



Women, Peace and Security: The Role of an Arms Trade Treaty

Dr Mirjana Dokmanovic
The IANSA Women's Network
October 2009



CONTEXT

Small arms and light weapons (SALW) are weapons that can be carried and used by one or two people, including handguns, assault rifles, machine guns, grenade launchers, anti-tank or anti-aircraft guns and light mortars.

Light weapons, ammunition, grenades, landmines and explosives are also part of this category.

The terms weapons, guns, small arms and firearms are used interchangeably in this publication.

There are an estimated 875 million guns in the world. Police, armies and other government agencies that have guns comprise around 25% of the total arsenal.

Around 75% of guns are owned by civilians and this includes private security companies, paramilitary forces and other armed groups.*

So the private arsenal is three times as large as all the firepower of governments combined. This makes these weapons extremely difficult to regulate and control.

Guns are overwhelmingly owned and used by men, in contexts of both conflict and formal peace.

This includes state and non-state actors and structures; people who possess guns for leisure pursuits; and those who feel the need to acquire weapons for self-defence.

Criminal activity is also a factor, often involving violence which increases the demand for weapons from victims and perpetrators alike.

* *Small Arms Survey (2007)*, Oxford University Press.

The IANSA Women's Network is the only international network focused on the connections between gender, women's rights, small arms and armed violence. It was formed in 2001 as a women's caucus at IANSA events and now links members in countries ranging from Fiji to Senegal, Argentina to South Africa, Canada to Sudan.

We are grateful to the Government of Norway for its support.

ABOUT THIS BRIEFING PAPER

This briefing paper argues that global standards for the international import, export and transfer of conventional arms and ammunition should prohibit transfers where there is a significant risk that the transfer will be in used to violate women's human rights or perpetuate a pattern of gender-based violence.

It argues that international law demands linking the norms of an Arms Trade Treaty with UN Security Resolutions 1325[1] 1820[2] 1888[3] and 1889[4] and obligations under international human rights and international humanitarian law.

The involvement of conventional weapons in facilitating violence against women is a cross-cutting issue that demands more attention.

States have a duty to protect their citizens. To protect women's rights, the relevant binding international instruments covering rape and sexual violence must be applied in an arms transfer decisions, as well as relevant soft law.

CONTENTS

1. The importance of an Arms Trade Treaty
2. The significance of Resolutions 1325, 1820, 1888 and 1889
3. International Law
4. International Human Rights Law
5. International Humanitarian Law
6. State responsibilities to protect women's human rights
7. State responsibilities to prevent sexual violence
8. Resolution 1325 and small arms control
9. States' responsibilities on the regulation of the arms trade and the prevention of sexual violence
10. Using International Law as a tool
11. Conclusion

1. The importance of an Arms Trade Treaty (ATT)

Every day, thousands of people are killed, injured, raped, and forced to flee from their homes as a result of irresponsible arms transfers. The poorly regulated global trade in conventional arms and ammunition fuels conflict, poverty and human rights abuses.

In eastern Democratic Republic of the Congo, at least 200,000 cases of sexual violence have been recorded since armed conflicts began in 1996.

Owing to gross under-reporting of cases, this figure is considered to be an underestimate. In some cases, women would drag themselves to the hospital, some after being left for dead in the forest.

In the former Yugoslavia, sexual violence formed a part of, and flowed from, the ethnic cleansing of areas coveted by parties to the armed conflict. It is estimated that more than 20,000 women were raped, often gang raped, and sometimes sexually enslaved and forcibly impregnated in so-called "rape camps" by armies and paramilitary groups.

In Rwanda, crimes including acts of sexual violence were committed in large part against the Tutsi group.

In Afghanistan, it is alleged that during the civil war that took place in Kabul from 1992 to 1995, "every mujahidin group fighting inside Kabul committed rape with the specific purpose of punishing entire communities for their perceived support for rival militias."

In the period between 2004 and 2006, when Haiti faced renewed political instability, it is reported that sexual violence was used by gangs to maintain territorial control, intimidate the local population, and control the social behaviour of women and girls.

Report of the Secretary-General pursuant to Security Council Resolution 1820, S/2009/362

The problems are compounded by the increasing globalisation of the arms trade. Components are sourced from across the globe, and assembled and produced in different countries, sometimes with lax controls. State regulation of the arms trade has failed to adapt to these changes.[5]

In armed conflict situations, all parties to the conflict, including State agents, bear primary responsibility to protect civilians in accordance with international humanitarian and human rights law. Conflict environments characterised by a breakdown in the rule of law and a prevailing climate of impunity create the conditions whereby a State and non-state parties, emboldened by their weapons, power and status, essentially enjoy free reign to inflict sexual violence with far-reaching implications.

In a number of contemporary conflicts, sexual violence has taken on particularly brutal dimensions, sometimes as a means of pursuing military, political, social and economic objectives, perpetrated mainly against civilians in direct violation of international humanitarian, human rights, and criminal law.

An increasing number of severe human rights abuses at gunpoint and suffering of civilians shows there is a need to limit States' right to trade arms, to ensure that such trade is in accordance with their responsibility to respect their obligations under international law, including international humanitarian law and international human rights law.

This is why NGOs and a growing number of governments are calling for a global ATT. It should establish binding international standards for authorising international transfers of conventional arms that reflect states' commitments under international law, including international human rights law and international humanitarian law.

In 2006, the UN General Assembly adopted Resolution 61/89 calling for work to begin towards a global ATT.

In 2008, 147 Member States voted in favour of a second resolution 63/240 on an ATT, creating an open-ended working group (OEWG) to discuss elements for a legally binding treaty on the import, export and transfer of conventional arms.

Following the report of initial OEWG sessions, it is expected that States will start negotiations on an effective ATT in 2010.

2. The significance of UN Security Council Resolutions 1325, 1820, 1888 and 1889

Resolutions 1325 and 1820 are the cornerstones of international mandates with regard to the full and equal participation of women in peace and security initiatives.

Resolution 1325 provides a political framework for the full and equal participation of women in all peace and security processes. Resolution 1820 addresses the obligation of state and the international community to combat sexual violence in armed conflict.

By adopting Resolution 1325 in October 2000, the UN Security Council recognised, for the first time, women's roles and needs in wartime and post-conflict situations, from victims of war to peacebuilders.

The Resolution addresses all UN Member States, all parties to armed conflicts and all actors involved in disarmament and peace processes to focus on peace and security matters in a coherent and gender sensitive manner.

The Security Council calls on all these actors to take measures that ensure the protection of and respect for human rights of women and girls. Gender mainstreaming is recognised as important at all stages of peace processes.

Resolution 1325 emphasises the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes, including those relating to sexual and other violence against women and girls.

It demands the formulation and implementation of concrete policies and plans^[6] by all actors, including the UN system, Member States and parties to armed conflicts.

Following the adoption of this landmark resolution, the UN Security Council passed Resolution 1820 on Sexual Violence against Civilian in Armed Conflicts in 2008.

Despite these Resolutions and political progress, women continue to be raped and trafficked in conflict situations with impunity, by paramilitary forces, non state armed groups and by government and

international peacekeepers charged with protecting them.

Women are still underrepresented in peace negotiations, and their voices are often not heard on issues of sexual violence and other violations of women's human rights.

In 2009, two Reports by the UN Secretary General on Women, Peace and Security^[7] warned that, despite some progress in responding to the problem, sexual violence against civilians is still widely used in armed conflict. He called for strict implementation of international law in the eradication of sexual violence, and for effective prevention and protection measures against the systematic use of sexual violence as a weapon of war.

At its session on 30 September 2009, the UN Security Council demanded that all parties to armed conflict take immediate action to protect civilians, including women, from all forms of sexual violence, and urged greater measures by States and the UN to combat these criminal acts. The Security Council adopted two Resolutions (1888 and 1889) on conflict-related sexual violence which build on Resolutions 1325 and 1820.

Resolution 1888 insists on increasing efforts to end sexual violence against women and children in conflict situations. The UN Secretary-General is asked to appoint a Special Representative on 1325 and 1820, to coordinate a range of mechanisms and oversee implementation of the Resolutions.

States are urged to undertake comprehensive legal and judicial reforms in accordance with international law, without delay and with a view to bring perpetrators of sexual violence to justice and to protect victims.

Resolution 1889 reiterates the call for all parties in armed conflict to fully respect international law applicable to the rights and protection of women and girls.

It emphasises the responsibilities of all states to put an end to impunity and to prosecute those responsible for all forms of violence against women and girls in armed conflicts, including rape and other sexual violence. This Resolution recommends, inter alia, for improving international responses to the needs of women and girls in conflict situations.

3. The importance of International Law

Although sexual violence and the arms trade are different issues, both demand high-level attention from both national authorities and the international community. In the past decade, both issues have been put on the agenda of many national and international organisations, including the UN.

At the international level, the cooperation of States has resulted in a large body of legal norms and policy recommendations that impose upon them responsibilities and certain duties regarding preventing armed conflicts and violence against women.

These different norms make international law.

They create rules for States about what should they do in general and specifically to prevent sexual violence in armed conflict, and protect victims.

Both international and national law arises from the idea that (international) order is necessary for a just and stable (international) existence. Law is the element that binds the members of the community together in their adherence to recognised values and standards.

Therefore, international law binds the members of the international community to adhere to recognised common standards and shared values (such as the prevention of armed conflict, torture and violence against civilians, protection of victims, and bringing perpetrators to justice).

International law differs from national law. While national law is the internal law of a State that regulates the conduct of individuals and other legal entities within its jurisdiction, international law regulates relations between equal and autonomous States.

It may also impose certain State responsibilities toward individuals. While a State has a legislative body (a parliament) and mechanisms (judiciary, police) to enforce law over individuals and sanction law breakers, the international community does not have central law-making authority.

International rules are created by a consensus of sovereign States and other actors (as international and regional organisations) to facilitate diverse social goals including peace, coexistence, international stability, and human development.

States regulate their relations by entering into cooperation and forming regional, international or supranational organisations.

In 1945 after the Second World War, they formed the United Nations and within this global organisation, they created rules aimed at promoting peace and preventing wars. They accepted to be bound by these rules in order to achieve common goals and shared values.

Therefore, the decisions of the UN main bodies (including the Security Council) are international law. Thus, Member States of the UN must implement them.

The responsibility of Member States in this regard is obvious, although there is currently no mechanism to enforce States' compliance.

International legal and policy documents influence the national legal order in several ways. International treaties may be ratified or directly implemented, thereby becoming national law.

States must observe treaties to which they are parties. Even if a State is not a party to a treaty, or does not have a national law in place, it may be bound by international law.

There are a wide range of rules that are considered to be universal, so they are binding upon all States, regardless of their explicit consent. For example, human life, freedom and dignity are values that are common and respected in all societies and cultures.

Therefore, a State should prohibit, prevent and prosecute violations of right to life and dignity, such as acts of genocide, slavery, human trafficking and torture, even if it is not a party to a relevant international treaty. These are customary international norms that are recognised as being so fundamental that States accept them as law.

4. The importance of International Human Rights Law

The founding document of the UN calls for universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination on any ground (Article 55c).

Likewise, UN Member States have pledged themselves to take both joint and separate actions in cooperation with the UN for the achievement of agreed set purposes (Article 56).

By adopting the Universal Declaration of Human Rights (UDHR) in 1948, the UN General Assembly established a cornerstone of international human rights law. Over time it has been widely accepted as a set of fundamental norms that everyone should respect and protect.

By the terms of the UN Charter, all members of the UN are legally bound to strive towards the full realisation of all human rights and fundamental freedoms.

This means that protecting human rights is a contractual obligation of all Member Parties and of the UN. Even if a country does not have a specific human rights law, it is still bound by international human rights law.

States' human rights obligations are found in a range of international treaties that protect individuals and groups against actions that interfere with human dignity and fundamental freedoms.

Besides the UDHR, the core international human rights law treaties are: The International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols; The International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocol; The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol. and; The Convention on the Rights of the Child (CRC) and its two Optional Protocols.

The purpose of human rights law is to ensure that individuals are protected from State violations. It also imposes certain international duties upon individuals for which they can be made responsible before international and national courts (such as for genocide, crimes against peace, and crimes against

humanity). By becoming a party to international treaties, a State assumes obligations and duties under international law to respect, to protect and to fulfil human rights of individuals.

The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights (for example it must refrain from gender based discrimination; must not use torture).

The obligation to protect requires States to protect individuals and groups against human rights abuses (e.g. to protect civilians and women from sexual violence in peacetime and during armed conflict; to prevent and prohibit transfer of arms if they are likely to be used to facilitate a pattern of gender-based violence).

This obligation requires that States take appropriate measures to assure the enjoyment of human rights (e.g. to provide victims of sexual violence with access to health care and justice; to guarantee that civilians will be treated humanely and not tortured in case of armed conflict).

Human rights treaties guarantee specific rights to individuals, establish States' obligations related to these rights, create mechanisms to monitor States' compliance, and allow individuals to seek redress when their rights are violated.

At the 1993 World Conference on Human Rights, governments reaffirmed that human rights are the birthright of all human beings and that the protection of human rights is the first responsibility of governments.

Due to different cultural or religious practices, some laws and procedures concerning human rights may radically vary in different parts of the world.

This challenges the universality at the core of human rights and contributes to the development of different concepts of human rights.

States may be reluctant to accept the full force of international human rights law in concrete cases, but all are subject to the broad scope of binding obligations.

5. The importance of International Humanitarian Law

International humanitarian law is a part of international law. It sets principles and norms intended to limit human suffering in times of armed conflict and to prevent atrocities.

It seeks to protect persons who are not (or no longer) taking part in the hostilities, such as civilians, prisoners of war and wounded combatants.

Humanitarian law is embodied in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. These treaties guarantee that individuals taking no active part in the hostilities will be treated humanely.

Traditionally, humanitarian law and human rights law were regarded as separate areas of international law. Human rights law was viewed as less applicable in situations of armed conflict.

However, after the 1968 World Conference on Human Rights, the UN recognised that major international human rights instruments provided for a broader spectrum of human rights protection than the Geneva Conventions.

The 1993 Vienna Declaration and Program of Action called on parties to armed conflicts to respect minimum standards of protecting human rights, as well as international humanitarian law.

It is widely acknowledged that international humanitarian law and international human rights law should be viewed in a holistic manner, where the individual is protected by both laws during armed conflict.

6. State responsibilities to protect women's human rights

Every state has the primary responsibility within its territory to ensure that all members of society enjoy their human rights without discrimination on any ground, including sex and gender.

Due to gender inequality in many societies, violations of women's human rights by private or State actors have often remained invisible, so in many cases victims have not enjoyed protection from the State.

An example of this approach is sexual violence against women.

Until the 1980s if sexual violence was committed by a spouse it was considered to be a private matter in which a State should not interfere; if committed during armed hostilities, it was considered to be a casualty of war.

The 1993 Vienna World Conference on Human Rights and the 1995 World Conference on Women specifically recognised the human rights of women and the duties of States to respect and promote such rights.

This recognition facilitated the entry of women's rights into the framework of international law and international, regional and national human rights policy.

By adopting The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[8] UN Member States have recognised that ensuring gender equality is a primary obligation. CEDAW binds a State Party in two ways: to apply its provisions and to accept a measure of international supervision.

However, the links between women's rights and peace and security were unrecognised for a long time.

Although women make up the vast majority of civilian victims of armed conflict, including as refugees, they were often excluded from the processes of peace negotiations, peace building, disarmament and reconstruction.

It was only in 2000 through Resolution 1325 that all actors, including governments and the UN, were explicitly called upon to ensure the participation of women in peace processes; Disarmament, Demobilisation and Reintegration (DDR); the integration of gender perspectives; gender training for peacekeepers; the protection of women; and gender mainstreaming in UN reporting systems and programmes.

7. State responsibilities to prevent sexual violence

Under international human rights law, States have obligations not only to refrain from violating the human rights of women, but also to protect and promote those rights. Violence against women is the most common form of violation of women's human rights.

Violence against women is the prevailing form of the violation of human rights of women. It occurs in all countries, societies and cultures, affecting women irrespective of their race, class and ethnicity. It jeopardises their lives, dignity, liberty, health and personal security, and impedes enjoyment of other rights, including economic and political rights.

Acts of violence against women are not examples of random victimisation, but are manifestations of inequality between women and men, as the perpetrators are almost exclusively men.

Such violence may take very different forms and these include domestic violence, battery, sexual violence, harassment and stalking. Sexual violence has also many forms including sexual exploitation, rape, sexual abuse, enforced prostitution, sexual servitude, sexual slavery, forced pregnancy, and forced sterilisation.

Gender-based violence, including sexual violence, is explicitly prohibited by international law,[9] demanding that States and international community take action to prevent it, protect victims and punish perpetrators.

International legal standards prohibit sexual violence as a violation of the fundamental human rights and freedoms guaranteed by the UDHR to all human beings: the right to equality (Article 1); freedom from discrimination (Article 2); right to life, liberty, and personal security (Article 3); and freedom from torture and cruel, inhuman or humiliating treatment (Article 5).

Additionally, States are bound by the binding norms of the Convention against Torture (CAT) because sexual violence is a form of torture. Sexual violence is prohibited by other major international human rights conventions, including the ICCPR, CEDAW and the CRC. The Optional Protocol to the CRC

Rape and other forms of sexual violence can constitute a war crime, a crime against humanity, and a constitutive act with respect to genocide. *UN Security Council Resolution 1820(2008)*

specifically forbids child prostitution and trafficking in children.

Due to its prevalence and multiple negative effects on women's lives and society, violence against women is recognised by the international community as an obstacle to development, equality and peace.[10]

At the International Conference on violence against women in Rome, Italy, 9-10 September 2009, the G8 condemned violence against women in all its forms and manifestations, as a crime.

They expressed commitments to keep this issue at the centre of the international agenda. Accordingly, the time has come for a new era of international cooperation and a great alliance by all governments and the civil society to tackle the common challenge of ending all forms of violence against women, including sexual violence.

G8: International Conference on violence against women - Presidency conclusions (10 September 2009)

Various forms of sexual violence are used as a tactic of war and are committed as a part of a widespread or systematic attack against civilians during armed conflict. Therefore, these acts are recognised and punishable as crimes against humanity.

Rape is qualified as a crime against humanity in the Statute of the International Criminal Tribunal for Rwanda (Article 3g), and in the Statute of the International Criminal Tribunal for former Yugoslavia (Article 5g).

The Rome Statute of the International Criminal Court (ICC) criminalises a number of grave forms of sexual violence besides rape, such as sexual slavery, forced pregnancy and enforced sterilisation (Article 7g).

The Statute of the ICC stresses that such grave crimes threaten the peace, security and well-being of the world and that it is the duty of every State to exercise its criminal jurisdiction over those responsible for this international crime.

Resolution 1325 and small arms control

All actors in conflict, including government, military, paramilitary units and civilians, use small arms.

They continue to have devastating effects on civilians both during and after conflicts, as they are cheap, widely available, simple, portable and deadly.

"In peace negotiations, as in declarations of war, men are more numerous than women.

This is where the link between women as builders of peace and the struggle against small arms becomes evident.

These so-called light weapons have killed more than 4 million people in the last ten years.

They have become the instrument of choice in most armed conflicts, and the UN Secretary General has rightly described them as weapons of mass destruction."

Christiane Agboton-Johnson, President, Mouvement contre les Armes Légères en Afrique de l'Ouest. Training Programmes for Lesser Developed Countries—Building Capacity for Small Arms Control, 9 July 2003, New York.

During wars and aftermath, small arms are used to facilitate many forms of abuse, including sexual violence and other forms of gender-based violence. Following war, the presence of arms in households often contributes to increasing risk from domestic violence.

The devastating effects of small arms on societies, on peacebuilding and on human security necessitate the involvement of women in arms control policy and practice.

Local women's organisations are often the first to initiate micro-disarmament projects under the banner of creating peace and security.

These projects often include awareness-raising and weapons collection components. Unfortunately, the essential work of these women's groups and networks has not always been sufficiently recognised and supported.

Entry points

Resolution 1325 provides entry points for the full and equal participation of women in small arms control. It stresses the importance of their full involvement in all efforts for the maintenance of peace and security.

Effective policies to prevent and respond to armed violence are essential component of this. In the field of small arms this can be achieved through reform of recruitment policy and practice; implementation of gender-balance requirements; consultation and collaboration with women's organisations; and policy training and education for women.

Article 8 of Resolution 1325 relates to measures that must be taken to support local women's small arms initiatives through increased capacity-building, provision of resources, and funding.

The 2002 Report of the UN Secretary General^[11] acknowledges the role that women's grassroots organisations have in supporting disarmament processes.

The Report notes that women's groups and networks can provide important information regarding perceptions of the dangers posed by the number or types of weapons, the identification of weapons caches, and the transborder weapons trade.

Article 13 of Resolution 1325 is a response to international assistance operations that neglect the specific needs of women and girls in armed movements as part of DDR processes.

This is because women combatants, supporters and dependents have not equally benefited from services, cash incentives, health care, training, travel remittance, small business grants or housing support that flow to their male counterparts - males with guns - as part of DDR packages.

National Action Plans on 1325

So far, 16 UN member states have developed National Action Plans on Resolution 1325. These Plans, while non-binding, provide an opportunity to link arms transfer controls with women's security.

Belgium has made a clear link between 1325 and arms control in its National Action Plan. It links to the UN Programme of Action on Small Arms and promotes the proposal of an Arms Trade Treaty. "Such a treaty should contain proper criteria for the export of arms, avoiding that arms could be exported to countries marked by conflicts, internal instability or the non-respect of human rights."

The Belgian Plan reiterates The Wassenaar Arrangement's Best Practice Guidelines for Exports of Small Arms and Light Weapons.

The Wassenaar Arrangement was established in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms.

Through further implementation and the development of National Action Plans, Resolution 1325 can continue to be used to enable women's participation in small arms control policy and practice, supported by an ATT.

An ATT will form part of a wider set of policies which complement Resolution 1325 and link to other Resolutions not strictly limited to 'women, peace and security'.



For example, UN General Assembly resolution 60/68 also supports 1325 by calling for "systematically including national measures to regulate small arms in longer term peacebuilding strategies and programmes" based on paragraphs II.2 and III.6 of the UN Programme of Action on Small Arms.

Similarly, the 2006 Geneva Declaration on Armed Violence and Development has highlighted the interconnection between small arms, armed violence and development.

It commits participating States to support programs on reducing armed violence with a development and human rights perspective.

The Declaration promotes a comprehensive approach to armed violence reduction as reflected in the provisions of Resolution 1325.

A strong and effective ATT will support and complement the broader goals of 1325 including conflict prevention, conflict management, and post-conflict peace-building with the active involvement and participation of women.



Training in small arms destruction, Swedish National Defence College, 2007

9. States' responsibilities on the regulation of the arms trade and the prevention of sexual violence

Under Articles 1 and 55 of the UN Charter, all Member States have an obligation to promote and protect universal respect for human rights and fundamental freedoms.

"Gun violence is a human rights issue. Around the world people are suffering because the legal gun market is poorly regulated, allowing these deadly weapons to be misused. (...)

Governments must now implement these global principles in order to protect their citizens from the flood of guns."

Rebecca Peters, Director of IANSA

States have accepted the centrality of human rights and their application to a broad range of their activities. Therefore, human rights violations are internationally wrongful acts for which the State is responsible.[12]

A State is also responsible if it knowingly assists another State in the commission of an unlawful act.

This means that, for example, for the commission of genocide and crimes against humanity, the responsibility would not involve only the State that commits these acts, but also the State(s) which transfer(s) or assist(s) in transferring weapons or ammunition.

Where a State has knowledge that a transfer of arms or ammunition would be likely to be used in the commission of war crimes, or of gross violation of human rights or international humanitarian law, it should prohibit the proposed transfer.



**Where did the gun
come from?**

The guiding principles of an ATT call on States to fully recognise and implement international norms and commitments, and to prohibit violation of obligations under international law.

An ATT should identify core obligations that reflect international legal commitments of States to prevent threats to peace and regional security, cooperate in protection of human rights, and ensure respect for international humanitarian law.

Therefore, these principles call for protecting women's rights and prohibiting sexual violence, as argued earlier in this paper.

Resolutions 1820 and 1888 recognise the seriousness of sexual violence as a grave challenge to peace and security. Systematic rape in conflict is considered to be a weapon of war.

An ATT should stipulate that States cannot authorise an international transfer of arms or ammunition where there is a substantial risk that the transfer will be used in serious violations of international humanitarian law or international human rights law, to commit acts of genocide or crimes against humanity, to facilitate a pattern of gender-based violence and violent crime, to be used for the commission of organised crime and if it will adversely affect regional security.

The guiding principles of an ATT are directly connected with States' obligations to prevent sexual violence, as required by a great number of international binding treaties and policy documents.

In this way, an ATT would strengthen the provisions of Resolutions 1325, 1820, 1888 and 1889 and complement their implementation.

10. Using International Law as a tool

For arms trade regulation advocates, international law is a powerful tool for lobbying for safeguarding peace and regional security, enhancing peaceful cooperation and settlement of disputes.

For human rights advocates, international law is a tool for calling upon respecting and promoting human rights, and preventing their violations.

For women's rights advocates, international law is a tool for promoting advancement of women and gender equality.

International law provides for rules aimed at establishing the international order necessary for just, peaceful and stable coexistence of sovereign States.

It establishes both rights and obligations for States to facilitate the realisation of their interests and needs in a manner that would not harm the rights, interests and needs of the others.

Under international law, States have certain rights, but at the same time, they are obliged to respect binding norms, including norms of international humanitarian and human rights law.

This means that the inherent right of States to manufacture, import, export, transfer and retain conventional arms for their self-defence and security needs is not unlimited.

The exercise of this right is bound by the obligations of States to respect the universal norms of human rights law and international humanitarian law.

Therefore, a State should not authorise international transfer of arms or ammunition that violate its duties under international law.

The norms of international law contribute to changing social patterns that undermine women's rights, including discrimination against women.

International instruments, such as CEDAW, Resolutions 1325 and 1889 provide obligations on States, the UN and other actors to ensure full and equal participation of women in all spheres of decision-making, including peacebuilding, disarmament, and the development and implementation of arms trade policies.

International documents, such as the Optional Protocol to CEDAW, provide complaints procedures in cases of systematic or grave violation of women's rights.

The binding norms of international law, and the prohibition and sanctioning of war crimes, have been the basis of establishing international mechanisms like the ICC, the ICTY and the ICTR.

UN peace support operations also provide mechanisms for complaint about human rights violations, including sexual violence and abuse, perpetrated by members of those operations.

International law is a significant source for national laws.

States are obliged to transpose ratified international treaties to national legislation, while the provisions of the International Bill of Human Rights are directly applicable to national bodies.

Universally recognised standards, including respect for basic human rights and prevention of aggression, are the guiding principles of the international community and of all States, whether they are a party to a specific treaty or not.

11. Conclusion

International human rights documents such as Resolutions 1820 and 1888 inevitably recognise that sexual violence may be employed as a tactic of war.

Therefore it can significantly exacerbate situations of armed conflict and impede the restoration of international peace and security.

Common points between sexual violence in armed conflicts and the arms trade indicate that there is a need to clearly introduce gender equality and the prohibition of violence against women, including sexual violence, among the guiding principles of an ATT.

An effective ATT should not contain ambiguous language that could lead to different interpretations by States of those obligations.

It must clearly prohibit international transfer of weapons and ammunition if there is a significant risk of causing sexual violence and other forms of gender-based violence, as well as of causing grave and serious violations of human rights and freedoms of civilians, including women.

States must also ensure women's equal and full participation in arms trade policies and monitoring, and call upon all of those involved in disarmament and peace processes to take into account the particular needs of women and girls associated with issues of arms and armed conflicts.

Endnotes

- [1] United Nations Security Council Resolution 1325 on Women, Peace and Security (S/RES/1325). Date of adoption: 31 October 2000
- [2] United Nations Security Council Resolution 1820 on Sexual Violence Against Civilians in Armed Conflicts (S/RES/1820). Date of adoption: 19 June 2008
- [3] United Nations Security Council Resolution 1888 on Women, Peace and Security (S/RES/1888). Date of adoption: 30 September 2009.
- [4] United Nations Security Council Resolution 1889 on Women, Peace and Security (S/RES/1889). Date of adoption: 5 October 2009
- [5] Arms Trade Treaty Steering Committee. (2009). Arms Trade Treaty: Global Controls for a Global Trade. Institute Sou da Paz: Amnesty International, IANSA & Oxfam International
- [6] See guidelines and examples of national plans: UN-INSTRAW. (2006). Securing Equality, Engendering Peace: A guide to policy and planning on women, peace and security (UN SCR 1325). Santo Domingo: UN-INSTRAW
- [7] Report of the Secretary-General pursuant to Security Council Resolution 1820, (S/2009/36), 15 July 2009, and Report of the Secretary-General on Women, Peace and Security (S/2009/465), 16 September 2009
- [8] G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981
- [9] General Recommendation 19, U.N.DocA/47/38 (1992)
- [10] A/Res/40/108
- [11] Report of the Secretary-General on Women, Peace and Security (S/2002/1145), 16 October 2002.
- [12] International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, 12 December 2001

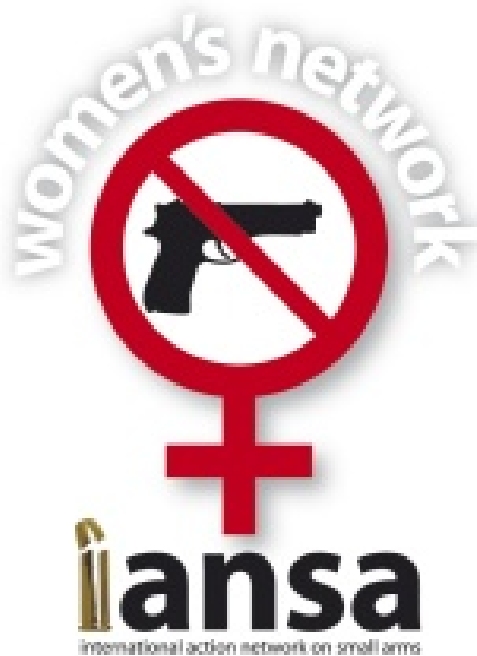




About this briefing paper

This briefing paper argues that global standards for the international import, export and transfer of conventional arms and ammunition should prohibit transfers where there is a significant risk that the transfer will be in used to violate women’s human rights or perpetuate a pattern of gender-based violence.

It argues that international law demands linking the norms of an Arms Trade Treaty with UN Security Resolutions 1325, 1820, 1888, and 1889, and obligations under international human rights and international humanitarian law.



The IANSA Women's Network is the only international network focused on the connections between gender, women’s rights, small arms and armed violence. It was formed in 2001 as a women’s caucus at IANSA events and now links members in countries ranging from Fiji to Senegal, Argentina to South Africa, Canada to Sudan.

We are grateful to the Government of Norway for its support.