Armed Groups and the Arms Trade Treaty: Challenges and Opportunities

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1. Introduction

Regulating the purchase, transfer and use of small arms and light weapons (SALW) is a critical but difficult humanitarian challenge. On the one hand, states require SALW to uphold the rule of law and their status as states, with a monopoly over coercive force. On the other, states are not the only actors with access to SALW, whose low cost and ease of use make them accessible to a wide range of non-state groups. Moreover, unlike landmines, it is not possible to conceive of an outright ban on SALW: the goal instead must be their appropriate regulation. But because of the wide range of state and non-state groups with access to SALW, such regulation is especially challenging. For example, an outright prohibition of the transfer of conventional arms to non-state armed groups has been a controversial issue in the disarmament debate, and raised a number of political and analytical challenges. With some exceptions (e.g. Man Portable Air Defence Systems - MANPADS), an outright prohibition of transfers to armed groups has proven either impossible (for some) or undesirable (for others).

Given the controversies on the subject of transfers to armed groups, the probability that a discussion on this issue will be ignored during the deliberations of arms transfers control regimes (for example, the Arms Trade Treaty deliberations\(^1\)) is high: states are likely to avoid a subject that risks stalemating negotiations.

Yet this impasse does not mean that the problem of arms transfers to and use by armed groups need be ignored. For any international transfer regime to be effective it has to consider the full range of end-users. This must include not just states but non-state armed groups as well.
With this in mind, we argue that it is possible to address the issue of arms transfers to armed groups, as well as the regulation of their end use by improved end-user controls particularly among states (the primary producers, suppliers and holders). Ensuring that states meet their commitments with regard to arms transfers and end use remains the most promising avenue to improve the overall arms control regime.

This paper offers a framework for thinking about how to do this, by better understanding the types of armed groups whose end use needs to be regulated, as well as some of the options available for doing so.

We make two central claims:

First, that the best available research shows that most non-state armed groups get their weapons from poorly-controlled state stockpiles and through sophisticated criminal networks. This means that monitoring end-use controls, particularly among states – who are the primary producers, suppliers and holders – promises to address a significant part of the problem of weapons acquisition and use by armed groups.

And second, acknowledging that at least some non-state armed groups may continue to acquire weapons either through legal or illegal means, it is also possible to improve upon existing regulatory methods and explore ways to address the end-use of difficult cases through traditional and non-traditional regulatory mechanisms.

The paper starts by offering a typology of armed actors in the disarmament debate – including both states and non-state armed groups – followed by a discussion of what the available research indicates about the dynamics of weapons transfers to armed groups. Based on this, we then propose ways to regulate states’ end-use through different command and control mechanisms, and conclude by exploring emerging ways to engage non-state armed groups in regulating their own weapons end-use which are compatible with improved state regulations.
2. Distinguishing Among Different Types of Armed Groups

From a legal perspective the distinction between states and non-state groups can be understood as a dichotomy: states are (mostly) recognized as such by other states, and there is (mostly) little ambiguity about which entities count as states and which do not.

Notwithstanding this legal dichotomy, a wide range of different actors buy, sell and use weapons. By contrast to the legal perspective, these actors can be better understood as a spectrum rather than in dichotomous terms. They include states, state agents as well as different types of armed non-state groups. Building on Muggah and Jütersonke, we suggest here a way of conceptualizing armed groups in the disarmament debate.

A group’s ability to access weapons and the nature of its end-use can be understood according to two key dimensions:

The first is a group’s degree of organization. Some groups are highly organized, operating sophisticated bureaucracies with significant executive capacity. Many states obviously fall into this category, but so do many non-state groups. For example some private security groups, including mercenaries and security companies are highly organized. This is also true of some rebel groups.

By contrast, some groups have very little of organizational capacity and operate as largely informal organizations. Certainly many non-state groups fall into this category, for example groups which form spontaneously as protests or movements in response to particular events or crises. In some instances, some groups may be more long-standing but still lack a clear or formal organization. This includes not only non-state actors: some states also have very little organizational capacity. In other words, degree of organization varies independently of whether a group is affiliated with a state or not.

The second dimension is whether an actor operates primarily in the public or private spheres (or for public or private ends). Generally, states are the primary actors operating in the public sphere – and indeed in defining its boundaries. But many non-state groups may also operate in this sphere. For example, a rebel group that seeks to overthrow a particular
government technically operates outside the public sphere, but because it aims to take over the public sphere it is useful to include them in this space as well.

The private sphere, by contrast, is occupied by actors that operate strictly private enterprises, for private ends. These again include a range of legal and illegal actors, from businesses to criminal enterprises.

Neither of these dimensions is dichotomous, insofar as both states and non-state groups can lie on any point of the organizational matrix outlined by these dimensions, as shown on Table 1. It bears restating that neither the degree of organization nor the particular sphere in which different actors operate map directly onto the legal distinctions between states and non-state groups. States can be more or less organized, and some non-state groups can operate in the public sphere. We contend that we can build on this insight both to understand some of the dynamics of weapons flows between states and non-state groups, as well as to build a more effective regulatory mechanism for these dynamics.
Table 1
Types of armed actors

<table>
<thead>
<tr>
<th>High organization</th>
<th>Low organization</th>
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<tr>
<td>Armed groups</td>
<td>Paramilitaries/militias</td>
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<tr>
<td>Criminal and vigilante groups</td>
<td>Armed groups</td>
</tr>
<tr>
<td>Private security companies</td>
<td>Paramilitaries/militias</td>
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<td>State armed forces</td>
<td>Private sphere</td>
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<td>Police forces</td>
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<td>Armed groups</td>
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<td>Paramilitaries/militias</td>
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<td>Armed groups</td>
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<td>Criminal groups</td>
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Source: Adapted from Muggah and Jütersonke (2008)

3. The Dynamics of Weapons Transfers to Non-State Armed Groups

A wide range of different actors participate in the transfer of weapons. These include states, state agents, state associates, and different types of armed non-state groups. In addition, there are two main ways of weapons diversion to non-state armed groups: unintentional diversion from government stockpiles, and state-sanctioned transfers.
As we outline below, a growing body of evidence suggests that weapons reaching the wrong hands come mostly from state stockpiles. It would therefore be inappropriate for any international efforts aimed to curb proliferation to ignore the problem of diversion from state stockpiles, and instead to focus on the manufacture and international transfers of new weapons from state to state entities.

Although a large part of the arms trade comprises of transfers between state actors, groups operating in the public sphere with access to state stockpiles can easily transfer arms to the wrong hands. Putting this in the terms suggested by Table 1, arms can flow from the public to the private spheres through diversion from state stockpiles. In many cases armed groups acquire their weapons from poorly-controlled government stockpiles - or through corruption.

In addition, some groups in the private sphere sometimes associate themselves with elites of the public sphere to facilitate diversion. Often weapons are easily available as a result of a political-criminal nexus, which consist of varying degrees of cooperation among the military, national law enforcement agents and their criminal participants. They may involve elements of the state armed forces, police, special forces and political elites.

In the context of domestic diversion from government stockpiles, research by Small Arms Survey and other organizations illustrates how ammunition originally intended exclusively for state forces is diverted to armed groups\(^4\). In Colombia, such diversion and distribution networks are associated with government licensed or authorized groups such as private security companies\(^5\). Other sources are theft of arms and ammunitions from military and police units.

**Unintentional diversion from government stockpiles**

In the case of international diversion from government stockpiles, seizures of weapons held by illegal groups in Colombia, for example, indicate that armaments intended for exclusive use by the armed forces of countries like Venezuela, Ecuador and Peru end up in the hands of groups such as the Revolutionary Armed Force of Colombia (FARC)\(^6\). It is alleged corruption in the Peruvian armed forces has provided a steady stream of arms and
munitions to Colombian rebels. According to Jane’s terrorism and security monitor there have been several incidents of corrupt members of the Peruvian security forces being implicated in smuggling military equipment to the FARC. A network involving police officers was unravelled in September 2006, when 31,300 Kalashnikov rounds were seized. Naval personnel were implicated in another network uncovered in December 2006. During internal audits on a marine battalion stationed at Ancon, 34,700 rounds were found to be missing; the ammunition boxes were filled with stones and sand to appear full. Seven members of the battalion, including a captain and a lieutenant, were tried by the military justice system in connection with the theft. In September 2007, the Peruvian anti-terrorist agency – the Dirección Contra el Terrorismo (DIRCOTE) – broke up another alleged arms smuggling network, arresting eight people, among them two serving and two retired members of the army.

In the DR Congo, recent UN experts reports suggest that weapons used in the remaining conflict zones in the north-east of the country have been diverted from military stockpiles, as a result of poor ‘command and control’ exercised over the Congolese national army.

To take another example of international diversion from government stockpile, the collapse of the former Soviet block contributed to the proliferation of MANPADs from the poorly secured Warsaw Pact arms depots to armed groups. Since 2002, armed groups “have acquired hundreds, possibly thousands, of missiles from a variety of sources, including poorly secured government depots, and government patrons”.

To better understand how arms flow across these spheres, it is useful to consider the second dimension of the typology, namely a group’s degree of organization: As mentioned earlier, an actor’s degree of organization is not related to whether it is a state or a non-state group. Highly organised groups might be intensely entrepreneurial with business portfolios spanning from the illegal through to the legal spheres, which allow them to cover up arms transfers. In other cases, some groups may lack a clear or formal organization. Sometimes such groups are either long-standing groups or loosely organized individuals or loosely affiliated civilians. These networks do not generally have leaders in the accepted sense, and have individuals or small groups that largely operate autonomously. These
groups are elusive and fluid, and can often operate across national boundaries with great ease. Such loosely organized operations are often associated with “ant trails” involving small quantities of weapons in trunks of cars, backs of trucks, backs of animals, etc. across land borders; or multiple shipment of small quantities of arms entering a country numerous times over the year.

Most “ants” between the United States and Mexico are alleged to be linked with the Mexican drug cartels. The weapons are often bought at gun shows in Arizona and other border states where legal loopholes allow criminals to stock up without background checks\(^{11}\). Corrupt customs officials also help smuggle weapons in Mexico. According to intelligence reports on Colombia, one of the main characteristics of the traffic in arms in Colombia is that it takes place in the form of multiple shipments of small quantities of arms – an average of 15-20 weapons per shipment\(^{12}\).

\textit{State-sanctioned transfers to armed groups}

Some non-state armed groups, particularly in the Horn of Africa and parts of the Middle East and Asia still benefit from covert arms supplies through varying degrees of cooperation among political actors and transnational intermediaries. Some states or state officials continue to exploit the rationale that they have the right to interfere in the internal affairs of other unstable or weak states to safeguard their own national security interests. Some governments transfer weapons directly to armed groups; or some key political or military stakeholders divert weapons from their national stockpile to armed groups through criminal networks at the local, national, and transnational levels.

For instance, in the past, both Rwanda and Uganda maintained security arrangements with leaders of armed groups in the embargoed regions of Democratic Republic of the Congo (DRC), under the excuse that the DRC failed to disarm rebel forces. The UN group of experts on DRC (2005) concluded that arms continued to be supplied to Ituri from Uganda in violation of Security Council resolution 1552 (2004). For example, The Group received information from eyewitnesses that a Uganda-based aircraft operating from Entebbe
delivered cases of arms and ammunition to Union des Patriotes Congolais (UPC) positions on 3 October and 14 November 2004\textsuperscript{13}.

Evidence also suggests that Ethiopia, Djibouti, Eritrea and Yemen support different factions in Somalia. For example, the Government of Eritrea has been accused of providing support to armed groups led by the Islamic Courts Union in Somali in opposition to Ethiopian military support to the Transitional Government in Somalia\textsuperscript{14}. The UN Monitoring Group on Somalia (2007) provides evidence relating to the purchase of cargo aircraft by Eriko Enterprises in Asmara which is believed to be a front company of the Eritrean government to make regular weapons deliveries to Somalia. The report states that the Eritrean government delivered a consignment of six SA-18 surface-to-air missiles to the Islamic Court Union in Somalia\textsuperscript{15}. In another case, a US Senate Foreign Relations Committee report dated 15 December 2006 explicitly stated that the government of Eritrea reportedly provides direct assistance to the LTTE.\textsuperscript{16}

*Other potential sources*

Other than transfers or smuggling from government stockpiles (whether state-sanctioned or otherwise), some armed groups also manufacture their own weapons. It is generally economically unprofitable and risky for armed groups to manufacture their own weapons, and only a few likely engage in this practice. Some armed groups have the capability to manufacture (improvised explosive devices) IEDs and to repair weapons. The LTTE has advanced weapons manufacturing capacity, and were capable of making sophisticated IEDs\textsuperscript{17}. Colombian authorities have found that the FARC have developed a semi-industrial capacity to produce light artillery materials, especially mortars and grenades. The FARC also has a series of workshops and repair centres where they manufacture certain parts for some rifles and provide maintenance for arms\textsuperscript{18}. Some blacksmiths and locksmiths in Africa, have the capability to repair and manufacture pistols, shotguns and single-barrel guns with relative sophistication\textsuperscript{19}. Such weapons appear to be increasingly used for criminal activities within the region.
In addition, there are a number of arms markets where recycled and locally produced weapons are sold. The Bakaaraha arms markets inside Somalia, particularly in Mogadishu, continue to play a central role as one of the primary sources of arms to various armed factions in the country\textsuperscript{20}. The Durra province of Durra or Darra Adamkhel, a village in north-western Pakistan, is renowned for its weapon-making expertise and is the world’s largest market for craft-produced weapons. It is alleged that it is possible to find everything from a handgun to a rocket launcher at the gun market. Gunsmiths in the village manufacture replicas of ammunition and different types of hand guns and rifles with scrap metals using primitive tools\textsuperscript{21}.

For reasons of economy of scale, only rich armed groups or groups with active state sponsorship or strong links with criminal networks can afford to acquire heavy and expensive weapons systems. Smaller groups and common criminal groups acquire their weapons through domestic and regional arms trafficking. Most armed groups often resort to small arms and light weapons\textsuperscript{22} because they lack the resources to buy heavy and sophisticated weaponry, or lack the skills and training to operate advanced weapons systems.

There appears to be no limit to the type of weapons armed groups have access to. The LTTE for example, has proved to be the first rebel group in the world with an offensive air capability\textsuperscript{23}. In 2007, Sri Lankan intelligence sources alleged that three light aircraft were purchased from Jakarta through intermediaries; two of them were disassembled and packed into shipping containers that were then smuggled to northern Sri Lanka by LTTE vessels. One of the aircraft was identified as a Czech-built Ziln Z 143\textsuperscript{24}. In another case, military police in the Brazilian city of Rio de Janeiro seized a 0.50 caliber "anti-aircraft" weapon from a drugs gang in April 2008. This seizure appears to confirm that the criminal gangs retain access to military-grade weaponry and will therefore continue to present a challenge to police attempts to reduce armed violence\textsuperscript{25}.

A growing body of evidence suggests armed groups have access to all types of weapons including, aircrafts (for example, Antonov Aircraft, MiG fighter jets, Helicopters and Helicopter MI-24 gun ships), and all types of heavy weapons, small arms, light weapons and
ammunitions, including anti-tank weapons, anti-aircraft weapons, anti-aircraft battery, AM6 anti-aircraft missiles, IGLA surface to air missiles, BM-27 (Hurricane) Multiple Launch Rocket system, BM-27 (Hurricane) Multiple Launch Rocket system, the "KUB" anti-aircraft missile complex, mechanized vehicles such as Tanks - T-64 and armoured personnel carriers, etc.

The list above indicates that the scope of a comprehensive arms transfer regime - such as the ATT - should consider or reflect the conventional arms used by armed groups. These may include a diverse range of land, air and sea-based weapons including, heavy, light weapons, ammunition, explosives, battle tanks and dual use items and technology.

To summarize the main points about the dynamics of the arms trade to armed groups, we argue that the degree of organization presents both a challenge and an opportunity:

On the one hand, highly organized groups are able to mount more sophisticated operations, to acquire more and better weapons, and to hide their tracks better. On the other hand, highly organized groups are better able to control the behaviour of their agents, meaning that policies set at the top of their hierarchy are more likely to be followed at the bottom, by all members. We would highlight the fact that most undesirable non-state armed groups obtain their weapons from states, often through illegal diversion from state stockpiles. This means that if we can improve states’ own internal controls – to make states better organized – we will have taken steps toward addressing an important part of the problem.

4. Command, Control and Monitoring

The previous section identified a number of cases where diversion from state stockpiles could either be state-sanctioned transfers to armed groups (“intentional” stockpile diversion); or unintentional diversion from government stockpiles. The nature of state-sanctioned transfers to armed groups is still being debated by national and international law on whether it is legal or illegal. This section instead focuses on how states can best be able to meet their commitments in preventing unintentional diversion of weapons to
armed groups. Our argument is that states that will best be able to meet their commitments pertaining to combating illegal arms transfers are those with strong command and control structures: those which are highly organized and best able to ensure that their agents follow the directives set out at the top by their leaders.

The problem of ensuring that agents follow orders and directives is known as the principal-agent problem: it refers to how principals (or leaders) ensure that their policies are carried out by hiring appropriate agents, by paying them appropriately, and especially by appropriately monitoring their activities.

Indeed, of all the things that principals need to do to ensure that agents implement their policies, there is increasing consensus that monitoring is perhaps the most important. Here we offer a way to apply some of the insights from this literature to the problems faced by the arms transfer regime.

Since it is not possible for the principal to know all of its agents’ activities all the time, it relies on multiple ways to monitor the activities of its agents. In arms control, transparency and oversight becomes essential to monitoring arms transfers and its misuse in any organization.

This can be done through two main methods: Internal monitoring (IM) is where transparency and oversight is ensured from within the principal's own organization, and external monitoring (EM) involves participants outside the direct control of the principal, for example, regional organizations, the United Nations or civil society.

Internal and external monitoring are not mutually exclusive strategies, and it is possible to have different combinations of the two. Indeed, many organizations rely on such combinations.

It is critical to allow both internal and some form of external monitoring mechanism in order to help limit diversion of weapons in the international arms trade. The reason is that monopolization of information internally leaves room for corruption. External monitoring
provides a wealth of independent information, allowing the principal to check different sources against each other.\textsuperscript{26}

**Table 2**

**Types of monitoring**

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<table>
<thead>
<tr>
<th>Internal monitoring</th>
<th>External monitoring</th>
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<td>Low</td>
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To reduce unintentional diversion to armed groups, it is essential for states to have responsibility over both their exports and imports. This requires monitoring over international transfers as well as state agents and weapon stockpiles: in other words, to increase both internal and external monitoring.

We argue there are five aspects to this monitoring:

1. **Coordination and Oversight:** Coordination on arms procurement by relevant government agencies reduces duplication and improves transparency and oversight.
on not just on the arms procurement but also on the activities of government and private agents involved. In most countries, several agencies are involved in arms procurement. This has long been recognised as a source of potential unintentional diversion, simply because it is almost impossible to coordinate government agencies/departments, particularly between the defence department, the executive branch and law enforcement agencies.

(2) Reporting: Periodic and reliable reporting procedures on arms transfers are also essential for better monitoring activities and agents. For example, under the ECOWAS Convention on small arms and light weapons, member states are to provide annual reports to the regional body detailing their orders or purchase of small arms and light weapons. For the European Union countries, reporting on arms exports is strongly influenced by the European Union Code of Conduct. In this sense, most European countries have changed their procedures and policies for reporting dramatically - in aspects ranging from industry reporting to government and government publication of annual arms export reports. The United Nations Register of Conventional Arms established in January 1992 calls on all Member States to provide annually for the Register data on imports and exports of conventional arms - Battle tanks, Armoured combat vehicles, Large calibre artillery systems, Combat aircraft, Attack helicopters, Warships, and Missiles and missile launchers. Since 2006, the Register has included an optional reporting on transfers of small arms and light weapons, with limited results to date.

A number of non-government agencies play a critical role in external monitoring on states’ report made public. For example, the Small Arms Survey has developed the Small Arms Trade Transparency Barometer to assess and compare countries’ export reports data made public. However due to varying forms of reporting it is difficult to get a complete picture of a country’s arms exports. Although the barometer cannot verify the truthfulness of the data, it provides a fair assessment of small arms and light weapons export data.
Adequate end-use certification: Post transfer certification is sometimes integrated into the end-use certification process to ensure that arms authorized for export are delivered to the stated end user, and not diverted to areas under embargo or groups likely to commit human rights violations. And this implicitly monitors the command-and-control procedures of the end-user. Post-delivery verification include reviewing proposed transfers to foreign recipients (through pre-delivery checks) and verifying that recipients of arms exports receive and/or use these weapons as intended (through post-delivery checks). Many arms exporters, including US and Canada, also deny an export permit for dual-use items where there is a risk of proliferation.

Many major exporters require a guarantee by the importing agency that they will not re-export the arms without the prior written consent of the exporting country. They also state that the recipient will not use the arms for proscribed purposes, including the committing of abuses of human rights or international humanitarian law.

Sweden, for example, has a good practice of end-use monitoring. The Swedish Inspektionen för Strategiska Produkter (ISP) responsible for administering export controls in Sweden require a "Declaration by End-User", printed on special banknote-quality paper bearing a unique number, for exports of military equipment for combat purposes to the armed forces in the recipient country. This type of certificate is sent by the exporter to the end-user, who upon completion delivers it to the Swedish embassy in the country of end-use. The embassy must verify that the request and the signature are legitimate before the export is authorized. Included in the certification process is a commitment by end-users not to re-export without permission. Requests to re-export are routed through the ISP, which applies similar criteria to such requests as it does to direct exports. In cases where it is known that end-use undertakings have been broken, Sweden reserves the right to halt further contracted supplies.

While post-delivery checks may be difficult for some states, civil society groups can serve a critical role in external monitoring of post-delivery goods. Groups like the
Small Arms Survey, International Crisis Group, Amnesty International and Human Rights Watch also provide independent reports, which complement states’ efforts at transparency particularly on end-use.

(4) Monitoring state agents: The issue of end-use suggests that monitoring state agents is a critical problem. A growing body of evidence suggest illegal diversion occurs not during international transfers between states but leaks from government stockpiles. To prevent weapons diversion, governments should ensure they take an interest to adequately secure the stockpile of all imports and exports. This should be complemented by good command and control mechanisms over its agents. Principals must ensure that their policies are carried out by hiring appropriate agents, training agents in effective stockpile management and security procedures, by paying them appropriately, and especially by appropriately monitoring their activities. This means states should consider introducing security sector governance into the broader framework of arms control.

(5) Monitoring stockpiles: Principals need to have greater oversight and control over stockpile management to prevent any likely diversion of surplus, damaged or obsolete arms and ammunition to undesirable groups or unauthorized individuals. This includes physical inventory, accountability on the part of personnel and management, training of staff in effective stockpile management and security procedures, and an effective recording keeping system and reporting procedures.

In conclusion, monitoring and adequate control over government stockpiles are essential to preventing diversion. Monitoring of state agents and weapons stockpiles must be an important component of any security sector governance program, including the ATT. External monitoring also provides the international community with a mechanism to prevent intentional and unintentional transfers to groups likely to commit human rights violations.
5. Emerging Ways to Engage Non-State Armed Groups

Very few conflicts around the world today are between states. Most conflicts are within states, involving by definition at least one non-state actor. While improving states’ monitoring and end-use will address a major part of eradicating proliferation of weapons, it will not address the entire problem. Many groups, whether in the private or public spheres, will still continue to obtain weapons either legally or illegally. Even though a major arms control initiative such as the ATT is primarily directed at states, these standards in international law may also apply to armed groups. Furthermore, it is worth noting that there are also emerging ways or codes of conduct for armed groups sanctioned by or associated with the state, such as state armed forces, police and Special Forces, paramilitary/militia, and private security companies or mercenaries. In addition, many international humanitarian organizations have long recognized the benefits of engaging armed groups in a dialogue on the principles of International Humanitarian Law (IHL). The humanitarian community is increasingly urging and engaging non-state armed groups to respect international norms. But the question is how to hold armed groups responsible or accountable for state-centric regimes that they are not in a position to sign regional or international agreements. The asymmetries of the state centric system makes it difficult to hold armed groups accountable for violations of human rights and humanitarian norms.

Arguably, armed groups are unlikely to abide by any international arms transfer regime that seeks to limit transfers of weapons to them. Access to weapons is fundamental to the sustainability and survival of these groups, so it may seem absurd to require them to prohibit the use, production, acquisition, transfer and stockpiling of such weapons; or required to destroy stockpiles. Moreover, they may lack capacity or unwilling to respect standards of IHL and International Human Rights Law (IHRL) in their operations. Strategically, targeting, terrorizing and displacing innocent civilians are their way of exerting pressure on the adverse party. "In many of today's armed conflicts, civilian casualties and the destruction of civilian infrastructure are not simply the by-products of war, but the consequence of the deliberate targeting of non-combatants. Violence and
human rights violation is consciously perpetrated by armed groups as a psychological warfare against its enemies”32.

Efforts to engage these groups to respect national or international standards, particularly on limiting their supply of weapons may appear fruitless. Yet there is room to engage armed groups for example on humanitarian issues – end-user activities – which are compatible with the broad aims of an international arms control regime.

The long-standing experience of major humanitarian organizations engaging with various armed groups has demonstrated the potential benefits of such an engagement. Some examples of such engagements with armed groups can be found in various agreements and memorandums of understanding with armed groups on humanitarian standards. Despite political obstacles, humanitarian organisations like the United Nations Development Programme (UNDP), the United Nations Children’s Fund (UNICEF), the Office of the UN High Commissioner for Refugees (UNHCR), The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), the International Committee of the Red Cross (ICRC) and Medecins Sans Frontieres / Doctors Without Borders (MSF) engage armed groups on daily basis in their humanitarian work. Such organisation negotiate access agreements, arrange for cease fires or safe passages to conduct humanitarian work or interventions. In doing so, these organisations are de facto experimenting with various policy tools to pressure armed groups to limit human rights abuses33.

Engaging armed groups in the landmine debate offers some potentially useful lessons. The Swiss NGO Geneva Call (GC)34 provides an innovative mechanism for armed groups, who were excluded from the drafting of the 1997 anti-personnel Mine Ban Treaty and thus may not feel bound by its obligations. Instead of formally adhering to an international state treaty that excludes them by definition, Geneva Call provides armed groups with a different venue to express their adherence to the norms embodied in the treaty. This is done through the group’s adherence to what GC terms a "Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action". Although politically contentious for some states, GC has helped groups set what is essentially a clear EM
benchmark, which can be used – by GC or anyone else – to ensure that they meet their commitments.

Another way to regulate weapons proliferation and misuse by armed groups is to increase external monitoring over their activities. Groups such as the International Crisis Group, Amnesty International, and Human Rights Watch, among others, regularly publish reports on different groups’ actions and responsibilities under international law, in many cases shaming groups that violate such international standards. The United Nations Security Council has also taken on a similar stance of naming and shaming groups that violate international accepted standards, for example, pertaining to the use of child soldiers.

6. Conclusions and Recommendations

In order to ensure a comprehensive solution in preventing transfers to undesirable end-users, any arms transfer regime has to consider all types of armed actors, from state to non-state groups.

The evidence gathered by those who monitor weapons acquisitions and transfers indicates that improving states’ own internal controls – especially through better internal monitoring – is a critical component of a better regulatory regime. Research indicates that most of the weapons reaching the wrong hands that undermine peace and security are mostly from poorly-controlled state stockpiles. Weapons are easily available as a result of the political criminal nexus, which consists of varying degrees of cooperation among the military, national law enforcement agents, and different criminal participants.

In order to counteract the political criminal nexus in illegal arms transfers, it is essential to have an organization with both stringent internal and external monitoring mechanisms that adequately covers information gathering, reporting, coordination and post-delivery verification. End-use monitoring should not be left to the discretion of states to decide when a certificate is required. Documentary proof of end-use must be compulsory for all transfers and restrictions on end-use and re-export must be clearly set out. States should
consider sharing resources for pre-licensing evaluations and post-export delivery verification and monitoring – such cooperation will prevent future misuse or diversion. In addition, better and timely reporting will ensure increased transparency and accountability.

States also have to improve and monitor the activities of the agents responsible for both arms transfers and stockpiles. Transparency and oversight are essential to monitoring arms transfers and their misuse in any organization. States should consider security sector governance and codes of conduct for armed groups i.e. state armed forces, police and Special Forces, paramilitary/militia, and private security companies or mercenaries, into the broader framework of arms control.

Non-state groups will continue to acquire weapons through legal or illegal means. It is therefore possible and indeed useful to consider non-traditional ways to regulate end-use by armed groups - such as setting out clear monitoring benchmarks for armed groups who are not signatories to arms transfer regimes – to ensure that they respect IHL and IHRL. Strategies in engaging armed groups will remain largely experimental as situations and tactics of armed groups evolve constantly. However, engaging armed groups on humanitarian issues should not be considered an experience of limited value, considering the progress that has been made on mine action by organizations such as Geneva Call.

We end by noting that for an arms transfer regime to be effective, it needs to consider the full range of armed actors: not just states, but non-state groups as well. We have argued that even though the issue of armed groups is politically contentious, from a regulatory perspective it makes sense to think of a world that is not strictly divided between states and non-state groups, but rather one that is closer to a continuum. The continuum of regulatory possibilities offered by different degrees of internal and external monitoring by both state and non-state actors is a promising way to help the international community limit the illegal proliferation, diversion and misuse of weapons.
NOTES


3 Throughout this section, we aim to avoid using the phrases “legal” or “illegal” arms transfers. We shall simply discuss the ways in which armed groups obtain weapons. We restrict ourselves in this sense because the term ‘legal’ can mean either by national law, or by international law. How international law applies to the arms transfers transferred and used by non-state armed groups is discussed in section 5. Although there is a substantial body of international law that can be applied to the international arms trade, there is little agreement on how this might apply. One of the challenges for an arms transfer regime is how to supplement and strengthen existing international law as it applies to the arms trade. Instead of legal and illegal transfers and use of arms, we will use pejorative terms such as “the wrong hands”, “diversion” or “misuse”, which will need to be properly defined in any future Treaty.


7 In the largest recorded arms shipment to the FARC, 10,000 Kalashnikov rifles from Peru were parachuted into the jungles of eastern Colombia in 1999. Estimated to be worth USD8 million, the deal was brokered by Montesinos, Peru’s then intelligence chief. Vladimiro Montesinos was at the centre of the conspiracy to buy rifles from Jordan and transfer them to the Colombian rebels. Montesinos was sentenced to 20 years in prison for the deal in September 2006. See “FARC rearms from Peru, eyes Venezuela”, Jane’s Terrorism & Security Monitor - October 10, 2007, Date Posted: 28-Sep-2007

8 The soldiers are being held on suspicion of stealing rifles, pistols, bullets, binoculars and telescopic sights from armouries in Lima. See “FARC rearms from Peru, eyes Venezuela”, Jane’s Terrorism & Security Monitor - October 10, 2007, Date Posted: 28-Sep-2007


11 In Arizona and Texas, unlicensed sellers can sell personal collections at weekend gun shows without background checks. Laws on personal collections were established to allow people such as widows of avid gun collectors to make sales without having to go through an elaborate licensing procedure. See Paul Helmke, “U.S. Guns Behind Cartel Killings in Mexico”, The Huffington Post, Posted November 6, 2007. Accessed 16 March 2008; http://www.huffingtonpost.com/paul-helmke/us-guns-behind-cartel-_b_71384.html.


19 Agboton-Johnson Christiane, Ebo Agedeji, Mazal Laura, Small Arms Control in Ghana, Nigeria and Senegal, West Africa Series NO.2, March 2004, page12


21 It need be noted that Durra’s weapons industry has existed for more than a century and it is a tradition in Durra to carry a small weapon for self-defense. As a result, the work of the gunsmiths in the village is somewhat legal. Also see http://observers.france24.com/en/content/20080425-durra-illegal-firearms-market-pakistan (accessed 11 September 2008)

22 The AK-47 is the assault rifle of choice for armed groups, because they are cheap, easily available, easy to carry, durable, and easy to use because they can discharge 600 rounds per minute.

23 This was confirmed when the Sri Lankan Air Force's (SLAF) main base was bombed on 25 March.


26 For a fuller discussion of the tensions and complementarities of internal and external monitoring, see Policzer Pablo, The Rise and Fall of Repression in Chile (Notre Dame University Press, 2009), Ch. 2.


30 The 2008 SIPRI Yearbook reports 14 major conflicts in 13 countries in 2007, all of which were intra-state. Among the over 30 major conflicts between 1998 and 2007, only three were inter-state.


32 See UN document S/1999/957 of 8 September 1999, p. 2. Armed groups are certainly not accountable for all violence perpetrated against civilians, but their presence among civilians plays a definite role in blurring the dividing line between combatants and non-combatants.


34 Geneva Call is an international humanitarian organization dedicated to engaging armed non-state actors to respect and to adhere to humanitarian norms, starting with the ban on anti-personnel (AP) mines.