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**THE IMPLEMENTATION OF THE UNITED NATIONS ARMS
TRADE TREATY AND ITS IMPACT ON INTERNATIONAL
ARMS TRADE**

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ABSTRACT

Uncontrolled International Arms Trade is a growing problem. Especially in corrupt countries where arms are being used for the commission of War Crimes and for the violations of Human Rights. The United Nations Arms Trade Treaty was adopted in order to tackle illicit and irresponsible arms trade. The aim of the research is to examine the Arms Trade Treaty and to determine whether it is a significant milestone in International Law and a true contribution to international peace and security. The research answers the question: “Does the Arms Trade Treaty reach its objectives, and does it contribute to pre-existing instruments”, by performing a critical jurisprudential analysis, utilizing a qualitative method. The study further examines whether the Treaty does what it is set up to do, and if it lives up to its objectives. The adoption of the ATT, and its entry into force have very little impact on International Arms Trade. The research finds, as the biggest problem of the ATT, its language’s looseness and vagueness. The research takes into consideration the challenges of enforcing non-reciprocal agreements in International Law. As a result of the study, proposals for amendments are brought up.

Keywords: Arms Trade Treaty, Implementation, International Law, Enforcement.

INTRODUCTION

As a result of a long ongoing campaigning for a treaty to control international arms trade (the Control Arms Campaign) done together by Amnesty International, Oxfam, the International Action Network on Small Arms, and other organisations worldwide, the United Nations (UN) took over to negotiate and to prepare an arms trade treaty.¹ The United Nations started negotiating the treaty in June 2010 and the prepared treaty was voted for and accepted as the Arms Trade Treaty (ATT; hereafter the Treaty) on the 2nd of April 2013 with 157 states voting in favour of the treaty.² The ATT has received both praise and criticism.³

The ATT covers various combat vehicles and aircrafts, missiles and missile launchers, and small arms and light weapons (SALW), which especially are a major problem in developing countries since they are used by criminals, rebels, terrorists and even child soldiers to commit crimes against humanity. The ATT aims to promote both international and regional security, peace and stability, and to reduce the suffering of humans.⁴ In addition, the ATT attempts to promote cooperation and transparency in international conventional arms trade.⁵

Prior to the ATT the UN had adopted instruments such as the Programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects (PoA), the International Tracing Instrument (ITI), and the United Nations Register of Conventional Arms (UNROCA) to control arms trade and increase transparency in the transfer of arms.⁶ However the ATT is the first binding UN instrument on Arms Control, whereas the PoA and UNROCA are voluntary.⁷

¹ Chick, L. (2012). *Control Arms Campaign - General Info*. Amnesty International UK. Accessible: <https://www.amnesty.org.uk/groups/st-albans/control-arms-campaign-general-info-0> (21.3.2018).

² *Ibid.*

³ Acheson, R., Bolton, M., Guerra, H., Sprague, O. (2014). The Road Forward for the Arms Trade Treaty: A Civil Society Practitioner Commentary. – *Global Policy*. Vol. 5, Issue 4. Blackwell Publishing, 469–473.

⁴ *Arms Trade Treaty* (ATT). 2 April 2013, in force since 24 December 2014, Article 1. Accessible: <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/English7.pdf> (21.3.2018).

⁵ *Ibid.*

⁶ *Programme of Action on small arms and its International Tracing Instrument*. The United Nations Office for Disarmament Affairs. Accessible: <https://www.un.org/disarmament/convarms/salw/programme-of-action/>; *United Nations Register of Conventional Arms*. Accessible: <https://www.unroca.org/about> (21.3.2018).

⁷ Implementing an Arms Trade Treaty Lessons on Reporting and Monitoring from Existing Mechanisms, p 1.

The aim of the research is to determine whether the Arms Trade Treaty is a significant milestone in International Law and a true contribution to international peace and security, or simply a ‘feel-good treaty’ and a political tool. The research question is the following: “Does the Arms Trade Treaty reach its objectives, and does it contribute to pre-existing instruments”. The research will perform a critical jurisprudential analysis. Due to the nature of the issue, the research will apply a qualitative method. The study will critically examine whether the Treaty does what it is set up to do and if it lives up to its objectives. The research will also determine, whether the treaty could achieve its objectives, and what it requires in order to do so.

The research will identify the shortcomings of the Treaty by researching the changes in international arms trade after the adoption of the Treaty, taking into account the opinions of international law professionals. The research will also analyse the enforcement of international law in general, and its relationship with the ATT. As a part of International Law, the effectiveness of the ATT’s enforcement is dependent on the effectiveness of the enforcement measures of International Law. The research will additionally demonstrate the importance and the need of control over international arms trade.

As a result of the research, the shortcomings of the Treaty will be identified and possible solutions will be proposed.

1. THE NEED FOR CONTROL OVER INTERNATIONAL ARMS TRADE

1.1. International Arms Trade as a Problem

After the second world war desire for international cooperation and solidarity increased due to the experiences of the world war.⁸ However the objectives set down by the UN Charter did not become to actualisation due to the Cold War ‘arms race’, which resulted in a surplus of arms.⁹ During the Cold War the number of arms accumulated exceeded far over the needs of national security and defence.¹⁰ Even though a large share of the stockpiles of arms leftover from the Cold War were demolished, enormous stocks were left remaining.¹¹

As new arms were developed during the Cold War, and old models were redesigned and put into production, the previously produced arms became outdated and dispensable, and were replaced by the more advanced ones. These dispensable arms, in particular, have found their way into conflict zones and into the hands of criminals and terrorists.¹² See appendix 1. for a demonstration on the source of arms in conflict zones and in possession of criminals.

Especially the AK-47, which was designed by Mihail Kalashnikov in 1946, gained incredible popularity among both governments and criminals.¹³ Over 75 million firearms out of approximately 500 million firearms around the world are AK-47 rifles, and another 25 million firearms are other assault rifles from the Kalashnikov family.¹⁴ The AK-47 was first used by the Soviet Army in 1949 and later by other armies, including Eastern-European, Asian and African countries. The AK-47 was later improved into the AK74. However, the AK-47 is still widely used

⁸ Hakapää, K. (2003). *Uusi kansainvälinen oikeus*. 2nd ed. Helsinki: Talentum Lakimiesliiton kustannus. P 446.

⁹ *Ibid.*, p 446.

¹⁰ Kryvonos, Y.; Kytömäki, E. (2010). *The Politics of Destroying Surplus Small Arms: Inconspicuous Disarmament*. Oxtan: Routledge. P 33.

¹¹ *Ibid.*, p 33.

¹² *Ibid.*, p 33 – 36.

¹³ Forge, J. (2013). *Designed to Kill: The Case Against Weapons Research*. New York, London: Springer. P 71–73.

¹⁴ Blair, D. (2015). *AK-47 Kalashnikov: The firearm which has killed more people than any other*. The Telegraph Media Group Limited. Accessible: <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11714558/AK-47-Kalashnikov-The-firearm-which-has-killed-more-people-than-any-other.html> (21.3.2018).

by national armies, criminals, terrorists and rebellious fighters. The AK-47 design was not protected by Intellectual property rights which meant that it could be easily copied without any consequences. AK-47 variants and assault rifles based on the AK-47 are manufactured in over 20 different countries, which in turn stimulated the arms' wide spread.¹⁵ In Sudan's black market an AK-47 can be bought for 86 USD.¹⁶ The significance of the AK-47 lies in its reliability and in its simplicity.¹⁷ The AK-47 is relatively light and so simple to operate that even a child can operate it, which is a serious problem.¹⁸ Most child soldiers are in fact armed with AK-47's or their variants.¹⁹ In addition to small arms and light weapons, the Cold War stockpiles consist of large arms and ammunition.²⁰ Specially the stockpiles of surplus ammunition left over from the Cold War are highly problematic.²¹ Properly stored ammunition can remain functional for up to 20 years, after which the performance of the ammunition begins decreasing.²² Which results in the continuous replacement of unused ammunition by national armed forces. If the excessive or replaced poorly functional ammunition stocks are not demolished, they might end up being sold or even gifted to conflict zones.²³

International arms trade is a large business with only six dominant exporting States, Russia and USA being the biggest exporters.²⁴ As mentioned previously the AK-47 was a very successful export for The Soviet Union, but that was not its only export. In addition to small arms, large conventional arms such as large-calibre artillery systems and combat aircrafts, which are many times more expensive than small arms, are being exported. According to Stockholm International Peace Research Institute (SIPRI) the financial value of the global arms trade amounted to 217.2 billion USD in 2016.²⁵ Although the financial value of the global arms trade seems quite large, it

¹⁵ Rottman, G. L. (2011). *The AK-47: Kalashnikov-series assault rifles*. Oxford: Osprey Publishing Ltd. P 4.

¹⁶ Skinner, E. B. (2008). *A Crime So Monstrous: Face-to-Face with Modern-Day Slavery*. New York: Free Press. P 82.

¹⁷ *The AK-47: the world's favourite killing machine*. (2006). Amnesty International. P 2. Accessible: <https://www.amnesty.org/en/documents/act30/011/2006/en/> (21.3.2018).

¹⁸ Forge (2013), *Supra nota* 13, p 71–73.

¹⁹ Rosen, D. M. (2005). *Armies of the Young: Child Soldiers in War and Terrorism*. New Brunswick, New Jersey, London: Rutgers University Press. P 14.

²⁰ Greene, O., Holt, S., Wilkinson, A. (2005). *Ammunition stocks: promoting safe and secure storage and disposal*. *Biting the Bullet Briefing*. Vol. 18. P 13. Accessible: <http://www.international-alert.org/publications/ammunition-stocks-promoting-safe-and-secure-storage-and-disposal> (21.3.2018).

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *The 'Big Six' arms exporters*. Amnesty International. Accessible:

<https://www.amnesty.org/en/latest/news/2012/06/big-six-arms-exporters/> (21.3.2018).

²⁵ *Global arms industry: First rise in arms sales since 2010, says SIPRI*. (2017). SIPRI. Accessible: <https://www.sipri.org/media/2017/global-arms-industry-first-rise-arms-sales-2010-says-sipri> (21.3.2018).

is relatively small compared to the global merchandise trade, which amounted to 15.46 trillion USD in 2016.²⁶ For comparison the financial value of exported automotive products alone, exported from the top 10 automotive products exporters in 2016, amounted to 1292 billion USD.²⁷ Thus it can be concluded that authorisation of arms export is more of a political tool than a financial necessity.

Due to the issue of International Arms Trade being more political than economical, trade in arms can be controlled and restricted without overly harming the economy of the exporting state. In order to ensure the compliance of the Party States with the Arms Trade Treaty, compliance must bring a political benefit higher than the international arms trade would bring, or alternatively the non-compliance of the Party States with the ATT must bring a political disadvantage higher than the compliance with the ATT would bring.

1.2.Human Rights Violations

Human Rights have a long history in western society. International Human Rights, as we know them today, can be traced back to the United Nations' Universal Declaration of Human Rights (UDHR), which has influenced Human Rights legislations.²⁸ The purpose of the declaration was to build a basis for global freedom, justice and peace, by the recognition of human dignity and of the equal and inalienable rights, which belong to all members of the human race, and to create a common standard.²⁹ The right to life, prohibition of torture and child's rights are the essential content for Human rights. Even though the UDHR is not a binding document and it is simply a 'soft law' document, which as such has no binding effect, it initiated the adoption of binding measures on Human Rights.³⁰

²⁶ *World Trade Statistical Review 2017*. (2017). World Trade Organization. P 19. Accessible https://www.wto.org/english/res_e/statis_e/wts2017_e/wts2017_e.pdf (21.3.2018).

²⁷ *Ibid.*, p 119.

²⁸ *International Human Rights Law: Six Decades after the UDHR and Beyond*. (2010). / Eds. M. A. Baderin, M. Ssenyonjo. Farnham, Burlington: Ashgate Publishing. P 251.

²⁹ *Universal declaration on Human Rights (UDHR)*. 10 December 1948. Accessible: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf (21.3.2018).

³⁰ Smith, R. K. M. (2014). *Textbook on international human rights*. 6th ed. Oxford: Oxford University Press. P 57.

Human Rights violations and corruption are strongly related to each other.³¹ Increase in corruption increases the possibility and severity of Human Rights violations.³² Thus corruption and human rights violations are so to say directly proportional to each other. Corruption creates inequality and empowers those in higher positions.³³ In addition, those who enjoy the benefits of inequality in society and the benefits from their higher position in the hierarchy of a corrupt society are more likely to use violence in order to preserve and protect their privileges.³⁴ Many African countries, including Somalia, South Sudan, Sudan and Libya, are highly corrupt³⁵ and those countries suffer from constant violence and unrest.³⁶ Therefore, the corruption index is a good meter for assessing the possibility for Human Rights violations.

In addition to Human Rights violations, the crime of genocide has taken place before and even after the Holocaust. Despite of efforts and conventions to prevent the commission of the harsh crime of genocide, and the so-called promise of ‘never again Auschwitz’, the commissions of genocide are being repeated.³⁷

Genocide was first defined in 1946 in Article II of Convention on the Prevention and Punishment of the Crime of Genocide (hereafter referred to as the Genocide Convention), by which the UN recognised genocide as a crime under international law.³⁸ As a part of Customary International Law the Genocide Convention prohibition of the commission of genocide binds all states, even non-party states to the convention.³⁹

³¹ Huber, A. (2014). *Corruption is a significant factor in human rights violations in many criminal justice systems*. Penal Reform International. Accessible: <https://www.penalreform.org/blog/corruption-significant-factor-human-rights-violations-many-criminal/> (21.3.2018).

³² *Human Rights and anti-corruption*. The United Nations Human Rights Office of The High Commissioner. Accessible: <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx> (21.3.2018).

³³ Huber, A. (2014), *Supra nota* 31.

³⁴ *Ibid.*

³⁵ *Corruption Perceptions Index 2017*. (2018). Transparency International. Accessible: https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (21.3.2018).

³⁶ *Somalia: Events of 2017*. Human Rights Watch. Accessible: <https://www.hrw.org/world-report/2018/country-chapters/somalia> (21.3.2018); *South Sudan: Events of 2016*. Human Rights Watch. Accessible: <https://www.hrw.org/world-report/2017/country-chapters/south-sudan> (21.3.2018); *Sudan: Events of 2017*. Human Rights Watch. Accessible: <https://www.hrw.org/world-report/2018/country-chapters/sudan> (21.3.2018); *Libya: Events of 2016*. Human Rights Watch. Accessible: <https://www.hrw.org/world-report/2017/country-chapters/libya> (21.3.2018).

³⁷ Smith, K. E. (2010). *Genocide and the Europeans*. 1st ed. Cambridge: Cambridge University Press. P 1

³⁸ *Definitions: Genocide*. The UN office on genocide prevention and the responsibility to protect. Accessible: <http://www.un.org/en/genocideprevention/genocide.html> (21.3.2018).

³⁹ *Weapons Under International Human Rights Law*. (2014). /Ed. S. Casey-Maslen. 1st ed. Cambridge: Cambridge University Press. P 455.

Genocide is defined in the Genocide Convention as acts of ‘killing members of a group, causing serious bodily or mental harm to members of a group, deliberately inflicting on a group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within a group, or forcibly transferring children of a group to another group’, when done with the intention of destroying the group, in whole or in part, given that the group is either a religious, ethnical, racial or a national group.⁴⁰ Later the International Criminal Court (ICC) adopted the UN’s definition of genocide into Article 6 of the Rome Statute of the International Criminal Court (Rome Statute), which established the ICC.⁴¹ The Rome Statute only binds the Party States to the Rome Statute. In addition, the ICC has jurisdiction only over the Party States to the Rome Statute.⁴² However, the ICC can get jurisdiction over a non-member, if the United Nations Security Council (UNSC) refers a situation of that particular state to the ICC.⁴³

Genocide is a problematic issue, due to the fact that recognition of certain acts as Genocide constitutes a strong political statement, which might hinder foreign relations of a state.⁴⁴ Sometimes crimes which fall under the definition of genocide may not be recognised as genocide. The significance of the prohibition of the Crime of Genocide is that it is punishable irrespective of the time of commission and despite the fact that it does not constitute a violation under the law of the state where such crimes take place.⁴⁵ The existing prohibitions on the commission of Genocide have not successfully prevented the killing of members of religious, ethnical, national, or racial groups with the intention of destroying the group, hence arms control plays an important role in the prevention of such killings and the commission of other Crimes Against Humanity.

⁴⁰ *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention). 9 December 1948, in force since 12 January 1951. Article 2. Accessible: http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf (21.3.2018).

⁴¹ *Rome Statute of the International Criminal Court* (Rome Statute). 17 July 1998, in force since 1 July 2002. Article 1, Article 6. Accessible: https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (21.3.2018).

⁴² *Ibid.*

⁴³ *Q&A: Accountability for Violations of International Humanitarian Law in Gaza*. (2009). Human Rights Watch. Accessible: https://www.hrw.org/news/2009/02/06/qa-accountability-violations-international-humanitarian-law-gaza#_Who_is_primarily (21.3.2018).

⁴⁴ Harkov, L. (2018). *Knesset votes down bill recognizing Armenian genocide*. The Jerusalem Post. Accessible: <https://www.jpost.com/Breaking-News/Knesset-votes-down-bill-recognizing-Armenian-genocide-542609> (11.5.2018).

⁴⁵ *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*. 26 November 1968, in force since 11 November 1970. Article 1. Accessible: http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.27_convention%20statutory%20limitations%20warcrimes.pdf (21.3.2018).

2. THE APPLICATION OF THE ARMS TRADE TREATY

2.1. Scope of Application

2.1.1. The Types of Arms Covered by the Treaty

The United Nations' Arms Trade Treaty (ATT; hereafter the Treaty), which has been open for signature since the 3rd of June 2013 and entered into force on 24th of December 2014,⁴⁶ covers a wide selection of conventional weapons.⁴⁷ The ATT regulates the export and import, as well as the transit, trans-shipment and brokering of conventional arms listed in the Article 2 (1) of the ATT.⁴⁸ The ATT covers the seven most offensive categories of arms, according to the United Nations,⁴⁹ as well as the category of small arms and light weapons (SALW).⁵⁰ The significance of the Treaty lays in the fact that it not only covers the list of conventional arms, but also parts of them as well as ammunition used in the arms.⁵¹ The eight categories of arms are listed in Article 2 (1) of the Treaty, and are the following: Battle tanks, Armoured combat vehicles, Large-calibre artillery systems, Combat aircraft, Attack helicopters, Warships, Missiles and missile launchers, and Small arms and light weapons.⁵² Small arms consist of weapons designed especially for individual use, such as pistols, sub-machine guns, and rifles.⁵³ Light weapons are especially designed for operation by two or three persons, this however does not exclude light weapons which can be operated by a single person from the scope of the definition. Light weapons include for example, heavy machine guns, portable anti-aircraft guns, grenade launchers, missile launchers and rocket launcher systems.⁵⁴

⁴⁶ *The Arms Trade Treaty: The landmark Arms Trade Treaty (ATT), regulating the international trade in conventional arms – from small arms to battle tanks, combat aircraft and warships – entered into force on 24 December 2014.* United Nations Office for Disarmament Affairs (UNODA). Accessible: <https://www.un.org/disarmament/convarms/att/> (21.3.2018).

⁴⁷ Bolton, M., Guerra, H., James, K. E., Pytlak, A., Whall, H. (2014). The Arms Trade Treaty from a Global Civil Society Perspective: Introducing Global Policy's Special Section. – *Global Policy*. Vol. 5, Issue 4. Blackwell Publishing, 433–438.

⁴⁸ Fukui, Y. (2015). The Arms Trade Treaty: Pursuit for the Effective Control of Arms Transfer. – *Journal of Conflict & Security Law*. Vol. 20, No. 2. Oxford University Press, 301–321, p 315.

⁴⁹ United Nations Register of Conventional Arms, *Supra nota* 6.

⁵⁰ Bolton, Guerra, James, Pytlak, Whall (2014), *Supra nota* 47, p 435–436.

⁵¹ Acheson, Bolton, Guerra, Sprague, (2014), *Supra nota* 3, p 471–472.

⁵² Bolton, Guerra, James, Pytlak, Whall (2014), *Supra nota* 47, p 435–436.

⁵³ *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*. Adopted by the United Nations General Assembly on 8 December 2005. Accessible: http://www.un.org/events/smallarms2006/pdf/international_instrument.pdf (21.3.2018).

⁵⁴ *Ibid.*

Small arms are the biggest threat to civilians in conflict areas, since it is estimated that approximately 90 percent of deaths in wars have been caused by small arms.⁵⁵ In addition trade in small arms constitutes 13 percent of trade in all arms.⁵⁶ Due to their cheap price, and the simplicity of their operation, conflict areas are flood by small arms,⁵⁷ and even children are equipped with rifles and machine guns to the degree that there are armies consisting of child soldiers in certain conflict zones.⁵⁸ Even though, child soldiers were not rare in the United States' and European armies in the beginning of the 19th century,⁵⁹ it is considered inhumane to recruit children into armed forces due to the development of Human Rights and Child's Rights.⁶⁰

Another attempt to prevent loopholes in the treaty is the inclusion of the ammunition used in the arms covered, and parts and components of the covered arms in the Treaty. This is to prevent, for example, the circumvention of the prohibition of arms exportation, set under the Articles 6 and 7 of the Treaty, by shipping alone parts of the arms listed in Article 2 (1) of the Treaty, to a destination where the parts and components are to be assembled into fully functioning arms, which are then expected to be used for prohibited purposes such as commission of genocide, commission of crimes against humanity or commission of attacks directed against civilian objects or civilians protected as such.⁶¹ Since many conflict zones are flood by small arms and some states in Africa⁶² are even referred to as 'arms dump',⁶³ the prevention of the flow of new arms is not going to end the violence in those areas. In addition, arms have a long lifespan and can be transferred from one conflict area to another. Weapons without ammunition are useless and therefore, the restriction on the transfer of ammunition is a very important if not the most important part of the Treaty, for

⁵⁵ Renner, M. (1997). *Small Arms, Big Impact: The Next Challenge of Disarmament*. Worldwatch Paper 137. Washington: Worldwatch Institute. P 5. Accessible: <http://www.worldwatch.org/system/files/WP137.PDF> (21.3.2018).

⁵⁶ Stohl, R. J. Smith, D. (1999). *Small Arms in Failed States: A Deadly Combination*. Center for Defense Information. Accessible: http://www.comm.ucsb.edu/faculty/mstohl/failed_states/1999/papers/Stohl-Smith.html (21.3.2018).

⁵⁷ 'Africa's arms dump': following the trail of bullets in the Sudans. The Guardian. Accessible: <https://www.theguardian.com/world/2014/oct/02/-sp-africa-arms-dump-south-sudan> (21.3.2018).

⁵⁸ Hoile, D. (2008). *Darfur: the road to peace*. 3rd, rev. ed. London: European-Sudanese Public Affairs Council. P 207; *Children as soldiers*. Unicef. Accessible: <https://www.unicef.org/sowc96/2csoldrs.htm> (21.3.2018).

⁵⁹ Rosen, D. M. (2012). *Child Soldiers: A Reference Handbook*. California: ABC-CLIO. P 3.

⁶⁰ *Convention on the Rights of the Child* (Child's Rights Convention). 20 November 1989, in force since 2 September 1990. Article 38. Accessible: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (21.3.2018).

⁶¹ ATT, *Supra nota* 4, Article 6 (3).

⁶² Nkoro, F., Nna, N. J., Pabon, B. G. (2012). Arms Proliferation and Conflicts in Africa: The Sudan Experience. – *IOSR Journal of Humanities and Social Science*. Vol. 4, Issue 4. P 32. Accessible: <http://www.iosrjournals.org/iosr-jhss/papers/Vol4-issue4/F0443139.pdf> (21.3.2018).

⁶³ 'Africa's arms dump': following the trail of bullets in the Sudans, *Supra nota* 57.

achieving the aim of ending violence and establishing peace, since the supply of ammunition would fuel violence.⁶⁴

2.1.2. Countries Affected by the Treaty

The ATT was open for signature by all states until its entry into force on 24th of December 2014, which was ninety days after the 50th ratification by a signatory state.⁶⁵ After its entry into force the Treaty has been open for accession for all states.⁶⁶ The ATT has 130 signatories so far, from which 89 have ratified the Treaty.⁶⁷

As the *pacta tertiis (nec nocent nec prosunt)* rule determines that treaties only bind the parties to the treaty. Treaties do not set obligations on third parties, without the third parties' consent to be bound.⁶⁸ Thus the ATT sets obligations only on the party states to the Treaty, which are obliged to act in accordance with the rules of the Treaty.⁶⁹ The ATT however affects the receiving state indirectly, by restricting their possibility to purchase conventional arms from party states, even if the receiving states themselves are not a party state to the Treaty. The objectives of the ATT are to reduce human suffering, and to enhance national and international security, stability and peace, by prohibiting arms trade with war criminals and parties committing crimes against humanity, and by preventing illicit arms trade, through which human rights abusers could obtain conventional arms.⁷⁰ Thus the ATT's objective is not the hindering of party states' arms export business or of the competition in the International Arms Trade market.⁷¹

⁶⁴ Murphy, B., Ray, D. B. (2012). *Stop a Bullet, Stop a War: Why ammunition must be included in the Arms Trade Treaty*. Oxford: Oxfam international. Accessible: https://www.oxfam.ca/sites/default/files/file_attachments/tb-stop-bullet-stop-war-arms-trade-treaty-310512-en_1.pdf (21.3.2018).

⁶⁵ ATT, *Supra nota* 4, Article 21 (1); *The Arms Trade Treaty: The landmark Arms Trade Treaty (ATT), regulating the international trade in conventional arms – from small arms to battle tanks, combat aircraft and warships – entered into force on 24 December 2014*, *Supra nota* 46.

⁶⁶ ATT, *Supra nota* 4, Article 21 (3).

⁶⁷ *The Arms Trade Treaty: The landmark Arms Trade Treaty (ATT), regulating the international trade in conventional arms – from small arms to battle tanks, combat aircraft and warships – entered into force on 24 December 2014*, *Supra nota* 46.

⁶⁸ *Vienna Convention on the Law of Treaties* (Vienna Convention). 23 May 1969, in force since 27 January 1980. Article 35. Accessible: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf> (21.3.2018).

⁶⁹ ATT, *Supra nota* 4, Preamble, Article 5 (1).

⁷⁰ *Ibid.*, Article 1, Article 6, Article 7.

⁷¹ Kitchen, C. (2015). *Strengthening Maritime Security Through Cooperation: The Arms Trade Treaty and the Law of the Sea*. Amsterdam: IOS Press. P 37.

2.1.3. Restrictions and Obligations Under the Treaty

The United Nations Arms Trade Treaty simply aims to prevent illicit arms trade, and to prevent the selling of arms to be used for inhumane purposes.⁷² The ATT does not set restrictions on the types of arms or the quantities which states may have in their possession. Whereas Customary International Law prohibits chemical and biological agents, gas warfare, explosive bullets and expanding bullets.⁷³ If a state is considered as a Human Rights respecting state then it can obtain as many arms as it wants and any types of arms it wants in accordance with International Law and treaties which it is a party state to.

The Treaty sets requirements for arms export⁷⁴ in order to prevent illicit arms transfer.⁷⁵ Article 6 prohibits State Parties from authorising a transfer of arms, and their parts and ammunition, as listed in Articles 2, 3 and 4 of the ATT, if it would violate that state's obligations deriving from measures adopted by the Security Council of the United Nations, or if it would violate that state's relevant international obligations deriving from international agreements to which it is a party to, or if at the time of authorisation the state has information that the arms or their parts or ammunition would be used for the commission of crimes against humanity, the commission of war crimes, as defined by international agreements which that state is a party to, including the crime of genocide, the commission of grave breaches of the 1949 Geneva Conventions, or for the commission of attacks directed against civilians or civilian objects.⁷⁶ Article 6 of the ATT in other words enables the exporting states to rely on ignorance of the intended use of the arms.

If the transfer of arms or their parts, or ammunition is not prohibited under the conditions set in the ATT Article 6, the export may be prohibited under Article 7 which sets a self-assessment obligation on State Parties.⁷⁷ According to Article 7 (1) each exporting state must, in conformity with the ATT Article 8 (1), assess the possibility that the exported arms or their parts, or ammunition would improve and not weaken peace and security, or if the arms could possibly be used for the commission of a serious breach under International Humanitarian Law or International Human Rights law, or facilitating such breach.⁷⁸ The exporting State Party must also assess whether

⁷² ATT, *Supra nota* 4.

⁷³ *The Law of Armed Conflict and the Use of Force: The Max Planck Encyclopedia of Public International Law*. (2017). / Ed. F. Lachenmann, R. Wolfrum. Thematic Series Vol. 2. 1st ed. Oxford: Oxford University Press. P83

⁷⁴ ATT, *Supra nota* 4, Article 6, Article 7.

⁷⁵ *Ibid.*, Article 1.

⁷⁶ *Ibid.*, Article 6.

⁷⁷ Christ, M., Gould, R., Valenti, M., Mtonga, R., (2014). The Arms Trade Treaty (ATT): A public health imperative. – *Journal of Public Health Policy*. Vol. 35, No. 1. Macmillan Publishers. 14–25, p 20.

⁷⁸ *Ibid.* P 18–19; ATT, *Supra nota* 4, Article 7 (1).

there is a possibility that the exported arms or their parts, or ammunition would be used for the commission of an offence under terrorism related or organised crime related international protocols or conventions to which the exporting State is a Party, or for facilitating such offences.⁷⁹ Article 7 (4) goes further to oblige the exporting state to assess whether the arms, their parts or ammunition will be used for the serious commission of acts of violence targeted at women and children or based on gender.⁸⁰ Thus, ATT Article 7 sets a purely subjective assessment obligation. The assessment of each state will likely differ based on each state's foreign policy.

The ATT not only sets obligations on exporting states but also on receiving states which are party states to the Treaty.⁸¹ The receiving states must assist the exporting states in their export assessment of, for example, the risk of commission of serious violation of International Humanitarian Law, Human Rights Law or obligations under international agreements, with the exported arms, and provide all the information needed for assessment.⁸² The obligation of importing states further improves the assessment of the exporting states.

The Treaty must not restrict or prevent legitimate and recognized states from obtaining conventional arms, as a strong military force remains the essence of the security of a state until this day.⁸³ Procurement of conventional arms for the purpose of national security and defence is the right of sovereign states.

In addition to the export and the import of arms, arms' parts and ammunition, the Treaty sets obligations on the State Parties regarding the transit of arms listed in Article 2 (1) of the ATT. According to the ATT Article 9, State Parties must where necessary regulate under its jurisdiction the trans-shipment of conventional arms, listed in Article 2 (1), through its territory.⁸⁴ However the article does not cover the transit of parts of the conventional arms or ammunition.⁸⁵

⁷⁹ ATT, *Supra nota* 4, Article 7 (1).

⁸⁰ *Ibid.*, Article 7 (4).

⁸¹ *Ibid.*, Article 8.

⁸² *Ibid.*

⁸³ *Contemporary Security Studies*. (2016). / Ed. A. Collins. 4th ed. Oxford: Oxford University Press. P 186.

⁸⁴ ATT, *Supra nota* 4, Article 9.

⁸⁵ *Ibid.*

2.2. The Effects of the ATT on International Arms Trade

Since the adoption of the ATT, international arms trade has only continued to increase.⁸⁶ See appendix 2. for the development in international arms trade. The value of international arms trade was approximately 10 percent higher between the years 2013 and 2017, compared to international arms trade between the years 2008 and 2012.⁸⁷ The value of international arms trade, however, does not truthfully indicate the effectiveness of the ATT, since not all arms exporters are ATT Party States. Therefore, in order to determine the effectiveness of the ATT and its influence on international arms trade, the development in the arms export of the ATT Party States must be observed.

The arms transfer of the ATT Party States France and the UK, which are among the top arms exporters in the world, has grown since the entry into force of the ATT, despite their obligation to be more critical in authorization of arms transfers. Not only has the arms export of the UK and France increased instead of decreasing, they are Saudi Arabia's largest arms suppliers, right after the USA.⁸⁸ Together the arms transfer of the UK and France amounted to almost 27% of Saudi Arabia's total arms import, between the years 2013 and 2017.⁸⁹ Saudi Arabia indisputably has committed numerous Human Rights violations in Saudi Arabia and continues to commit War Crimes in Yemen.⁹⁰ Despite this fact, most of the states, arming Saudi Arabia, are either ATT Party States or ATT signatories.⁹¹ Hence, it can be concluded that the ATT is weak and incapable of reducing human suffering, since it is not capable of preventing ATT Party States from transferring arms, which are evidently being used for War Crimes in Yemen, into Saudi Arabia.⁹²

⁸⁶ Fleurant, A., Kuimova, A., Tian, N., Wezeman, P. D., Wezeman, S. T. (2017). *Trends in International Arms Transfer, 2017*. SIPRI. Accessible: https://www.sipri.org/sites/default/files/2018-03/fssipri_at2017_0.pdf (27.4.2018).

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Roth, K. (2018). *Saudi Arabia: Events of 2017*. Human Rights Watch. Accessible: <https://www.hrw.org/world-report/2018/country-chapters/saudi-arabia> (2.5.2018).

⁹¹ *States must stop selling weapons to Saudi Arabia for use in Yemen conflict*. (2016). Amnesty International. Accessible: <https://www.amnesty.org/en/latest/news/2016/02/states-must-stop-selling-weapons-to-saudi-arabia-amid-yemen-conflict/> (2.5.2018).

⁹² Knight, B. (2017). *UN's Arms Trade Treaty 'too weak to make a difference'*. Deutsche Welle. Accessible: <http://www.dw.com/en/uns-arms-trade-treaty-too-weak-to-make-a-difference/a-40452550> (2.5.2018).

Saudi Arabia is not the only country, committing war crimes, that is supplied arms by ATT party states. Egypt⁹³, Israel⁹⁴ and Iraq⁹⁵ have also committed acts defined as War Crimes under International Law, and are still being supplied with arms by ATT Party States, including the UK, France, Germany, Italy and the Czech Republic.⁹⁶ The fact that ATT Party States continue to supply countries disregarding Human Rights and breaching International Humanitarian Law with arms,⁹⁷ proves the weakness and the ineffectiveness of the ATT.

The failure of the ATT is so apparent that in 2017 Party States to the ATT gathered in Geneva to discuss the failure of the treaty.⁹⁸ The fact, that the Treaty has not managed to prevent its Party States from supplying arms to Saudi Arabia and other countries, which are using the arms for inhumane purposes, proves the claims about the treaty being weak and not capable of achieving its objectives.

Having the biggest arms exporters, the USA, Russia and China, enter the treaty, will not amount to any progress unless the treaty itself is improved. Taking into consideration the continuous flow of arms, from multiple ATT Party States, which supposedly are bound by the ATT, into countries committing War Crimes and disregarding Human Rights, demonstrates that the weakness of the Treaty does not lay in the insufficient number of Party States.

The ATT has also failed to increase transparency in International Arms Trade.⁹⁹ Thus, the Treaty as a binding document has not achieved anything remarkable compared to the United Nations Register of Conventional Arms (UNROCA), which on the contrary is a voluntary instrument.¹⁰⁰ Briefly, the impact of ATT cannot be seen as a decline in arms transfers and nor as an increase in the transparency of arms transfers.

⁹³ *Egyptian army accused of war crimes*. (2013). Al Jazeera. Accessible: <https://www.aljazeera.com/news/middleeast/2013/11/egyptian-army-accused-war-crimes-2013111616409318660.html> (3.5.2018).

⁹⁴ Blatman, D. (2018). *The Israeli Army Committed at Least 4 War Crimes in Recent Weeks. But Who Cares?* Haaretz Daily Newspaper. Accessible: <https://www.haaretz.com/opinion/.premium-the-idf-committed-4-war-crimes-in-recent-weeks-but-who-cares-1.5883568> (2.5.2018).

⁹⁵ *Iraq: US-Trained Forces Linked to Mosul War Crimes*. (2017). Human Rights Watch. Accessible: <https://www.hrw.org/news/2017/07/27/iraq-us-trained-forces-linked-mosul-war-crimes> (2.5.2018).

⁹⁶ Fleurant, A., Kuimova, A., Tian, N., Wezeman, P. D., Wezeman, S. T. (2017). *Supra nota* 86.

⁹⁷ Clancy, M. (2017). *Failure to manage arms trade responsibly is putting a dirt cheap price on the lives of civilians*. ICRC. Accessible: <https://www.icrc.org/en/document/failure-manage-arms-trade-responsibly-putting-dirt-cheap-price-lives-civilians-0> (7.5.2018).

⁹⁸ *Ibid.*

⁹⁹ Knight, B. (2017). *Supra nota* 92.

¹⁰⁰ United Nations Register of Conventional Arms. *Supra nota* 6.

2.3. The Deficiencies and Flaws of the Treaty

Article 31 (1) of the 1969 Vienna convention on the Law of Treaties (hereafter Vienna Convention) reads as follows: ‘A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’. Thus, the ATT must be interpreted in the light of its objectives. However, the flaws and shortcomings of the treaty cannot be fixed solely by interpretation. In addition, if Oliver Wendell Holmes’ bad-man theory, in which a person decides whether to follow a rule based on the possible punishment, is taken into consideration, Article 31 (1) of the Vienna convention is not likely to be implemented properly.¹⁰¹ According to the bad-man theory a person follows the rules only if the violation results in a loss, bigger than the gain.¹⁰²

Firstly, the ATT Article 6 (1) prohibits a Party State from violating obligations deriving from measures taken under Chapter VII of the UN Charter (UNC), through authorisation of arms transfer. This prohibition, however, does not impose any new obligations on the great majority of Party States, since every State in the world, except for the Vatican, the State of Palestine and Kosovo, is a Member State of the UN, and thus bound by the UNC and obliged to implement its obligations under the UNC.¹⁰³ Additionally, Article 6 (2) goes further and prohibits violations of Party State’s obligation under international agreements, to which it is a State Party, through authorisation of arms transfer.¹⁰⁴ Based on the *pacta sunt servanda* principle, which is also included in the Vienna Convention, a State is bound by the treaty, which it is a party to, and thus the ATT Article 6 (2) does not impose additional obligations on Party states in comparison to the absence of the Treaty.¹⁰⁵

Secondly, the ATT imposes vague and open obligations. The first problem with the wording of the ATT is the constant use of the phrase [...State Party shall take measures...] in its Articles.¹⁰⁶ The measures for implementing the objectives of the treaty are however left open and relying on each party state. In addition, the prohibition on authorisation of arms export under Article 6 (3), which imposes the obligation of assessment, is insufficient. The Article prohibits a party state from

¹⁰¹ Oliver Wendell Holmes – *Bad man theory*. (2017). Law Thesis Proofreading. Accessible: <https://lawthesisproofreading.com/oliver-wendell-holmes-bad-man-theory/> (12.5.2018).

¹⁰² *Ibid*.

¹⁰³ Rosenberg, M. (2017). *Non-Members of the United Nations*. ThoughtCo. Accessible: <https://www.thoughtco.com/non-members-of-the-united-nations-1435429>; *Member States*. United Nations. Accessible: <http://www.un.org/en/member-states/index.html> (21.3.2018).

¹⁰⁴ ATT, *Supra nota* 4, Article 6.

¹⁰⁵ Vienna Convention, *Supra nota* 68, Article 26.

¹⁰⁶ ATT, *Supra nota* 4, Article 5, Article 7, Article 8, Article 10.

authorising the transfer of the conventional arms covered by the Treaty, if it has knowledge that the arms are going to be used for 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. However, the crimes listed in Article 6 are not defined nor does the Article state which institution's definitions shall be applied.

The second problem with ATT is the wording of Article 7 of the Treaty. Article 7 (1) states that if the authorisation of arms export is not prohibited under Article 6, the exporting state must itself assess the possibility of the risk that arms might be used for adverse purposes, which allows a purely subjective assessment of risk from the point of view of the exporting State Party.¹⁰⁷ Russia claims that for this exact reason it has abstained from the voting on the continuation of negotiations on the Arms Trade Treaty and it has not signed the ATT.¹⁰⁸ Russian officials claimed that the ATT rules would be interpreted subjectively and in an ideological way.¹⁰⁹ This imperfection sets the exporter states in a stronger position compared to the importer states. Which would allow exporting states to supply states which are criminals under International Humanitarian law or Human Rights Law with conventional arms, and to prevent arms export for legitimate use, if it wills. Due to the subjectivity of the assessment criteria of the possibility of Crimes against humanity or Human Rights abuse set in the Treaty, it is difficult to determine when the Treaty has been violated.¹¹⁰

Thirdly, the ATT's most notable defect is the absence of sanctions and any kind of enforcement measures.¹¹¹ The Treaty poses no sanctions on State Parties which violate the prohibitions set in the Treaty, or which do not implement the obligations imposed by the Treaty.¹¹² Furthermore, the enforcement of the treaty is set as the responsibility of each party state to implement the articles of the ATT by adopting national laws and national regulations.¹¹³ As an understanding of Legal Theory, especially Legal Positivism, sanctions are an inevitable part of Legal Norms.¹¹⁴ The

¹⁰⁷ *We have an Arms Trade Treaty. What difference does it make?* (2013). Accessible: <http://www.stopwaphandel.org/node/1495> (21.3.2018).

¹⁰⁸ *Amnesty International Media Briefing: The 'big five' in Arms Trade Treaty negotiations.* (2013). Amnesty International. P 3. Accessible: <https://www.amnesty.org/download/Documents/8000/act300172013en.pdf> (6.2.2018).

¹⁰⁹ *Ibid.*

¹¹⁰ *113th Congress 1st Session: Concurrent Resolution: Expressing the sense of Congress regarding the conditions for the United States becoming a signatory to the United Nations Arms Trade Treaty, or to any similar agreement on the arms trade.* (2013). P 2. Accessible: <https://www.enzi.senate.gov/uploads/un.pdf> (21.3.2018).

¹¹¹ Christ, Gould, Valenti, Mtonga, (2014), *Supra* nota 77, p 14–25.

¹¹² ATT, *Supra* nota 4.

¹¹³ *Ibid.*, Article 14.

¹¹⁴ Kelsen, H. (1967). *Pure Theory of Law*. Berkeley, Los Angeles: University of California Press; London: Cambridge University Press. P 11ff.

validity of a Legal Norm is reliant on the effectiveness of the norm, which is strongly related to sanctions.¹¹⁵ Sanctions are what separates Legal Norms from Moral or Social Norms, which may or may not impose sanctions on acting contrary to a norm.¹¹⁶ Legal Norms must always impose sanctions.¹¹⁷ Thus the ATT must have an enforcement measure supported by sanctions, either diplomatic or economic sanctions, in order to be effective.

2.4. Ineffectiveness of International Law Enforcement

As an international treaty, the ATT also suffers from the insufficient effectiveness of the enforcement of international law, which is quite problematic for a number of reasons.¹¹⁸ Firstly the absence of a powerful institution of the global government,¹¹⁹ and the responsibility of states to enforce their international obligations against their selves.¹²⁰ Secondly International Law by its nature is biased, and it operates more on the basis of International Relations and politics rather than on the neutral application of general legal principles.¹²¹ Thirdly enforcement of international obligations against non-state actors is even more problematic due to the ambiguity of their international legal personality.¹²²

In a domestic legal system where usually, the parliament is the sovereign legislator, which sets the obligations and sanctions under which threat the obligations are enforced by the executive branch, the police forces. In international law the norms are negotiated by the parties or their representatives, and there is no equivalent executor which has the competence to enforce international norms in an effective way.¹²³ The United Nations Security Council is not considered a sufficient representative body.¹²⁴ In addition, any of the five permanent members of the council, which are the United States, Russia, China, the United Kingdom and France, are eligible to veto any significant measure.¹²⁵

¹¹⁵ Kelsen, H. (1967). *Supra nota* 114., P 11–12.

¹¹⁶ *Ibid.*, P 25–27.

¹¹⁷ *Ibid.*, P 25–27.

¹¹⁸ Kirgis, F. L. (1996). *Enforcing International Law*. Vol. 1, Issue 1. American society of international law. Accessible: <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law> (21.3.2018).

¹¹⁹ *Law in politics, politics in law*. (2013). /Ed. D. Feldman. Hart Studies in Constitutional Law Vol. 3. Oxford, Portland: Hart Publishing. P 210 (sited in Max Weber, *Politics as a Vocation* (1919)).

¹²⁰ *Ibid.*, p 206.

¹²¹ *Ibid.*, p 203.

¹²² *Responsibilities of the Non-State Actor in Armed Conflict and the Market: Theoretical Considerations and Empirical Findings*. (2015). / Eds. N. Gal-Or, M. Noortmann, C. Ryngaert. Leiden: Brill. P 371.

¹²³ Kirgis, (1996), *Supra nota* 118.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

Due to International Courts, such as International Criminal Court (ICC), having no ability, whatsoever, to use tremendous power to enforce their decisions, International Courts tend to mitigate their decisions in order to ensure the execution of their decisions, and in order for the court to not appear improvident or irrelevant.¹²⁶ Lack of effective means for compelling compliance and hoping for ‘voluntary’ or ‘optional’ compliance predisposes the court system to the danger of states turning against the court, which in turn weakens the international rule of law.¹²⁷ It is especially the challenge of the accountability element which is difficult to transfer from national legal systems to International Law.¹²⁸

In addition, armed groups and non-state actors such as rebels and ‘freedom’ fighters do not usually abide by international norms or the domestic norms of the constitutional government, and as non-state actors they cannot be a party to international conventions and treaties as they are not recognised as representatives of that state they claim to represent, nor as a legitimate Non-Governmental Organisation (NGO).¹²⁹ Even when the Non-State Actors are powerful and have control over parts of the state territory, they are not recognised in order to ensure the sovereignty of the state government.¹³⁰ Non-state actors lacking International legal personality cannot be given international rights or obligations.¹³¹ Thus, they cannot be obliged by International Law. However Non-State Actors can be and are obliged by domestic laws as residents or citizens, and convicted based on it, when necessary.

The enforcement of UN issued International Law against states is also problematic. The United Nations ensures the sovereign equality of all UN members, in the UN Charter Article 2. However, UN members are not equal in the eyes of the UN, and they do not have equal rights. The five permanent members have much more power than the rest of the members all together. The UN often fails to act when required due to the political interests of even one permanent member.¹³² The sole objective of the UNSC is maintaining peace and security, and not the maintaining of the Rule

¹²⁶ *Law in politics, politics in law*, (2013), *Supra nota* 119, p 210.

¹²⁷ *Ibid.*

¹²⁸ Nollkaemper, A. (2011). *National Courts and the International Rule of Law*. Oxford: Oxford University Press. P 1–4.

¹²⁹ Murray, D. (2016) *Human Rights Obligations of Non-State Armed Groups*. Oxford; Portland: Hart Publishing. P 7–8.

¹³⁰ *Ibid.*, p 133.

¹³¹ *Responsibilities of the Non-State Actor in Armed Conflict and the Market: Theoretical Considerations and Empirical Findings*, (2015), *Supra nota* 122, p 371.

¹³² Fruchart, D., Holtom, P., Strandow, D., Wallensteen, P., Wezeman, S. T. (2007). *United Nations Arms Embargoes: Their Impact on Arms Flows and Target Behaviour*. Sweden: SIPRI, Upsala University. P 4–5. Accessible: https://pcr.uu.se/digitalAssets/653/c_653520-1_1-k_un_embargoes_071126.pdf (21.3.2018).

of Law.¹³³ Hence, the United Nations is an unjust institution which operates more or less as a political tool in the hands of the five permanent members of the UNSC. To conclude, the effectiveness of International Law enforcement is strictly dependent on International Relations between states, and on the collective action taken by states.

¹³³ *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. (2008). /Eds. V. Lowe, A. Roberts, J. Welsh, D. Zaum. New York: Oxford University Press. 35–37.

3. EFFECTIVE ENFORCEMENT OF THE ATT

3.1.Improving the ATT

As concluded above, the Arms Trade Treaty can only be effective if it is implemented in a uniform matter. It is not enough to prevent suffering, if one exporting Party State concludes in its export assessment, that there is a high possibility that the exported arms will be used, for example, for the commission of Human Rights violations or for crimes of aggression, and therefore decides not to export arms to that state. Regardless of how many party states comply with the treaty and refuse to supply a certain State with arms, if one party state supplies that country with arms, the refusal of the rest of the party states is useless and has no effect on the protection of Human Rights or the prevention of violence. Unless all the Party States follow the same line, the ATT's prohibitions cannot be effective.

Since, the ATT gives too much freedom of action in its current form, to ensure the uniform application of the Treaty, it must operate on common terms and criteria. The classification of permitted and prohibited destinations of arms export must be based a common objective assessment system, which cannot be manipulated by the five permanent members of the UN Security Council. The subjective assessment obligation in the ATT should be abolished and the prohibitions should be based on a politically unbiased assessment.

Adoption of such list would surely make the Treaty more effective, however it will also drive away states whose political interest are endangered by the prohibition of arms trade with certain states. As an example, the USA will not enter into a treaty or agreement which prohibits its arms trade with its allies, the State of Israel and with China.¹³⁴ This factor once again demonstrates the problem with International Law. States' commitment to International Treaties, as well as to the Arms Trade Treaty, is a purely voluntary action. Therefore, a state may withhold from entering into a treaty, if it is not pleased with its terms.

The obligation to follow the UN arms embargo list, as stated in the ATT Article 6 (1), does not widen the existing obligations of the UN members. All UN members must follow the UNSC arms

¹³⁴ *113th Congress 1st Session: Concurrent Resolution: Expressing the sense of Congress regarding the conditions for the United States becoming a signatory to the United Nations Arms Trade Treaty, or to any similar agreement on the arms trade*, (2013), *Supra nota* 110, p 2–3.

embargo resolutions.¹³⁵ The UN arms embargo resolutions seem like a good and effective solution to control international arms trade, however, due to the fact that embargoes derive from UNSC resolutions, the system is imperfect and biased. Firstly, it is manipulated by the five permanent UNSC members. Any resolution, that would prevent any of the UNSC permanent members of supplying their allies with arms, will likely be vetoed. This can be seen from the adoption of UN resolutions during the Cold War, when the world was more or less divided into three sides, the capitalist (1st world) countries, the communist (2nd world) countries and the 3rd world countries. The number of arms embargoes agreed upon by the UNSC after the ending of the Cold War is notably high in comparison with the number of arms embargoes agreed upon during the Cold War.¹³⁶ During the Cold War the five permanent UNSC members vetoed UNSC resolutions easily, due to the tensions between the Cold War parties.¹³⁷

Secondly, the main problem with the UN arms embargo list is its slow application.¹³⁸ Arms transfers have often been scheduled to take place during the threat period, before the arms embargo comes into effect. Reportedly at least one permanent member of the UNSC has provided arms to the embargo target during the threat period, before the effect of the embargo, in nine cases out of the total 21 UN arms embargo threats imposed between the years 1990–2006.¹³⁹ Therefore, in order for the arms embargo resolutions to be effective it must be up to date and be updated promptly.

The arms being transferred in illegal arms trade originate mostly from the same legal arms factories which the arms being legally traded originate from.¹⁴⁰ As mentioned above, a big part of the surplus of small arms produced during the cold war for the purpose of national security and defence of Sovereign State territory, has ended up in conflict zones. Thus, illegal arms transfer, whether it is retailing and wholesaling of arms, brokering, arranging or facilitating deals on arms, or trafficking of arms, is mainly possible due to inadequate national control and surveillance.¹⁴¹ Especially national control is an essential factor in preventing illicit arms trade in both exporting and receiving states but it alone is not enough to prevent illicit arms transfer.¹⁴² Many States for example, have

¹³⁵ Bellal, A., Casey-Maslen, S., Giacca, G. *Implications of International Law for a Future Arms Trade Treaty*. Accessible: <https://www.sipri.org/sites/default/files/research/disarmament/dualuse/pdf-archive-att/pdfs/un-implications-of-international-law-for-a-future-arms-trade-treaty.pdf> (21.3.2018).

¹³⁶ Fruchart, D., Holtom, P., Strandow, D., Wallenstein, P., Wezeman, S. T. (2007). *Supra nota* 132.

¹³⁷ *Ibid.*, p 4–5.

¹³⁸ *Ibid.*, p 14–15.

¹³⁹ *Ibid.*, p 14–19.

¹⁴⁰ Greene, O., Holt, S., Wilkinson, A. (2005). *Supra nota* 20.

¹⁴¹ Garcia, D. (2006). *Small Arms and Security: New emerging international norms*. 1st ed. New York: Routledge. P 95–99.

¹⁴² Garcia, D. (2006), *Supra nota* 141, p 95–99.

not adopted any national laws to criminalize violations of the UN arms embargoes and ensure the compliance with the embargoes.¹⁴³

Some arms are however manufactured locally in the conflict zone in illegal arms factories which produce lower quality arms. Arms can also be transfer to illicit traders through legal arms transfer by a legitimate military. The United States army, for example, has left their arms used in battle on the foreign battlefield to the local authorities, when leaving it.¹⁴⁴ The Islamic State of Iraq and Syria (ISIS) has acquired over 600 million USD¹⁴⁵ worth of US made arms due to poor assessment done by and bad decisions taken by the United States, to supply corrupt¹⁴⁶ and weak Iraqi armed forces with highly advanced arms in order to fight ISIS.¹⁴⁷ In many cases, illicit arms trade is carried out by corrupt government officials or with their assistance.¹⁴⁸

The Arms Trade Treaty does not impose restrictions on domestic gun control legislation.¹⁴⁹ However it requires Party States to have in place a national control system in order to control the export of arms, their parts and components, and ammunition.¹⁵⁰ In addition, the Treaty imposes the obligation to keep record nationally of arms which are exported, imported and trans-shipped through its territory.¹⁵¹

In order for the ATT to reach its objectives it must go through a number of changes and improvements. Firstly, it must clearly state what measures each Party State must take and set more concrete and precise obligations. It has been suggested that the vagueness of the ATT's wording must be eliminated.¹⁵² As an example, words which have no clear definition such as 'overriding risk' must be removed.¹⁵³ Such vague norms leave room for decisions to be made on the basis of economic or political considerations, which are irrelevant in regard to the ATT's objectives.¹⁵⁴

¹⁴³ Brian Wood. *Strengthening compliance with UN arms embargoes – key challenges for monitoring and verification*. P 3–4. Accessible: <http://www.smallarmssurvey.org/fileadmin/docs/L-External-publications/2006/2006-Wood-EU-arms-embargoes-compliance.pdf> (21.3.2018).

¹⁴⁴ Pianin, E. (2015). *U.S. Shoots Itself in the Foot by Accidentally Arming ISIS*. The Fiscal Times. Accessible: <http://www.thefiscaltimes.com/2015/06/04/Fog-War-US-Has-Armed-ISIS> (21.3.2018).

¹⁴⁵ *Ibid.*

¹⁴⁶ Kelley, M. B. *US-Supplied Weapons Are Already Ending Up in ISIS Hands*. Business Insider. Accessible: <http://www.businessinsider.com/iraqi-weapons-reportedly-ending-up-with-isis-2014-11?r=US&IR=T&IR=T> (21.3.2018).

¹⁴⁷ Pianin, (2015), *Supra nota* 144.

¹⁴⁸ Stohl, R., Grillot, S. (2009). *The International Arms Trade*. Cambridge: Polity Press. P100-102

¹⁴⁹ Kimball, D. G. (2016). *The Arms Trade Treaty at a Glance*. Arms Control Association. Accessible: https://www.armscontrol.org/factsheets/arms_trade_treaty (21.3.2018).

¹⁵⁰ ATT, *Supra nota* 4, Article 3, Article 4, Article 5.

¹⁵¹ *Ibid.*, Article 12.

¹⁵² Fukui, (2015), *Supra nota* 48, p 320.

¹⁵³ Fukui, (2015), *Supra nota* 48, p 320.

¹⁵⁴ Lustgarten, L. (2015). *The Arms Trade Treaty: Achievements, Failings, Future*. – *International and Comparative Law Quarterly*. Vol. 64. Cambridge: Cambridge University Press, 569–600.

3.2. Enforcing International Law

The legal sources of international law consist of three categories: the general principles of international law, international agreements and customary international law.¹⁵⁵ International law is enforced in three different ways, by collective action, reciprocity and shaming.¹⁵⁶

As a United Nations treaty the ATT enforcement relies on the UN main organs, the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.¹⁵⁷ The General Assembly (UNGA) consists of all the UN members¹⁵⁸ and its main function is maintaining international security and international peace by launching studies and presenting recommendations.¹⁵⁹ In the process of maintenance of international security and peace, the UNGA may bring to the Security Council's (UNSC) attention any situation which threatens international security or peace.¹⁶⁰ The UNGA may propose recommendations upon the UNSC and UN's Members.¹⁶¹ The UNSC consists of the five permanent members of the UN and 10 other members elected by the UNGA.¹⁶² The UNGA is responsible for maintaining and restoring international security and peace, in order to ensure the prompt action of the UN.¹⁶³ The UNSC has the power and obligation to determine whether there is a threat to peace, breach of peace, or commissions of acts of aggression.¹⁶⁴ In addition, the UNSC shall present a recommendation, or a decision on measures to be taken for ensuring international peace and security.¹⁶⁵ The measures determined by the UNSC shall not include the exploitation of armed forces.¹⁶⁶ However if the non-military measures prove to be ineffective or inadequate, the UNSC may take action by initiating military operations by the UN members' land, air or sea forces.¹⁶⁷ Thus the UNSC together with the help of UNGA's studies and reporting, and UN members' armed forces, observes the compliance of the UN members with their obligations under

¹⁵⁵ Samaan, A. W. (2011). *Fordham Environmental Law Review: Enforcement of International Environmental Treaties: At Analysis*. Vol. 5, No. 1. Accessible:

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1352&context=elr> (21.3.2018).

¹⁵⁶ *How Is International Law Enforced?* New York: The Levin Institute - The State University of New York. Accessible: <http://www.globalization101.org/how-is-international-law-enforced/> (21.3.2018).

¹⁵⁷ Charter of the United Nations (UNC), Article 7.

¹⁵⁸ *Ibid.*, Article 9.

¹⁵⁹ *Ibid.*, Article 13.

¹⁶⁰ *Ibid.*, Article 11.

¹⁶¹ *Ibid.*, Article 10.

¹⁶² *Ibid.*, Article 23.

¹⁶³ *Ibid.*, Article 24.

¹⁶⁴ *Ibid.*, Article 39.

¹⁶⁵ *Ibid.*

¹⁶⁶ UNC, *Supra nota*, 157, Article 39.

¹⁶⁷ *Ibid.*, Article 42.

the Charter of the United Nations (UNC; hereafter the UN Charter) and initiates required measures to maintain and re-establish international peace and security.

Even though the enforcement of the ATT is upon the responsibility of the party states¹⁶⁸ to the Treaty,¹⁶⁹ the UNSC, along with the assistance of the UNGA and UN members, has the ability and competence to assess the existence of a threat to international peace and security resulting from the arms export of a party state.¹⁷⁰ In this manner the UN bodies can determine whether a party state's authorisation of an arms export poses a threat to international security or peace, and thus determine the measures to be taken for maintaining or restoring international security and peace. The competence of the UNSC covers all UN members, and all UN members must accept the decisions of the UNSC and carry them out.¹⁷¹ Thus not only the party states to the ATT are obliged to respect and act according to the UN principles in fulfilling the objectives of the UN.¹⁷²

The UN system seems coherent and flawless taking into consideration the first principle of the UN, which ensures the sovereign equality of all UN Members.¹⁷³ However the 'veto' power granted to the five permanent UNSC members under the UN Charter Article 27,¹⁷⁴ creates inequality in the enforcement of UN measures, making it a political tool, or as the Iranian president Ahmadinejad calls it 'A Satanic Tool', in the hands of the UNSC permanent members.¹⁷⁵ Between the years 1946 and 2004 approximately 257 vetoes have been given, which has resulted in the abandonment of more than 200 resolutions.¹⁷⁶

The state's power, or in other words military power, determines to a large extent how International Law is enforced against it.¹⁷⁷ Great powers, such as the United States have attempted and managed to enforce International Obligations against weaker states by using military force.¹⁷⁸ The USA did not manage to do so without substantial military effort.¹⁷⁹ Great powers have the capacity to

¹⁶⁸ Christ, M., Gould, R., Valenti, M., Mtonga, R., (2014), *Supra nota* 77, p 20.

¹⁶⁹ ATT, *Suopra nota* 4, Article 14.

¹⁷⁰ UNC, *Supra nota*, 157, Article 39.

¹⁷¹ *Ibid.*, Article 25.

¹⁷² *Ibid.*, Article 2.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*, Article 27.

¹⁷⁵ *Ahmadinejad Calls U.N. Veto Power "Satanic Tool"*. (2010). CBS Interactive. Accessible: <https://www.cbsnews.com/news/ahmadinejad-calls-un-veto-power-satanic-tool/> (21.3.2018).

¹⁷⁶ Wouters, J., Ruys, T. (2005). *Security council reform: a new veto for a new century?* Egmont Papers 9. Gent: Academia Press. P 9. Accessible: <http://aei.pitt.edu/8980/1/ep9.pdf> (21.3.2018).

¹⁷⁷ Nevers, R. D. (2007). Imposing International Norms: Great Powers and Norm Enforcement. – *International Studies Review*. Vol. 9, Issue 1. Oxford: Oxford University Press. 53 – 80.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

forcibly impose obligations on weaker states, and to enforce them against the weaker states.¹⁸⁰ However, enforcement of International norms against great powers using force is difficult and less likely to happen.¹⁸¹ Therefore, enforcement of International obligations against strong sovereign states forcibly is problematic and may threaten global stability.

Taking into consideration the fact that the largest arms exporters, the USA, Russia and China, are great powers, forcible enforcement is not an option. Thus, they can only be driven into international agreements by reciprocity and global pressure. Smaller states may gain power by uniting, likewise the European Union's states. The EU as a whole, having much power, may pressure great powers through reciprocity. The EU may link matters such as Arms Trade with commercial or economic matters, in order to pressure the great powers. To conclude, effective enforcement of International Law requires balance of powers and collective action.

¹⁸⁰ Nevers. R. D. (2007). *Supra nota* 179.

¹⁸¹ *Ibid.*

CONCLUSION

The aim of the research was to determine whether the UN Arms Trade Treaty (ATT) is a significant milestone in International Law, and whether it contributes to international peace and security, or is it simply a ‘feel-good treaty’ or a political tool. The research question is: “Does the Arms Trade Treaty reach its objectives, and does it contribute to pre-existing instruments?”. The research also determined, the possibility of the treaty achieving its objectives, and what is particularly required in order for that to happen. The research revealed the shortcomings of the Treaty and the possible solutions for improving the Treaty.

As a result of the study, the UN Arms Trade Treaty can be considered both a success and a failure. It is without a doubt a significant milestone in international law and in the process of promoting universal peace and Human Rights. However, it has failed, as a treaty, to regulate international arms trade. The ATT has not prevented arms transfer into countries which have low respect for Human Rights but a high political importance in its region. The ATT was a result of a long lasting international campaigning for arms control, done by Amnesty International and other international organisations, which led to the negotiation and adoption of the ATT by the UN. The adoption of the ATT shows that the work of international organisations is in fact important and influential. Additionally, the worldwide adoption and ratification of the ATT on the other hand is a demonstration of the universal will of states to control international arms trade.

The ATT is supposed to prevent illicit arms trade and legal arms trade with countries, where arms have a high possibility of being used for inhumane purposes. The ATT in reality has not fulfilled this objective, mainly because its obligations are vague and loose, but partly because the world’s biggest arms exporters have not ratified the Treaty. Non-Party States, such as the United States, China and Russia, have no legal obligation to withhold from arms trade with any State, since the ATT can only bind Party States. However, as UN members they are bound by the UN Security Council’s resolutions and arms embargoes resulting from the resolutions. In the event that the ATT would be effective, its biggest shortcoming would be the absence of these three major arms exporters from the treaty.

Even though the ATT, in its current form, lacks effectiveness, it sets an example and a minimum standard for forthcoming treaties and instruments. In addition to adopting new treaties and instruments, the ATT itself can be improved by amending it, in accordance with Article 20 of the Treaty. According to Article 20 Party States may propose amendments earliest after six years from its entry into force, which will be on 24th of December 2020.

The ATT needs much improvement, in order for it to achieve what it is set to do. Firstly, the ATT must be improved by including binding legal consequences for the violations of the clauses of the ATT. In its current form the ATT does not impose any sanctions on breaches whatsoever. The severity of a sanction is directly proportional to the effectiveness of the norm. The absence of sanctions makes a norm voluntary, and thus eliminates the whole purpose of the norm. The purpose of a norm is to regulate the actions of the legal person, by making the breach of the norm harmful and unprofitable for the norm violator. A purely voluntary norm, which can be breached without consequences, does not serve this purpose. Likewise, the ATT's clauses, as weak norms, do not serve the purpose of the ATT.

Secondly, the looseness and vagueness of the ATT's obligations must be eliminated. The obligations, such as the assessment and the tracing obligations, must be clearly and exhaustively written. The phrase 'State Party shall take measures' must be removed from the ATT. The ATT must set in detail the methods for executing its obligations, rather than leaving a Party State to determine the methods freely, as it does currently. In addition, the possibility of a purely subjective assessment must be abolished from the ATT, and it must adopt an objective standard when determining the prohibited arms' transfer destinations. In its current form the ATT leaves the classification of a prohibited destination on the responsibility of each Party State. This is the biggest deficiency of the ATT. The classification of a country as a prohibited destination must be unbiased, impartial and based on objective criteria.

Thirdly, the accession of the Treaty must be made favourable for States. For the ATT to be favourable for accession by all states, it must be a fair and just system, which is not manipulated by the most powerful States. The Treaty also must not bring benefit to some States at the expense of others. As Russia claimed that it was not willing to continue negotiations on the ATT, because the ATT would allow a subjective assessment of the exporting state. The treaty will not operate on just and fair grounds, unless it is enforced objectively and in a uniform way. The Treaty must be amended. It must adopt an objective assessment standard and clear and detailed obligations.

Since in the absence of the ATT any state can freely decide not to supply another state, committing war crimes, with arms, the ATT is only significant if it ensures that no other state either supplies arms to that particular destination. States complying with the ATT's rules must not feel that they have missed out on an arms trade opportunity without reducing human suffering, and for no good reason. ATT Party States will not follow the rules of the ATT, if they do not believe that the ATT has potential of preventing other states from supplying the same destinations. When doubting the effectiveness of the ATT, Non-Party states will not enter the Treaty. In order for the Treaty to have

effect it must be amended. However, the possibility of amendments is enough reason for powerful States to withhold from entering the Treaty and giving away big part of their sovereign power.

The ATT has failed to satisfy the needs of international peace and security. In its current form, the Treaty has no effect on international arms trade, not to mention domestic gun control. However, the treaty could have the potential of preventing arms transfer into countries where they are being used for War Crimes, and of reducing human suffering, if amended properly. The shortcomings, brought up by the research, must first and foremost be addressed. However, the ATT will remain weak and ineffective, until the first amendments can be proposed and adopted.

Non-Party States to the treaty must be pressured to access the Treaty by Party States by using economic and political means, such as embargoes on goods or by implying diplomatic sanctions. In the absence of a competent authority in International Law, as mentioned above, unity between States is necessary for enforcing International Law effectively.

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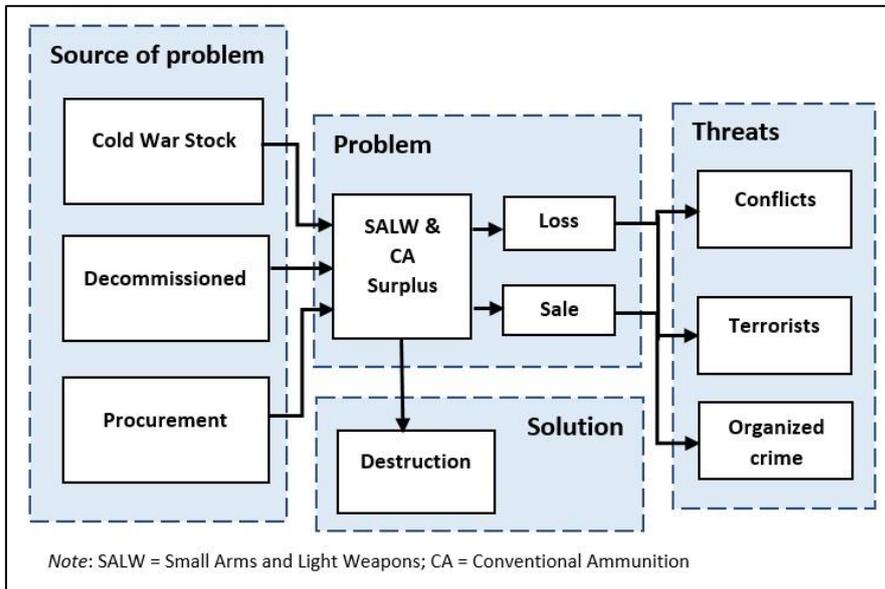
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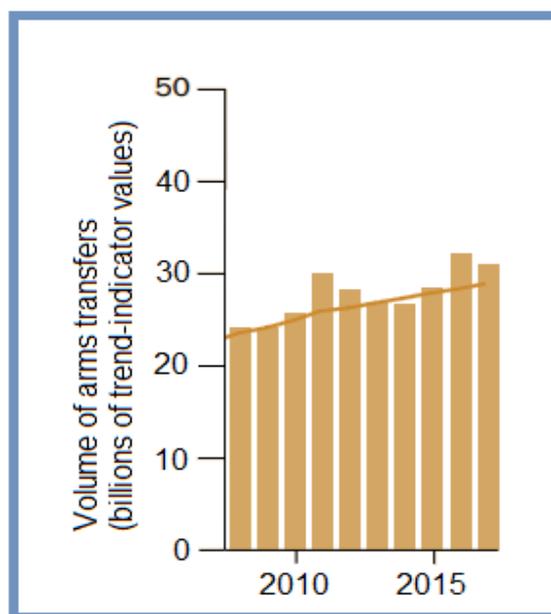
APPENDICES

Appendix 1. Source of surplus stockpiles and related threats



Source: Kryvonos; Kytömäki (2010, 36).

Appendix 2. The trend in international transfers of major weapons



Source: Fleurant, Kuimova, Tian, Wezeman, Wezeman, (2017, 1).