Stopping Destructive Arms Proliferation:

How the Arms Trade Treaty can improve peace and security by introducing the first international regulations on transfers of conventional arms

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Abstract

This thesis explores how the newly adopted Arms Trade Treaty (ATT), the first international treaty to regulate the trade in conventional arms, can address the issue of the illegal and irresponsible proliferation of small arms and lights weapons (SALW) and improve peace and security. By far the most commonly used weapons in modern conflicts, SALW and their effects mainly on intrastate conflicts, I argue, are the most important issues for the ATT to address. Being one of the prime sources of fuel for, and even cause of, the new trend of increasingly deadly and destructive intrastate conflicts today, controlling the largely illegal and internationally unregulated SALW market would be a crucial step to improving peace and security.

The thesis uses Security Dilemma theory to describe how arms and their proliferation pose threats to peace and security, while international law and regime theory is used to identify how legal action and structures of cooperation (regimes) can offer solutions to these problems. To determine to what extent the ATT can address these issues, the thesis uses a case study approach together with a content analysis of the ATT text to identify the relevant legal provisions and how they can operate in the context of the theoretical framework.

The findings of this study suggest that the most important aspect of the ATT is that it imposes prohibitions on any arms transfer that risks being used to commit acts of genocide, human rights abuses and other violations of international law, or that risk leading to diversion. These provisions could be used to stop the irresponsible kinds of arms transfers that facilitate these crimes. The effects of the ATT are however largely dependent on the will of states, which will determine the effectiveness of the treaty. Nonetheless, as this thesis shows, the ATT provides tools and a legal platform that could, if utilized, have a substantial impact on these issues.

Title: Stopping destructive arms proliferation - How the Arms Trade Treaty can improve peace and security by introducing the first international regulations on transfers of conventional arms

Key words: Arms; Arms Trade; Arms Trade Treaty; Intrastate conflict; International law; Proliferation; Regime theory; Security dilemma; Small Arms and Light Weapons;
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List of abbreviations

ATT - Arms Trade Treaty
CIL - Customary International Law
IHL - International Humanitarian Law
ILC - International Law Commission
ICC - International Criminal Court
PoA - Programme of Action to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light Weapons In All Its Aspects
RT - Regime Theory
SALW - Small Arms and Light Weapons
SD - Security Dilemma
UNRCA - The United Nations Registry of Conventional Arms
1. Introduction

1.1 General introduction

The trade in arms is paradoxical in that it is a highly globalized phenomenon, while being almost completely outside the control of global institutions. It has the most dangerous potential of being misused, yet it is virtually unregulated at the global level. This has been particularly true of Small Arms and Light Weapons (SALW), the ubiquitous portable weapon systems perhaps most readily associated with the handguns, automatic rifles, rocket launchers etc. that is commonly seen used by militants, criminal gangs and other armed groups in everyday news items. SALW are by far the most commonly used in today’s warfare, and therefore arguably have the most devastating effects on global peace and security.\(^1\) It is hard to make accurate estimates, but by all accounts the world has vast numbers of weapons. Some estimates put the total number of SALW alone at approximately 875 million, out of which the bulk of weapons, some 650 million, are in civilian hands.\(^2\) The number of bullets produced each year number around 12 billion.\(^3\) The destructive effects of arms proliferation on peace and security are well attested - including exacerbating conflicts in weak states and undermining peace efforts\(^4\), facilitating human rights offences,\(^5\) and as being the one of the largest single contributors to corruption world-wide.\(^6\) The arms trade has important impacts on issues of poverty and development, the prospects for peace-building, geopolitics and the making of strategic alliances, geo-economics, international terrorism and more.\(^7\) Arms constitute natural precondition and even a driving factor behind armed conflicts. The security

\(^{1}\) “Small arms and light weapons were the only weaponry used in 46 out of the 49 recorded regional conflicts between 1990 and 2000”: DiGiusto, 2007, p.249.  
See also: O’hanlon 2005, p.113  
\(^{2}\) Small Arms Survey 2011, p. 1  
\(^{3}\) Wallacher; Harang 2011, p.2  
\(^{4}\) SIPRI 2013, p.5  
\(^{5}\) Amnesty International 2010, p.3  
\(^{6}\) See also: Pyman 2009, p. 5  
\(^{7}\) For a summary analysis on the impact of arms control on peace and security, see: Hartung 2013, p.442
dilemma theory (SD) is an effective way of illustrating this, showing how the mere presence of arms can be enough to aggravate tensions between groups to the point of war, as is commonly recognized in an arms race. Despite this, the international arms market has been almost entirely unregulated.\(^8\)

The lack of action on arms control is largely owed to the fact that any multi-lateral agreements relating to arms are notoriously hard to reach at the international level. It was therefore a historically significant event when in April 2013, the first international treaty to regulate the international arms trade was adopted in United Nations General Assembly. 'The Arms Trade Treaty' (ATT) is meant to regulate the trade in conventional arms, ammunition and parts, and to impose prohibitions on arms transfers that may lead to e.g. human rights abuses, genocide or violations of international law. This is the first instance where some of the norms concerning what are generally considered unacceptable arms transfers (e.g. the Russian arms transfers to the oppressive Syrian regime during the on-going civil war) find concrete expression in international law. This gives many reason to hope that the adverse effects of arms trade can finally be addressed, while others have cast grave doubts over the ATT’s potential to make a concrete impact, pointing e.g. to the previous failures of the international arms control regime and to weaknesses in the ATT text.\(^9\)

1.2 Layout

This thesis explores to what extent arms control measures as employed by the ATT can address the issues of SALW proliferation and intrastate conflicts. In section 2 are described the background and contents of the ATT. I also provide a general background on SALW and intrastate conflicts, and motivate why I consider these to be the two most important areas in need of arms control measures. In section 3 I develop the methodological framework of the study, which relies on a case study analysis of the ATT, together with a content analysis of the ATT text. In section 4 I develop the theoretical framework used to inform the study. I use security dilemma theory, which describes the aggravating and destabilizing effects of arms, as


well as international law and regime theory to describe some of the solutions to these problems. In the analysis of section 5, I explore to what extent the ATT can address some of the issues identified in this thesis. Section 6 provides a critical discussion of the results and an assessment of the possible impact of the ATT on the issues described. Finally, in section 7 I present the conclusions of the study.

1.3 Research problem

Arms control and its related issues is a large topic that is the subject of study in many fields - including international relations, international and domestic law, development studies and peace and conflict studies. There are therefore many different approaches to take on the causes of and solutions to arms related issues. The problems associated with arms proliferation are not limited to or caused exclusively by arms or the lack in regulation thereof. There are of course innumerable social, political and economic factors - both at the higher, international level as well as at the grassroots - that contribute to the ‘demand’ for arms. The causes of arms proliferation can be explained in terms of state political motives (as when for example the US transferred large shipments to the Contras of Nicaragua and Mujahedeen of Afghanistan in the 80’s); the economic interests of military industries; or societal factors such as poverty and inequality, crime, nationalism and so forth.\(^\text{10}\) Likewise, the solutions are not limited to the international level of UN decision-making and treaties.

A common feature however is that arms, particularly in modern times, usually have international dimensions - in terms of their sources, areas of use or both - ignoring national boundaries and spilling over across societies,\(^\text{11}\) which has contributed to making arms and arms transfers an international concern. This is one of the reasons why arms has long been the subject of attempted or enforced international agreements, limiting which weapons can be used and how. The ever increasing destructiveness of arms during the 19th and 20th century, together with the increasing involvement of civilians in war, advanced the development of international humanitarian law (IHL) regulating the rules of conduct in war - both of states, combatants and their use of arms. Several attempts to limit the destructiveness of war were made, through e.g. the Hague and Geneva conventions, the League of Nations on to the

\(^{10}\) For more on this subject, see: Hartung 2013

\(^{11}\) Trade in particular has long been recognized for its tendency to escape state borders. The World Trade Organization predicted that, at the turn of the 21st century, around 60% of the world trade would be conducted without any customs barriers. Stern 2000, p. 248
United Nations - but the experiences of the 20th century shows that these attempts have been far from satisfying. This failure must be largely attributed to the political impasse of the cold war period as well as the intractable nationalist policies and extreme political climate of the 20th century in general. But even in the more cooperative climate of today, reaching solutions to arms control and related issues has proved difficult.

The ATT raises important questions about the future development of the arms control regime, and opens up new possibilities for controlling the international flow of arms and limiting its negative consequences. It also raises a number of questions as to if and how the ATT will be able to make an impact on peace and security issues in the future. In order to meet its goal, the ATT must not only be able to regulate the trade as such, but to be able to provide real security improvements. There are several ways one could attempt to measure such an improvement: through studying its impact on organized crime, corruption levels, developmental factors etc., or even an ability to prevent inter-state conflicts. But since the most common and destructive conflicts today and for the foreseeable future is intrastate conflicts - driven, maintained and fought almost exclusively using SALW armaments, to a large extent obtained through illegal markets or irresponsible arms transfers - these are the most acute problems the ATT must be able to address.

### 1.4 Aim of study

My presupposition, as argued in the background section, is that the most common and destructive conflicts today take place within the intrastate context, involving combatants that are almost exclusively reliant on supplies of SALW and ammunition. Therefore, for the ATT to make real improvements on peace and security, the most important issue that the it needs to address is halting the irresponsible SALW proliferation that fuels these conflicts and makes possible human rights violations and other violations of international law that are some of the worst causes of human suffering and prolonged conflict today.

The aim of this study therefore is to explore to what extent the ATT can address and prevent the illegal proliferation and irresponsible trading of SALW and consequently to what extent this can help to prevent and halt intrastate conflicts.

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12 For a developed history of these issues, see: Neff 2005, particularly chapter 5, 8
To this end I will rely on previous research of the impact of arms proliferation in intrastate conflicts and explore to what extent the ATT can addressed some of the problems that have been identified there. I will make use security dilemma theory as a theoretical framework both to provide an explanatory model of how arms related issues such as arms races fuel conflicts, and in order to identify what arms control measures can achieve to prevent conflicts. I will also make use of other background research to identify and explain some of the issues connected to intrastate conflicts and SALW.

To summarize, the aims of this study are to:

● Investigate how measures imposed by the ATT can address the problems posed to peace and security by SALW in intrastate conflicts;
● Investigate how the ATT may contribute to the advancement of international law and the arms control regime;
● Position the ATT in a theoretical context;
● Identify what measures are inadequate or missing in the ATT

The overarching goal of this thesis is to provide a balanced picture of the ATT with its merits and demerits, and to place it within the theoretical context used in this study. Because of its recent adoption and the historical novelty of the ATT as being the first arms control instrument of its kind, this study can hopefully contribute by providing some preliminary findings with which to fill an initial gap of research. The aim is that the reader of this thesis will gain a better understanding of the ATT and its future effects, and how states and other groups can use the ATT for the interests of peace and security.

1.5 Delimitations

The reasons for choosing to explore intrastate conflicts and SALW have already been stated, but some further distinctions may still be needed. Intrastate conflicts encompass many different aspects and modes of conflict - terrorism for example, is a large area of study in its own right, and even if it occurs in the intrastate context, to cover the many issues peculiar to the study of terrorism are beyond the scope of this study. There are many other aspects of intrastate conflicts that deserve to be studied, for example criminal networks, ethnic, political or societal factors etc. are some of the approaches that can be used to explain the complex dynamics of intrastate conflicts. Since the focus of this study is on arms control of SALW in
the context of intrastate conflicts, I will not attempt to give a detailed theoretical account of how intrastate conflicts operate. Instead, I will only venture to give a brief background of what I believe are quite uncontroversial assertions, despite what theoretical approach one takes: that intrastate conflict is the most common and therefore important theatre of war today, that intrastate conflicts are fought almost exclusively using SALW, and that improved arms control of SALW is needed. The study will focus on how the ATT can improve the arms control of SALW in the interests of peace and security, and I will therefore focus on theories that directly address the issue of arms and arms control. These theories will be further described in section 4.

As will be explained in section 2.2, the ATT also covers large-scale conventional weapons. Such weapons are by no means unimportant to issues of peace and security, however these weapons are already subject to some regulation both international and domestic, and are by their nature less likely to be obtained or even successfully operated except by major state-owned army units that have, as I will argue, become increasingly irrelevant factors in modern conflicts. For these reasons, and those stated in section 2.3, the focus of this thesis is on SALW, together with its parts and ammunition. For roughly the same reasons as just stated, neither will I devote much attention to interstate conflicts. By interstate conflicts I mean the ‘classical’ large-scale conflicts between states and their armies. It is not so much that the interstate level has become irrelevant - the intrastate conflicts I will describe are highly globalized phenomena that often involve trans-border interactions - it is rather that intrastate conflicts tend to ignore state boundaries. This will all be familiar to some as the ‘New Wars’, but for reasons of simplicity and in order not to be too restricted by or risk abusing this theoretical concept, I will keep to the label of intrastate conflicts. By this label I mean to encompass the groups that are typically the recipients, users and victims of SALW, both state and non-state actors. These concepts will all be further defined in section 2.3 of this thesis. The basis for these delimitations, as already stated in section 1.4, is these are the issues that pose the main threats to peace and security today and are therefore the most important for the ATT to address.

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14 The concept of ‘New Wars’ will be discussed further in section 2.3
A justified objection to this thesis may be that: even though the ATT might address some of these issues, what reason is there to think that there will be enough political will to successfully implement it? It is indeed a very real possibility that countries such as the US, Russia and China will not ratify the treaty, limiting the effect of the ATT (more on this in the discussion section). I will not attempt to speculate as to whether the ATT will have this political support, however in the analysis I will evaluate some of the factors that may influence the levels of compliance and implementation.

Even though much research has been conducted on the ATT, and theoretical literature devoted to arms control issues, I have not found studies of the ATT in its present form in the theoretical literature except by short references of its on-going development. The future implications of the ATT, and its place within the theoretical literature and the arms control regime, I will contend constitute the biggest gaps in research at present. Because of the highly theoretical nature of this study, it is important to point out that in no way is this thesis aspiring to accurately predict how the ATT will or will not function once in effect. Since the ATT is a recent development – the concrete effects of which are still years in the future – the findings of this study will necessarily be somewhat speculative. With this in mind however, the study is aimed at giving a preliminary account of how the ATT relates to and can improve on the issues described in this thesis, of SALW proliferation and its role in intrastate conflicts, based on the contents of the treaty and the theoretical models used in this thesis.

1.6 Previous Research

There exists a large body of research on arms control and related issues, including the ATT. The Stockholm International Peace Research Institute (SIPRI) is one of the leading research institutes in the area, conducting empirical research including comprehensive data sets, analyses and recommendations on arms related issues, and its impact on peace and security. The United Nations Institute for Disarmament Research (UNIDIR) has provided extensive research on the political development of the ATT - including analyses of states and international organizations positions towards the ATT - as well as detailed analyses of its technical aspects such as particular treaty provisions and issues. The ATT have been studied by a number of NGO’s - such as Amnesty International, Human Rights Watch and Oxfam - monitoring the flow of arms and its sources, as well as its humanitarian impacts. The ATT has also recently been the subject of a close legal analysis by the Geneva Academy of
International Humanitarian Law and Human Rights, for in-depth analysis of the ATT as a whole, refer to this report.\textsuperscript{15}

Arms control is an important subject of analysis in many different fields, approached by a number of different schools and perspectives. Briefly summarized, arms control is subject to the same discussions between different approaches/paradigms as is common to topics within international law and peace and conflict studies, including: realist and liberal; state-centered and institutionalist; rationalist and constructivist debates. The legal dimensions of arms control also makes it relevant to international law theory where roughly the same debate applies, although with somewhat different implications, e.g. for legal interpretation. Because of its importance for this study, a longer discussion and a literature review of the theoretical framework will be provided in section 4.

\textsuperscript{15} See: Geneva Academy 2013
2. Background

2.1 The Arms Trade Treaty

The ATT is a multilateral treaty negotiated under UN auspices and adopted in the general assembly on 2 April 2013, and is the first treaty to regulate the international trade in conventional weapons, including SALW. The purpose of the treaty is, briefly, to set common standards for the largely unregulated global arms market, to prevent arms from ending up in the wrong hands and from violating international law or committing human rights offences. Although there already exist a number of multi-lateral treaties regulating weapons of mass destruction, mines, cluster weapons and other particularly harmful weapon systems - the bulk of the arms trade including conventional weapons and SALW remained largely unaddressed by the international community until the adoption of the ATT. Regulating arms has long been a highly prioritized goal in the international community, as is reflected in the UN charter where a system of arms control was one its primary goals. However, despite several attempts, arms control proved perhaps the most difficult issue in which to reach international agreements, and very little progress was made.

SALW has hitherto been a largely neglected issue in international arms control negotiation and therefore its inclusion in the ATT marks a widening of the arms control regime. In view of this, the ATT marks a historic and important step forward in strengthening international peace and security and the international arms control regime, a regime which historically is marked by its slow progress and intransigent positions. At present, international arms control is mainly exercised through domestic jurisdictions. Provided that such jurisdiction even

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16 General Assembly A/CONF.217/2013/L.3
17 UN charter article 23. Also addressed in articles 11, 26, 47
exists, which is not the case in the majority of states today, it is often lax or subject to arbitrary decisions, even in well developed countries.

After 7 years negotiations, the ATT was intended to be adopted by consensus, which requires that there be no formal opposition from any state. In March 2013, Syria, North Korea and Iran alone prevented this from happening. The ATT was then sent on to the general assembly by April, where it was passed by a majority of 154 states voting in favour, including three Security Council members (the US, GB and France), while only three states voted against (again: Syria, North Korea and Iran). At the outset, the fact that the very states who may be among the most likely to be targeted by the ATT took such firm resistance to it suggests that they may have felt there was good reason to be apprehensive. Despite the apparent success, what impact the ATT will have is up to question, considering the limited impact that the UN has had on issues of peace and security in the past, particularly concerning arms control. It remains to be seen how many states will finally decide to ratify the treaty. The extent of support from the Security Council members, together accounting for around 70-80% of the global arms trade, will have a crucial impact. Moreover it remains to be seen how strong the treaty provisions will prove to be, and to what extent potential loopholes risk to undermine it.

But more important than the immediate effect of the ATT will be its staying power and ability to produce long term effects in strengthening the arms control regime. Regimes can be briefly summarized as systems of cooperation that arise in the international arena, around which different actors’ behaviour converge. Textbook examples of regimes include the international postal, shipping and economic systems; as well as human rights and arms control. The importance of regimes is their ability to affect attitudes and behaviour - as a central concept in regime theory “...behaviour follows from adherence to principles, norms, and rules, which legal codes sometimes reflect”. More specifically, arms control regimes strengthen the conventions of war by advancing the position that the use of certain weapons should be banned or limited, specifying which ones. The development and future function of the ATT is indeed largely dependent on how states will interpret and execute it, influencing the common practice or ‘praxis’ which will in turn influence the development of the arms control

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18 According to Oxfam International, only 90 countries employ national arms control. See: Oxfam 2013
19 Hartung 2013, p.443
20 Puchala, Hopkins p.62
21 Heinze 2012
Echoing this fact, one representative speaking on behalf of 96 states after the treaty was passed, stressed how the ATT would need to adapt to future developments, and, ending on a note of due resolve and appropriate circumspection called for at such moments, concluded that: “This is just the beginning ... the hard work starts now.”

The rules applying to treaties are themselves contained in a treaty - the 1969 Vienna Convention on the Law of Treaties. Treaties are in essence written, international agreements concluded between states governed by international law. Treaties are bi-lateral (between two states) or multi-lateral (involving more than two states) as with the ATT. Consenting to a treaty is voluntary - the ATT is therefore not legally binding (as e.g. a Security Council chapter VII resolution would be) even though it has been adopted, that is, until the state in question accepts it. This is done by signature and ratification. Since the ATT opened for signature in June 2013, states can sign the treaty. The signature merely indicates that the state is interested to join the treaty in the future and does not make it legally binding, but it does obligate the state “not to take any action that would undermine the object and purpose of the treaty”. Once the state has signed, it can choose to ratify the treaty. Doing so means that the state is party to the ATT and legally bound to follow it. Finally, the ATT formally enters into effect a period after 50 states have ratified it.

2.2 Contents and Purpose of the Arms Trade Treaty

This section is to give a brief outline of the ATT’s general contents and purpose. The provisions of the ATT are wide-ranging, making them difficult to give separate accounts of. I will therefore sometimes refer to the articles in the ATT text (attached to this document as an appendix). More detailed accounts of the provisions will be provided in the analysis section (section 5).

The purpose of the ATT is as an arms control instrument, it is not designed as a disarmament mechanism. In practical terms, this means that the provisions of the ATT are not directly

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22 Regimes will be more thoroughly described in section 4.3.2
23 UN general assembly 2013, GA/11354: General Statements
24 Wallace, Martin-Ortega 2009, p. 265
25 As of 2013-08-09, a total 81 states have signed the treaty.
26 United Nations (2013), Arms Trade Treaty: Signature and Ratification, article 1
27 Ibid. article 2
28 Ibid, article 3
aimed at reducing arms levels either in terms of existing stockpiles or the arms on the marked
- except those of the illegal markets. This has been criticized by some as giving undue
legitimacy to the arms trade. All states are however to a large extent dependent on arms
trade to sustain their military, which means that arms trade is and has been viewed as a
legitimate practice by states historically. Many states were therefore apprehensive that the
ATT would constrain this trade to the detriment of that most sacred of state rights - the right
of self-defence. The ATT therefore explicitly recognizes legitimate arms trade (and without
such an acknowledgement the ATT could hardly have been expected to pass).

The main objectives of the ATT (article 1) may be worth outlining in full. They are to:
"Establish the highest possible common international standards for regulating or improving
the regulation of the international trade in conventional arms;
- To prevent and eradicate the illicit trade in arms and their diversion.
- For the purposes of: Contributing to international and regional peace, security and
stability; Reducing human suffering; Promoting cooperation, transparency and responsible
action by States Parties in the international trade in conventional arms, thereby building
confidence among States Parties."

The contents of the ATT can roughly be divided into three main categories:
Scope\(^{31}\) - the materials and transfers to be included.
Criteria\(^{32}\) - what criteria are to be met before an arms transfer can take place, and;
Implementation\(^{33}\) - what measures that are to be taken to ensure that the ATT is followed
and implemented

The scope encompasses a range of major conventional weapons (tanks, aircraft, battleships
etc.) already defined in an earlier multi-lateral instrument - The United Nations Registry of
Conventional Arms (UNRCA) - with the addition of SALW, and the parts, components as
well as ammunition needed to assemble and maintain the included weapon systems. The
scope also includes the different kinds of transfers to be encompassed, including e.g. exports,

\(^{29}\) See for example: Campaign Against Arms Trade 2013; Feltham 2013
\(^{30}\) Kytömäki, UNIDIR 2012, p.10
\(^{31}\) ATT article 2-5; 8-10
\(^{32}\) ATT article 6,7
\(^{33}\) ATT article 12 - 19
imports, brokering and trans-shipments. The provisions imply that not only importers and exporters are responsible, but also third party states acting as “middle men”.

The transfer criteria are the core of the treaty. They obligate states to make a series of risk assessments before they approve of arms transfers. States are forbidden to authorize transfers that violate their international obligations, in particular to Security Council obligations and arms embargoes. Before accepting a transfer the state also has to assess if it risks being used for e.g.: human rights abuses; genocide; illegal diversion; violations of international law and the 1949 Geneva conventions.

The implementation measures are simply concerned with how to implement and enforce the measures of the treaty. This is the main responsibility of state, and the provisions mainly instruct states on how to make appropriate adjustments to their national legislation and its enforcement. However implementation also includes measures at the international level. These include monitoring state compliance; transparency measures; dispute settlements; assistance with implementation; funding etc. - some of which will be handled by an international secretariat for the ATT.

An important tool of the ATT, and an end towards the purpose of building confidence among states (as outlined in the last paragraph of article 1), is the use of ‘transparency measures’. By making the arms trade ‘transparent’ e.g. by the act of enforcing reporting mechanisms where states have to be open about their arms trade and stockpiles, the aim is to avoid build-ups of dangerous and destabilizing arms accumulations by building confidence among member states - this is recognizable as a central themes in the SD.

### 2.3 Intrastate Conflicts

Intrastate conflicts (variously labelled ‘internal’, ‘domestic’, ‘civil’ conflicts or ‘societal wars’) can be difficult to define. Though generally accepted to be confined within the borders of a single state, intrastate conflicts are nonetheless often ‘internationalized’, i.e. involve outside actors as with ISAF and other international forces in Afghanistan; or they can even be difficult to distinguish from interstate wars - as in the case of Russia in North Ossetia/Georgia. Intrastate conflicts may also be difficult to distinguish from one-sided or state-sponsored violence. A typical definition of intrastate conflict generally includes that the
conflict is: a) inside of state borders; b) Involves the government; and c) involves effective resistance from both sides. But this definition may be extended to include foreign involvement or reduced to only involve non-state actors. For my use and understanding of the definition, refer back to section 1.5.

Since the end of the second world war, and particularly after the end of the cold war, conflicts between states have become less and less common, instead the vast majority of conflicts today take place within states. Since the Second World War, around two-thirds of the conflicts have been intrastate conflicts and only 17% ‘classical’ interstate conflicts, which is a notable break from former trends. Intrastate conflicts were on a steep rise during the cold war while interstate wars have been in decline, both in terms of numbers and magnitude (see figure 1 below). It can be argued that with few exceptions, only two kinds of war are fought today: ‘civil wars’ and ‘policing wars’. Civil wars are most often waged in poor countries by non-state actors using irregular troops - such as rebels, warlords, terrorist, criminal organizations etc. - fighting over sectarian issues, weak governments or just for private gain and loot. Policing wars are efforts, usually by developed countries, to intervene in intrastate conflicts or in countries ruled by despotic regimes, with the stated goal of restoring order.

In terms of levels of destruction, intrastate conflicts are particularly devastating - it is estimated that over 20 million deaths resulted from intrastate conflicts since WWII, most of which were civilian. This may be caused in large part by the fact that intrastate conflicts generally involve non-state actors that are often difficult to distinguish from civilians, which means that civilians are often drawn into or even become targets in the conflict, leading to practices of rape and other human rights violations, mass killings or even genocide. As the state descends further into chaos, such practices become more wide-spread, and as entire societies get drawn into the violence, conflicts become embittered and more difficult to resolve.

34 Smith 2010, p.99
35 For more developed definitions, The Uppsala Conflict Data Program (UCDP) is a commonly cited authority. UCDP definitions are available at: http://www.pcr.uu.se/research/ucdp/definitions/
36 Morgan 2006, p. 163, 164: “For at least the past 180 years, with an exception during the cold war period, war has been in decline, with 150 states not experiencing war at all, 49 states one or two times, and only 8 states being at war 10 times or more.”
37 Large scale inter-state conflicts proving as exceptions to the trend since WWII being: the Arab-Israeli wars, the Vietnam war, the wars involving Iraq, and the Ethiopia-Eritrean war.
38 Mueller 2006, p. 73, 74
39 Smith 2010, p.100
The increase of internal conflicts is part of the new patterns of conflict that has emerged since WWI. Today’s conflicts usually grow out of a state of anarchy or lawlessness, and feed of criminal activity and black markets. These conditions generally result from the weakness, incompetence or even complete failure of states or their governance. Between the years of 1955-2003, the research project ‘Political Instability Task Force’ has identified 141 episodes of political instability world-wide. 40 Weak states generally suffer from all manner of problems, including: weak economies, failing infrastructure, rampant corruption, poor rule of law, weak institutions, high crime rates and more - they are also much more prone to outbreaks of conflict (see figure 2). Importantly, weak states often lose the ability to impose authority over their territory, which leaves paramilitary bands, terrorists and other armed groups outside of state reach, letting them operate more or less freely. 41 These combatants usually do not have the economic means, logistical capability and training required to command modern large scale military equipment like tanks and aircraft, instead they rely on unconventional tactics and the use of SALW. These new patterns of conflicts described above are sometimes labelled the ‘New Wars’, from a theory most prominently represented by Mary Kaldor. Key features in New Wars is the low-intensity power struggles based upon and mobilized around nationalist or sectarian grounds, with limited or no involvement of the state and with many global connections ignoring state boundaries. Another key feature is the way these wars are driven by a “Globalized War Economy”:

“...these economies are heavily dependent on external resources. In these wars, domestic production declines dramatically because of global competition, physical destruction or interruptions to normal trade, as does tax revenue. In these circumstances, the fighting units finance themselves through plunder, hostage-taking and the black market or through external assistance.” 42

This makes New Wars the magnets of international black marked trade, where SALW is an integral part. SALW is also necessary in order for the fighting units to continue the extortion which is so important to their upkeep.

40 Political Instability Task Force 2005, p. 5
41 Krasner 2008, pp. 180, 181
42 For more on this topic, and a developed account of the New Wars theory as a whole, see: Kaldor 2012, p.10
Figure 1. Global Trends in Armed Conflict, 1946-2010\textsuperscript{43}

(By: The Center for Systemic Peace, 2011)

\textsuperscript{43} The Center for Systemic Peace 2011, p. 3: “Interstate and civil wars must have reached a magnitude of over 500 directly-related deaths to be included in the analysis. The magnitude of each “major episode of political violence” (armed conflict) is evaluated according to its comprehensive effects on the state or states directly affected by the warfare, including numbers of combatants and casualties, affected area, dislocated population, and extent of infrastructure damage. It is then assigned a score on a ten-point scale; this value is recorded for each year the war remains active.”

Figure 2. State Fragility and Warfare in the Global System, mid-2011\textsuperscript{44}

(By: The Center for Systemic Peace, 2011)

\textsuperscript{44} Ibid, p. 5: The figure uses the same data set and criteria as described in the above footnote. For the complete data-set, coding and methodology, see: \url{http://www.systemicpeace.org/warlist.htm}
2.4 Small Arms and Light Weapons

As with intrastate conflicts, SALW is a broad term that can be difficult to accurately define. SALW weapons range from small pistols and rifles to missile launchers capable of destroying tanks or large aircraft in mid-flight. A United Nations Panel of Governmental Experts on Small Arms was convened in 1997 to determine the nature and effects of the ill-defined SALW category. The definition they agreed upon included 21 categories of weapons, including e.g.: machine guns, mortars, explosives, rocket launchers, assorted ammunitions etc. They further distinguished small arms from light weapons in that: “Broadly speaking, small arms are those weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew.” Small arms are handheld weapons such as the ubiquitous Kalashnikov rifle, while the light weapons operated by crews are such as the mortar equipment used at the Markale massacres during the siege of Sarajevo.

The same UN panel on SALW quoted above also described the devastating impact that SALW has on intrastate conflicts and is found to be closely tied to its increasing prevalence. SALW empowers irregular troops, insurgents, terrorists, criminal gangs etc., eroding the legitimacy and authority of governments, making it difficult for them to cope with both the causes and the effects of its proliferation. SALW are easily obtained, concealed, and can be used to devastating effect by practically anyone without requiring much training - this means that the weapons can be thrust into the hands of child soldiers of a very young age, something which is commonly exploited in many intrastate conflicts.

Since the end of the cold war and the collapse of the Soviet Union, vast quantities of formerly state-owned SALW armaments spilled out on the global market, often into the hands of non-state actors, and further exacerbated the destructive new conflict trends. The UN panel was one in a series of reactions to this rapid development that, arguably, set the stage for the development of the ATT. Preceding the above mentioned panel was a 1995 report by the UN secretary general where the new patterns of conflicts that were described in the last chapter, including the use and spread of SALW, were acknowledged. It was concluded that the spread of SALW had gone beyond state power to control; that it had given free rein to criminals and criminals and criminals and criminals and criminals and criminals and

45 United Nations General Assembly 1997, A/52/298, paragraph 26
46 Ibid, paragraph 25
47 United Nations General Assembly A/52/298 27, 1997, part II, article14
48 Ibid, paragraph 18
49 United Nations General Assembly 1995, A/50/60-S/1995/1, see: part II
consequently a reason for citizens to acquire arms themselves in turn in order to defend themselves; and finally that regional solutions were the only way to effectively tackle the problem. The problem as described here, with a breakdown of government authority and citizens having to provide for their own security while the state is awash with weapons, has been identified as precisely the conditions leading to a feedback loop of worsening insecurity that causes an intrastate SD.

SALW transfers made a further dramatic increase during the early 2000’s - growing by around 28% between 2000-2006 to a total figure of 1.44 billion USD in 2006, and with a large gap in data resulting from under-reporting and the illicit trade, the figure was probably higher by factors of millions or even billions. The illicit trade alone has been estimated at 55% of the total trade in SALW. Today, SALW armaments are the only weapon system used in around 90% of all conflicts, and are the attributed to account for 30-90% of the civilian casualties.

Ammunition is a choke-point for the illegal trade, since no matter the amounts of illegal arms there is, to be of any use they need to be supplied by large amounts of ammunition. The ammunition will usually need to be mass-produced using high precision tools, which means that ammunition supplies most often comes from industrial arms producing countries, often outside of the region in which they will eventually be used (as already mention, up to 80% of the arms production takes place in the Security Council states). It has been argued that monitoring this trade could provide early warning of dangerous arms accumulations and the risk of impending conflict.

To counter-weigh these arguments, it should be said that although SALW can be an important exacerbating factor of conflicts, it is not necessarily the cause of conflict. Countries such as the US, Switzerland and Finland are heavily stacked with weapons, placing them in the top five of highest per capita civilian gun ownership in the world, while also being amongst the

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50 Ibid, paragraph 63  
51 Bourne 2005, p. 156  
52 Small Arms Survey 2009, p. 52  
53 Hill 2004, p. 5  
54 Bourne 2005, p. 155  
55 Laurance 1999, p. 190, 191  
56 Finland and Switzerland has approximately 45 guns per hundred citizens, while the US tops the list at 89. Small Arms Survey 2011, p. 2
most internally stable countries in the world (as opposed to ‘fragile states’).\textsuperscript{57} Echoing this fact, the aforementioned United Nations Panel on Small Arms nonetheless concluded that:\textsuperscript{58}

\textit{“While not by themselves causing the conflicts in which they are used, the proliferation of small arms and light weapons affects the intensity and duration of violence and encourages militancy rather than a peaceful resolution of unsettled differences. Perhaps most grievously, we see a vicious circle in which insecurity leads to a higher demand for weapons, which itself breed still greater insecurity, and so on.”}

This statement is a good summary of the problems posed by SALW in conflict situations, and how its proliferation leads to the “vicious circle” of insecurity which the SD describes. One can hardly overstate the importance placed on SALW by the panel, stating that: \textit{“...virtually every part of the United Nations system is dealing with the direct and indirect consequences of recent armed conflicts fought mostly with small arms and light weapons.”}\textsuperscript{59}

\begin{flushright}
\textsuperscript{57} See eg.: The Center for Systemic Peace 2011, p. 34, 35
\textsuperscript{58} United Nations General Assembly 1997: foreword by the Secretary General
\textsuperscript{59} United Nations General Assembly 1997: part II, point 20
\end{flushright}
3. Methodological Framework

3.1 Choice of method

The objective of this study is to explore and evaluate the possible effects of a single particular program (the ATT), it therefore seems adequate to conduct a case study. To this aim, I will need to study the ATT text, and to position the ATT within the theoretical and historical context. The ATT text serves as the empirical basis for analysis. In analysing the text I am studying the three main categories outlined in section 2.2, and how the provisions they contain relate to this thesis. This evaluation is done based on the findings presented in the background and theory sections, which I will refer back to throughout the analysis. Because some of the effects described by regime theory and international law involve a more long term perspective, which requires a different discussion from the rest of the analysis, I have for reasons of simplicity divided the analysis into two sections: direct and indirect effects. These will be further explained in section 5.1.

3.2 Ontological and epistemological discussion

Interpretivism (or: constructivism) is a term used as a contrasting epistemology to positivism, often referred to by social scientists critical of a positivist approach to human behaviour. Interpretivists contend that an explanation of human behaviour and a focus on the forces that brought about that behaviour - the positivist approach - is inadequate because it fails to address to meanings that are attributed to and influence human behaviour, and that one must instead seek an understanding of human behaviour by interpreting the world from their own point of view.\(^{60}\) The general positivist approach of studying things “as they are” in an ‘objective’ sense, should in this context be distinguished from the branch of legal positivism. Legal positivism asserts that, rather than study the law as it should be (in juridical terms: de

\(^{60}\) Bryman 2008, p. 15
lege ferenda), one should study the law ‘as it is’ (de lege lata). In this view, any description of law must reflect the social practises that make up the law. As opposed to this approach, the ‘process school’ sees international law as not only based on past legislation, but as an on-going process which involves considerations of both past and present affairs as well as future goals. In terms familiar to the social sciences, the process school is thus more akin to subjectivism, while the positivist school is more identifiable with objectivist views. Since the ATT is still very much in development, I view it as necessary to take a process oriented approach, if not only for practical reasons. The development of the ATT will be to a large extent influenced by how states and others interpret and put it to use, it is therefore a process in a very real sense as well as in a legal one. It is probable that this was what the above mentioned speaker was alluding to by saying that “...the hard work starts now”. This speaker, who is urging for a strong treaty (i.e. interpreting and enforcing its obligations as rigorously as possible), and others who have different goals, are aware that law is constantly evolving and that present circumstances will determine the direction of this development.

3.3 Case Study

For this thesis, the goal of using the case study approach is to explore how the ATT could potentially address a number of identified issues. To this end I rely on background information from previous research and theory to contextualize the ATT, followed finally by a content analysis of the ATT informed by theory and background to draw conclusions.

Because of its recent adoption there are for obvious reasons no cases where the ATT can be studied ‘in operation’ - in other words the program effects are in the future and therefore unknown, and in an empirical sense one could argue that they are in fact unknowable. Since these effects are the subject of the investigation, choosing a proper case study design/type can pose problems, since most designs are addressed at investigating present or historical cases. However, by comparing issues where arms control measures have been identified as having effects, with the contents and function of the ATT, it is possible to draw some conclusions to what impact the ATT can have on the identified issues. Also, since the ATT has a carefully defined program ‘plan’ (the treaty text) where specific issues, provisions, objectives, instruments etc. are outlined, one can immediately draw a number of conclusions as to its

61 Çali 2010, p. 74
62 Ibid, p. 79
effects. For example: contrary to the wishes of many state groups, there are no provisions in
the treaty that prohibits arms transfers to non-state actors - one can therefore reasonably
conclude that the ATT will not directly prevent such transfers from continuing to take place.
To judge the effects of the ATT therefore, it is crucial to study the treaty text - consequently a
content analysis of the treaty will be the primary mode of data collection.

This thesis is a single case study, where I intend to provide a descriptive account, with
exploratory elements - to use in Yin’s terminology; or an ‘intrinsic case study’ in Creswell’s
terminology.63 The reasons for choosing this approach are that the aforementioned
importance of the context, as well as the novelty of the case requires an extensive descriptive
account - this makes the description both a precondition and an end in itself. Also because of
its novel, and to some extent unexplored nature, the case is interesting from an exploratory
point of view. This is also necessary in order to meet the aims and answer the questions of
this thesis.

Common criticisms against case studies are that they lack scientific rigor and easily let biased
views influence results; lack basis for scientific generalization; and are impracticable and
lengthy. To avoid these pitfalls, it is important to maintain an orderly procedure and to report
evidence fairly. Considering the generalizability of the study, case studies must only venture
to generalize theoretical propositions, not to make ‘statistical’ generalizations about the
outside world.64 Because of the nature of this study, it is easy to slip into all too far-reaching
speculations or generalizations - so the danger of biased views is especially relevant for this
study. In order to give a fair account of the ATT, it is important to stress that the study
investigates how the treaty could operate - given the contents of the treaty text, previous
experiences etc., - but also to point to evidence against such predictions, and stress that future
developments are still uncertain.

3.4 Content Analysis

A useful procedure to go about a content analysis is to use the following steps:65 First,
identifying your research material and what parts are relevant to answer you research

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63 Creswell 2013, p. 99, 100
64 Yin 2009, p.14-16
65 Adopted from: Mayring, P (2000), “Qualitative Content Analysis”
Read in: Flick 2009, p.323, 324
questions; **second**, analyse how the data was created (by whom, how, where does it come from?); **third**, characterize how the material was documented (was there transcription involved etc.?); **fourth**, the researcher specifies the direction of the analysis, research questions, and what one wants to interpret from the text; **fifth**, the researcher identifies analytical units - “coding unit” defines what is the smallest element of the text which may fall under a category while the “contextual unit” defines the largest, finally the “analytical unit” defines which passages are analysed. Next the researcher may want to summarize and narrow down the text - reducing it down to the essentials, and generalizing its core contents.66

These steps are intended to be addressed in the background section (section 2.2). As mentioned, I will also strive as far as possible to refer directly to the ATT text that is annexed to this thesis so that any conclusions I draw from the text can be easily reviewed by the reader.

The analysis of documents has some strength, since documents are generally: stable i.e. they can be reviewed repeatedly; unobtrusive - not created as a result of the case study; and finally, exact. A weakness of the document analysis is that there is sometimes a bias by the researcher in selecting which documents to study.67 I do not consider selection bias to be a much relevant issue for this study, since the contents of the ATT are contained in a single document (the treaty text). This is the unequivocal primary source of the analysis. There is however other documents connected to the ATT from other UN sources, such as other treaties, meeting procedures, statements from states and other officials, earlier draft decisions of the treaty etc. that could be of use either for their own sake, or for developing the context of the ATT. Also an important source for the interpretation of the treaty is the theoretical framework and background used to inform this study. Together these form the secondary sources of the thesis.

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66 Flick 2009, 325
67 Yin 2009, p. 102
4. Theoretical Framework

4.1 Choice of theory

Even though studies in arms control and of related subjects abound, there have been surprisingly few attempts to construct a ‘general theory’ of arms control - in fact no such fully developed theoretical framework can be said to have been devised.\(^68\) Studies of arms control come from a number of different disciplines, most notably: international law, international relations as well as peace and conflict studies. For the purposes of this study, I will use the Security Dilemma (familiar to peace and conflict studies as well as international relations) to describe the effects of arms flows, and their destabilizing and conflict inducing consequences, creating mutual fear and antagonism between groups. I choose SD theory because two of its key factors are arms and the anarchic context. These two factors are also crucial in intrastate conflicts, where the failing, anarchic state context and the access to SALW play crucial parts. Since arms are a central factor in the SD, arms control measures can be seen as an ameliorating factor or even a possible solution to the SD.\(^69\) Another such ameliorating factor described by SD theorists is the effects of institutions and norms such as the arms control regime in reducing the mutual antagonism created by the SD and creating options for cooperation instead of competition in the anarchic context.\(^70\) In order to explain this further, I will use Regime Theory which describes how such cooperative structures develop and operate, and which treats arms control initiatives as an important case in point. Finally I will use international law as a crucial tool to interpret how the ATT’s legal provisions will operate, and to describe how the international legal system can enforce the objectives of the treaty.

\(^68\) For an enlarged discussion of this, and a history of theoretical approaches to arms control, see: Morgan 2012, chapter 3
\(^69\) See: Croft 1996, p.14
\(^70\) See: Wendt 2008, pp. 105, 106
These concepts will all be developed further in this chapter. The purpose of the previous comparison is showing the interrelatedness of the two theoretical frameworks used in this study. Again, one can categorize the security dilemma as describing the problems and effects caused by arms, while regime theory and international law describes how to reach solutions to some of these problems.

4.2 The Security Dilemma

The SD describes a relationship between two or more actors (e.g. states) where a mutual mistrust and fear of each other’s military motives may exacerbate or even cause a state of military tension which may escalate into conflict. The term ‘security dilemma’ was first described by John Hertz and Herbert Butterfield in 1951, but the term describes a phenomena that they both argue influence all human relations: a deep-seated uncertainty and fear of others intentions caused by the essential insecurity of human nature, that in the worst case may lead to a logic of ‘kill first or risk being killed’ - leading two parties to try to pre-empt each other even though both parties did not harbour any harmful intentions to begin with.71 This may appear to place the SD theory squarely in with a hard-nosed realist school, presenting a somewhat bleak view of human nature, as if straight from Hobbes.72 But the SD does not arise out of purely realist conceptions: it is caused by a tragic combination of a desire growing out of uncertainty for actors to prepare for the worst, coupled with a failure to realize how threatening their own security measures appear to others around them. This phenomenon is described by Booth and Wheeler as the ‘Security Paradox’, where a concern for one’s own security leads to an overall decrease in security.73 Ken Booth and Nicholas J. Wheeler, who present one of the most developed and up to date accounts of the SD, considers that the desire to prepare for the worst case scenario grows out of an ‘unresolvable uncertainty’ - a sense that no actor can be completely certain about the current and future motives and intentions of those that might harm them, even of friends and allies.74

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71 Roe 1999, p. 183, 184
72 Briefly summarized - Hobbes imagined the human condition and society as dominated by a concern for one’s own security, often at violent odds with that of other people or societies. This for Hobbes entailed that human interaction would also be dominated by fear. For a longer discussion of Hobbes ideas and how they relate to the Security Dilemma, see: Roe 1999, p. 185
73 Sec studies, p. 142
74 Sec Studies, p. 138
4.2.1 Arms and Arms races

Uncertainty is therefore at the heart of the SD. Booth and Wheeler defines the SD as consisting of two interrelated dilemmas: the ‘dilemma of interpretation’ - knowing whether the other’s motives are defensive or offensive; and the aspect of response - how one should respond to the other’s actions.\textsuperscript{75} The fundamental uncertainty in interpreting the intentions of others military development and political posturing leads to a state of insecurity which motivates one actor to increase its security (e.g. by acquiring more arms) - but this security poses an increased threat for others, leading them to increase their security in turn, and so on. This becomes a feedback-loop of action-reaction which Robert Jervis (another influential figure in SD theory) calls a ‘\textit{spiral model}’, something which is easily identified in arms races where one or more groups tries to keep a steady pace with or up-ante their rival’s increasing arms arsenals in order to maintain the same level of security.\textsuperscript{76} This mutually aggravating process is driven by the fear that the rival’s military power will out-balance one’s own, this threat is aggravated further by perceived grievances and hostilities. In an intrastate conflict, a disintegrating state and ethnic rivalries may exacerbate the situation further and motivate groups to take advantage of other groups’ relative weakness and to fill the vacuum left by the state.\textsuperscript{77}

Even though military capability and arms are often euphemistically termed ‘defensive’, all weapons have the potential of being used for offensive purposes, and so defensive actions are almost indistinguishable from aggressive ones. This leads Jervis to define the SD as “\textit{these unintended and undesired consequences of actions meant to be defensive}”.\textsuperscript{78} Despite the unintended signals and consequences they may provoke, arms can be intended for many different purposes other than direct violence:

\textit{States will arm themselves either to seek security against the threats posed by others or increase their power to achieve political objectives against the interests of others. Military power can be used to achieve objectives through use of force, implicit and explicit threats, or symbolism}”.\textsuperscript{79}

\textsuperscript{75} Booth; Wheeler, p. 139
\textsuperscript{76} Roe 1999, p. 186
\textsuperscript{77} Jeong 2008, p.138, 139
\textsuperscript{78} Tang 2009, p. 591
\textsuperscript{79} Buzan, Herring 1998, p. 83
Arms can therefore be thought of as a kind of ‘power currency’, making them attractive to acquire for a number of reasons, and making it a key component of the SD.

4.2.2 Anarchic Structures and the Security Dilemma

An underlying cause of the uncertainty and insecurity central to the SD, is for many writers the notion of an anarchic state structure. Anarchy is sometimes viewed as the cause or a necessary condition of the SD, since it encourages the uncertainty, insecurity and self-help behaviour that forms a kind of breeding ground for the SD predicament.\(^{80}\) In the completely unmitigated, or ‘worst case’, anarchic structure associated with Hobbes\(^ {81}\) and certain realists - put bluntly - the lack of a higher authority to govern the behaviour of states puts them in a precarious situation where they can never fully rely on anyone but themselves for security and are so essentially dependent on self-help. Such a structure promotes uncertainty and insecurity, and motivates states to assume the worst case scenario with regards to others’ intentions.\(^ {82}\)

Few scholars, however, would subscribe to a definition of anarchy quite as unbending or fatalistic as the one just provided. Even if they may accept such conditions as applying to complete anarchy, most scholars would consider that anarchy can be, and is, overcome to different extents. Either by imposing overarching structures such as international law and the UN in the liberal tradition, or by the dominance of a hegemon in the realist tradition - anarchy, and consequently the SD, can be mitigated.\(^ {83}\)

4.2.3 The Security Dilemma in Intrastate Conflicts

The SD was traditionally used mainly to explain arms races and conflicts between states, like the great power struggles of the cold war. But the theory has lately been applied to intrastate conflicts as well. Stephen M. Hill cites Barry Posen as the first scholar to draw attention to how the SD can operate in intrastate conflicts. Posen argues that as anarchy promotes SD

\(^{80}\) Roe 1999, p. 186

\(^{81}\) Briefly summarized - Hobbes influential idea of anarchy was that it would be characterized by what he famously phrased as a “War of all against all”. The only way to avoid this predicament for Hobbes, was by installing a strong overarching structure, or “Sovereign”, with a clear monopoly on violence. On the local level, this meant the presence of a strong state. But since no such “sovereign” exists on the international level, the society of states would be in violent anarchy. For a developed discussion on how this relates to the security dilemma, see: Wendt 2008

\(^{82}\) Roe 1999, p. 186

\(^{83}\) Hartung 2013, p.143, 144
dynamics on the international level, the same logic applies to intrastate conflicts where an “emerging anarchy”\textsuperscript{84} develops within the state which puts sub-state groups in the same predicament as states in the international system, where they are subject to the same fear and suspicion of other groups and have to provide for their own security. Hill takes this argument further by suggesting that SD’s in an anarchical intrastate context may even be more acute than its international counterpart, since individuals are much more vulnerable relative to states, meaning that even a small influx of arms may provoke dramatic results, increasing the risk of civil war.\textsuperscript{85} Just as state actions in the SD are driven by a concern for one’s own security and independence, defended by means of arms, intrastate actors in a state of anarchy may act in a similar fashion motivated by similar concerns.\textsuperscript{86}

Resolving intrastate conflicts means moving from a state of anarchy back to a centralized state structure, this involves reconciling warring parties and making them give up their military ‘self-help’ capability to the state - which puts them in a vulnerable position. This may pose a difficult problem in terms of a SD, since the previously warring parties fear that centralized power will be seized by an opponent who may provide for its own security to the detriment of others.\textsuperscript{87} The demobilizing groups needs to be able to trust that all parties are equally committed and do not cheat on their obligations to take advantage of their relatively weakened state once they begin to disarm. This problem relates to the canonical ‘prisoner’s dilemma’\textsuperscript{88}: the game theoretical scenario where the best option - mutual cooperation - can only be achieved at the price of both parties putting themselves in a vulnerable position towards each other, requiring them to invest a good deal of trust in the other. To this end, third parties such as the UN or other state parties - perhaps acting under ATT provisions - may provide the stability that is required during this critical stage and act as a guarantor that parties are living up to their commitments.\textsuperscript{89}

\begin{footnotesize}
\begin{enumerate}
\item Posen 1993, p.27
\item Hill 2003, p. 14
\item Roe 2005, p. 39
\item Hartzell 1999, p. 20
\item For its applicability to arms related issues, it is sometimes cast in an alternative version known as ‘The Arms Race Game’
\item For an enlarged discussion on disarmament between rival parties, and a brief introduction to the prisoner’s dilemma, see: Hill 2003, p. 14, 15;
\item For a more detailed introduction to game theory and the prisoner’s dilemma, see: Security Studies 2013, chapter 4
\end{enumerate}
\end{footnotesize}
4.3 International Law

International law is different from other approaches such as IR in that it is also a practice in a formal sense. The purpose of this section is to provide a brief background to both the practice and theoretical underpinnings of international law.

International lawyers identify a statement as law if it has a ‘source’ of international law. These sources are based on the collective consent of states, and are defined in article 38 of the Status of the International Court of Justice or the aforementioned Vienna convention. Different sources can be roughly summarized as: conventions (e.g. treaties), principles, custom/norms and judicial decisions (or *opinio juris*). Of these, treaties and norms are the primary sources while principles act as ‘guiding tools’ in interpretation. Law is primarily identified in explicitly stated and recognized agreements, e.g. treaties; or by way of long standing practices, i.e. norms or customary law. There also exists certain norms that set universal limits on states’ behaviour whether they agree upon it or not: considered inviolable, these are called ‘ius cogens’ rules, and although there is no agreed upon list of such rules, generally accepted examples are the prohibition of slavery and of genocide.90 There is however no hierarchy in the different sources of law, the sources are independent of each other, and the only prioritization would be to place newer and more specific rules before older and more general.91

Customs, or customary international law (CIL), are a set of rules and structures that constrain and determine the legality of state practice, that are themselves derived from state practice.92 The seemingly circular reasoning behind CIL may seem arbitrary, but CIL is nonetheless an important factor in international law. The most important aspect of CIL is that while treaties are only binding to those who accept them, CIL is universally binding. What practices are to be considered CIL, and which ones are not, are however (as with *ius cogens* rules) up for discussion. There are two legal source of CIL: *formal sources* are sources that acknowledge a certain norm as CIL (for example in the statute of the international court of justice), while *material sources* are what gives the norm its content - examples of such material sources include state actions and treaties.93

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90 Adopted from: Çali 2010, p. 93, 94
91 Voyiakis 2010, pp. 103, 104
92 Becket 2010, p.123
93 Becket 2010, p. 129
Treaties such as the ATT will both influence, and be influenced by, CIL and the prescriptive, normative structures it imposes. For instance, the indeterminate and ambiguous nature of international law means that there will often be different sets of standards and rules to choose from, either at higher and more general levels (such as the UN charter) or the lower and more specific (such as the ATT), and these may in some instances conflict with or even contradict each other. There will also be certain ambiguities in interpretation, e.g. of the meaning of rules or the semantics of a text such as the ATT. This implies that any interpretation of legal documents will involve subjective interpretations where norms are an important factor.\(^\text{94}\)

This line of reasoning, involving norms as a - if not the - driving factor behind treaty interpretation is in tune with liberal or institutionalist perspectives, and one which realist thinkers are likely to question. Where liberals would speak of norms in this respect, realists would rather speak of state interests - although such considerations are by no means foreign to liberals either. Indeed both theoretical perspectives’ conception of international cooperation may sometimes converge in the study of regimes, which will be briefly developed in the next section.

4.4 Regime Theory

As defined by Stephen Krasner, one of the more notable figures in regime theory, regimes are “...explicit or implicit principles, norms, rules, and decision making procedures around which actor expectations converge in a given issue-area.”\(^\text{95}\) Put simply, regimes are used to explain how systems of cooperation develop and operate in the international community. Regimes can operate as explicitly stated, formalized systems as in institutions and treaties - as such, the difference between regimes theory and institutionalism is not very obvious - but regimes are used to encompass a wider range of factors than is typically attributed to institutions, particularly the implicit agreements, norms and customs (reminiscent of CIL) that guide actors decisions, importantly: “…regimes themselves are subjective: they exist primarily as participants’ understandings, expectations or convictions, about legitimate, appropriate, or moral behaviour.”\(^\text{96}\) Regimes thus also refer to systems that may not be expressly addressed in e.g. treaties, but are nonetheless powerful in influencing state

\(^{94}\) Kratochwill pp. 51, 52
\(^{95}\) Krasner 1982 p.186
\(^{96}\) Puchala, Hopkins 1983, p.62
behaviour: an example of this is the ‘tacit rule’ effectively prohibiting the use of nuclear weapons.\footnote{Nye 1987, p.375} This state of affairs can to some extent be attributed to the arms control regime, of which the ATT is part.

The study of regimes is approached differently by realist and liberal theorists, but is also an area in which certain concepts are shared. Primarily, a shared concept is that regimes are attempts to facilitate cooperation in an essentially anarchic system.\footnote{Little 2008, p.298} Thus regimes can be viewed as a means of overcoming the state of anarchy in the international system by reaching mutually beneficial arrangements. Arms control is an interesting case in point here, and a challenge to regime theory. Arms control and disarmament measures are potentially the ultimate mutually beneficial arrangement, since these are steps towards what would be the optimal scenario or outcome in terms of security - a state where all parties refrain from the use or threat of force. Why, then, is not the arms control regime stronger, or at least more vigorously pursued? Regime theorists explain this situation by invoking the aforementioned prisoner’s dilemma. The optimal outcome just described can only be achieved, regime theorists argue, when all parties involved have reason enough to expect that others will abide by their obligations and not take advantage of the their trust. For example: a ban on fishing in a certain area requires the cooperation of all involved, but is easily exploited to great relative advantage by a single defector. The same is true of arms control, but here the stakes are naturally much higher. The function of regimes is to facilitate cooperation by building structures that encourages or even enforces compliance to the obligations set out, reducing the risk of defection that may otherwise impede cooperation.\footnote{Little 2013, pp. 303-304}

The ATT is an attempt to create such a structure of cooperation and can be viewed as an example of regime formation. In a broader perspective, the ATT may be viewed as part of the international arms control regime at large. The ATT builds on previous regimes and incorporates elements of earlier arms control instruments such as the UNRCA and the UN ‘Programme of Action to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light Weapons in All Its Aspects’ (PoA).\footnote{For example, the ATT scope of weapons was based on the UNRCA. See: Kytölä, UNIDIR 2012, pp.12-13} Tracing the development of a regime within of a certain issue area such as international arms control of SALW, one can discern a progression from a state where no regime existed (before the 1990’s), negotiated through to a state where
weak regimes appear (as with the emergence of the nonbinding PoA in 2001), to a state of highly formalized agreements (as in the ATT). This development indicates a growing convergence of expectations among actors that certain rules should be abided by. The evolution of the SALW control regime was pushed on by the demands of scholars, UN panels, NGO’s etc. who recognized a need for such controls, and has resulted in increasing international policy coordination in this area, addressing some of the issues identified by these groups while failing to address others. In the ATT for example, there was an ultimate decision not to impose a blanket prohibition on arms transfers to non-state actors despite some calls to do so, while it succeeding in imposing prohibitions on certain transfers of ammunition despite some opposition. Which issues finally make it in to the formal agreement will influence the direction of the future development of the arms control regime, as well as the norms, attitudes and expectations associated with it.

101 Little 2013, pp. 300, 301
102 Dimitrov et al. 2007, pp. 249, 250
103 Kytömäki, UNIDIR 2012, p.76
104 Ibid. p.12
5. Analysis

5.1 Introduction

Before finally commencing on the analysis, a few last words on procedure are needed. Again, the primary questions asked are how the ATT can address the problems posed to peace and security by SALW in intrastate conflicts, and how the ATT can contribute to the advancement of international law and the arms control regime. Of course, the questions are to some extent interrelated since the advancement of the arms control regime may also have an indirect impact on the question of SALW proliferation and intrastate conflicts. I therefore propose to divide the analysis of the ATT in terms of ‘direct’ and ‘indirect’ effects. By direct effects I mean those that are directly attributed to or addressed by the ATT - for example the decision of a state to prohibit a certain arms transfer by reference to ATT transfer criteria. In this section I will analyse the articles that may directly impact on SALW and intrastate conflicts. By indirect effects I mean the long term effects that may come as a result of the ATT and that are less tangible in nature - e.g. the effects on CIL, norms, the climate of cooperation and regime formation. In this section I will look at some of possible ways in which the ATT may lead to future developments that may ameliorate the problems associated with SALW and intrastate conflicts.

5.2 Direct Effects

5.2.1 Preventing diversion and wrongful use of arms

The measures that are bound to be among the most important, and perhaps the most controversial, are those that directly prevent dangerous arms transfers by prohibiting or otherwise preventing the transfer. These measures are primarily found in articles 6 and 7.
Article 6 contains the main prohibitions that a state has to consider before authorizing a transfer. In essence, these provisions make any state transfer of included arms, ammunition or components subject to international law and obligations to which it is party. It first reasserts that binding Security Council resolutions under chapter VII must be respected (art. 6 (1)); second, states have to observe all its “relevant international obligations” (art. 6 (2)). Because of the wide range of obligations that could be conceived of to fall under this provision (e.g. human rights obligations), it may support a strong interpretation of the treaty as well as make it adaptive to future developments, however the vague phrasing may also allow for far more conservative interpretations. Also, the special emphasis on illicit trafficking of conventional arms here is particularly important to SALW issues. Third, the article prohibits any transfers liable to be used in order to commit acts of genocide, crimes against humanity, grave breaches of the 1949 Geneva conventions or “other war crimes as defined by international agreements to which it is a Party” (art. 6 (3)).

Paragraph 3 of article 6 is perhaps the single most important part of the treaty, aimed at absolutely prohibiting the most clear cut examples of harmful arms transfers, such as transfers to states waging war against portions of their own population. The references to genocide and crimes against humanity are quite unambiguous, and it is undoubtedly a positive development that there is finally a formal prohibition against arms transfers to states participating or acquiescing in such violations, because since there were no treaties or otherwise against this in the past, such transfers were in a strict sense legal, however reprehensible. This was perhaps most strikingly evidenced by the large-scale arms transfers to Indonesia provided by the US, UK and other G8 countries during the massacres and other human rights violations in East-Timor committed by Indonesian forces during the period between the mid 1970’s and late 1990’s.105

The reference to grave breaches of the Geneva conventions of 1949 is also very important, since here are contained what can be considered the core of IHL, regulating the laws of war. This implies that a state must evaluate if the recipient is likely to commit any grave violations contained in the four conventions universally adhered to and (for those states party to them) their additional protocols. These include the critical protection of civilians and restrictions on

the conduct of war. These provisions are vitally important in the context of intrastate conflicts, since the protection of civilians and the distinction between legitimate and illegitimate combatants and their conduct are some of the most pressing issue in these conflicts. Additionally, the reference to “…other war crimes as defined by international agreements to which it is a Party.” potentially has a very broad application, including regulations imposed by the International Criminal Court (ICC) to which the state is party, as well as CIL and other relevant legislation, particularly article 3 of the Geneva conventions which is specifically concerned with intrastate conflicts.

Clouding this positive picture is the fact that the state must have “knowledge at the time of authorization that the arms or items would be used in the commission [of described violations]” (art. 6 (3)). The risk that states may “plead ignorance” seems an all too likely one. It also seems unclear to what degree the risk at the time of authorization must be imminent, i.e. if transfers to odious regimes with a record of past violations would pass as legitimate for lack of an immediate risk. In such a scenario where a state through ignorance or neglect has failed to identify a looming risk with the recipient, this may at least be somewhat rectified should violations subsequently occur, by then denying future transfers of ammunition and weapon components. This can limit or even make impossible the continuation of war, as was the case when UN sanctions forced the rebel forces LURD (Liberians United for Reconciliation and Democracy) to abandon the siege of Monrovia during the 2003 civil war in Liberia for lack of ammunition.

If a transfer is not encompassed by article 6, exporters are nonetheless obligated to assess a number of transfer criteria contained in article 7. These include the risks of violations against IHL, human rights, the undermining peace and security, and violating laws relating to terrorism and transnational organized crime (7 (1)). If the risks of paragraph 1 are involved, the state is enjoined to try to mitigate them in cooperation with the importer (7 (2)), or if this fails, prohibit the export (7 (3)). Since organized crime and black markets fuel and aggravate intrastate conflicts, such measures are important. Also important to intrastate conflicts,

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106 For access to all Geneva conventions and commentary thereof, I suggest the Red Cross webpage available at: http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp


108 For additional information on the Liberian war and the role played by sanctions and access to ammunition in how it unfolded, see: Human Rights Watch, 2003
paragraph 4 obligates a special risk assessment for gender based violence and violence against children. In general, the broad reach of article 7 seems to encompass most violations that may otherwise have slipped through unmentioned in the treaty, but its focus on exports alone seem to put into doubt if it applies to the equally important transfer routes of trans-shipments, brokering etc..

The articles concerning diversion (6 (2) and (11), is perhaps one of the most important articles in addressing intrastate conflicts. Diversion can be defined as a “breakdown in the transfer control chain” meaning that arms end up at one point or other at unauthorized users.\textsuperscript{109} Since the illegal transfers SALW may account for as much as around half of the total global trade, diversion is a major problem.\textsuperscript{110} As previously argued,\textsuperscript{111} intrastate conflicts take place where state authority has to varying extents broken down. These are often states that can barely exercise even rudimentary government functions and authority, let alone the task of preventing arms from being smuggled into or around the country, something which is difficult even for well-functioning states. The black and grey arms markets involved in such diversion are often part of a much larger network of black market trade, stretching out far beyond the state in question.\textsuperscript{112} Most of this illicit trade is owed to weak jurisdiction rather than powerful criminal groups.\textsuperscript{113} This implies the failure not only of the state which ‘receives’ the diverted arms, but of one or several other states from which the goods were sent from or transferred through. As was concluded in the previously quoted UN panel and the Small Arms Survey, such a problem can only be tackled by concerted action.

Diversion is primarily addressed in article 11. Since diversion is primarily due to lacking regulation, the article primarily imposes various improvements on these standards. They also introduce a number of cooperative measures, aimed at the concerted action mentioned above. If measures against diversion prove effective, then the illicit and clandestine SALW transfers which so many combatants are reliant upon in intrastate conflicts could be intercepted. Halting the illegal influx of SALW in intrastate conflicts could prevent the action-reaction spiral brought about when clandestine groups acquire arms and motivate citizens and other groups to react in kind, as the above mentioned UN panel described. In a positive light, the

\textsuperscript{109} Small Arms Survey 2008, p. 156
\textsuperscript{110} Hill 2004, p. 5
\textsuperscript{111} In section 2.3
\textsuperscript{112} For a developed analysis of the global black market trade in SALW, see: Small Arms Survey 2006
\textsuperscript{113} Ibid, p. 126
\textsuperscript{113} See also: Hartung 2013, pp.449-450
fact that many such transfers originate in states far away from the intrastate conflicts in which they are used, often requiring them to be trans-shipped through third states, who are in turn also obligated to go through the same procedure with arms passing through their jurisdiction (art. 9), may increase the odds that illicit transfers will be detected. Efforts to cooperate and coordinate efforts may be the most valuable to countries that lack effective legislation and enforcement mechanism, even more effective may the proposed efforts (in art.16) to offer institutional capacity-building assistance through financial and juridical means etc. coordinated by an international secretariat of the ATT (art. 18). The act of strengthening the capacity of state arms control institutions may also have the effect of making mandatory Security Council arms embargoes, which is an important tool of conflict resolution but often lack in strength of implementation, more watertight and effective.

A serious limitation to the action against diversion is that they do not include ammunition, neither in article 11 concerning diversion, nor the provisions regulating the conduct of transit/transhipments, brokering or imports. This is a serious defect since an effective cutting off of ammunition transfers when necessary may help to restrict or halt combat operations, as before mentioned, and this limitation may allow for some ammunition to slip through.

5.2.2 Transparency and Cooperation Measures
As explained in chapter 4.2, uncertainty forms the underlying basis for the SD. Uncertainty permeates relations with a potentially dangerous other. The problem of uncertainty that the parties face can be attributed both to a general lack of information, as well as a lack of contact between them. The information gap and lack of contact may in fact be mutually enforcing, since lacking contact with the other party precludes a better informed picture of the other’s motives, while the lack of information may encourage suspicion, raise tensions and so prevent further contacts. As with the prisoner’s dilemma, this situation may be exacerbated if both parties feel at risk and have no effective means to ensure that greater cooperation will not be exploited by the other party to their own detriment. The measures that could potentially

114 Kytömäki, UNIDIR 2012, pp. 35, 36
115 For more information, see: Geneva Academy 2013, p. 33
116 Ibid. p.32
117 Ibid. p.33
118 Ibid. p.31
119 For a brief introduction to the prisoners dilemma, see: Hill, p.14
address these problems I identify as those that are broadly concerned with cooperation and transparency measures. These measures are found within articles 11(4-6); 12; 13; and 15-19.

Articles 11(4-6), 12 and 13 are concerned with record keeping and reporting. The reporting measures are partly concerned with the communication with other states - informing affected states of suspected weapon diversions, as well as informing them on their own progress in ATT implementation - and partly with reporting to the UN of the same issues, as well as an annual report of all authorized arms transfers in the state during the last year. Record keeping is, naturally, necessary for reporting, but may also be important for tracking weapons in order to e.g. discover how they are being diverted. Both measures are also important to verify compliance with the ATT, which is critical to its survival. Reporting measures could help mitigate the SD by reducing the intrinsic mistrust known as the ‘unresolvable uncertainty’ in the SD. Speaking against this, however, is the fact that many of these provisions merely “encourage” states to provide such information (art. 15). A major downside is also that reporting and record-keeping measures do not include ammunition, and since large ammunition accumulations are a tell-tale sign of rising tensions, as above mentioned, such reports could have had an important function.120

The primary source of international weapons reporting at present is the UNRCA. The register has been criticized, however, and its impact on peace and stability questioned, for its failure to adapt to new circumstances since its inception in the 1990’s, and its waning relevance has resulted in the fading commitment of its members followed by falling levels of reporting.121 The ATT is in many ways similar to the UNRCA, and so the problems of the UNRCA may very well become those of the ATT. The levels of compliance to the UNRCA, as with regimes generally, are largely determined on to what extent states expect to gain something by cooperating. In order not to lose the interest of its members therefore, the ATT must strive to avoid the pitfalls of the UNRCA just mentioned. Transparency measures may prove remarkably effective as verification tools, as in the implementation of the Conventional Forces in Europe (CFE) arms control agreement that reduced lingering cold war tensions during the 1990’s.122 This ability for verification is also crucial to regime survival, since it

120 For more on the issue of the left out ammunition provisions, see: Geneva Academy 2013, p.35-36
121 For more information on the UNRCA and these issues, see: SIPRI; Holtom 2010
122 Croft 1996, p. 79, 85
ensures that the principle of reciprocity is observed, and that one party is not cheating on its commitments.\textsuperscript{123}

On the downside, however, implementation and enforcement of these provisions is mostly dependent on the state in question (art. 14). Presiding as judge and jury over their own cases, as it were, certain states, especially those with a weak rule of law, may be at best reluctant to interpret the ATT in a fair, or \textit{bona fide}, manner. For this reason, states may sometimes need to be reminded of their responsibilities, by national and international pressure and advocacy groups; other states; and international organizations in order for the ATT to function. NGO’s, civil society and other non-state groups are invited to cooperate with states in the implementation on the treaty (art. 16.2), but this is only voluntary, and whether or not the article proves to be an empty gesture or not is entirely up to the states themselves. Whether or not these groups receives an outstretched hand from the state, however, the possibility of greater insight into state arms deals, as well as the increased juridical leverage the ATT will give them in putting states to account for their actions, increases their power as watchdogs and their ability to influence state policy. Transparency will be crucial for these groups to be able to conduct this important role, and this makes transparency mechanisms of the ATT crucially important to promote and guard from infringements.

5.3 Indirect Effects

5.3.1 Strengthening International Law

Once the ATT is in effect, any arms transfer encompassed by the ATT handled by a party to the treaty will be subject to international law. As stated in article 1 by the international law commission (ILC), the UN body responsible for codifying international law, \textit{"Every internationally wrongful act of a State entails the international responsibility of that State."}\textsuperscript{124} By making irresponsible arms trade an area of international responsibility, the ATT opens up a range of tools available to the international community for handling such situations. Under article 5, even organs and entities within the state that act under state authority are attributable to the state, and considered an act of the state under international

\textsuperscript{123} Little 2008, p. 305
\textsuperscript{124} International Law Commission 2001, article 1.
\textsuperscript{125} This is further clarified in article 12:
\textsuperscript{126} “There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”
law this would make the state liable for the actions of domestic arms dealers/companies.\textsuperscript{125} As with any breach of international law, if a breach of ATT provisions is committed, the offending state is required to pay reparations.\textsuperscript{126} Although states generally respect international law, at least enough not to make any serious infringements upon it, it is possible that a state may invoke the responsibility of another state for a breached obligation if it considers that the state itself, a group of states, or even the international community as a whole has been injured.\textsuperscript{127}

It may be a very distant possibility that a state should invoke the responsibility of another state for violating its obligations under the ATT, but considering that irresponsible arms transfers can have quite disastrous consequences that spread over state boundaries, it should not be dismissed as impossibility. Consider for example the aforementioned case of the LURD rebels during the Liberian civil war: after the arms embargo had effectively broken of the siege, LURD forces were later resupplied by the state of Guinea (breaking the embargo), which enabled LURD forces to continue their assault with renewed force, causing massive civilian casualties and destruction.\textsuperscript{128} Guinea had clearly committed what would constitute a violation of the ATT, but the injuries to Liberia might also partly be attributed the US, which had supported Guinea militarily during the war.\textsuperscript{129} Such cases can be taken to International Court of Justice (ICJ), as in the somewhat similar case of US support for the Nicaraguan rebel ‘Contras’, brought to the ICJ in 1984 by Nicaragua, where they subsequently won (but did not receive any damages from the US). How many states may or may not eventually use this potential may be beside the point, more important is that obligations imposed by the ATT raises the possibility that states may be held accountable for their actions which is likely to make them act more responsibly. It should be remembered however, that far from all states recognize the ICJ’s, at least not as compulsory (the US is again a case in point).\textsuperscript{130} For a dispute between two parties of the ATT to be taken to the ICJ, both must have recognized the court’s jurisdiction.\textsuperscript{131} Perhaps partly for this reason, the ATT employs its own system of settling disputes (ATT art.19).

\textsuperscript{125} Ibid. article 5
\textsuperscript{126} Ibid. article 31
\textsuperscript{127} Ibid. article 42
\textsuperscript{128} Human Rights Watch 2003, p.3
\textsuperscript{129} Ibid. p.25
\textsuperscript{130} For a list of the states who recognize the jurisdiction of the ICJ as compulsory, refer to the list provided by the ICJ itself on its website, available at: http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3
\textsuperscript{131} Geneva Academy 2013, p. 41
Another possibility is the development of CIL. Even a small number of states persistently observing a practice may be enough for that practice to be considered CIL. Also, as stated by the ILC:

“Obligations may arise for a State by a treaty and by a rule of customary international law or by a treaty and a unilateral act. Moreover, these various grounds of obligation interact with each other, as practice clearly shows. Treaties, especially multilateral treaties, can contribute to the formation of general international law; customary law may assist in the interpretation of treaties...”

So even in the event that the ATT is not implemented in any meaningful way, or even fails to be significantly followed and applied, the optimistically inclined could still suggest that the ATT had given rise to new or developed elements of CIL or the arms control regime. However, this is far from certain and should not to be taken at face value. The ATT’s influence on CIL would first have to be considered separately in term of the issues the ATT addresses. The issues that for the first time find a clear expression in the ATT compared to international law in general would be of most interest, as these are ‘material sources’ of CIL that were previously unavailable, providing solid grounds for further development. The ATT itself is the ‘material source’ of an international arms trade treaty in general. More specifically, the ATT is the first instance where SALW and ammunition is addressed by international law in a direct way. These are important new material sources that may form the basis for the future development of CIL as well as of new treaties and agreements. Finally, the mere adoption of the ATT indicates that there is considerable support for its objectives and purposes in the international community, which is a basis for legal interpretation even in cases other than the ones addressed directly by the ATT.

The application and interpretation of these new sources into CIL will, as stated by the ILC above, be determined by unilateral state action, as will state action to some extent be determined by CIL. As explained in section 3.2, the process in which the law develops is determined by this interaction between law and state. In an ideal(ized) scenario - the ATT is strongly interpreted and applied, and over time the normative and customary structure that prohibits irresponsible arms transfers becomes as firmly establishes and as strongly adhered to as that against the proliferation of nuclear weapons, represented by the Non-Proliferation

132 Wallace, Martín-Ortega 2009, p. 11
133 International Law Commission 2001, article 12 (4)
Treaty (NPT). In the opposite scenario, the treaty is created but is then ignored and becomes increasingly irrelevant - sometimes called a “dead-letter regime”. The ATT is not likely to be nearly as strongly adhered to as the NPT (the most widely ratified treaty of any disarmament or arms limitation agreement), since the exceptional danger of and common stigma against nuclear weapons and its proliferation is a basis for cooperation out of the ordinary. Neither does the ATT at present look like becoming a dead-letter regime. The strong support for the ATT voiced during its negotiations (e.g. by the aforementioned group of 96), the relative speed with which it negotiated to completion, and the overwhelming majority vote with which it was passed, shows that there is a good deal of urgency and level of support behind the ATT among states. In what areas, then, would the ATT be able to create, or at least influence CIL? As with the NPT, the most successful legal rules develop where there is already a strong common interest to implement them. In the ATT, the most unequivocal prohibitions are those in article 6. And as there is already a longstanding and wide support against acts of genocide, crimes against humanity and serious violations of IHL, these are likely to be the areas where CIL may develop. An established prohibition against supporting genocidal regimes with arms in CIL for example, would have the clear advantage of being applicable to all states, whether or not they ratify the ATT. Such provisions could have an important role in preventing the type of arms transfers that supplied the Indonesian government during the conflict in East Timor, for instance. These are however only conjectures and any future emergence of CIL will depend on a long and consistent observance by states. However uncertain future developments are, the ATT at least provide new legal material sources that opens possibilities of strengthening international law, that would have important impacts on peace and security.

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134 For more on the NPT and the strong customs developed against the spread and use of nuclear weapons, see: Adamson; Sriram 2011, pp. 40, 41
See also: Becket 2011, pp. 127, 128
135 For more information, see the official records by the United Nations Office for Disarmament Affairs, available at: http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml
136 For more on this topic see: Kytömäki, UNIDIR 2012, pp. 95, 96
5.3.2 Strengthening the Arms Control Regime

The ATT is not a typical arms control treaty, since technically it doesn’t prevent or limit the use of any particular weapon systems, except for those trying to obtain them by illegal means or use them for illegal purposes. However the attempt to control the access of arms and impose standards by which they can be sold or transferred, and to whom, indicates that certain uses of arms are being viewed as illegitimate and are being limited. The fact that an international treaty regulating transfers of arms has at all been passed, after several failed attempts spanning almost a hundred years back in time,\textsuperscript{137} indicates a significant normative change. That this treaty also includes weapon systems that has not had a tradition of being treated under such circumstances (SALW) or has been viewed as contentious (ammunition), is further proof of this trend.

Arms have always been closely associated with self-defence, arguably the most important foundational interest of states. This is what makes any international agreement concerning arms so hard to reach, even though mutual disarmament and collective security would be more sustainable solutions to security. But as argued by regime theory, once mutually cooperative structures are established they are generally stable, since there would not be an incentive to return to a worse situation.\textsuperscript{138} This is important for the survival and observance of the ATT. The small step away from the closely guarded self-defence interests of states that the ATT signifies, may open the way for further developments in arms control and collective security.

\textsuperscript{137} For a brief history of attempted and enforced arms control treaties relating to the ATT, see: Kytömäki, UNIDIR 2012, pp. 30 - 41
\textsuperscript{138} Little 2008, p. 305
6. Critical Discussion

The questions for this thesis, of whether the ATT can address the issues posed by SALW and improve peace and security, is predicated on the value of arms control. However, it may be argued that controlling arms is at best an incomplete solution to these problems, which precludes the more durable solution of disarmament. Disarmament was at the heart of the UN charter and a goal pursued throughout the cold war, however since then, perhaps because of the lack of progress, disarmament initiatives have stalled, lost urgency, and given way to arms control as the prevalent way of addressing arms issues. Critics have explained this situation by unwillingness, especially by major powers and exporters, to take any serious measures to reduce arms levels and partly by motive of protecting a lucrative arms industry. Critics also point to the fact that major exporters often pride themselves over their strong and longstanding export controls, while these have apparently not prevented arms from falling into the hands of those that they were trying to prevent. Will the ATT serve the same purpose as the national controls just described, only on a global level? Even if one accepts the above description, it would be a mistake to assume that the ATT would work (or not work) as domestic controls do. Crucially, the ATT introduces an international dimension to the controls, which means that the state is no longer the sole arbiter over these decisions. Of course, since states will retain the main responsibility for implementing the ATT, one should not overestimate the immediate effects of the treaty, but the increased insight and influence as well as demands of the international community over the arms transfers may at the very least open up new possibilities to strengthen controls. Also important is the fact that the ATT imposes common standards and jurisdiction on states where in most cases these are non-existent. Finally, one can lament the fact that disarmament initiatives have not yielded more results, and justifiably be concerned that a focus on arms control risks obscuring such goals.

139 For examples of this critique, see for example: Feltham 2013; and Cooper 2006
however, considering that international disarmament initiatives have not gained significant ground for over a hundred years, more pragmatic solutions may need to be explored.

A common objection to arms control measures, the ATT being no exception, is the realist argument that, even if states decide to abide by the rules set out, they will only do so for their own interests and may just as easily abandon their commitments should the need arise. Once a state has ratified a treaty however, they rarely flout it so carelessly. A more realistic fear is that a large number of states or very powerful ones will choose not to ratify the treaty in the first place. Speaking for the ATT in this case is the fact that even should such a scenario play out, a defector or non-signatory may still sometimes be hindered from completing an irresponsible arms transfer by ATT observing states that the shipment has to cross through. It has however been observed, e.g. in the aforementioned case of Liberia, that even single defectors (in this case, Guinea) may seriously undermine efforts to control arms flows, even as in this case of a complete embargo.\footnote{Human Rights Watch 2003, p. 2}

Provided that the ATT provisions are successfully implemented, will halted arms transfers improve the situation in intrastate conflicts where violations occur? In May of 2013, the EU decided to partly break the arms embargo against Syria and to begin supplying certain rebel groups with arms. The decision sparked a heated debate within the EU as well as internationally. The debate illustrates one of the main dilemmas that will likely face decision makers in interpreting the ATT. The risks of supplying the Syrian rebels would be many - including many of the prohibitive provisions of article 6 in of the ATT, such as crimes against humanity and the Geneva conventions. However, blockading the rebel supply of arms and ammunition would risk leading to devastatingly one-sided violence on the part of government forces. It will probably be difficult to elicit any direct legal support for arming the rebels from the ATT, so unless there were overriding circumstances such as a Security Council resolution in support of doing so, the matter would by all probability be clear from a legal perspective. Putting Syria aside, it will not always be as clear if “putting the lid on” intrastate conflicts will be the right action to take either from a political or moral point of view. A more clearly positive aspect of the ATT in a difficult scenario such as Syria, is that it obligates members to adhere to any international decisions regarding arms that may come as a result and to which they are part, such as a Security Council resolution or EU decision.
The proactive effects of controlling arms will in all likelihood ease the tensions or “drain the powder keg” of many a potentially violent intrastate situations around the world, leading to an overall improvement in peace and security. However the active measures imposed by the ATT, such as the hypothetical case of blockading the Syrian rebels, will not always have such clear positive implications.
7. Conclusions

The impact that the Arms Trade Treaty (ATT) will be able to have in prevent the devastating effects on peace and security caused by small arms and light weapons (SALW) is, naturally, difficult to estimate. Being one of the prime sources of fuel for, and even cause of, the new trend of increasingly deadly and destructive intrastate conflicts today, the largely illegal and internationally unregulated SALW market needs to be addressed. Something which is often painfully obvious to most observers is that that SALW proliferation, spreading across national borders with ease, can only be tackled by an internationally concerted effort. As this thesis has hopefully shown, the ATT provides tools that could, if utilized, have a substantial impact on these issues.

An important achievement of the ATT is the fact that all arms transfers within its jurisdiction, including those of SALW, can now formally be considered an international concern, subject to international law. This opens up new possibilities to influence what has been exclusively a state concern, and to prevent destructive SALW transfers that may otherwise have been unreachable behind the aegis of the state. Particularly important in this respect are the main article 6 provisions of the treaty that prohibits any transfers that violates international obligations, risk being used to commit acts of genocide, war crimes and violations of human rights and humanitarian law. These provisions could be used to stop the irresponsible kinds of arms transfers that facilitate these crimes, and may limit the ability of combatants to continue hostilities by cutting of the supplies of arms and ammunition.

Another important part of the ATT is the provisions against arms diversion, which is one of the prime sources by which militant groups, terrorists etc. obtain SALW. This together with cooperation and capacity-building measures intended to from the international level build up or strengthen often lacking or completely absent domestic arms controls, may be a step
towards limiting the illegal diversion. The influx of SALW into countries where there is weak state authority or existing intrastate conflict, may trigger a successive increase of violence, destabilization and further increase of arms, as various groups inside the country try to defend themselves from each other and to live of plunder and warfare - setting of an action-reaction spiral of escalation familiar to the security dilemma. For this reason the actions against SALW proliferation is one of the more important in the ATT.

The possible success of all these measures is however conditioned on the ability and will of states to enforce them, since the state has the main responsibility of implementing the ATT. This is the main limitation of the ATT, on which its possible effectiveness depends. Even the failure of single states to live up their obligations or to accept them in the first place, may seriously limit the ATT’s impact. Another limitation is that ammunition has in certain cases been left out of the provisions, which may enable certain dangerous transactions to slip through the controls. There are also a number of ambiguities in the ATT text which make certain actions entirely voluntary or may allow states to avoid their obligations.

If states can be convinced or pressured into applying the ATT provisions in an effective manner, the standards imposed by the ATT may ascend to the status of generally accepted norms and practice which may even find its way into customary international law and become universally applicable. Here, public and NGO pressure will be decisive to ensure that states commit themselves to implementing the treaty in a meaningful way. The transparency measures imposed by the ATT will be a crucial tool to this effect, as well as for improving confidence among states that in turn will strengthen cooperation and consequently make the treaty more effective.

The ATT represents the first treaty of its kind to be successfully put into place in close to a hundred years’ worth of attempts. Passed quickly and with widespread support, this indicates that there has been notable normative shift among states and that they are now more prepared to seek new solutions to arms related issues than in the past. The scope and contents of the ATT have expanded the reach of the arms control regime by its inclusion of SALW, ammunition and more. The contents also indicate that policy makers have realized the need to address the destructive and destabilizing effects common to intrastate conflicts.
In closing, the ATT is potentially well adapted to address the issues particular to SALW and intrastate conflicts - considering the repeated emphasis on stopping diversion, human rights violations and protection of civilian targets as well as the emphasis on intrastate conflicts and the issues important to them in the discussions leading up to the treaty, it appears as if these issues have been taken into account. The ATT provides a political platform and a legal framework for such an effort. If this will be used to its purpose once the treaty enters into force, or if the ATT will follow down the path of many of its failed predecessors in the arms control regime, is largely dependent on the political will of states.
8. Sources


Appendix

THE ARMS TRADE TREATY

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against
Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty,

Determined to act in accordance with the following principles;
Principles

- The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;

- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;

- Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;

- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;

- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;

- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;

- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;

- Implementing this Treaty in a consistent, objective and non-discriminatory manner,
Have agreed as follows:

Article 1

Object and Purpose

The object of this Treaty is to:

– Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;

– Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

– Contributing to international and regional peace, security and stability;

– Reducing human suffering;

– Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

Article 2

Scope

1. This Treaty shall apply to all conventional arms within the following categories:

(a) Battle tanks;

(b) Armoured combat vehicles;

(c) Large-calibre artillery systems;

(d) Combat aircraft;

(e) Attack helicopters;

(f) Warships;
(g) Missiles and missile launchers; and

(h) Small arms and light weapons.

2. For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as "transfer".

3. This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership.

Article 3

Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4

Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5

General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non discriminatory manner, bearing in mind the principles referred to in this Treaty.

2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.

4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.

5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.

6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6

Prohibitions

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.

3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be
used in the commission of genocide, crimes against humanity, grave breaches
of the Geneva Conventions of 1949, attacks directed against civilian objects or
civilians protected as such, or other war crimes as defined by international
agreements to which it is a Party.

Article 7

Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State
Party, prior to authorization of the export of conventional arms covered under
Article 2 (1) or of items covered under Article 3 or Article 4, under its
jurisdiction and pursuant to its national control system, shall, in an objective
and non-discriminatory manner, taking into account relevant factors, including
information provided by the importing State in accordance with Article 8 (1),
assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;

(b) could be used to:

(i) commit or facilitate a serious violation of international
humanitarian law;

(ii) commit or facilitate a serious violation of international human
rights law;

(iii) commit or facilitate an act constituting an offence under
international conventions or protocols relating to terrorism to which the
exporting State is a Party; or

(iv) commit or facilitate an act constituting an offence under
international conventions or protocols relating to transnational organized
crime to which the exporting State is a Party.

2. The exporting State Party shall also consider whether there are measures
that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1,
such as confidence-building measures or jointly developed and agreed
programmes by the exporting and importing States.

3. If, after conducting this assessment and considering available mitigating
measures, the exporting State Party determines that there is an overriding risk
of any of the negative consequences in paragraph 1, the exporting State Party
shall not authorize the export.
4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.

6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipments States Parties, subject to its national laws, practices or policies.

7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

**Article 8**

**Import**

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.

2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.

3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

**Article 9**

**Transit or trans-shipment**

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of
conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Article 10

Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11

Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.

2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.

3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).

4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.

5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to
share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 12

Record keeping

1. Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).

2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.

3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.

4. Records shall be kept for a minimum of ten years.

Article 13

Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).

3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14

Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15

International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.

2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.

3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.

4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.

6. States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices.

7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16

International Assistance

1. In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.

2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.

3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17

Conference of States Parties

1. A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.

2. The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.
3. The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.

4. The Conference of States Parties shall:

   (a) Review the implementation of this Treaty, including developments in the field of conventional arms;

   (b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;

   (c) Consider amendments to this Treaty in accordance with Article 20;

   (d) Consider issues arising from the interpretation of this Treaty;

   (e) Consider and decide the tasks and budget of the Secretariat;

   (f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and

   (g) Perform any other function consistent with this Treaty.

5. Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

   Article 18

   Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.

2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.
3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:

(a) Receive, make available and distribute the reports as mandated by this Treaty;

(b) Maintain and make available to States Parties the list of national points of contact;

(c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;

(d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and

(e) Perform other duties as decided by the Conferences of States Parties.

Article 19

Dispute Settlement

1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the interpretation or application of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.

2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20

Amendments

1. Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.

2. Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than
180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.

3. The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depositary shall communicate any adopted amendment to all States Parties.

4. An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depositary of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

1. This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.

2. This Treaty is subject to ratification, acceptance or approval by each signatory State.

3. Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
Article 22

Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.

2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23

Provisional Application

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24

Duration and Withdrawal

1. This Treaty shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.

3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.
Article 25

Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.

2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26

Relationship with other international agreements

1. The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.

2. This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28

Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE AT NEW YORK, this second day of April, two thousand and thirteen.