement of international aviation regulations. It is nevertheless possible for third countries that serve as a refuelling point to impound an aircraft on safety pretexts; governments should be particularly vigilant in seeking to exercise this option since aircraft that are registered under a flag of convenience are, more than any other, likely to be poorly maintained thus posing a safety risk.

**Assistance should be provided to states lacking adequate air traffic control infrastructure to enable, more readily, the tracking and prevention of the movement of illicit arms by air. All states should take steps to ensure that existing regulations governing air traffic are implemented to the fullest extent.**

## **B. The targeting of arms embargoes**

### **Developing a consistent approach to arms embargoes and non-state actors**

The transfer of arms by the US to the Northern Alliance in Afghanistan in 2001, the failure of the international community to allow arms transfers to the Bosnian Muslims in the early 1990s, and the specific targeting of sanctions against UNITA highlights the contradictory approach to the implementation of arms embargoes against non-state actors. In the first instance, arms were transferred to the Northern Alliance whilst an embargo was imposed against the Taliban government of Afghanistan; in the second, an arms embargo was enforced against all parties to the Bosnian conflict; whilst in the third the non-state group, UNITA, and not the government of Angola, has been the specific focus of particular sanctions, including an arms embargo. This apparent lack of an international consensus on the issue of arming non-state actors was borne out at the UN Small Arms Conference in 2001 where the US refusal to accept any restrictions on the arming of non-state actors threatened, at the eleventh hour, to scupper the entire Conference process. Agreement on an all-encompassing embargo on the export of arms to non-state actors is clearly not possible at the present time. However, the fact that the majority of states claim to operate some form of criteria in their export licensing process, together with commitments made in Section II, para. 11 of the UN Conference Programme of Action, means that it should be possible for UN member states to reach agreement on those circumstances under which it is unacceptable to transfer arms to non-state actors.

**All UN Member States should adhere to their international obligation not to transfer arms to recipients where there is a risk that they will be used to violate international law, for example through the abuse of human rights and breaches of international humanitarian law.**

## Intervening to prevent genocide

The international community's failure to respond to the slaughter in Rwanda in 1994 meant that the world stood by as one of the worst humanitarian catastrophes of modern times unfolded. The imposition of a UN arms embargo in May 1994 came far too late to have any impact on the intensity of the killing and, in practice, did little to constrain the then Hutu government's access to arms and ammunition. The Rwandan tragedy is proof, therefore, that there are, in fact, circumstances so dire that the imposition of an arms embargo is a wholly inadequate response. In such cases, where genocide is threatened, it is legally and morally incumbent upon the international community to take a proactive stance and to intervene in order to prevent the slaughter of innocent civilians.

**All UN Member states should reaffirm their commitment to the Convention for the Prevention and Punishment of the Crime of Genocide, adopted by the U.N. General Assembly on December 9, 1948. The UN should also set up a dedicated Task Force to monitor and plan responses to situations where there is a risk of genocide.**

## C. Arms embargoes and other sanctions

### Extending sanctions beyond the arms embargo

The Angola and Liberia case studies, along with the UN Panel of Experts investigations into the violations of the sanctions against UNITA and the RUF, clearly show how the ability to exploit natural resources (oil/diamonds and diamonds/timber respectively) has allowed both protagonists to sustain their insurgency over a number of years. Indeed whilst the access to resources is a key element in the sustenance of any conflict, in situations where one or more parties is subject to an arms embargo access to significant funds is particularly important since these are required to facilitate the purchase of arms on the illicit market. As a result, where the embargoed party has access to valuable commodities, arms embargoes on their own often have little impact. A wider regime of sanctions therefore needs to be adopted which includes a ban on the trade in those resources and products that are sustaining the war effort of the embargoed party; it should also include a ban on the sale of equipment that could be used to extract, or to facilitate the sale of, these commodities. The seizure of financial assets should be carried out and travel sanctions also imposed from the outset. Companies that are found to be trading in banned commodities should be prosecuted by their home government or, where a multinational is involved, by the government of the country where the company's head office is located.

**Arms embargoes should form part of a wider regime of sanctions which seek to prevent the target from sustaining their war effort through exploitation of natural resources or access to financial assets.**

## The use of secondary sanctions

One of the principal conclusions of the case-study on Angola above, which reinforces the findings of the UN Panel of Experts set up to investigate breaches of the sanctions against UNITA, is that the rebel group was able to acquire large quantities of arms, in part because of the willingness of some African countries to facilitate this procurement. The case-study also notes the willingness of some arms manufacturing countries, desperately seeking to bring in hard currency, to sell arms regardless of the end-user. The UN Panel of Experts recommended the use of secondary sanctions, particularly the extension of an arms embargo so that it applies to states who have been complicit in facilitating breaches of the embargo. As well as applying to states that knowingly supply arms to an embargoed party, this should apply to those states which act as a conduit or transshipment point, which provide false end-user documentation, which knowingly launder funds used to pay for illicit arms deals, or which provide flags of convenience or safe-havens for arms traffickers. The proposal for a three-year embargo followed by a three-year probation period is one that should be seriously considered.

**The UN Security Council should impose an arms embargo upon any state that knowingly facilitates the transfer of weapons to an embargoed party. Greater assistance should be given to states seeking to destroy stockpiles of surplus weapons.**

## D. Enhancing enforcement and monitoring of arms embargoes

### Establishing a common military list for UN embargoes

The Security Council Resolutions that establish UN arms embargoes have evolved a standard text describing, in general terms, the type of equipment to be covered. However, as noted in Section 1 the failure to refer to an internationally agreed comprehensive list of military equipment presents the danger that states will interpret differently the exact scope of the equipment to be embargoed. For example, equipment such as certain types of civilian "off-road" vehicles that can be adapted for military use may fall into a grey area whereby some governments prohibit their export to an embargoed destination whilst others do not. Moreover, whilst the recent addition of "police" equipment to the description of equipment covered is to be welcomed, the failure of UN Embargo Resolutions to include reference to dual-use equipment raises the prospect that whilst governments do not sell arms to embargoed destinations, they may still sell machine tools and other equipment that can be used to manufacture arms.

**An urgent priority must be for the UN Security Council to agree a detailed list of military, paramilitary, police and dual-use equipment to which UN arms embargoes will apply. There should also be an express prohibition on the provision of military and police training to embargoed forces, except in cases where the assistance focuses on the provision of human rights / international humanitarian law training by the UN or affiliated organisations. There should also be a ban on the provision of technical assistance in relation to the operation of the equipment listed within the terms of an Embargo Resolution.**

## Employing embargoes as a preventive tool

A major criticism of arms embargoes noted in Section 1 is that they often seem "too little, too late". In numerous instances, from Rwanda in 1994 to Ethiopia and Eritrea in 2000, arms embargoes have been imposed only after many months of increasing tensions and often after the protagonists have embarked upon a military build-up which enables them to prosecute a war. In such circumstances, embargoes seem more of a political statement by the international governmental community and an attempt to be seen to be doing something, rather than a serious attempt to prevent bloodshed. Few conflicts emerge "out of the blue", however, and the UN must be aware of most situations where a military build-up is being undertaken and the outbreak of violent conflict is a distinct possibility. This places a premium on the taking of early and preventive action which would help reduce the likelihood of violent conflict breaking out.

**UN arms embargoes must be viewed and employed as a means of preventing conflict by their early imposition in response to rising tensions or perceived military build-up.**

## Establishing a dedicated Sanctions Unit

As noted in Section 1, Sanctions Committees are at the heart of efforts to monitor and enforce UN arms embargoes. The uniqueness of each embargo regime, and the range of tasks involved in assessing and promoting compliance with UN embargoes, is such that a dedicated Committee is required in order to adequately assess the effectiveness of each one. However, according to BICC there has been a wide variation in terms of impact across the various Sanctions Committees, depending on the personalities and personnel driving each one, and many draw heavily on outside expertise in order to fulfil their requirements.<sup>78</sup> This has led BICC to argue for the establishment of a dedicated Sanctions Unit within the UN Secretariat. This Unit could have a number of useful functions. Beyond helping to reduce the duplication of effort across the Committees, such a Unit could maintain a database of information on enforcement and provide an institutional link to other relevant UN departments, regional and international organisations such as DPKO, DDA, UNDP, SADC, ICAO etc. as well as with non-government organisations and experts.<sup>79</sup> It is also suggested that the Sanctions Unit could develop in-house expertise which would allow the stationing of observers on the ground in sensitive locations to undertake embargo-monitoring activities.<sup>80</sup> The development of such an in-house monitoring and investigative capacity could have the effect of institutionalising the valuable role of the hitherto ad hoc UN Panels of Experts. However, whilst the exact role and scope of activities for any proposed Sanctions Unit could be debated extensively, there is little doubt that the current fragmented approach to sanctions enforcement within the UN needs to be addressed. In this regard the establishment of a Sanctions Unit could fulfil an important function, helping to create a "culture of enforcement" and, with powers of reporting directly to the UNSC, it could facilitate enhanced implementation on the part of all UN Member States.

**The UN should seriously consider establishing a dedicated Sanctions Unit with a specific monitoring function and the capacity to make recommendations for enhanced implementation of UN embargoes directly to the UN Security Council.**



## 4 The UN PoA, The Implementation of Embargoes and the Enhancement of Human Security

Although the UN Programme of Action (PoA) was rightly criticised for not explicitly addressing critical issues such as controls on civilian ownership of SALW and on transfers of SALW to non-state actors, it nevertheless represents a comprehensive agreement detailing commitments to be undertaken to tackle the supply and demand aspects of the illicit trade in SALW at national, regional and international levels. Indeed the range of measures set out in the Programme of Action is such that, if implemented in spirit and letter, the PoA would undoubtedly have a major impact upon the global illicit trade and misuse of SALW.

It follows, therefore, that efforts to strengthen the effectiveness of arms embargoes and thus to enhance human security, through acting to limit the severity and duration of armed conflict, would also benefit significantly from a concerted effort by states to implement key provisions of the PoA. Indeed many of the measures set out within the PoA resonate with the recommendations of the various UN Panels of Experts and are extremely pertinent to ongoing efforts to strengthen arms embargoes. Accordingly, the final section of this paper seeks to set out those priority areas of the UN PoA which, if acted upon by states, would be most effective in strengthening the implementation of arms embargoes and therefore in enhancing human security.

Whilst the measures set out in the Programme of Action are aimed towards addressing the illicit trade in small arms and light weapons, many of these measures – such as those relating to export controls, action to tackle arms brokering and transportation, the development of information exchange and the provision of assistance – are also relevant for addressing the illicit trade in other types of weaponry and thus would serve to enhance the implementation of UN and other arms embargoes.

### **A: Laws, regulations and controls relating to the production, import, export, transit or retransfer of SALW**

*Establishment of laws, regulations and administrative procedures relating to the production, import, export, transit, or retransfer of SALW, the criminalisation of breaches of the same, and the prosecution of transgressors (Section II, paras 2, 3, 6 & 12).*

The ability to identify and prosecute individuals and organisations that violate the terms of an arms embargo depends on the existence and implementation of laws, regulations and administrative procedures covering all aspects of arms importation, production and transfer. Legislation, regulations and procedures that are applied to direct transfers of arms must also apply to the transit of arms, whilst

exporting states should ensure that there is a legal requirement for the recipient to give notification if it plans to re-export the goods to another end-user. Such requirements should be made part of an improved, internationally agreed, system for end-user certification and monitoring. (see Section 3).

In order to maximise the efficiency and effectiveness of laws, regulations and procedures relating to the importation, production and transfer of arms, harmonisation is required at sub-regional, regional and international levels. Indeed, research undertaken by Biting the Bullet into the implementation of the UN PoA suggests that where regional initiatives are in place that national implementation of international commitments is more widespread and ultimately more effective.<sup>81</sup> It is crucial, therefore, that states build on these regional and international agreements with a view to developing an international treaty on conventional arms transfers which would ensure consistent and rigorous international application of arms transfer controls.

For laws and regulations to be effective in controlling the production, import and export of weapons they must be supported by effective implementation and enforcement procedures at all levels. There are a number of examples, including that of the ECOWAS Moratorium, where poor implementation and enforcement practices have undermined significant political commitments, rendering them largely ineffective. However, where implementation is a major problem there is often the greatest need for technical and financial assistance which ought to be met by both governments and relevant donor agencies.

*Assessment of SALW export authorisation according to states existing obligations under international law and to maintain an effective national system of import, export and transit licensing (Section II, para 11).*

All states are bound by international legal obligations not to authorise exports or transfers of arms which they know could assist the recipient to commit one of the following internationally wrongful acts: breaching of the United Nations Charter or corresponding rules of customary international law, in particular those relating to the threat or use of force in international relations; serious violations of human rights; serious violations of international humanitarian law relating to international or non-international armed conflict; genocide or crimes against humanity; and acts of terrorism.

States should show their commitment to upholding international law by pursuing the conclusion of a global convention governing the international transfer of arms which codifies these existing responsibilities and sets out their application with respect to transfers of arms. In addition, a global convention should also include criteria based on areas of emerging consensus such as the need to avoid transferring arms to recipients in regions of conflict and tension, the need to take into account the effect of arms transfers on regional and international stability, the importance of not undermining sustainable development, and the need to take into account the possibility of the unauthorised re-export or transshipment of the arms.

Whilst there have been recent efforts on the part of some regional and international groupings of states – such as the EU and OSCE – to adopt criteria-based export systems which take into account many of the above factors, as yet none of these agreements are legally binding and thus

they rely on the voluntary compliance of states parties, despite the fact that many of the criteria reflect international legal obligations. Moreover it is worth noting that strict adherence to these obligations would, to a great extent, negate the need for the imposition of arms embargoes, since states would refrain from exporting or transferring weapons to those actors whose behaviour violated the above principles and was therefore a cause for serious international concern.

*The use of authenticated end-user certificates (Section II, para 12).*

The case studies in Section 2 clearly illustrate the weaknesses in current end-user systems and the widespread abuse of these requirements that takes place. End-user certification requirements need to be significantly strengthened with the certificates themselves taking the form of a legally binding commitment, on the part of the recipient, to notify the exporting country if they intend to re-export the arms, and not to use them for proscribed purposes (such as to abuse human rights or commit breaches of international humanitarian law). Beyond this, the certificates should carry the serial numbers of the weapons to be transferred, and details of the physical means used to export the arms and the route along which they will be transported. For their part the licensing government should reserve the right to conduct follow-up checks to ensure that the arms, once exported, are being used in accordance with the export licence application. Finally, those governments that are found to persistently provide false end-user assurances should also be subject to sanctions. (See also Section 3).

*Notification of retransfer of SALW (Section II, para 13).*

The retransfer of imported weapons to a third party is one of the principal means whereby arms can enter the illicit market since, when compared with direct exports of arms that have been manufactured domestically, states typically tend to take less care over the retransfer of weapons they have themselves imported. All arms exporting states should therefore take steps to impose a legal obligation upon recipient states to notify them if there is an intention to retransfer the weapons. Acceptance of such an obligation should be integral to the provision of satisfactory end-user undertakings and should be a condition of granting an export licence.

Whilst the original exporting state will not necessarily have the power to prevent any retransfer occurring, the increased openness and transparency that would accrue would make it more difficult for countries to retransfer arms to embargoed destinations and other end-users of concern. Furthermore, in cases where a state retransfers arms to an undesirable end-user, the possibility then emerges of refusing further arms exports or the provision of spares or associated training to the guilty party.

To be effective, provisions for the notification of retransfer need to be integrated into a system of export controls which includes enhanced end-user certification and monitoring, the consideration of the risk of weapons being diverted to the illicit trade or to embargoed destinations, and the monitoring of lines of supply.

*To regulate arms brokering agents including registration, licensing of transactions and prosecution of violators (Section II, para 14).*

The case studies in Section 2 are clearly indicative of the role that arms brokering and transportation agents play in the supply of arms to embargoed end-users. Despite the large quantities of information that now exist concerning the activities of such individuals and companies and the commitments made in various regional and international agreements, few states have adequate controls on the activities of arms brokering and transportation agents. Accordingly all governments should require nationals who are arms brokering and transportation agents to register as such and to apply for a licence for each transaction they undertake, regardless of where the arms are being sourced from and delivered to, and regardless of where the deal is actually conducted. Governments should also refrain from selling arms to arms brokering agents and other middlemen as final end-users. An international convention on arms brokering and transportation remains, moreover, a pressing priority for the international community. (See also Section 3)

*To use all legal or administrative means against violations of UN arms embargoes (Section II, para 15).*

The Case Study in Section 2 outlining the role of a company based in the Republika Srpska in conspiring to break the arms embargo on Iraq is a clear example of how arms embargoes can be flouted where there lacks either the capacity or the will for enforcement. In cases where an individual or company is found to have broken a binding UN embargo, which has international legal force, it should be possible to prosecute them. However traffickers and sanctions-busters who are well acquainted with the techniques and methods of illicit arms trafficking often evade justice by operating from countries that have not implemented embargoes in their national legislation and where it is therefore impossible to bring criminal charges against the offender. All states should ensure that binding UN embargoes are enacted through their national legislation in order to ensure that breaches are criminalized, thereby enabling the prosecution of sanctions-busters. (See also Section 3)

*To encourage negotiations with the aim of concluding legally-binding regional instruments aimed at preventing, combating and eradicating the illicit trade in SALW (Section II, para 25).*

Legally binding regional instruments have the potential to greatly enhance the implementation and effectiveness of embargoes since they can be used to foster a common approach to the illicit trade in arms. This common approach can be particularly useful in cases where it is unclear who has national responsibility for a shipment of illicit arms which has been halted en route to its destination. In this regard, where regional instruments include agreements between states with regard to the illicit cross-border movement of arms and the activities of off-shore arms brokers these can help overcome loopholes and weaknesses in national legislation.

Regional instruments also allow for the concentration of effort in tackling the priority issues for a particular group of states, whilst at the same time providing a framework for mobilising international support for regional and national programmes in this regard. In regions of conflict, by increasing

cross border controls and monitoring, regional instruments with effective operating procedures and implementation agencies could serve to reduce the circulation of weapons within the region. Such co-operation can greatly enhance the effectiveness of state action to tackle breaches of arms embargoes and promote their effective implementation.

*To encourage the strengthening and establishing of moratoria or similar initiatives on the transfer and manufacture of SALW in affected regions and to respect such moratoria (Section II, para 26).*

To date the only agreement banning transfers of SALW is the moratorium concluded on 31 October 1998 by the members of the Economic Community of West African States (ECOWAS). This political, non-binding declaration prohibits the "importation, exportation and manufacture of light weapons in ECOWAS Member States." However, whilst the Moratorium is a welcome step, it has so far failed to curtail the continuation of violent conflict in the region. One of the reasons for this is that it deals only with the legal trade and thus fails to address the huge number of illicit weapons circulating in the region. Another reason is that, whilst the Wassenaar Agreement, the EU and the OSCE have indicated their adherence to the Moratoria, there is evidence that many of the weapons in the region originate from countries which have poor export control systems and which are not members of these institutions. For this and future Moratoria to be effective it is important that these instruments include shared legally binding commitments between supplier and recipient countries that are incorporated into national legislation. The weakness of the ECOWAS Moratorium also indicates that legislation alone is not enough and that there is a vital need for effective operating procedures, well-resourced implementation agencies, concerted monitoring of compliance and prosecution of violators.

## **B: Removing weapons from society**

*To ensure all confiscated, seized or collected SALW are destroyed unless another form of disposition or use has been officially authorised. (Section II, para 16).*

The destruction of confiscated, seized and collected SALW is extremely important in terms of both limiting the proliferation of SALW and improving the effectiveness of arms embargoes. Weapons that are not destroyed often re-enter the illicit market and are recycled within regions of conflict, which creates the potential for them to find their way into embargoed destinations. There are a range of well-proven destruction techniques for weapons destruction, of which several are cheap and involve low technology. The main technical challenges arise in relation to the disposal of ammunition and explosives, which generally require relatively expert handling and destruction. Even in these cases, however, most armed forces have such expertise and experience.

In practice, however, despite the relative ease with which small arms can be destroyed, most surplus arms are sold on and a substantial fraction of confiscated or collected arms probably find their way back into use. This implies the need for not only increased efforts to promote safe storage and destruction, but also the development of good practices relating to transfers of surplus stocks. In cases where weapons are reallocated to new users it is vital that they are first re-registered and marked so that they can be traced.

*To develop and implement effective DDR programmes including the effective collection, control, storage and destruction of SALW (unless another form of disposition has been approved) (Section II, paras 21, 30, 34 & 35, and Section III, para 16).*

An essential feature of any effort to resolve conflict and build a stable peace must be the speedy and effective disarmament, demobilisation and reintegration of former combatants. Disarmament and weapons collection initiatives have been undertaken around the world and have frequently been seen as representing the desire of a country or community to put a violent or traumatic period behind them. DDR programmes not only serve to reduce the number of weapons circulating within a region and therefore the likelihood of weapons reaching the hands of embargoed parties, they also help prevent ex-combatants from resuming fighting or resorting to crime. Weapons collection and management is an integral part of DDR programmes, with a wide variety of voluntary weapons collection programmes being undertaken in post-conflict states, including "gun buy-backs", "weapons-for-development" programmes and firearms amnesties. Experience shows that there is no reliable "formula" for successful weapons collection programmes: design and implementation should vary according to local contexts and needs, and according to the particular target groups for the programme.

### **C: Marking, tracing, record-keeping and transparency**

*The marking of SALW at the point of manufacture and import, the destruction of inadequately marked or unmarked SALW, and the keeping of accurate records on SALW under state jurisdiction (Section II, paras 7, 8 & 9).*

Efforts to combat and prevent illicit trafficking and proliferation of SALW and violations of arms embargoes are obstructed by a current lack of capacity to trace sources and lines of supply. Enhancing the traceability of weapons is necessary to identify points of diversion or loss of responsible control so that action can be taken to tackle the problems. An effective international mechanism to enable tracing requires three essential elements: adequate marking to uniquely identify each weapon; detailed and accessible record-keeping; and mechanisms for international co-operation in tracing sources and lines of supply of SALW.

At the point of manufacture the following markings should be applied: country of origin, name of manufacturer and unique serial number. The identity of the purchaser, the name of the importing country and the date should be added at the point of import. These markings should be supplemented by an invisible, or 'security' marking, that can only be detected by with specialist knowledge and equipment and will allow for the tracing of weapons even if determined attempts have been made to remove the markings.

Problems in tracing weapons do not only relate to standards of marking. Attempts to trace a fully and uniquely marked weapon are frequently frustrated by inadequate record keeping. In order to enable the tracing of weapons it is essential that each state has an effective national system for record keeping which holds data on the markings of each authorised and manufactured SALW and on the manufacture, transfer, holdings and dealings relating to SALW. Whilst the UN Firearms

Protocol states that records should be maintained for at least 10 years, given that the lifespan of such weapons can be much longer a minimum period of 50 years would represent a more appropriate standard.

*To develop, on a voluntary basis, measures to enhance transparency in SALW (Section II, para 31).*

Efforts to combat the illicit trafficking in, and proliferation and misuse of, small arms and light weapons are hampered by a lack of relevant information-exchange and transparency. Transparency is a key feature of good governance and there is there is great scope for disseminating relevant information on SALW without seriously compromising national security, necessary commercial secrecy or law enforcement. Parliaments and similar legislative bodies should have access to sufficient information to be able to exercise appropriate oversight over the conduct of government policies and transparency measures such as allowing for prior parliamentary scrutiny of applications for export licenses would be a very positive step. Increased transparency also enhances the importance of civil society, which has a role to play as an independent check on the decision making process and also as a partner in the process of implementing initiatives and agreements. Transparency thus increases government accountability and serves to discourage states from providing arms directly or indirectly to embargoed destinations.

## **D: Information sharing, co-operation and assistance**

*The establishment of national co-ordination agencies responsible inter alia for monitoring efforts to tackle the illicit trade in SALW and co-operating on tracing of illicit SALW, including a national point of contact to act as a liaison between states (Section II, paras 4 & 36).*

An effective national commission can be a focal point for national efforts to tackle the complex challenges posed by SALW trafficking, availability and misuse. Such an agency needs to function as a custodian, a developer and an implementer of action to tackle these challenges. In view of the cross-cutting nature of SALW issues it should aim not only to involve all relevant national ministries and agencies, but also all key national stakeholders, including relevant civil society experts and groups. It needs to have the capacity to take, or directly influence, decisions on behalf of the government, while still engaging with interested groups and citizens outside government and, at the same time, facilitating appropriate local initiatives and regional co-operation.

The establishment of national co-ordination agencies and national points of contact serves to institutionalise efforts to tackle breaches of embargoes at the national level and also facilitates co-operation and information-sharing between governments at the regional and international level on suspected breaches. This is crucial to efforts to enhance the enforcement and monitoring of the implementation of embargoes and to the identification and prosecution of those responsible for violations.

*To establish sub-regional or regional mechanisms for information exchange amongst law enforcement, border and customs control agencies (Section II, para 27).*

Effective information exchange is vital in terms of identifying the need for an arms embargo, monitoring its implementation and identifying and punishing violators. For example, regional and international co-operation between intelligence, law enforcement, border and customs control agencies can enhance the capacity of states to monitor the accumulation of weapons stocks in a region of tension, opening up the possibility of imposing an arms embargo as a preventative measure. Internal and cross-border information exchange between law enforcement, border and customs agencies is also crucial in terms of identifying and punishing those responsible for embargo violations. This is particularly the case where arms are transhipped from a "legitimate" end-user to an embargoed destination or where arms brokering agents are reliant on a lack of co-operation between countries in order to operate outside national jurisdictions. Information exchange and co-operation is also important in terms of identifying those cases whereby the trading in illicit commodities, such as diamonds and timber, serves to weaken the effectiveness of embargoes.

Information exchange and transparency can also promote wider awareness and understanding of the specific needs of those agencies involved in monitoring and preventing the proliferation of small arms and the violation of embargoes, and thus can contribute to the mobilisation of appropriate assistance.

*To co-operate with the UN to ensure effective implementation of arms embargoes and to enhance co-operation with Interpol to identify those groups and individuals engaged in the illicit trade in SALW (Section II, paras 32 & 37).*

The UN PoA clearly recognises the importance of the effective implementation of arms embargoes in preventing and combating the illicit trade in SALW. In this regard, states should cooperate fully with the UN in terms of reporting instances of embargoes violations and responding quickly and openly to UN enquiries and allegations of negligence or complicity in such violations.

In addition to the above, the UN PoA encourages states to use and support Interpol's International Weapons and Explosives Tracking System (IWETS) database. IWETS is an analytic database designed to collate information on illicit firearms trafficking and to help track stolen and recovered weapons. As a mechanism with the potential to co-ordinate information from all around the world on arms trafficking in regions of conflict, the Interpol database could, in conjunction with an effective global marking and tracing regime, be extremely useful in terms of tracing the supply of weapons to embargoed destinations and enabling action to be taken against violators. This system is currently being upgraded in several ways in order to allow national central bureaux to electronically request and exchange text and images. Despite this, at present, the Interpol database and resources are not used to their fullest extent. Further efforts should be made to use the Interpol mechanisms for disseminating information relating to suspected diversion points and lines of supply in order to enhance the implementation of embargoes.

*To enhance mutual legal assistance and other forms of co-operation in order to assist investigations and prosecutions in relation to the illicit trade in SALW (Section III, para 13).*

A significant part of the illicit trade in SALW is organised by a few individuals, some of whom have been identified in reports of the various UN Panels of Experts investigating violations of UN embargoes. Despite the fact that these people are well-known, apprehending them and bringing them to justice has proved very difficult. The development of international controls on arms brokering and transportation (see Section 3) would create an international legal framework within which arms traffickers could be brought to justice anywhere in the world. However, until such an agreement is reached, states that act as a base or refuge for known arms traffickers should make every effort to apprehend these individuals and either prosecute them in their national courts for violations of national or international law or more appropriately surrender them to a specially convened court or tribunal (such as that currently operating in Sierra Leone) where an indictment can be served.

*To make greater efforts to address problems related to human and sustainable development (Section III, para 17).*

It is crucial that the implementation of embargoes is seen in the context of the underdevelopment, poverty and poor human rights standards that characterise many states that are subject to embargoes. Respect for human rights, improved access to education, employment and an impartial judicial system all help to provide conditions in which communities are less liable to engage in conflict. The international community has an important role to play in creating conditions where sustainable development and respect for human rights is possible and where communities feel more secure.

Where embargoes and sanctions are imposed, particularly on commodities such as diamonds and timber, it is important that this does not have a negative effect on human security and sustainable development. In the cases of Liberia and Angola, for example, the exploitation of natural resources was central to the ability of protagonists to sustain the conflict and therefore sanctions were imposed on these materials. In those instances, where a ban on the trade in commodities might have a significant economic impact on the general population, measures should be taken to counteract this, for example by increasing development assistance.

## **E: Stockpile management**

*To ensure adequate and detailed standards and procedures relating to the management and security of state-authorized stocks, to review requirements for state-owned SALW and to destroy surplus (Section II, para 17 & 18).*

Measures to enhance the security and management of legal stocks of small arms must be central to efforts to combat illicit trafficking and prevent the leaking of weapons from the legal to the illicit trade. In most regions, many illicitly trafficked weapons have come from authorised weapons holders, including the armed forces, police and other armed agencies of the state, whose stocks are a key

target for criminals, bandits and armed opposition forces wishing to obtain such arms. This is particularly a problem in war-torn and conflict prone areas and in post-conflict societies, where stockpile security is often weak and arms are liable to travel from neighbouring countries into embargoed destinations. It is therefore vital that steps are taken by all states to review and improve stockpile management and security and whilst the primary responsibility for such measures lies with governments, regional and international initiatives are also to be welcomed in this area.

One of the factors leading to large stockpiles of small arms, which are liable to theft and loss, is the failure by states to destroy all those weapons designated as 'surplus.' All weapons which are deemed surplus to the requirements of the armed forces, police and other authorised agencies should be destroyed. In those cases where the decision is taken to dispose of the weapons by another means it is vital that they are transferred responsibly and that steps are taken to ensure they do not find their way to embargoed destinations e.g. by requiring that the recipient undertake not to re-export the weapons without informing the original owner.

## **F: Public awareness-raising**

*To develop and implement public awareness programmes on the consequences of the illicit trade (Section II, paras 20 & 41).*

In general, there is very little understanding and engagement amongst the general public and even amongst influential groups of opinion formers regarding the problems inherent in successfully implementing embargoes. So, prior to being able to generate public interest in, and concern for change, it is first important to develop greater public awareness of the issue. By generating understanding and interest in, for instance, the human rights and developmental impact of small arms trafficking and misuse, it should be possible to engage groups on the range of possible solutions.

In areas affected by small arms proliferation and misuse, the priority must be to develop public awareness programmes on the immediate dangers facing communities and specific groups within society as a result of the widespread availability of arms. In some states, including Australia, Brazil and Serbia, public awareness campaigns, usually co-ordinated by civil society groups, have been instrumental in changing public attitudes towards for instance civilian ownership and the prevalence of gun cultures and in encouraging participation in weapons collection programmes.

Civil Society groups, and non-governmental organisations in particular, have an important role to play in helping to communicate to wider publics the problems associated with the proliferation and misuse of small arms and ultimately the requirements for more effective controls, including embargoes. Civil society groups can and do act independently and as partners of governments in developing and implementing public awareness programmes. At the same time, they can also play an important role in holding government to account for implementing their existing commitments, as well as acting as advocates for change in the development of more effective controls on all aspects of the production, possession, transfer and use of arms.



## 5 Conclusion

It is clear from the foregoing discussion that arms embargoes, as stand alone measures, will have little impact on the flow of arms, particularly where the target of the sanctions has the ability to purchase weapons on the illicit market; in such circumstances, moreover, arms embargoes will have little or no benefit to human security. To be effective, then, arms embargoes need to be made part of a regime of sanctions which tackle the ability of the target to access and pay for their weapons, for example, by including a prohibition on trade with the target in valuable commodities such as oil, diamonds and timber. Whilst a comprehensive approach is thus required, great care also needs to be taken to ensure that the sanctions that are imposed do not have an effect wider than the intended target, or that compensatory measures are adopted which offset the impact, for example, on the civilian population in an embargoed state, or on neighbours that are dependent on trade with the target. It is therefore encouraging that there is now increasing emphasis being placed on so-called "smart sanctions" where the financial assets of the target are seized and restrictions are placed upon their international travel and representation. Together with intensive diplomatic efforts directed towards countries neighbouring the sanctioned entity, coupled with assistance for those who lack the capacity to monitor and control the trade across their borders, such a strategy will be an important part of efforts to enhance the effectiveness of UN and other embargoes.

Notwithstanding such efforts, arms embargoes will continue to be circumvented unless action is taken to strengthen the international apparatus of control on the transfer of weapons. This apparatus should include measures on the import, export and transit of weapons, controls on arms brokering and fully enforced regulations on air traffic at the national level. The UN PoA contains a wide range of measures which if implemented would strengthen international controls on the possession, use and transfer of small arms; much therefore needs to be done to ensure that these measures are elaborated upon and implemented fully over the coming months and years, and certainly in advance of the 2006 Review Conference.

It is important, however, to acknowledge that the implementation of many of the measures set out in Sections 3 and 4 above will pose a major challenge to states, and in particular to those in the developing world. Accordingly, the sharing and provision of technical and financial assistance will be key to making progress on many fronts, with the onus on states with experience of implementing particular measures – such as controls on arms brokering and transportation – to share their knowledge and expertise with other states, some of whom may not even understand the full relevance and scope of the problem. Agreeing the modalities of, and establishing the structures for, providing the requisite assistance is therefore a major priority for the Biennial Meeting of States.

It is also vital that states show the requisite political will for the enforcement of arms embargoes. Whilst it is crucial that efforts are made to put in place laws, structures and processes that will contribute to the effectiveness of arms embargoes and the enhancement of human security, if the political will to enforce such measures and controls is absent, then very

little will change. Moreover, where persistent corruption is a major problem, the UN should not shirk from naming and shaming offenders and from imposing secondary targeted sanctions.

Finally, it is important that arms embargoes and other forms of smart sanctions are not seen as the only or even the primary tool for protecting human security. There are times when the imposition of sanctions is a wholly inadequate response. In such cases, the international community needs to show conviction and resolve by being ready to intervene in a timely fashion to prevent the persecution and slaughter of innocent civilians.

# Endnotes

- <sup>1</sup> United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects, <http://disarmament.un.org/cab/poa.html> Hereafter this will be referred to as the UN Programme of Action or UN PoA.
- <sup>2</sup> Section II, para 15.
- <sup>3</sup> UN Charter, Chapter VII, Article 41.
- <sup>4</sup> Legally binding UN arms embargoes have been imposed against the following: Afghanistan UNSC 1333 (2002); Angola (UNITA) UNSC 864 (1993); Eritrea and Ethiopia UNSC 1298 (2000); FRY Yugoslavia UNSC 713 (1991), UNSC 727 (1992), UNSC 1160 (1998); Haiti UNSC 841 (1993); Iraq UNSC 661 (1990); Liberia UNSC 788 (1992), UNSC 1343 (2001); Libya UNSC 748 (1992); Rwanda (non-government forces only from 1995) UNSC 918 (1994), UNSC 997 (1995), UNSC 1011 (1995); SFR Yugoslavia UNSC 713 (1991), UNSC 727 (1992), Sierra Leone (non-government forces only from 1998) UNSC 1132 (1997), UNSC 1171 (1998); Somalia UNSC 733 (1992). Voluntary UN arms embargoes have been established against the following: Afghanistan 1076 (1996); Armenia and Azerbaijan UNSC 853 (1993); Ethiopia and Eritrea UNSC 1227 (1999); Yemen UNSC 924 (1994).
- <sup>5</sup> European Council Declaration on China, June 1989 <http://projects.sipri.se/expcon/euframe/euchidec.htm>
- <sup>6</sup> Common position of 20 November 1995 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Nigeria, 95/515/CFSP [http://projects.sipri.se/expcon/euframe/eu\\_nigeria.htm](http://projects.sipri.se/expcon/euframe/eu_nigeria.htm)
- <sup>7</sup> See [http://projects.sipri.se/expcon/euframe/eu\\_burma.htm](http://projects.sipri.se/expcon/euframe/eu_burma.htm)
- <sup>8</sup> Common Position of 16 September 1999 concerning restrictive measures against the Republic of Indonesia, 1999/624/CFSP <http://projects.sipri.se/expcon/euframe/euinscp.htm>
- <sup>9</sup> Other EU embargoes are currently in force against Bosnia and Herzegovina, Democratic Republic of Congo, Libya, Sudan and Zimbabwe.
- <sup>10</sup> Decisions based on the Interim Report on Nagorno-Karabakh <http://projects.sipri.se/expcon/csceazbarm.htm>
- <sup>11</sup> Ministerial Statement, 01.03.93, HC 8.
- <sup>12</sup> Ministerial Statement, 09.02.02, HC 184 & 185.
- <sup>13</sup> The Federal Register can be found at <http://fr.cos.com/> For a list of current embargoes see also the US Department of State website, <http://pmdtc.org/country.htm>
- <sup>14</sup> Federal Register Vol. 58, No. 81, April 29 1993 <http://www.pmdtc.org/docs/frnotices/58FR26024.pdf>
- <sup>15</sup> Law No. 185 of 9 July 1990 <http://projects.sipri.se/expcon/natexpcon/Italy/ita90law.htm>
- <sup>16</sup> See endnote 4.
- <sup>17</sup> See endnote 4.
- <sup>18</sup> Treaty of European Union (Maastricht Treaty), Title V Provisions on a Common Foreign and Security Policy, 7 February 1992.
- <sup>19</sup> European Council Declaration on China, June 1989 <http://projects.sipri.se/expcon/euframe/euchidec.htm>
- <sup>20</sup> See endnote no.10.
- <sup>21</sup> Figure supplied by the International Institute of Strategic Studies (IIS). This figure includes 'International Armed Border and Territorial Conflicts' involving governments in armed conflict over sovereignty and territory, and 'Internal Armed Conflict', taking place between government forces and organised groups, which control sufficient territory to sustain concerted military operations.
- <sup>22</sup> UN arms embargoes are currently in place in relation to Haiti, Iraq, Libya, Rwanda, Sierra Leone and Somalia (for resolution numbers see endnote no. 4).
- <sup>23</sup> Cortright, Lopez and Gerber, pp.9.
- <sup>24</sup> Ibid pp.4-5.

- <sup>25</sup> Cortright et al, pp. 6.
- <sup>26</sup> 'America used Islamists to arm the Bosnian Muslims' The Guardian, April 22 2002, <http://www.guardian.co.uk/yugo/article/0,2763,688327,00.html>
- <sup>27</sup> Bonn-Berlin Process: "Monitoring and Enforcement of Arms Embargoes" in *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions*, Michael Brzoska (ed), BICC, Bonn 2001 pp. 115 to 116.
- <sup>28</sup> Ibid pp.114.
- <sup>29</sup> UN Document ref. S/1999/92
- <sup>30</sup> See also the afore-mentioned report in *Design and Implementation of Arms Embargoes and Travel and Aviation Related Sanctions* for an in-depth discussion of the merits of establishing a specific "Sanctions Unit" within the UN.
- <sup>31</sup> UNSC 1237 (1999)
- <sup>32</sup> UNSC 1306 (2000)
- <sup>33</sup> UN presidential statement dated 2 June 2000 (S/PRST/2000/20).
- <sup>34</sup> Gilbert Barthe was an Expert in the UNSC International Commission of Inquiry on Rwanda in 1996 and 1998, an Expert in the Panel investigating violations of the sanctions against UNITA from 1999 to 2000 and co-signatory to the Fowler Report, Technical Adviser to the UNSC Panel on the illegal exploitation of natural resources in the Democratic Republic of Congo from 2000 to 2002 and is now Manager of the UNDP Programme on Addressing Small Arms Proliferation in the Great Lakes Region of Africa.
- <sup>35</sup> <http://www.globalwitness.org/reports/show.php/en.00013.html>
- <sup>36</sup> Final Report of the Monitoring Mechanism on Angola Sanctions, S/2000/1225.
- <sup>37</sup> S/2000/1225, para. 49.
- <sup>38</sup> Matias Capapelo is Vice President of the NGO Angola 2000. Angola 2000 is an independent non-profit, organization created to serve, promote and protect the needs, aspirations and interests of the Angolan people by enhancing the individual and institutional capacity of civil society so that they can play a meaningful role in the process of national reconciliation and reconstruction. It was founded on the 23rd of November 1999 by a group of young Angolans who were appalled by the resumption of civil war in 1998 and inspired by a deep-rooted desire to play a pro-active role in bringing about peace in Angola.
- <sup>39</sup> S/2000/1225, para. 30,
- <sup>40</sup> Transparency International's "Corruption Perception Index" measures the perceptions of well-informed people as regards the extent of corruption in individual countries. Corruption is defined as "the misuse of public power for private benefit". See [http://www.globalcorruptionreport.org/download/gcr2003/24\\_Data\\_and\\_research.pdf](http://www.globalcorruptionreport.org/download/gcr2003/24_Data_and_research.pdf)
- <sup>41</sup> Information supplied by local Congolese sources, see also <http://www.analisidifesa.it/numero11/eng/africa-congoeng.htm>, <http://www.web.net/~iccaf/humanrights/congoinfo/decnnewscongo.htm>, [http://www.wpb.be/icm/2001/01en/PTB\\_Congo.htm](http://www.wpb.be/icm/2001/01en/PTB_Congo.htm)
- <sup>42</sup> <http://www.smartsanctions.se/>
- <sup>43</sup> Report of the UN Secretary General on Small Arms S/2002/1053.
- <sup>44</sup> Human Rights Watch, "Rearming Impunity: International Support for the Perpetrators of the Rwandan Genocide", May 1995, p. 5.
- <sup>45</sup> Ibid., p. 1.
- <sup>46</sup> William Schabas, "The Genocide Convention at Fifty", <http://www.usip.org/pubs/specialreports/sr990107.html>
- <sup>47</sup> Global Witness, [http://www.globalwitness.org/press\\_releases/article.php?id=118](http://www.globalwitness.org/press_releases/article.php?id=118)
- <sup>48</sup> "The Usual Suspects: Liberia's Weapons and Mercenaries in Côte d'Ivoire and Sierra Leone", Global Witness, March 2003, pp. 6.
- <sup>49</sup> Ibid pp.8.
- <sup>50</sup> UNSC 1478 (2003)

- <sup>51</sup> Ibid.
- <sup>52</sup> Witness, "Global Witness Welcomes UN's New Proposed Ban on Liberian Timber as a Decisive Act to Bring Peace to a War-Torn Region", 7 May 2003.
- <sup>53</sup> Los Angeles Times, 'Missions supplied to Afghan rebels come back to haunt US', October 6 2001.
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# BITING THE BULLET FOLLOW-UP PROJECT

The Biting the Bullet Follow-up Project is a joint project between Saferworld, International Alert and the University of Bradford which seeks to build upon the successful first phase of the Biting the Bullet project. This facilitated a wide-ranging and well-informed debate between governments and civil society with a view to advancing the agenda of the UN 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects in July 2001. Following the agreement of the Programme of Action, Biting the Bullet is now working to promote international understanding of key issues relating to the implementation of the Programme of Action while creating opportunities to discuss the critical issues that proved controversial at the 2001 UN Small Arms Conference. In order to facilitate discussion on these issues, an informal Consultative Group Process involving government officials, international experts and non-governmental organisations was created and has met twice already to discuss in particular, export controls and the issue of non-state actors.

Subsequent to the first series of policy briefings, the Follow-up Project has published further research papers for the Biennial Review focusing on civilian possession, and the implementation of embargoes.

In addition, the Biting the Bullet Follow-up Project has prepared a substantial report on States' implementation of the commitments set out in the Programme of Action. This monitoring report analyses progress at the national, regional and international level. It was researched by partners from all world regions and produced by Biting the Bullet for IANSA.

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