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# NOTES AND COMMENTS

## THE INTERNATIONAL ARMS TRADE: REGULATING CONVENTIONAL ARMS TRANSFERS IN THE AFTERMATH OF THE GULF WAR

David G. Anderson\*

If the world could live for a few generations without war, war would come to seem as absurd as duelling has come to seem to us. No doubt there would still be some homicidal maniacs, but they would no longer be heads of Governments.

Bertrand Russell<sup>1</sup>

### INTRODUCTION

For the world's largest arms-producing states,<sup>2</sup> conventional arms

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This article is dedicated to my mother who instilled in me the principle that the things worth doing are always the ones others say cannot be done. I wish to thank Domingo Acevedo and Janne Nolan for their many comments on earlier drafts, and also Gregg Schmitz for his tireless efforts in proofing this piece. I am also indebted to Michael Slater, the Defense Budget Project, the British American Security Information Council, the Office of Technology Assessment, and the Japanese United Nations Delegation for all their help in supplying and locating documents used in this article.

1. THE GAIA PEACE ATLAS: SURVIVAL INTO THE THIRD MILLENNIUM 60 (Frank Barnaby ed., 1988) (quoting Bertrand Russell).

2. See OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, AMERICAN MILITARY POWER: FUTURE NEEDS, FUTURE CHOICES -- BACKGROUND PAPER 7 (1991) [hereinafter AMERICAN MILITARY] (listing the countries producing weapons on a major or wide range scale through the year 2000 in descending order of magnitude as: the United States, Soviet Union, France, Germany, United Kingdom, China, Poland, Czechoslovakia, Italy, Sweden, Japan, Brazil, India, Israel, South Korea, Yugoslavia, South Africa and Spain). Other studies show a similar ranking of the world's leading suppliers. See *The Trade in Major Conventional Weapons*, in SIPRI Y.B. 1991: WORLD ARMAMENTS AND DISARMAMENT 198 (Stockholm International Peace Institute ed., 1990) [hereinafter SIPRI Y.B. 1991] (ranking the largest arms exporters between 1986-1990 as the Soviet Union, United States, France, China, and the United Kingdom); ARMS CONTROL AND DISARMAMENT AGENCY, U.S. DEP'T OF STATE, WORLD

transfers<sup>3</sup> are an important foreign policy tool.<sup>4</sup> The arms export indus-

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Military Expenditures and Arms Transfers 1989, at 14 [hereinafter ACDA 1989 Study] (ranking the largest exporters for 1988 (last year of available data) as the Soviet Union, United States, China, France, and Czechoslovakia); CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, CONVENTIONAL ARMS TRANSFERS TO THE THIRD WORLD, 1983-1990, at 6-9 (R. Grimmett ed., 1991) [hereinafter Grimmett Study] (explaining that the export leaders to the Third World over the last decade have been the United States, the Soviet Union, China, France, and the United Kingdom).

3. For purposes of this Comment, the terms "arms trade" "arms traffic" and "arms transfers" will be used interchangeably. The technically correct term, "arms transfers," depending on the source used, is defined in various ways. This Comment will utilize aggregate transfer data mainly from two sources: the Stockholm International Peace Research Institute's annual yearbook, SIPRI Y.B. 1991, *supra* note 2, and the United States Arms Control and Disarmament Agency's annual report, ACDA 1989 Study, *supra* note 2.

ACDA defines arms transfers as "the international transfer (under terms of grant, credit, barter, or cash) of military equipment, usually referred to as 'conventional,' including equipment and other commodities designed for military use." ACDA 1989 Study, *supra* note 2, at 137. ACDA uses constant United States dollar conversions for arms transfers and reflects military expenditures purportedly in all categories of weapons and components. *Id.* at 138-39. ACDA does include in its computations small arms, ammunition, and equipment applicable to both civilian and military sectors when the military application is dominant. *Id.* at 137. Arms transfer data in ACDA's study is based on official statistics from the United State's Department of Defense and Department of State. *Id.*

SIPRI limits its definition of arms transfers to "the value of trade" in five categories: aircraft, armor and artillery, radar systems, missiles, and warships. SIPRI Y.B. 1991, *supra* note 2, at 274. SIPRI uses constant United States dollar conversions and designs its computations and registers to reflect trends in the total world arms trade. *Id.* at 275. The SIPRI study does not include small arms, ammunition, service, or components. *Id.* at 274. SIPRI gathers its data from over 200 documents and publications available in the public domain. *Id.*

Analysts in the arms transfer field note that these sources should be used with caution due to each source's limits and differing emphases. See Edward T. Fei, *Understanding Arms Transfers and Military Expenditures: Data Problems, in ARMS TRANSFERS IN THE MODERN WORLD* 37-46 (Stephanie G. Neuman & Robert E. Harkavy eds., 1979) (explaining that users of the SIPRI and ACDA data must know each has limited value, that their best functions are in trend analyses and that corroborating sources should be used when available).

4. See ANDREW J. PIERRE, *THE GLOBAL POLITICS OF ARMS SALES* 3 (1982) [hereinafter PIERRE] (describing modern arms sales as a major foreign policy instrument); OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, *GLOBAL ARMS TRADE: COMMERCE IN ADVANCED MILITARY TECHNOLOGY AND WEAPONS* 3 (1991) [hereinafter OTA Study] (stating, for example, that the United States has traditionally viewed arms transfers as foreign policy instruments advancing the goals of exerting regional influence, strengthening alliances, and opposing communism); Richard F. Grimmett, *The Arms Trade After the War*, *ARMS CONTROL TODAY*, June 1991, at 21, 21 [hereinafter Grimmett] (explaining that the United States has used arms transfers to fulfill primarily foreign policy goals as opposed to economic goals); Vanessa P. Sciarra, *Congress and Arms Sales: Tapping the Potential of the Fast-Track Guarantee Procedure*, 97 *YALE L.J.* 1439, 1439 (1988) (stating that arms transfers have long been a significant feature of American foreign policy); Michael T. Klare, *Fueling the Fire: How We Armed the Middle East*, *BULL. OF THE ATOMIC SCIENTISTS*, Jan.-Feb. 1991, at 19, 23 [hereinafter Klare, *Fueling the Fire*] (quoting a State Department official as stating

try in these states also plays a key role in their respective economies.<sup>5</sup> The strong link between conventional arms transfers, sovereign foreign policy decisions<sup>6</sup> and economic necessity, combined with a sovereign

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that today's arms sales have "replace[d] the security pacts of the 1950's"); PAUL Y. HAMMOND, ET AL., *THE RELUCTANT SUPPLIER: U.S. DECISIONMAKING FOR ARMS SALES* 59-203 (1983) (describing the use of arms sales by successive post World War II administrations to achieve foreign policy aims); Edward A. Kolodziej, *Arms Transfers and International Politics: The Interdependence of Independence*, in *ARMS TRANSFERS IN THE MODERN WORLD* 3, 25 (Stephanie G. Neuman & Robert E. Harkavy eds., 1979) [hereinafter Kolodziej] (concluding that arms transfers are key components of a nation's trading and security regime); David J. Louscher, *The Rise of Military Sales as U.S. Foreign Assistance Instrument*, 20 *ORBIS* 933, 936 (1977) (discussing Congress's realization that arms transfers by the President represent United States foreign policy); ROBERT E. HARKAVY, *THE ARMS TRADE AND INTERNATIONAL SYSTEMS* 1 (1975) [hereinafter HARKAVY] (asserting that it may be possible to claim that arms transfers have become the most important tool of international diplomacy).

5. See Grimmett Study, *supra* note 2, at 9 (stating that arms producing states such as France, Britain, Germany, and Italy export for financial gain); *Meet the New Arms Exporters*, *ECONOMIST*, Aug. 6, 1988, at 54, 55 (finding that Japanese arms-related production firms see profit in a major future move into the world market); OTA Study, *supra* note 4, at 19 (explaining that many in the United States Congress are worried about the economic dislocation decreased defense spending will bring to areas of the country).

Economic pressures to export are especially evident in the cases of the European states. See *id.* at 40 (concluding that European defense firms, especially those in France and Britain, depend upon exports for survival). See also Ulrich Albrecht, *The Federal Republic of Germany and Italy: New Strategies of Mid-Sized Weapons Exporters?*, 40 *J. INT'L AFF.* 129, 134 (1986) (explaining that with each new generation of weapons systems, costs rise to such an extent that European producers fall under increasing pressure to export). The French have asserted, for example, that domestic military aircraft production would be economically unfeasible without an export outlet. *Id.* The United States, however, has also made this argument. See Lionel Barber, *U.S. Plans Export Credits for Arms*, *FIN. TIMES*, Mar. 19, 1991, at 22 [hereinafter Barber] (quoting White House Press Secretary Marlin Fitzwater as stating that reduced support for domestic defense industries may diminish the United States' military industrial base and its capacity to produce efficiently arms needed for national defense). For the European states and for most medium and small-sized producers in general, production runs which generate exports sustain the cost-efficiency of domestic production, reduce balance of payments deficits and benefit employment.

States often finance their domestic production through the benefits generated by producing at export levels. Christian Catrina, *International Arms Transfers: Supplier Policies and Recipient Dependence*, 13 *DISARMAMENT* 113, 118 (1990) [hereinafter Catrina]. Unit costs through export level production runs are reduced in three ways. First, when labor and management perform a task repeatedly, efficiency increases, and hence a "learning" benefit is realized. *Id.* Second, longer production runs allow for greater economies of scale benefits. *Id.* Third, research and development costs spread over a greater number of units reduces the overall cost per unit. *Id.*

6. See, e.g., Announcement Concerning a Presidential Directive on U.S. Transfer Policy, 17 *WEEKLY COMP. PRES. DOC.* 749 (July 9, 1981) [hereinafter Reagan Transfer Policy] (proclaiming that the United States will utilize arms transfers to effect its foreign policy goals). See also Treaty Establishing the European Community, Mar. 25, 1957, art. 223(b), 298 *U.N.T.S.* 11, 88 (1958) (stating that member states are free to make armament decisions as they deem necessary). Leaving arms transfer decisions solely in the hands of states is often seen as the main bar to the establishment of a

nation's inherent right to self-defense,<sup>7</sup> has largely insulated the arms transfer process, and the arms trade in general, from international regulation or multilateral restraint.<sup>8</sup>

The international community realized,<sup>9</sup> however, the danger in maintaining an unregulated international arms market when Iraq invaded Kuwait on August 2, 1990, with an arsenal stocked with arms acquired from the world's largest exporters.<sup>10</sup> Iraq received its arms<sup>11</sup> and mili-

comprehensive arms regime. See, e.g. Klare, *Fueling the Fire*, *supra* note 4, at 26 (claiming that as long as sovereign governments regard arms transfers as legitimate exponents of foreign policy, efforts to control arms transfers will be limited).

7. U.N. CHARTER art. 51.

8. See John Simpson, *The Nuclear Non-Proliferation Regime as a Model for Conventional Armament Restraint*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 227 (Thomas Ohlson ed., 1988) [hereinafter Simpson] (stating that while an elaborate regime exists for the regulation of trade in nuclear arms and material, no such regime exists for the conventional arms trade).

Since the early days of the Reagan Administration, the United States has promoted world-wide arms sales in order to further foreign policy goals. See Reagan Transfer Policy, *supra* note 6, at 749 (establishing the Reagan Administration policy positing arms sales as a central element in its defense and foreign policy considerations). The Bush Administration has not fundamentally diverged from this policy. See Vincent F. Decain, *Promoting Restraint in International Arms Transfers: An American Perspective*, 13 *DISARMAMENT* 144, 145 (1990) (asserting, as the Deputy Director of the United States Arms Control and Disarmament Agency, that it is the Bush Administration's policy that arms transfers can generally forward international peace and security needs).

9. See *Meeting of the Five on Arms Transfers and Non-Proliferation* 3 (July 8-9, 1991) [hereinafter *Paris Communiqué*] (copy available in the offices of the *American University Journal of International Law and Policy*) (expressing the belief of the five (the United States, Soviet Union, France, the United Kingdom and China) that indiscriminate arms and technology transfers create instability); Michael Wines, *U.S. Aid Helped Hussein's Climb; Now, Critics Say, the Bill is Due*, N.Y. TIMES, Aug. 13, 1990, at A11 (quoting Secretary of State James Baker as stating that the United States should have been more concerned about the unregulated market prior to the outbreak of the Gulf War); See GENERAL AND COMPLETE DISARMAMENT: INTERNATIONAL ARMS TRANSFERS, STUDY ON WAYS AND MEANS OF PROMOTING TRANSPARENCY IN INTERNATIONAL TRANSFERS OF CONVENTIONAL ARMS, REPORT OF THE SECRETARY-GENERAL, 46th Sess., Agenda Item 60(b) at 49, U.N. Doc. A/46/301 (Mimeo version 1991) [hereinafter U.N. TRANSFER STUDY] (stating that the Persian Gulf War has shown the negative effects of unmonitored arms trade). See also Ian Anthony, *The Global Arms Trade*, *ARMS CONTROL TODAY*, June 1991, 3, 3 (asserting that the Persian Gulf War highlighted how an unrestrained conventional arms trade can threaten international peace).

10. See MICHAEL BRZOSKA & THOMAS OHLSON, *ARMS TRANSFERS TO THE THIRD WORLD, 1971-1985, 191-95* (1987) [hereinafter BRZOSKA & OHLSON] (showing that the countries supplying arms to Iraq over the last twenty years included Argentina, Brazil, Czechoslovakia, Egypt, East Germany, West Germany, Hungary, Italy, Jordan, Kuwait, Libya, Poland, Spain, Sudan, Switzerland, and Yugoslavia); SIPRI Y.B. 1991, *supra* note 2, at 201 (finding that Iraq accumulated over 80% of its arsenal between 1980 and 1990 from the Soviet Union, France and China); Grimmett Study, *supra* note 2, at 29 (illustrating that Iraq concluded 88% of its arms transfer agreements between 1983 and 1990 with the Soviet Union, China, France, Germany, Italy and other European states); ACDA 1989 Study, *supra* note 2, at 117 (estimating that Iraq

tary technology<sup>12</sup> in large part from the five permanent members of the United Nations Security Council.<sup>13</sup> Following the Gulf War, policy-makers in the United States<sup>14</sup> and abroad<sup>15</sup> decried the existing unregulated arms market which facilitated Iraq's build-up. In October of 1991, the five permanent members of the United Nations Security Council agreed upon a set of restraint rules each state would use when

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received over 85% of its arms transfers between 1984 and 1988 from the Soviet Union, France, China, Britain, West Germany, Czechoslovakia, Poland, Italy and Bulgaria).

11. See *infra* notes 139-47 and accompanying text (describing the transfer of arms, tanks, fighter jets and missiles from the Soviet Union, France and China to Iraq).

12. See *Foreign Assistance Legislation for Fiscal Years 1992-1993: Hearings and Round Table Discussion on the Role of U.S. Foreign Policy and Assistance in the Promotion of Democracy Abroad Before the Committee on Foreign Affairs, House of Representatives*, 102d Cong., 1st Sess. 301 (1991) [hereinafter *Foreign Policy and Assistance*] (statement of Sen. Wolpe) (declaring that through technology transfers, the United States, Germany, France, and the Soviet Union built an Iraqi "monster"). See *infra* notes 133-38 and accompanying text (describing military technology transfers from the United States, Britain and Germany to Iraq).

13. The five Permanent Members are: the United States, the Soviet Union, China, Great Britain and France. U.N. CHARTER art. 23.

14. See *Foreign Policy and Assistance*, *supra* note 12, at 7 (statement of James Baker, Secretary of State) (concluding that the "time has come" for arms flow restrictions for the Gulf region). Baker further asserted that in order to expedite arms control in the region, an international agreement on tighter restraint is needed to stem the flow of weapons and sensitive technology into the Middle East. *Id.* Following the conclusion of the Gulf War, United States Congressmen derided the free flow of arms into the international market. See *id.* at 312 (statement of Rep. Berman) (asserting that the United States' 40 year-old policy of massive arms transfers has failed to provide true security); 137 CONG. REC. S3318 (daily ed. Mar. 14, 1991) (statement of Sen. Roth) (stating that the almost complete absence of international coordination on arms proliferation led to Iraq's ability to accumulate its vast arsenal of conventional weapons); 137 CONG. REC. S3137 (daily ed. Mar. 13, 1991) (statement of Sen. Biden) (decrying the "merchants of death" in France and Germany who sold weapons of mass destruction to the Middle East); John McCain, *Controlling Arms Sales to the Third World*, 14 WASH. Q. 79, 79 (1991) (asserting that arms transfers to developing countries have now exceeded reasonable limits); Lee H. Hamilton, *Middle Eastern Arms Restraint: An Obligation to Act*, ARMS CONTROL TODAY, June 1991, at 17, 17 [hereinafter Hamilton] (warning that if the United States does not lead in efforts to attack the unrestrained transfer of arms, suppliers and recipients will return to the *status quo ante* "arms bazaar").

15. See Brian Mulroney, Notes for an Address by Prime Minister Brian Mulroney on the Situation in the Persian Gulf 5 (February 8, 1991) [hereinafter *Mulroney Initiative*] (asserting that one of the main lessons to be learned from the Gulf War is the negative effects of unrestrained arms proliferation); *Declaration on Conventional Arms Transfers and NBC Non-Proliferation*, reprinted in, [Jan.-June] Int'l Trade Rep. (BNA) No. 29, at 1095 (July 17, 1991) [hereinafter *EEC Declaration*] (declaring that the Heads of Government and representatives of the European Community believe that the Gulf War showed how peace is undermined when nations can accumulate arsenals far beyond their reasonable needs); Ronald E. Yates, *Japan Urges Nations to Tighten Arms Control*, CHI. TRIB., May 28, 1991, at C4 (quoting Japanese Prime Minister Toshiki Kaifu as stating that the international system of arms transfers enabled Iraq to build its military arsenal).

making arms transfer decisions.<sup>16</sup> In December 1991, the international community took further action by voting to establish a United Nations supervised conventional arms trade register.<sup>17</sup>

Despite these positive international responses aimed at mitigating the negative consequences of the arms market, the conventional arms trade continues to plague the volatile and developing areas of the world.<sup>18</sup> International arms shipments have fueled and prolonged the Yugoslavian civil war.<sup>19</sup> The vast amounts of conventional weapons left in the

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16. See *Meeting of the Five on Arms Transfers and Non-Proliferation 1-5* (Oct. 17-18, 1991) [hereinafter *London Communiqué*] (copy available in the office of the *American University Journal of International Law and Policy*). The document states, *inter alia*, that these states will "consider" in making transfers: whether the transfer will aid the recipient's legitimate self-defense needs; whether the transfer is an appropriate response to the security needs of the recipient; and whether the transfer will aid the collective security needs of the recipient's region. *Id.* at 4. The states will also "avoid" transfers where they may aggravate existing conflicts; increase instability and tension in the region; introduce destabilizing military technology to the area; violate embargoes or regional restraint measures; be used for other than defensive needs; be used for terrorism; interfere with the recipient's internal affairs; or undermine recipient's economy. *Id.* at 4-5.

17. G.A. Res. 673 (1991) (mimeo). See also Paul Lewis, *U.N. Passes Voluntary Register to Curb Arms Sales*, N.Y. TIMES, Dec. 10, 1991, at A11 (reporting that the registry was approved by a vote of 150-0, with abstentions by Cuba and Iraq, and China not participating in the vote).

18. See R. Jeffrey Smith, *U.S. Complains to China About Libyan Arms Shipment*, WASH. POST, Apr. 28, 1992, at A6 (reporting that a Chinese shipment of small arms had been delivered to Libya after a United Nations arms embargo was imposed on such transfers); Jane Perlez, *Sudanese Troops Push into South*, N.Y. TIMES, Mar. 18, 1992, at A9 (reporting that Libya, Iran and China shipped a new load of heavy weapons to the Sudanese Army fomenting the civil war and disrupting refugee relief efforts); Jackson Diehl, *Israelis Charge 'Smear Campaign,' Deny Violations in Sales of U.S. Arms*, WASH. POST, Mar. 16, 1992, at A12 (announcing the leak of a State Department document which stated that Israel had sold weapons with U.S. weapons components and technology to China, South Africa, Ethiopia and Chile); Eric Schmitt, *North Korea Ship Delivers To Iran*, N.Y. TIMES, Mar. 18, 1992, at A12 (reporting a North Korean shipment of SCUD missiles and components to Iran despite a formal complaint by the Bush Administration); James Adams, *The Arms Trade: The Real Lesson of the Gulf War*, THE ATLANTIC, Nov. 1991, 36, 36 (stating that immediately after the Gulf War, arms salesmen from the United States, Britain, France, Germany and Czechoslovakia converged upon the Middle East to market new weapons to replenish those expended); see also Michael T. Klare, *World Arms Mart: It's Business As Usual*, 254 THE NATION 120, 121 (1992) (observing the conflict between the current international trend toward arms trade restraint and the countervailing trend of massive post-Gulf War arms sales.)

19. See Mary Battiata, *Tank Seizure by Germany Spotlights Arms Trade by Czechoslovakia*, WASH. POST, Feb. 2, 1992, at A24 (discussing a contract for Czechoslovakian machine guns, automatic rifles and anti-tank missiles destined for Serbian forces in Croatia); Nathaniel C. Nash, *Chilean Arms Shipment to Croatia Stirs Tensions*, N.Y. TIMES, Jan. 11, 1992, at A2 (finding that Chile's state run arms manufacturer, Famae, had attempted to clandestinely export eleven tons of small arms to Croatian forces in violation of the United Nations sales ban); B. Debusman, *Despite Control Plans, Disarmament Remains Elusive Dream*, Reuters, Sept. 29, 1991, available in

former republics of the Soviet Union are in jeopardy of being sold to any bidder holding hard currency.<sup>20</sup> The world-wide black market in arms thrives in the absence of coordinated international action.<sup>21</sup> Further, overextended arms budgets, especially in Third World states, divert scarce resources from productive development.<sup>22</sup> With an increas-

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LEXIS, Nexis Library, Reuters File [hereinafter Debusman] (reporting that arms shipped for use in the Yugoslavian conflict originated in large part from the surplus in a now peaceful Lebanon); Blaine Harden, *Serbia Accepts Plan for EC to Monitor Yugoslav Cease-Fire*, WASH. POST, Sept. 1, 1991, at A24 (stating that Croatia has not tried to hide the fact that it intends to import black market weapons from world-wide arms merchants); Peter Maass, *Arms Sale to Croatia Causes Stir in Hungary: Opposition Accuses Budapest Government of Helping to Promote Breakup of Yugoslavia*, WASH. POST, Mar. 2, 1991, at A7 (reporting on the Hungarian shipment of 10,000 assault rifles to Croatia).

20. See Christopher Drew & Michael Arndt, *Arms Flow to Iran Concerns U.S.: Russian Deals May Tip Power in the Gulf*, CHI. TRIB., Jan. 19, 1992, at C1 (explaining that there is a current "firesale" of Soviet arms going to Iran and potentially to China, North Korea, and Vietnam); Adel Darwish, *Third World Scrambles for Cut-Price Arms; Black-Market Weapons Race Gathers Pace as Gaddafi Woos Ex-Soviet Scientists*, DAILY TELEGRAPH, Jan. 12, 1992, at 9 (reporting that Moscow has encouraged army officers still stationed in former East Germany to negotiate arms deals at a fifty-percent markdown); *Keep Watch Over Former Soviet Arms*, AVIATION WEEK AND SPACE TECH., Jan. 6, 1992, at 9 (warning that the West needs to closely monitor arms sales in the former Soviet republics as the economic situation worsens); Arnaud de Borchgrave, *Gorbachev Refuses to Give Up Union; 3rd World Cash Buys Soviet Nuke Expertise*, WASH. TIMES, Dec. 10, 1991, at A1 (reporting that high ranking Soviet military personnel view their arms as ready for "the world's largest rummage sale"); J. Lyons, *Soviet Defense Ministry Warns Against Republics' Arms Sell-Off*, Reuters, Nov. 22, 1991 available in LEXIS, Nexis Library, Reuters File (quoting Soviet Defense Ministry official Valery Manilov as stating that the arms trade is one of the leading sources of hard currency in the Soviet Union, and that uncontrolled sales by sovereign republics are a grave concern).

21. See U.N. TRANSFER STUDY, *supra* note 9, at 46 (explaining that the arms black market, while smaller in overall dollar values compared to overt arms transfers, can have a disproportionately large effect on international security). Generally, the illicit arms trade is defined as the international transfer of arms contrary to the laws of individual nations or international law. *Id.*

Private individuals and groups play a large role in this trade. *Id.* at 47. These individuals are a dangerous uncontrolled factor in the overall black-market problem. See James Adams, *Arms and the Salesmen*, WASH. POST, Jan. 27, 1991, at C1 [hereinafter Adams] (examining the dealings and links of one of the world's leading arms suppliers, Syrian, Monzer Al-Kassar, with Iraq); Ann Reilly Dowd, *U.S. Arms Dealers are Making a Killing*, FORTUNE, Feb. 16, 1987, at 58-68 (detailing the exploits of the United States' most successful arms merchants).

22. See Lewis T. Preston, *Address to the Board of Governors of the World Bank Group 6* (Oct. 15, 1991) (copy available in the offices of the *American University Journal of International Law and Policy*) (observing that current military spending in developing countries far outstrips spending on education and health combined). The President of the World Bank further noted that the changing world order presents states with the opportunity to divert scarce resources away from defense and toward other domestic priorities. *Id.*

See also U.N. TRANSFER STUDY, *supra* note 9, at 26 (reaching the conclusion that arms acquisitions absorb national resources that could be utilized for basic social ser-

ing number of exporting nations coming into the market,<sup>23</sup> the world's largest exporters can no longer hope to control the international supply of armaments through unilateral self-restraint.<sup>24</sup>

Currently, no international conventional arms regulation regime, plan, or scheme exists.<sup>25</sup> Indeed, the world's largest exporters have agreed upon a set of non-binding rules for transfers in response to the Iraqi build-up,<sup>26</sup> but the international community has yet to develop a comprehensive regime on the subject.<sup>27</sup> Bases for such a regime do exist, and may take the form of supply-side restraints,<sup>28</sup> demand-side restraints,<sup>29</sup> and transparency or military openness schemes.<sup>30</sup> Most

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vices and economic development); U.N. DEP'T OF POLITICAL AND SECURITY COUNCIL AFFAIRS, STUDY ON THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE ARMS RACE AND MILITARY EXPENDITURES, 1989, at 37, U.N. Doc. A/43/368, U.N. Sales No. E.89.IX.2 (1989) (finding that extensive military spending undermines economic growth and contributes to economic stagnation); U.N. DEP'T OF POLITICAL AND SECURITY COUNCIL AFFAIRS, THE RELATIONSHIP BETWEEN DISARMAMENT AND DEVELOPMENT, 1982, U.N. Doc. A/36/356, U.N. Sales No. E.82.IX.1 (1982) [hereinafter U.N. DISARMAMENT STUDY] (concluding that high military consumption has a depressing effect on economic growth by displacing public investment).

23. See OTA Study, *supra* note 4, at 123 (explaining that over the past twenty years many Third World nations have developed indigenous arms industries). Between 1978 and 1988, for example, Israel, Brazil, Spain, and South Korea exported approximately \$16 billion worth of conventional arms. *Id.* at 9. Other developing nations participating in the arms industry include China, Yugoslavia, North Korea, Egypt, Portugal, Libya, Pakistan, Chile, Turkey, Greece, Cuba, Argentina, India, and Singapore. *Id.* at 11. The OTA estimates that by the year 2000 thirty-seven nations will have at least minimal weapons production capability. AMERICAN MILITARY, *supra* note 2, at 7.

24. Ian Anthony, *The International Arms Trade*, 13 DISARMAMENT 231, 231-32 (1990) [hereinafter Anthony]. See also OTA Study, *supra* note 4, at 16 (explaining that when many suppliers exist, unilateral attempts at restraining the arms trade are likely to fail).

25. SIPRI Y.B. 1991, *supra* note 2, at 221. The absence of a conventional arms regulation regime continues despite the fact that since 1945, all wars and conflicts have been fought with conventional weapons causing over 20 million deaths. 1989 U.N. DISARMAMENT Y.B. 315, U.N. Sales No. E.90.IX.4.

26. See *infra* note 165 and accompanying text (describing the October 1991 agreement between the United States, the Soviet Union, France, Britain and China with regard to arms transfers).

27. Michael T. Klare, *Gaining Control: Building a Comprehensive Arms Restraint System*, ARMS CONTROL TODAY, June 1991, at 9, 10 [hereinafter Klare, *Gaining Control*] (outlining the bases for a restraint system in the absence of an existing regime); Geoffrey Kemp, *Regional Security, Arms Control, and the End of the Cold War*, 13 WASH. Q. 33, 47 (1990) (stating that no international institutions exist to handle conventional arms control); Simpson, *supra* note 8, at 227 (observing that while restraint systems exist for nuclear weapons, no such system has been devised to address conventional weapons).

28. See *infra* notes 172-220 and accompanying text (discussing unilateral and multilateral forms of supply-side restraint).

29. See *infra* notes 226-66 and accompanying text (describing potential modalities for regional recipient restraint).

30. See *infra* notes 273-86 and accompanying text (detailing the United Nations arms registry).

arms-exporting countries employ some unilateral, supply-side restraints.<sup>31</sup> The rules of restraint agreed upon in October of 1991 serve as a loose, non-binding form of multilateral supply-side restraint.<sup>32</sup> The voluntary arms register will help to promote recipient restraint through openness in arms sales and acquisitions.<sup>33</sup> Yet these potential layers of arms regulation remain unconnected and uncoordinated.<sup>34</sup> The stark example of how the current arms market aided Iraq's build-up, coupled with the end of the Cold War, presents a favorable climate for the creation of a transfer regime capable of linking and strengthening these regulatory models.<sup>35</sup>

This Comment will explore the serious problems attendant to the conventional arms transfer area in an attempt to learn a clear lesson from the Gulf War: unregulated arms transfers promote world and regional instability and must be internationally managed. Since the conventional arms trade between the major exporters and developing states is the area of most transfer activity, this Comment will focus on these relations. This Comment asserts that the negative consequences of the arms trade can only be addressed by the current arms regulation models if they are coordinated and comprehensively linked through multilateral agreements. As with most arms control efforts, this process may prove to be slow and complex.<sup>36</sup> Therefore, this Comment will recommend the creation of an international arms agency to deal with the

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31. Thomas Ohlson, *Assessment, in ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 241, 241 (Thomas Ohlson ed., 1988) [hereinafter Ohlson, *Assessment*] (noting that with varying degrees of success and resolve, many states apply unilateral export controls).

32. See *London Communiqué, supra* note 16, at 4 (detailing the criteria that the five permanent members of the United Nations Security Council have agreed to follow when making arms transfer decisions).

33. See *infra* notes 273-86 and accompanying text (discussing the benefits of increased arms sales transparency).

34. See Klare, *Gaining Control, supra* note 27, at 13 (arguing that in order for arms regulation mechanisms to be effective, they need to be linked in a comprehensive regime).

35. Andrew J. Pierre, *The Prospects for Arms Transfer Controls, ARMS CONTROL TODAY*, June 1991, 23, 23 (expressing the view that the current political situation, as set against the Gulf War, presents a "unique opportunity" for international restraint in conventional arms build up); see Thomas Graham, Jr. and Edward Ifft, *Legal Aspects of Bilateral Arms Control Treaties*, 16 N.C. J. INT'L L. & COM. REG. 1, 1 (1991) (asserting that the current time presents the most promising opportunities to date for arms control); G.A. Res. 673 (1991) (noting that the present international situation bodes well for arms limitation measures).

36. See *America and Europe: Creating an Arms Suppliers' Cartel: Hearing Before the Subcommittee on European Affairs of the Senate Committee on Foreign Relations*, 102d Cong., 1st Sess. 2 (Comm. Print 1991) (statement of Sen. Biden) (recognizing that the multilateral arms control process is often slow and incremental in nature).

immediate concerns associated with the currently unregulated arms market. Part I will survey the prior attempts at international regulation of the conventional arms trade. Part II will describe more specifically how the international arms market supplied Iraq — the most glaring example of how an unregulated arms trade threatens world and regional security. Part III will outline and analyze existing models of arms transfer restraint currently employed or available for controlling international arms transfers. Finally, Part IV proposes an integration and coordination of these restraint systems through a multilateral treaty and an adjacent arms transfer agency as a two stage method of creating an enduring international conventional arms transfer control regime.

## I. INTERNATIONAL ARMS TRANSFER REGULATION ATTEMPTS

### A. PRE-WORLD WAR II

The period preceding the advent of the atomic bomb witnessed the most activity to date<sup>37</sup> concerning the international regulation of conventional arms transfers. This era provided several enduring and important models of transfer regulation upon which future systems of regulation may be built.

A number of accords<sup>38</sup> enacted by various combinations of nations between 1868 and 1914 sought to codify the laws of war<sup>39</sup> and to prohibit certain classes of weapons.<sup>40</sup> Generally, the Brussels Act of

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37. See Thomas Ohlson, *Introduction, in ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 1, 2 (Thomas Ohlson ed., 1988) [hereinafter Ohlson, *Introduction*] (noting that the period before the Second World War marked the "heyday" of arms transfer proposals).

38. See John Moore, *Strengthening World Order: Reversing the Slide to Anarchy*, 4 AM. U.J. INT'L L. & POL'Y 1, 7-8 (1989) (discussing the emergence of the international conference system for the pacific settlement of disputes which generated many of the early arms control measures).

39. Convention for the Pacific Settlement of International Disputes, July 29, 1899, 32 Stat. 1803, T.S. 392, reprinted in 2 WILLIAM M. MALLOY, TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS 2016-32 (1910) [hereinafter MALLOY, U.S. TREATIES]; Convention [No. II] on the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803, T.S. 403, reprinted in 2 MALLOY, U.S. TREATIES 2042-57 (1910); Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 32 Stat. 2199, T.S. No. 536, reprinted in 2 MALLOY, U.S. TREATIES 2220-48 (1910); Convention [No. IV] Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, reprinted in 2 MALLOY, U.S. TREATIES 2269-90 (1910).

40. See Declaration of St. Petersburg, Forbidding Use of Certain Projectiles in Time of War, Nov. 29, 1868 reprinted in 1 AM. J. INT'L L. 95, 96 (Supp. 1907) (renouncing light-weight projectiles which are charged with flammable substances or ex-

1890,<sup>41</sup> which, *inter alia*, restricted arms flows to Northern Africa, was the first<sup>42</sup> and only<sup>43</sup> modern multilateral treaty to enter into force specifically aimed at controlling the international arms trade.<sup>44</sup> After the First World War, international efforts to control the arms trade intensified due to the widely held belief that the world-wide arms traffic was a significant cause of the war.<sup>45</sup> The drafters of the League of Nations Covenant included this belief in the Covenant's disarmament provision, Article VIII,<sup>46</sup> and charged the League with the supervision<sup>47</sup> of the

plode); Declaration Respecting Expanding Bullets, July 29, 1899, 1899 Gr. Brit. T.S. No. 32; Declaration as to Launching of Projectiles and Explosives from Balloons, July 29, 1899, 32 Stat. 1839, T.S. No. 393, *reprinted in* 2 MALLOY, U.S. TREATIES, *supra* note 39, at 2032-34 (1910); Declaration Prohibiting the Discharge of Projectiles and Explosives From Balloons, Oct. 18, 1907, 36 Stat. 2439, T.S. 546, *reprinted in* 2 MALLOY, U.S. TREATIES, *supra* note 39, at 2366-68 (1910).

41. General Act for the Repression of the African Slave Trade, July 2, 1890, arts. 8-10, 27 Stat. 886, T.S. No. 383, *reprinted in* 2 MALLOY, U.S. TREATIES, *supra* note 39, at 1970-72.

42. HARKAVY, *supra* note 4, at 213.

43. STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, THE ARMS TRADE WITH THE THIRD WORLD 297 (rev. ed. 1975) [hereinafter SIPRI ARMS TRADE].

44. JOZEF GOLDBLAT, AGREEMENTS FOR ARMS CONTROL: A CRITICAL SURVEY 4 (1982) [hereinafter GOLDBLAT]. It is, however, disputed whether this treaty was ever effectively implemented. See R.W. Beachey, *The Arms Trade in East Africa in the Late Nineteenth Century*, 3 J. AFRICAN HISTORY 451, 457-62 (1962) (demonstrating that the Brussels Act was blatantly disregarded by European arms merchants).

45. Ohlson, *Introduction*, *supra* note 37, at 2. See 1 VISCOUNT GREY OF FALDON, TWENTY-FIVE YEARS 91-92 (1928) (stating as the former British Foreign Secretary at the start of World War I that "[g]reat armaments lead inevitably to war. . . [t]he enormous growth of armaments in Europe. . . made war inevitable"); *President's Message to the Senate on a Post-War Settlement*, 40 THE PAPERS OF WOODROW WILSON 538 (Arthur Link ed., 1982) (quoting President Wilson as stating on Jan. 22, 1917 that "[t]here can be no sense of safety and equality among the nations if great preponderating armaments are henceforth to continue here and there to be built up and maintained"); H.C. ENGLEBRECHT & F.C. HANIGHEN, THE MERCHANTS OF DEATH 1-5 (1937) (arguing that arms firms foment war scares, arm both sides of a conflict, and generally promote war); ROYAL COMMISSION ON THE PRIVATE MANUFACTURE OF AND TRADING IN ARMS, 1935-1936, CMD. 5292, at 16 (statement of Foreign Secretary Lord Halifax) (stating that the great majority of British citizens consider the arms trade to be intertwined with issues of war and peace).

46. LEAGUE OF NATIONS COVENANT art. 8, para. 5. Article 8(5) provides in full:

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

*Id.*

47. LEAGUE OF NATIONS COVENANT art. 23(d). This provision provides in full: Subject to and in accordance with the provision of international conventions existing or hereafter to be agreed upon, the Members of the League: . . . (d) will entrust the League with the general supervision of the trade in arms and ammu-

arms traffic problem.<sup>48</sup>

The 1919 St. Germain-en-Laye Convention (St. Germain Convention)<sup>49</sup> represented the League's attempt to supplant the Brussels Act<sup>50</sup> with a comprehensive legal framework for League regulation of international arms transfers.<sup>51</sup> The St. Germain Convention attempted to control arms transfers to Africa, Turkey, and the Middle East,<sup>52</sup> and sought to create a system of coordinated export licensing and national supervision.<sup>53</sup> In addition, the Convention proposed the creation of a "Central International Office," under the aegis of the League, to coordinate the arms transfer matters of the signatories, including publish-

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tion with the countries in which the control of this traffic is necessary in the common interest.

*Id.*

48. LEAGUE OF NATIONS COVENANT art. 8, para. 5. This provision also entrusted the League with the responsibility of determining how the "evil effects" of the arms trade could be addressed. *Id.* This responsibility manifested itself in a 1921 report by the Temporary Mixed Commission which discovered a total of six "evils" of the private arms trade. *Report of the First Sub-Committee of the Temporary Mixed Commission on Armaments*, LEAGUE OF NATIONS DOC. A.81, 1921, at 11. The six "evils" were: arms firms foment war; bribe governments; disseminate false military reports in order to stimulate arms spending; manipulate the press; form international arms rings to play one country off another; and, form arms race trusts. *Id.*

49. Convention for the Control of the Trade in Arms and Ammunition, Sept. 10, 1919, 46 Stat. 2199, T.S. No. 779, 7 L.N.T.S. 331, 1919 Gr. Brit. T.S. No. 12, (Cmd. 414), reprinted in 3 MALLOY, U.S. TREATIES, *supra* note 39, at 3752 (1923) [hereinafter St. Germain Convention]. The St. Germain Convention was an adjunct of the Treaty of St. Germain, one of the five armistice treaties ending World War I. BERNADETTE E. SCHMITT & HAROLD C. VEDELER, *THE WORLD IN THE CRUCIBLE* 462 (1984). The Treaty of St. Germain itself represented the peace agreement between the allies and Austria. *Id.*

50. St. Germain Convention, *supra* note 49, at Preamble. The preamble of the Convention stated clearly that with regards to the "regulating of the traffic in arms . . . [the Brussels Act] no longer meet[s] present conditions, which require more elaborate provisions . . ." *Id.*

51. HARKAVY, *supra* note 4, at 214. The St. Germain Convention provided many mechanisms for controlling the arms trade. For example, Article I of the Convention listed the arms to be prohibited from export. St. Germain Convention, *supra* note 49, art. I. Article II prohibited exports to any areas without export licenses issued by the exporter's national government. *Id.* art. 2. Article V sought to establish a "Central International Office," under the League's control, which would supervise all activities falling under the Convention. *Id.* art. 2. Finally, Article VI specifically listed the areas where the prohibitions were to be enforced, citing mainly Africa and the Middle East, areas then under colonial domination by the contracting powers. *Id.* art. 6.

52. St. Germain Convention, *supra* note 49, art. 6. Limiting arms transfers in these defined areas was an attempt to prevent "vast bloodshed." *Report Presented to the Third Assembly by the Third Committee*, League of Nations Doc. A.124.1922.IX (3d Assembly, Plenary Mtg., Annex 24) at 163 [hereinafter 1922 Third Committee]. However, it has been argued that this convention was an attempt by the European powers to prevent their colonials from gaining arms with which to rebel. See HARKAVY, *supra* note 4, at 214 (arguing that Britain and France used the convention to prevent anti-colonial revolutions).

53. St. Germain Convention, *supra* note 49, arts. 1, 4, 11, and 13.

ing an annual report of their respective arms export data.<sup>54</sup> The ambitious St. Germain Convention, however, never entered into force, due primarily to the absence of the United States as a participant in the scheme.<sup>55</sup>

In 1925, League members sought to amend the St. Germain Convention to suit the needs of the United States.<sup>56</sup> The resulting document, the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War (Geneva Arms Traffic Convention),<sup>57</sup> devised a regulation system less tied to the League. Unlike the St. Germain Convention, the Geneva Arms Traffic Convention focused closely on the publicizing of transfers.<sup>58</sup> The new plan shifted supervisory responsibilities away from the League and left them in the hands of the contracting states.<sup>59</sup> The Geneva Arms Traffic Convention did not, however, address the issue of publicizing or regulating arms production. Because production was, and still is,<sup>60</sup> a contentious issue

54. *Id.* art. 5.

55. See 1922 *Third Committee*, *supra* note 52, at 163 (noting that the United States' refusal to ratify the St. Germain Convention quelled hopes that the Convention would receive general acceptance). See also 2 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 212 (1922) (stating that nations which signed the St. Germain Convention predicated their ratification upon the participation of the United States).

56. See *Conference for the Control of the International Trade in Arms, Munitions and Implements of War*, League of Nations Doc. C.758.M.258 1924.IX, at 47 (1925) (reprinting a letter from the United States to the League's Secretary General, Eric Drummond, which states that the St. Germain Convention was so intertwined with the League that it would be impracticable for the United States, as a non-member, to ratify it); HARKAVY, *supra* note 4, at 214 (asserting that the United States did not ratify the St. Germain Convention due to the Convention's clear connections to the League).

57. Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War, June 17, 1925, League of Nations Doc. A.13.1925.IX (1925), 6 LEAGUE OF NATIONS O.J. 1117 (1925), reprinted in 4 MALLOY, U.S. TREATIES, *supra* note 39, at 4903-4934 (1938) [hereinafter Geneva Arms Traffic Convention]. The Geneva Arms Traffic Convention was ratified by 14 League nations in 1925, one short of the number needed for passage. FRANCIS COLT DE WOLF, GENERAL SYNOPSIS OF TREATIES OF ARBITRATION, CONCILIATION, JUDICIAL SETTLEMENT, SECURITY, AND DISARMAMENT, ACTUALLY IN FORCE BETWEEN COUNTRIES INVITED TO THE DISARMAMENT CONFERENCE 192 (1966). In the wake of the United States' own arms scandal in 1934-1935, see *infra* note 67, the United States ratified the Geneva Arms Traffic Convention on June 21, 1935. 4 MALLOY, U.S. TREATIES, *supra* note 39, at 4903 (1938).

58. Geneva Arms Traffic Convention, *supra* note 57, arts. 6-9.

59. *Id.* art. 1.

60. STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE, THE ARMS TRADE WITH THE THIRD WORLD 95-97 (1971); GOLDBLAT, *supra* note 44, at 6. The argument that arms transfer regulation lacks measures for controlling production as well as trade, and thus inherently discriminates against non-producing states, is still an issue of grave concern today. See Nicole Ball, *Third World Arms Control: A Third World Responsibility*, in ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY 45, 46 (Thomas Ohlson ed., 1988) [hereinafter Ball] (explaining that Third World states are often crit-

for non-producing states, the convention failed to secure the necessary state accessions and did not enter into force.<sup>61</sup> In 1924, the League published its first of fifteen annual *Armaments Yearbooks*,<sup>62</sup> based on public and voluntary information.

In 1932, the First World Disarmament Conference convened at Geneva, and the arms trade was once again a significant topic.<sup>63</sup> After Germany withdrew on October 14, 1933,<sup>64</sup> the Conference lagged on until June 1934, when it adjourned *sine die*.<sup>65</sup> Despite Germany's withdrawal, the Conference continued work on the arms trade issue,<sup>66</sup> due mainly to the significant investigations of the armament industries occurring at the time in the United States<sup>67</sup> and Britain.<sup>68</sup> In June 1934,

ical of arms transfer agreements because most deal only with actual transfers, and not production). See also *Disarmament: Third World Wary of Western Advocacy*, Interpress Service, Oct. 23, 1991, available in LEXIS, Nexis Library, Interpress Service File [hereinafter *Third World Wary of Western Advocacy*] (discussing current Third World concerns about arms agreements which fail to focus on national production).

61. HARKAVY, *supra* note 4, at 215; GOLDBLAT, *supra* note 44, at 6; Ohlson, *Introduction*, *supra* note 37, at 3. The more successful Geneva Protocol on chemical weapons was signed at the same time as the unratified Geneva Arms Traffic Convention. Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, T.I.A.S. No. 8061.

62. 1924 ARMAMENTS Y.B., League of Nations Doc. A.37.1924.IX (1924). The Yearbooks were published annually from 1924 until 1940. 1939/40 ARMAMENTS Y.B., League of Nations Doc. C.228.M.155.1939.IX (1940). In 1942 the League also published the first companion volume, STATISTICAL YEAR-BOOK ON THE TRADE IN ARMS, AMMUNITION AND IMPLEMENTS OF WAR, League of Nations Doc. A.30.1924.IX (1924), which was also published yearly until 1938. STATISTICAL YEAR-BOOK ON THE TRADE IN ARMS, AMMUNITION AND IMPLEMENTS OF WAR, FOURTEENTH YEAR, 1938, League of Nations Doc. C.263.M.156.1938.IX (1938).

63. GOLDBLAT, *supra* note 44, at 9-10. See also SIPRI ARMS TRADE, *supra* note 43, at 299 (listing the numerous Conference proposals for regulation of the international arms trade). These initial proposals originated from France and were supported by Poland, Spain, Holland, Scandinavia, Turkey, and Persia. *Id.* at 301. The Conference delegated the topic of developing a system for regulation of the arms trade to the Committee for the Regulation of the Trade in and Private and State Manufacture of Arms and Implements of War (Committee on the Regulation of the Arms Trade). F.C. WALTERS, THE HISTORY OF THE LEAGUE OF NATIONS 500 (1967) [hereinafter WALTERS].

64. WALTERS, *supra* note 63, at 550.

65. *Id.* at 555.

66. *Id.* at 554.

67. See S. Res. 206, 73d Cong., 2d Sess., 78 CONG. REC. 6896 (1934) (authorizing the Special Committee on Investigation of the Munitions Industry (Nye Committee) to look into the activities of America's arms industry, including the nature of their trade in arms, munitions, or other implements of war). The Nye Committee met from September 4, 1934 to February 20, 1936 and compiled 39 volumes of testimony on the arms industry. *Munitions Industry, 1934: Hearings Before the Special Comm. Investigating the Munitions Industry Pursuant to S. Res. 206, 73d Cong., 2d Sess. 1* (1934) (statement of Sen. Nye opening the hearings). The Nye Committee found that American arms manufacturers routinely bribed foreign nations, conducted themselves in a

the American delegation revived hopes of an arms traffic agreement<sup>69</sup> by submitting a set of draft articles (American Draft Articles) to the Disarmament Conference's Committee for the Regulation of Trade in the Private and State Manufacture of Arms (Disarmament Conference Committee).<sup>70</sup> The American Draft Articles<sup>71</sup> tracked the substance of the St. Germain and Geneva Arms Traffic Conventions by defining the categories of arms to be regulated,<sup>72</sup> requiring national licensing of ex-

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questionable manner during peace and munitions reduction negotiations, contributed to regional instability, and violated arms embargoes. *Munitions Industry: Report of the Special Comm. on Investigation of the Munitions Industry Pursuant to S. Res. 206, S. Rep. No. 944, 74th Cong., 2d Sess. pt. 3, at 3-13 (1936)*. In 1936 the Nye Committee concluded that the nation's armaments and naval industry should be brought under a national monopoly in order to curb the worst of the industry's arms trade abuses. *Id.* at 15-17.

See also *Arms and the Men*, FORTUNE, Mar. 1934, at 53 (discussing in detail the global dealings of American and European arms merchants and concluding that they intentionally caused prolonged wars and disturbed the peace for the sake of profit).

68. See ROYAL COMMISSION ON THE PRIVATE MANUFACTURE OF AND TRADING IN ARMS, 1935, CMD. 5292, at 55 (stating that the Commission considered, *inter alia*, evidence of considerable public opinion that believed the arms industry in Britain contributed to war and was subject to grave concern). The Royal Commission responded to a parliamentary call for an investigation into the alleged evils of the arms industry in early 1934. See 285 PARL. DEB. H.C. (5th ser.) 1933 (1934) (statement of C. Attlee) (enunciating the Labour Party's position that the arms industry fomented wars, bribed governments, formed price-rising rings, and stimulated arms races). The Commission held twenty-two public sessions over two years and heard testimony from peace activists, captains of the arms industry, and from Britain's top military command. See David G. Anderson, *Rearmament and the Merchants of Death: The 1935-36 Royal Commission on the Private Manufacture of and Trading in Arms 2* (1990) (unpublished M.A. thesis, University of London). The Commission eventually recommended that the evils attendant to the arms industry were not grave enough to counsel nationalizing the industry, but were of such concern that strict government regulation was necessary. *Id.* at 43-45. The Commission often referred to evidence produced during the Nye Commission investigation which was occurring concurrently in the United States. *Id.* at 24.

69. See WALTERS, *supra* note 63, at 555 (noting that American proposals for regulating the arms trade were an eleventh hour attempt at salvaging something from the ruins of the Disarmament Conference). The American Draft Convention was formally presented in November 1934. See 14 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 262 (1934) (reprinting the American draft which proposed that a maximum amount of publicity be focused on arms exports and imports, and establishing a system of "graduated control" over the arms trade).

70. See 14 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 136 (1934) (reporting that the United States had presented a set of draft articles to the Committee on the Regulation of the Arms Trade articulating a new means of controlling the private manufacture of and trade in arms).

71. *Draft Articles for the Regulation and Control of the Manufacture of and Trade in Arms and the Establishment of a Permanent Disarmament Commission*, League of Nations Doc. Conf. D. 167 (1934) [hereinafter *American Draft Articles*].

72. *Id.* art 1. The American Draft Articles divided regulated armaments into five categories: arms and ammunition used for land, sea and aerial warfare; naval armaments; aerial armaments; arms and ammunition with military and civilian uses; and

ports,<sup>73</sup> and compelling states to make public their arms transactions.<sup>74</sup> The distinctive feature of the American Draft Articles was its proposal for a powerful international supervisory body, the Permanent Disarmament Commission.<sup>75</sup> In April 1935, the Disarmament Conference Committee adopted the American Draft Articles and began to prepare for the signing of a general convention.<sup>76</sup> Despite wide acceptance of the American plan,<sup>77</sup> international events, most notably the Italian invasion of Ethiopia in October of 1935,<sup>78</sup> ended the discussions on the topic of arms transfer regulation.<sup>79</sup>

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arms and ammunition designed for non-military use but incidentally capable of military use. *Id.*

73. *Id.* arts. 8, 10-13, 15. The Draft Articles specifically limited arms transfers to government-to-government sales. *Id.* art. 8. The Draft Articles did allow for sales to private parties where the party's government approved the sale, where the sale was for sporting uses, and where the sale was for trade representation purposes. *Id.* art. 11.

74. *Id.* art. 9.

75. *Id.* arts. 17-37. These articles set out the composition and functions of the Permanent Disarmament Commission. Under this proposal, this body had the power to publicize arms transactions and to investigate and cause investigations on convention matters. *Id.* art. 20. The Commission was entitled to examine the territory of each member state with regard to their compliance with national control measures set out in the convention itself. *Id.* art. 26. States with complaints under the convention could bring them to the Commission for investigation, inspection, and resolution. *Id.* art. 28. The Commission was limited in its ability to review technical defense secrets, private records and stocks of raw materials. *Id.* art. 30(4).

The idea of creating a permanent disarmament commission was originally proposed by France as part of the Conference's draft convention. DENYS P. MYERS, *WORLD DISARMAMENT: ITS PROBLEMS AND PROSPECTS* 219 (1932).

76. See 15 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 88 (1935) (reporting that the Committee had adopted the Draft Articles and that they would be submitted to the League members for approval).

77. See WALTERS, *supra* note 63, at 555 (stating that the American Draft Convention was acceptable to all League members except Britain, Italy, and Japan).

78. See RAYMOND J. SONTAG, *A BROKEN WORLD, 1919-1939*, at 287-88 (1971) (discussing Italy's invasion of Ethiopia). Also, earlier in March 1935, Germany effectively renounced the Treaty of Versailles concerning disarmament by introducing conscription on March 16, 1935. *Id.* at 284.

79. See 15 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 322 (1935) (stating that further discussions of arms traffic matters by the League would be postponed due to "the political situation"). See also WALTERS, *supra* note 63, at 555 (observing that further consideration of the American Draft Convention was submerged by the "rising tide of international disorder and national re-armament"). By mid-1937, the Conference had moved far away from proposing any new initiatives on international controls of arms transfers and concentrated on smaller tasks, such as trying to get member states to adopt internal measures to supervise the arms trade. See 17 MONTHLY SUMMARY OF THE LEAGUE OF NATIONS 229 (1937) (reporting that the Disarmament Conference recommended that each member examine the possibility of adopting national arms transfer policies in line with the proposals suggested at the Conference). Collecting the arms transfer policies of each state willing to participate was one of the last tasks the Disarmament Conference and the League performed with regard to arms transfer limitation. See *Conference for the Reduction and Limitation of Armaments, National Control of the Manufacture of and Trade in Arms*, League of Nations Doc.

## B. POST WORLD WAR II

International discussions on arms transfer regulation reached their zenith during the League days.<sup>80</sup> Soon after World War II, international efforts to regulate conventional arms stalled.<sup>81</sup> The drafters of the United Nations Charter made few references to the disarmament and arms trade issues which were foremost in the minds of the framers of the League of Nations' Covenant.<sup>82</sup> The leading players on the international scene were now the United States and the Soviet Union, states that had formerly played but minor roles in the League's arms trade regulation efforts.<sup>83</sup> The bipolar international system,<sup>84</sup> the pre-emi-

D.184 (1938) (setting forth the arms transfer and manufacture policies of fourteen League members).

80. See U.N. TRANSFER STUDY, *supra* note 9, at 18 (finding that in comparison with the inter-war period, post-World War II international efforts to create an arms transfer restraint system have been much less successful).

81. See BERNHARD G. BECHHOEFER, POSTWAR NEGOTIATIONS FOR ARMS CONTROL 98-99 (1961) [hereinafter BECHHOEFER] (explaining that superpower disagreement in 1950 over what forces the United Nations should employ through the Military Staff Committee led to a stalemate on conventional arms talks).

82. U.N. CHARTER arts. 11, 26, and 47. Article 11 allows the General Assembly to consider and recommend action to member states and the Security Council with regard to matters concerning the "principles governing disarmament and the regulation of armaments." *Id.* art. 11. Similarly, Article 26 instructs the Security Council to submit plans to member states on the establishment of a "system for the regulation of armaments." *Id.* art. 26. Article 47 mandates the establishment of a Military Staff Committee empowered to advise the Security Council on matters of peace and security, including the regulation of armaments. *Id.* art. 47.

A comparison of these relatively brief Charter provisions with the Covenant's central Article 8 shows how diminished the subject had become after the war. Article 8 specifically charges the League Council with formulating plans for the reduction of armaments. LEAGUE OF NATIONS COVENANT art. 8, para. 1. League members agreed that the private manufacture of arms was open to "grave objections." *Id.* art. 8, para. 5. The League Council was further instructed to determine how the "evils" of the arms enterprise could best be prevented. *Id.* The Covenant also gave the League the power to supervise the "traffic" in arms. *Id.* art. 23(d). See also *supra* notes 46-48, and accompanying text (describing the Covenant's significant concerns about the "evils" of the arms trade and the League's role in rectifying such concerns).

The United Nations Charter, despite its outlawing of war in Article 2(4), has never been viewed as affecting law on the regulation of weapons. LOUIS HENKIN, ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 804 (2d ed. 1987). Although a Military Staff Committee exists pursuant to Article 47, its functions since 1945 have been only perfunctory. See CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, IRAQ-KUWAIT: THE UNITED NATIONS RESPONSE BEFORE THE WAR 6-9 (Marjorie Ann Browne ed., 1991) (stating that while the Military Staff Committee meets yearly, their activities are only *pro forma* and they assume little responsibility). But see Erskine B. Childers, *The Future of the United Nations: The Challenges of the 1990s*, 21 BULL. OF PEACE PROPOSALS 143, 143 (1990) (stating that the framers of the Charter intended to regulate arms through Article 47). In 1990 President Gorbachev suggested revamping Article 47 as a vehicle for arms regulation. *Id.*

83. See BECHHOEFER, *supra* note 81, at 11 (noting the vast differences between the inter-war and post-World War II periods on the subject of arms control and regula-

nence of the nuclear question,<sup>85</sup> and the profitability of the arms industry<sup>86</sup> all contributed to create a climate adverse to the emergence of any regulation system on the level contemplated before World War II.

Since 1945, there have been various proposals, embargoes, and plans aimed at curbing different aspects of the arms trade.<sup>87</sup> Only three serious multilateral or bilateral efforts at regulating arms transfers have been attempted or proposed since World War II. The first international post-war attempt at controlling the arms trade<sup>88</sup> was the 1950 Tripartite Declaration on security in the Middle East.<sup>89</sup> This agreement was a multilateral accord between the United States, Britain and France<sup>90</sup> tying arms transfers to promises of non-aggression by the recipient states.<sup>91</sup> The Near East Coordinating Committee successfully managed the accord until the Soviet Union upset the system by arranging a Czechoslovakian arms deal with Egypt's Premier Nasser.<sup>92</sup>

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tion). When the members of the United Nations took up arms control issues in the early 1950s, so many of the delegates were unfamiliar with the inter-war efforts that the Secretary-General had to draw up a briefing paper on the subject. *Id.*

84. See Ohlson, *Introduction*, *supra* note 37, at 3 (stating that the bi-polar world political situation since World War II has led to superpower proliferation of weapons in order to expand influence, such as the U.S. policy of "containment").

85. See 1989 U.N. DISARMAMENT Y.B. 315, U.N. Sales No. E.90.IX.4 (explaining that although conventional weapons reductions were addressed in the earliest General Assembly sessions, nuclear disarmament has traditionally pre-occupied the arms control agenda).

86. See *supra* note 5 and accompanying text (discussing the reliance of many nations upon arms exports for revenue).

87. See U.N. TRANSFER STUDY, *supra* note 9, at 18-20 (compiling arms transfer proposals through 1989).

88. U.N. TRANSFER STUDY, *supra* note 9, at 18.

89. *Tripartite Declaration Regarding the Armistice Borders*, reprinted in 2 U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY, 1950-1955, BASIC DOCUMENTS 2237 (1957) [hereinafter *Tripartite Declaration*].

90. PAUL JABBER, NOT BY WAR ALONE: SECURITY AND ARMS CONTROL IN THE MIDDLE EAST 64 (1981). These countries signed the declaration on May 25, 1950 in an attempt to retain control over armament flows to the region. *Id.* Containment of Soviet influence in the region was the main aim of the arms control measures. *Id.* at 63. The plan succeeded until September 1955, when the Soviet Union organized an arms deal between Czechoslovakia and Egypt. *Id.*

91. *Tripartite Declaration*, *supra* note 89, at 2237 (declaring that the three signatory states will supply arms for self-defense due to the assurances from the receiving states that they will not undertake any act of aggression against other states).

92. U.N. TRANSFER STUDY, *supra* note 9, at 18. The Declaration became a nullity following Nasser's nationalization of the Suez Canal and the outbreak of the Suez Crisis in 1956. *Id.*

The second attempt occurred in 1974, when eight Andean countries<sup>93</sup> signed the Declaration of Ayacucho,<sup>94</sup> an unprecedented<sup>95</sup> regional measure designed to promote restraint in the importation of armaments.<sup>96</sup> Spurred by the economic drain of a regional arms race,<sup>97</sup> these countries held five technical meetings, hoping to create a binding regional treaty restricting arms imports.<sup>98</sup> Following a break-down in these talks in 1976,<sup>99</sup> the Mexican government revived the process during the 1978 United Nations Special Session on Disarmament.<sup>100</sup> The Mexican proposal included the creation of a regional organization to develop and coordinate regional limitations on arms transfers and acquisitions.<sup>101</sup> Since the failed Contadora peace process,<sup>102</sup> the Latin American states have taken only one additional step in pursuit of the arms transfer restraint principles of the Ayacucho Declaration.<sup>103</sup>

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93. See GOLDBLAT, *supra* note 44, at 67 (listing the member states as of the Andean Group as Bolivia, Chile, Columbia, Ecuador, Peru, and Venezuela). The Declaration of Ayacucho also included two non-members, Argentina and Panama. *Id.*

94. Declaration of Ayacucho, U.N. Doc. A/10044, Annex 28, January 28, 1975, reprinted in GOLDBLAT, *supra* note 44, at 214. The preamble states in relevant part:

We undertake to promote and support the building of a lasting order of international peace and co-operation and to create the conditions which will make possible the effective limitation of armaments and an end to their acquisition for offensive purposes, so that all possible resources may be devoted to the economic and social development of every country in Latin America.

*Id.*

95. PIERRE, *supra* note 4, at 283.

96. ANNE HESSING CAHN, ET AL., *CONTROLLING FUTURE ARMS TRADE 187 (1977)* [hereinafter CAHN] (explaining that the main goal of the Ayacucho Declaration was to create mechanisms among the states to control arms transfers into the region, thus reducing arms expenditures overall).

97. Augusto Varas, *Regional Arms Control in the South American Context*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY 175, 178* (Thomas Ohlson ed., 1988) [hereinafter Varas].

98. GOLDBLAT, *supra* note 44, at 67.

99. See Varas, *supra* note 97, at 179 (stating that the process failed due to a wide variety of military and political factors, including Chilean opposition to a freeze in imports and the absence of Brazil).

100. PIERRE, *supra* note 4, at 284.

101. *Id.*

102. Contadora Act for Peace Process and Cooperation in Central America, reprinted in *Contadora and the Central American Peace Process: Selected Documents*, 8 SAIS PAPERS IN INTERNATIONAL AFFAIRS, 194-217 (Bruce Michael Bagley et al. eds., 1985). The 1984 unratified Contadora Act for Peace and Cooperation in Central America contains several provisions for controlling arms trade in the region, including a call for the elimination of arms transfers to irregular forces attempting to destabilize existing governments. *Id.* at 201-02, art. 29. The Contadora Act also would have created a Commission on Verification, to which violations in the Act could be brought for investigation. *Id.* art. 31.

103. See *Five Latin American Chiefs Sign Peace Plan*, L.A. TIMES, Aug. 9, 1987, at 1 (reporting that Guatemala, Nicaragua, El Salvador, Honduras, and Costa Rica signed a working plan to end hostilities in the region that included a halt to the transfer of arms to groups seeking to undermine neighboring states).

Finally, the most significant arms transfer control effort in the post-World War II era was the series of Conventional Arms Transfer Talks (CATT), conducted in 1977 and 1978, between the United States and the Soviet Union. Early in his tenure, President Carter expressed his intent to restrain the United States' arms exports.<sup>104</sup> Carter unexpectedly<sup>105</sup> managed to persuade the Soviets to negotiate reciprocal arms transfer restraints<sup>106</sup> at a bilateral level. Despite in-fighting within the American delegation, at several stages during the early negotiations,<sup>107</sup> it appeared<sup>108</sup> as if the two parties were close to establishing basic guidelines<sup>109</sup> for conventional arms transfers. The two parties even agreed that a successfully negotiated arms transfer regime could be first implemented in Latin America.<sup>110</sup> Ultimately, the CATT fell vic-

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104. See Conventional Arms Transfer Policy, 13 WEEKLY COMP. PRES. DOC. 756, 757 (May 19, 1977). President Carter's Directive concluded:

I [President Carter] am initiating this policy of restraint in the full understanding that actual reductions in the worldwide traffic in arms will require multilateral cooperation. Because we dominate the world market to such a degree, I believe that the United States can and should take the first step. However, in the immediate future the United States will meet with other arms suppliers, including the Soviet Union, to begin discussion of possible measures for multilateral action. In addition, we will do whatever we can to encourage regional agreements among purchasers to limit arms imports.

*Id.*

105. See Jo Husbands & Anne Hessing Cahn, *The Conventional Arms Talks: an Experiment in Mutual Arms Trade Restraint in Conventional Arms Transfers*, in ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY 117 (Thomas Ohlson, ed. 1988) [hereinafter Husbands & Cahn] (explaining that prior to the CATT talks, the Soviet Union had refused to negotiate on the issue of arms transfers); PIERRE, *supra* note 4, at 286 (speculating that even some officials in the Carter administration did not believe the Soviets would negotiate on arms transfer restraints).

106. See PIERRE, *supra* note 4, at 286 (quoting Soviet Secretary-General Leonid Brezhnev as saying in 1977 that "[I]n general the problem of international arms trade seems to merit an exchange of views"). In March 1977 Secretary of State Cyrus Vance could not get Brezhnev to accept the United States' proposals on the SALT II talks, but did manage to get a working discussion group started on issues such as arms transfer restraint.

107. See PIERRE *supra* note 4, at 289 (asserting that in-fighting between National Security Advisor Zbigniew Brzezinski and Leslie Gelb prior to the December 1978 talks in Mexico City led to an impasse on what regions would be discussed as areas for arms transfer limitations).

108. See Husbands & Cahn, *supra* note 105, at 118-19 (explaining that by July 1978, the two sides had agreed upon an arms transfer control framework).

109. See *Indian Ocean Arms Limitations and Multilateral Cooperation on Restraining Conventional Arms Transfers: Hearings Before the House Committee on Armed Services*, 95th Cong., 1st Sess. 17 (1978) (statement of Leslie Gelb, CATT negotiator) (stating that the development of "harmonized national guidelines" on arms transfers seemed to be a "realistic possibilit[y]").

110. Don Oberdorfer, *U.S., Soviets Seek to Limit Arms Sales*, WASH. POST, Oct. 26, 1978, at A1 (reporting that the superpower agreement to negotiate arms transfer guidelines in Latin America was prospectively the first superpower collaboration in the area of conventional arms sales).

tim to a series of countervailing political and military issues.<sup>111</sup> The failure of these talks emphasizes the fact that arms transfers have traditionally been political tools, and that agreements surrounding their regulation are highly susceptible to political pressures. However, the CATT experience, like the Ayacucho negotiations, demonstrates that both supplier and recipient restraint schemes are not unrealistic options for establishing arms transfer control. These schemes, along with the interregnum conventions and draft plans, serve as key guideposts for future models.

### C. UNITED NATIONS PROPOSALS FOR ARMS TRANSFER REGULATION

Since the early 1980s, the international community has dedicated increasing attention to the subject of conventional arms transfer controls.<sup>112</sup> An international consensus has emerged which recognizes that the issue of conventional arms transfer controls must be seriously addressed as a shared international responsibility.<sup>113</sup> At the United Nations, the subject of conventional arms transfer regulation began to receive serious attention once the international community determined that conventional arms needed to be controlled concurrently with nuclear arms.<sup>114</sup> Between 1945 and 1980, the General Assembly considered a few proposals on transfer restraints, but failed to take any action.<sup>115</sup> Then in 1984, the topic received serious attention in a new United Nations Study on Conventional Disarmament.<sup>116</sup> The ensuing reduction in superpower tensions in the mid-1980s allowed the subject to continue to make steady progress. During the 1988 Third Special Session of the General Assembly on Disarmament, a broad-based coal-

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111. See Husbands & Cahn, *supra* note 105, at 120 (stating that the Mexico City debacle and the serious post-1979 general decline in U.S. - Soviet relations led to the abandonment of interest in bilateral restraint by both parties).

112. See 1989 U.N. DISARMAMENT Y.B. 317, U.N. Sales No. E.90.IX.4 (citing the growing international opinion that arms transfers restraints must be addressed by suppliers and recipients).

113. Alessandro Corradini, *Consideration of the Question of International Arms Transfers by the United Nations*, 13 DISARMAMENT 131, 142 (1990) [hereinafter Corradini] (tracing the progress of the arms transfer issue at the United Nations and finding that the international community now considers conventional arms transfer restraint a serious goal).

114. 1985 U.N. DISARMAMENT Y.B. 315, U.N. Sales No. E.90.IX.4.

115. Corradini, *supra* note 113, at 133.

116. U.N. DEP'T OF POLITICAL AND SECURITY COUNCIL AFFAIRS, GENERAL AND COMPLETE DISARMAMENT: STUDY ON CONVENTIONAL DISARMAMENT, Report of the Secretary General, 1984, at 59-60, U.N. Doc. A/39/348, U.N. Sales No. E.85.IX.1. (1984) (encouraging arms suppliers and recipients to agree on arms transfer restraints, and for especially for recipients to negotiate regional agreements on import-reductions).

tion of countries, including the United States and the Soviet Union, expressed serious concern about the arms trade.<sup>117</sup>

On December 7, 1988, the General Assembly adopted the seminal resolution 43/75 I, which recognized that arms transfers have serious consequences due to their effects on areas of tension, on the process of peaceful social and economic development of states, and on the illicit trafficking of arms.<sup>118</sup> The resolution called on the Secretary General to conduct an expert study on the ways and means of promoting transparency in arms transfers.<sup>119</sup> In September 1991, the expert panel appointed by the Secretary General submitted the Arms Transfer Study,<sup>120</sup> which recommended, *inter alia*, that the United Nations establish an arms registry to publicize arms transfers in the hope of promoting greater security and confidence in disarmament efforts among nations.<sup>121</sup> On December 9, 1991, the General Assembly passed Resolution 673 by a vote of 150-1, with one abstention, and established the United Nations Arms Registry (the Registry), which will become operative in March 1993.<sup>122</sup> Resolution 43/75 I and the creation of the Registry show that the international community, including the United States, Western Europe, and the former Soviet Union, consider conventional arms transfer restraint a serious peace and security issue for the 1990s.<sup>123</sup>

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117. Corradini, *supra* note 113, at 138 (noting that in addition to the two superpowers, countries including Albania, Argentina, Australia, Belgium, Columbia, Ghana, Indonesia, Italy, Luxembourg, the Philippines, and Spain have devoted special attention to the arms transfer problem).

118. G.A. Res. 75 I, 43 U.N. GAOR Supp. (No. 49) at 81, U.N. Doc. A/43/49 (1989). The pertinent preambulatory clauses read:

*Bearing in mind* that, in accordance with the Charter of the United Nations, Member States have undertaken to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources. . . . *Expresses its conviction* that arms transfers in all their aspects deserve serious consideration by the international community. . . .

*Id.*

119. *Id.* at 82.

120. U.N. TRANSFER STUDY, *supra* note 9, at 51.

121. *Id.*

122. Lewis, *supra* note 17, at A11.

123. Corradini, *supra* note 113, at 142.

## II. THE ARMING OF IRAQ: A CASE STUDY ON THE HARMFUL EFFECTS OF AN UNREGULATED ARMS MARKET

### A. FACTUAL BACKGROUND

Iraq invaded Kuwait on August 2, 1990 with what was then the world's fourth largest<sup>124</sup> military force. Iraq's leader, Saddam Hussein, began amassing the country's arsenal in 1971.<sup>125</sup> By 1990, Iraq had acquired the largest amount of weapons ever accumulated in the Third World.<sup>126</sup> Between 1983 and 1990, Iraq concluded arms transfer agreements of \$30.4 billion,<sup>127</sup> accounting for about 10% of all the arms transfers to developing states.<sup>128</sup> United States Secretary of State James Baker told the House Foreign Affairs Committee three weeks into the Gulf War that Iraq had more battle tanks than the United Kingdom and France combined, and more combat aircraft than either Germany, France, or the United Kingdom.<sup>129</sup>

Iraq built its arsenal from the world's unregulated arms market.<sup>130</sup> Three main forces enabled Iraq to utilize the arms market to build its military strength: superpower rivalry,<sup>131</sup> the Iran-Iraq War,<sup>132</sup> and the

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124. *Foreign Policy and Assistance*, *supra* note 12, at 4 (statement of Secretary of State James Baker).

125. Jill Smolowe, *Who Armed Baghdad?*, *TIME*, Feb. 11, 1991, at 34 [hereinafter Smolowe]. In 1971, Iraq imported only \$1.9 million worth of arms. ARMS CONTROL AND DISARMAMENT AGENCY, U.S. DEP'T OF STATE, *WORLD MILITARY EXPENDITURES AND ARMS TRANSFERS 1971-1980* 94 (1983). In 1980, however, ACDA estimates that, after adjusting for inflation, Iraq imported over \$2.3 billion worth of arms. *Id.*

126. Klare, *Fueling the Fire*, *supra* note 4, at 19.

127. Grimmett Study, *supra* note 2, at 11. Grimmett is the author of a yearly study of third world arms transfers. His 1988 study indicates that Iraq purchased around \$46.7 billion between 1981-1988. CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, *TRENDS IN CONVENTIONAL ARMS TRANSFERS TO THE THIRD WORLD BY MAJOR SUPPLIERS, 1981-1988* 51 (R. Grimmett ed., 1989). ACDA data from 1983-1988 estimates Iraq's imports from 1983-1988 at about \$40 billion. ACDA 1989 STUDY, *supra* note 2, at 93.

128. Grimmett Study, *supra* note 2, at 11.

129. *Foreign Policy and Assistance*, *supra* note 12, at 4 (statement of Secretary of State James Baker).

130. See *supra* note 10 and accompanying text (listing the countries which exported arms to Iraq). See generally KENNETH R. TIMMERMAN, *THE DEATH LOBBY: HOW THE WEST ARMED IRAQ* (1991) (detailing the origins of Iraq's military build-up as supplied by the West).

131. See Smolowe, *supra* note 125, at 34 (stating that the Soviet Union began to arm Iraq in the 1970s to extend its sphere of influence into the Middle East); Klare, *Fueling the Fire*, *supra* note 4, at 23 (asserting that the United States sold Iraq sophisticated technology with military applications in an effort to pull Iraq away from the Soviet sphere of influence); CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, *MIDDLE EAST ARMS CONTROL AND RELATED ISSUES* 9 (1991) [hereinafter

economic necessity of exporter states.<sup>133</sup> Between 1980 and the start of the Gulf War, three of the five permanent members of the United Nations Security Council, the Soviet Union, France, and China, supplied Iraq with over 80% of its conventional weapons.<sup>134</sup> The remainder of Iraq's arms and military technology came from a myriad of other countries.<sup>135</sup> The United Kingdom,<sup>136</sup> Germany,<sup>137</sup> and the United States<sup>138</sup> contributed mainly through technology transfers.

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CRS Middle East Study] (stating that Soviet-American competition over the last two decades has been one of the major factors contributing to major arms transfers); FRANK THOMAS BLACKABY, *The Arms Trade: What Should Be Done?* (British American Security Information Council Paper) (July 1991), at 4 [hereinafter BLACKABY] (asserting that the superpower confrontation has been the driving force in the world's arms trade with the Third World).

132. See Klare, *Gaining Control*, *supra* note 27, at 11 (noting that the five permanent members of the United Nations Security Council provided approximately 90% of Iraq's military capability during the Iran-Iraq War); William Scott Malone, *Did the U.S. Teach Iraq to Hide Its Terror Arms?*, WASH. POST, Nov. 3, 1991, at C1 [hereinafter Malone] (stating that the United States gave Iraq sensitive strategic and technological information as part of the Reagan Administration's "tilt" toward Iraq in an effort to punish Iran); Stuart Auerbach, *American Sales to Iraq Totaled 1.5 Billion*, WASH. POST, Nov. 1, 1990, at C1 [hereinafter Auerbach] (reporting that the United States' sales to Iraq of \$1.5 billion worth of electronic and machine tools with military applications were a manifestation of the Reagan and Bush Administrations' "tilt" toward Iraq in its war against Iran); *The West's Full Service to a Weapons Buyer: in Too Many Ways, Seller's Greed Brought Us This War*, L.A. TIMES, Feb. 18, 1991, at B4 [hereinafter L.A. TIMES] (asserting that the United States' exports to Iraq were in part motivated by a desire to help Iraq in its war against Iran).

133. See Peter Fuhrman, *It Couldn't Have Happened to A Nicer Guy*, FORBES, Mar. 4, 1991, at 39 [hereinafter Fuhrman] (showing that France exported large amounts of arms to Iraq to support its massive state arms industry); L.A. TIMES, *supra* note 132, at B4 (stating that U.S. sales to Iraq were approved by the Commerce Department as part of its traditional role of boosting the United States' sales abroad); Catrina, *supra* note 5, at 117 (estimating that for each Western European state, the arms industry provides between 400,000 and 700,000 jobs).

134. SIPRI Y.B. 1991, *supra* note 2, at 201.

135. See BRZOSKA & OHLSON, *supra* note 10, at 191-95 (showing that the non-U.N. security council nations supplying arms to Iraq between 1970 and 1985 included Argentina, Brazil, Czechoslovakia, Egypt, East Germany, West Germany, Hungary, Italy, Jordan, Kuwait, Libya, Poland, Spain, Sudan, Switzerland, and Yugoslavia).

136. See ACDA 1989 Study, *supra* note 2, at 117 (calculating that between 1984 and 1988 the United Kingdom exported approximately \$30 million worth of military hardware to Iraq). As late as 1990, the United Kingdom transferred \$5.4 million worth of armored vehicles and communications equipment to Iraq. TIMMERMAN, *supra* note 130, at 423.

137. CRS Middle East Study, *supra* note 131, at 22-23 (stating that up to eight German companies have been linked to selling, among other things, missiles and advanced weapons projects); ACDA 1989 Study, *supra* note 2, at 117 (calculating that between 1984 and 1988 the Federal Republic of Germany sold approximately \$10 million worth of military-related applications to Iraq). Germany's greatest contributions to Iraq came in the form of military and nuclear technology. See Lally Weymouth, *Third World Nukes: The Germany Connection*, WASH. POST, Dec. 13, 1991, at A29 (citing a 1991 German intelligence report which claimed the German government knew of German firms which were exporting equipment designed to extend the range of Soviet

The former Soviet Union was Iraq's leading source of arms, accounting for 52.2% of Iraq's imports since 1983.<sup>139</sup> The Soviets provided Iraq with MiG jet-fighters; ground-attack planes; tanks; heavy artillery<sup>140</sup> including the SCUD missile; and military advisers, many of whom left Iraq only after the start of the Gulf War.<sup>141</sup>

Iraq received about one-fifth of its conventional weapons from France<sup>142</sup> and was one of France's most important arms customers.<sup>143</sup>

SCUD missiles). R. Jeffrey Smith, *13 Firms Named as Sources of Nuclear Items for Iraq*, WASH. POST, Dec. 12, 1991, at A43 (reporting that the International Atomic Energy Agency identified thirteen German firms which had contributed material and technology to Iraq's nuclear development campaign).

138. George Lardner & R. Jeffrey Smith, *CIA Shared Data with Iraq Until Kuwait Invasion*, WASH. POST, Apr. 28, 1992, at A6 (finding that despite Iraq's aggressive behavior during the months preceding the Kuwaiti invasion, the Bush Administration continued to provide Iraq with CIA intelligence information); CRS Middle East Study, *supra* note 131, at 24-25 (explaining that during the latter half of the 1980s the United States exported computers, electronic and telecommunications equipment, and satellite and airborne image enhancement equipment); Auerbach, *supra* note 132, at C1 (stating that since 1986, the United States has transferred \$1.5 billion worth of computers and machine tools with military applications); Malone, *supra* note 132, at C4 (stating that although much of what the United States actually transferred to Iraq is classified, the United States generally transferred short range tactical intelligence and valuable photo-reconnaissance data); Kenneth R. Timmerman, *Surprise! We Gave Hussein the Bomb*, N.Y. TIMES, Oct. 25, 1991, at A33 (stating that in July 1990 the American firm Consarc was prepared to export high-temperature furnaces for use in nuclear weapons manufacturing to Iraq).

139. Grimmett Study, *supra* note 2, at 30; SIPRI Y.B. 1991, *supra* note 2, at 202.

140. CRS Middle East Study, *supra* note 131, at 80 (listing the Soviet-Iraqi arms transfers between 1970 and 1989 as including helicopters, MiG jet fighters, Howitzer artillery, light and main battle tanks, and SCUD missiles); SIPRI Y.B. 1991, *supra* note 2, at 213 (stating that the Soviet Union transferred fifteen per cent of its total exports to Iraq).

141. Smolowe, *supra* note 125, at 35.

142. SIPRI Y.B. 1991, *supra* note 2, at 202. ACDA figures put France's exports to Iraq at about \$3.1 billion for the period 1984 through 1988. ACDA 1989 Study, *supra* note 2, at 117.

143. SIPRI Y.B. 1991, *supra* note 2, at 215; OTA Study, *supra* note 4, at 69 (citing France as the biggest western supplier of complete weapons systems to Iraq). France has a reputation as a "no holds barred" arms dealer. See Smolowe, *supra* note 125, at 35 (quoting an American pilot as stating that if the price is right, the French will sell to any country); Stephen Budiansky, *Back to the Arms Bazaar*, U.S. NEWS & WORLD REP., Apr. 1, 1991, 20, 22 [hereinafter Budiansky] (quoting a Pentagon analyst as stating that an arms transfer control agreement will never be worked out due to French willingness to sell to anybody). France's reputation as an unscrupulous arms trader is buttressed by its frank talk about its transfers. See Fuhrman, *supra* note 133, at 39 (quoting a French military attaché who served in Baghdad: "France, in selling arms, cannot afford to have many scruples"); William Drozdiak, *War Fuels French Debate on Arms: Forces in Gulf Faced Higher-Tech Weapons Sold by Paris to Iraq*, WASH. POST, Apr. 6, 1991, at A17 [hereinafter Drozdiak] (quoting French Socialist Deputy Francois Hollande as stating, "morality has a price. We need to alert the French people to the fact that if we sell fewer weapons, we will have to pay a lot more for our own defense policy").

France provided Iraq with the Exocet missile<sup>144</sup> and Mirage jet-fighter, along with military helicopters and aircraft radar.<sup>145</sup>

Over the last decade, China exported to Iraq about 8% of that state's total arsenal.<sup>146</sup> China supplied Iraq with MiG-19 clone jet-fighters, battle tanks, and the Silkworm anti-ship missile.<sup>147</sup>

## B. INTERNATIONAL REACTION

Iraq's invasion of Kuwait prompted immediate response from the international community<sup>148</sup> with regard to arms transfers.<sup>149</sup> On August 3, 1991 the United States and the Soviet Union jointly announced arms embargoes and called upon the international community to follow suit.<sup>150</sup> The next day the European Community prohibited all arms sales to Iraq<sup>151</sup> and China halted all transfers one day later.<sup>152</sup> On August 6, 1991, the United Nations Security Council passed Resolution 661<sup>153</sup> which explicitly prohibited all United Nations members from

144. See Smolowe, *supra* note 125, at 35 (finding that France sold Iraq up to 880 Exocet air-to-surface missiles). Iraq used an Exocet missile when it nearly sank the U.S.S. Stark in 1987. Fuhrman, *supra* note 133, at 38.

145. CRS Middle East Study, *supra* note 131, at 80-81. France was unable to use its most advanced jet fighter in the Gulf War, the Mirage 2000, because the allies would not have been able to distinguish these Mirages from the ones France had already transferred to Iraq. Fuhrman, *supra* note 133, at 38. Similarly, France had to evade its own point defense radar while attempting to destroy Iraq's caches of French Exocet missiles. *Id.* The fact that French troops had to face their own weapons on the battlefield caused a heated debate in France about its arms transfer policies. See Drozdiak, *supra* note 143, at A17 (reporting the outrage of the French public at the fact that French weapons were used against French soldiers in the Gulf War).

146. See Grimmett Study, *supra* note 2, at 30 (estimating that China's transfer agreements accounted for 7.8% of Iraq's purchases from 1983 to 1990 in current dollars); SIPRI Y.B. 1991, *supra* note 2, at 202 (estimating China's aggregate sales to Iraq between 1980 and 1990 to be 8% of Iraq's total purchases, or 2.2 billion in 1985 constant dollars); ACDA 1989 Study, *supra* note 2, at 117 (estimating China's transfers to Iraq between 1984 and 1988 at \$2.8 billion).

147. CRS Middle East Study, *supra* note 131, at 81.

148. See CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, IRAQ-KUWAIT CRISIS: A CHRONOLOGY OF EVENTS, JULY 17, 1990 - MAY 6, 1991, 74-75 (Clyde R. Mark & Renee Stasio eds., 1991) [hereinafter Mark & Stasio Study] (stating that on the day of the Iraqi invasion, the Soviet Union halted all arms supplies to Iraq while France and Britain froze all Iraqi assets in their countries). President Bush responded the day of the invasion by banning all trade with Iraq. See Blocking Iraqi Government Property and Prohibiting Transactions with Iraq, Executive Order No. 12,722, 55 Fed. Reg. 31,803 (1990) (prohibiting the export to Iraq of goods, technology, and services from the United States).

149. SIPRI Y.B. 1991, *supra* note 2, at 201.

150. Mark & Stasio Study, *supra* note 148, at 73-74.

151. *Id.* at 73.

152. BEIJING REV., Aug. 13-19, 1990, at 8; Mark & Stasio Study, *supra* note 148, at 73.

153. S.C. Res. 661 (1990).

exporting "weapons or any other military equipment" to Iraq or Kuwait.<sup>154</sup>

The war aroused world interest in changing the existing laissez-faire system of arms transfers,<sup>155</sup> especially transfers to the Middle East.<sup>156</sup> After the war, the United States put forward an arms transfer control initiative,<sup>157</sup> Canada proposed holding a world summit on arms transfers,<sup>158</sup> France advanced a detailed arms control plan,<sup>159</sup> and Japan

154. *Id.* §3(c). The arms embargo provision states in pertinent part: "the Security Council . . . [d]ecides that all States shall prevent: . . . [t]he sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories . . . . *Id.*

The Security Council passed the resolution by a vote of 13-0-2, with Yemen and Cuba abstaining. See CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, IRAQ-KUWAIT: U.N. SECURITY COUNCIL RESOLUTIONS—TEXTS AND VOTES, at 3 (Marjorie A. Browne ed., 1990) (listing resolutions and votes by the Security Council from August 2, 1990 to November 29, 1990).

155. See BRITISH-AMERICAN SECURITY INFORMATION COUNCIL, SUMMARY OF RECENT INITIATIVES TO CONTROL ARMS TRANSFERS 1-8 (1991) [hereinafter RECENT INITIATIVES] (illustrating how the international community is attempting to control arms trading through various forums including the United Nations, the Group of Seven Industrialized Nations (G-7), the European Community, NATO, and the Conference on Security and Cooperation in Europe).

156. See *Foreign Policy and Assistance*, *supra* note 12, at 7 (statement of Secretary of State James Baker) (asserting that "[t]he time has come to try to change the destructive pattern of military competition and proliferation in this region and to reduce arms flow into an area [the Middle East] that is already over-militarized").

157. See Remarks at the United States Air Force Academy Commencement Ceremony in Colorado Springs, Colorado, 27 WEEKLY COMP. PRES. DOC. 683, 684 (May 29, 1991) (announcing the President's arms control initiative calling for supplier guidelines on conventional arms exports to the Middle East). See also White House Fact Sheet on Middle East Arms Control Initiative, 27 WEEKLY COMP. PRES. DOC. 688, 688-89 (May 29, 1991) (describing the initiative in detail). In addition to conventional weapons, the initiative included controls on missile, nuclear, chemical, and biological proliferation in the region. *Id.*

158. See Mulroney Initiative, *supra* note 15, at 5 (proposing that the United Nations convene a Global Summit on the Instruments of War and Weapons of Mass Destruction). Prime Minister Mulroney in this address also asserted that one of the most important lessons to be learned from the Gulf War is that the arms trade must receive better international supervision. *Id.* See also Ernie Regehr, *Canada Prods United States on Arms Sales*, ARMS CONTROL TODAY, June 1991, at 14, 14-16 [hereinafter Regehr] (describing the Canadian arms transfer control initiative); Frank J. Murray, *Bush Cool to Mulroney's "World Summit" Idea*, WASH. TIMES, Mar. 13, 1991, at A3 (noting that Canada's proposal sought a global consensus on the arms trade resulting in a "comprehensive program of action" in order to control the trade which hitherto has not been internationally regulated); Jonathan Ferguson, *PM Pushes Proposal to Limit Arms Sales*, TORONTO STAR, July 15, 1991, at A3 (stating that British Prime Minister supported Mulroney's measures including the creation of an arms registry).

159. Francios Mitterand, Plan for Arms Control and Disarmament 3, Speech to the Permanent Members of the United Nations' Security Council (June 3, 1991) [hereinafter Mitterand Initiative] (proposing France's three point arms control plan including negotiations between the largest exporters on defining rules of restraint).

called for tightening national controls on weapons of mass destruction.<sup>160</sup> At the same time, legislators in the United States<sup>161</sup> and around the world<sup>162</sup> put forth numerous measures aimed at arms transfer restraint.

This heightened international concern for restraining the conventional arms trade has manifested itself in two significant ways. First, the five permanent members of the United Nations Security Council met in July and October of 1991<sup>163</sup> and, in an unprecedented show of

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160. Ronald E. Yates, *Japan Urges Nations to Tighten Arms Control*, CHI. TRIB., May 28, 1991, at C4.

161. See *Legislative Summary of the 102d Congress: Bills Relating to Arms Transfers* 1-15 (C. Lessure ed., Defense Budget Project Information Paper, 1991) (discussing bills introduced during the first session of the 102d Congress relating to arms transfer restraint, oversight and information); see, e.g., International Cooperation Act of 1991, H.R. 2508, 102d Cong., 1st Sess. H.R. Conf. Rep. No. 225, 102d Cong., 1st Sess. (1991) (requiring the President to develop, along with the other four permanent members of the United Nations Security Council, a multilateral arms transfer control regime for the Middle East); S. 1046, 102d Cong., 1st Sess. (1991) (directing the Secretary of State to begin multilateral negotiations to establish a comprehensive regime for regulating arms transfers to the Middle East, and should the Secretary fail to initiate such negotiations, halting all transfers to the region); H.R.J. Res. 344, 102d Cong., 1st Sess. (1991) (providing a non-binding resolution directing the President to enter into multilateral arms supplier negotiations with United Nations Security Council members to establish a transfer control regime); H.R.J. Res. 256, 102d Cong., 1st Sess. (1991) (providing a non-binding resolution stating that the Congress wishes to undertake self-restraint in conventional arms transfers to Third World nations and recommending that the permanent members of the United Nations Security Council convene negotiations on conventional arms transfer control); S. 309, 102d Cong., 1st Sess. (1991) (prohibiting the export of items on the munitions control list to countries which the President has determined are a threat to regional and world stability); H.R. 669, 102d Cong., 1st Sess. (1991) (requiring the President to prepare an annual report of countries posing a threat to world stability, prohibiting exports to these countries, and requiring the President to report on the bill's effectiveness and efforts made in furtherance of curbing arms transfers).

162. See RECENT INITIATIVES, *supra* note 155, at 1-7 (detailing post-Gulf War arms transfer proposals, initiatives, and domestic legislation from Australia, Belgium, Canada, China, Czechoslovakia, France, Germany, Israel, Italy, Japan, the Netherlands, the Soviet Union, the United Kingdom and the United States). See also *EEC Declaration*, *supra* note 15, at 1095 (declaring that the Gulf crisis highlighted the danger of unchecked proliferation of weapons); *Non-Proliferation and Arms Exports 17, Annex 7*, Commission of the European Communities, RAPID, June 29, 1991, available in LEXIS, World Library, Europe File (establishing that the Community and the member states support the creation of a United Nations register and that the European Council calls on all States to support measures which aim to "prevent the uncontrolled spread of weapons and military technologies"); *European Report, ACP/EEC Joint Assembly: Resolutions on Arms, South Africa, Debt and Trade*, European Information Service 9, Oct. 2, 1991, available in LEXIS, World Library, Europe File (reporting that the Joint Assembly of the European Parliament and the African Council called for international action for increased transparency in arms exports).

163. *Paris Communiqué*, *supra* note 9. The five permanent members of the U.N. Security Council at this meeting decided to formulate guidelines for transfers and to

cooperation on the issue,<sup>164</sup> agreed on “rules of restraint” for conventional arms sales.<sup>165</sup> Second, the United Nations General Assembly, taking into account the conclusions of its own U.N. Arms Transfer

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meet again at a later date. *Id.* at 3. They met again in October. *London Communiqué*, *supra* note 16, at 1.

164. James Bone & Michael Evans, *U.N. Five Draw Up Accord to Restrict Arms Exports*, THE TIMES (London), Oct. 19, 1991, at 1 (quoting Richard Clarke, the U.S. Assistant Secretary of State and the Chief American Delegate: “[t]his major breakthrough is the first time in history that the five powers have agreed on rules governing export of arms”).

165. *London Communiqué*, *supra* note 16, at 3-5 (setting out the arms transfer guidelines among the five). To achieve the goals set out in the July 1991 Paris meeting, the five nations met again in October and agreed on the guidelines each would follow in their determinations of arms transfers. *Id.* at 1. The London Communiqué’s pertinent preambulatory and effective clauses read:

*[M]indful* of the dangers to peace and stability posed by the transfer of conventional weapons beyond levels needed for defensive purposes. . . . *[R]ecalling* that in accordance with the Charter of the United Nations, UN Member States have undertaken to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources, *[S]eeking* to ensure that arms transferred are not used in violation of the purposes and principles of the UN Charter. . . . *[R]eaffirming* their commitment to seek effective measures to promote peace, security, stability, and arms control on a global and regional basis in a fair, reasonable, comprehensive and balanced manner. . . . *[D]etermined* to adopt a serious, responsible and prudent attitude of restraint regarding arms transfers, *[D]eclare* that, when considering under their national control procedures conventional arms transfers, they intend to observe rules of restraint, and to act in accordance with the following guidelines:

1. They will consider carefully whether proposed transfers will:
  - (a) promote the capabilities of the recipient to meet needs for legitimate self-defence;
  - (b) serve as an appropriate and proportionate response to the security and military threats confronting the recipient country;
  - (c) enhance the capability of the recipient to participate in regional or other collective arrangements or other measures consistent with the Charter of the United Nations or requested by the United Nations;
2. They will avoid transfers which would be likely to:
  - (a) prolong or aggravate an existing armed conflict;
  - (b) increase tension in a region or contribute to regional instability;
  - (c) introduce destabilizing military capabilities in a region;
  - (d) contravene embargoes or other relevant internationally agreed restraints to which they are parties;
  - (e) be used other than for the legitimate defence and security needs of the recipient state;
  - (f) support or encourage international terrorism;
  - (g) be used to interfere with the internal affairs of sovereign states;
  - (h) seriously undermine the recipient state’s economy.

*Id.* at 3-5.

Study,<sup>166</sup> reached back to the interwar days<sup>167</sup> and voted to create a voluntary international arms registry to be operative by 1993.<sup>168</sup>

### III. MODELS FOR ARMS TRANSFER REGULATION: APPROACHES IN THE INTERNATIONAL REGULATION AND RESTRAINT OF ARMS TRANSFERS

Although the international community has constructed regulatory transfer regimes in the fields of nuclear<sup>169</sup> as well as chemical and biological weapons,<sup>170</sup> there is no comparable conventional arms transfer system.<sup>171</sup> There are, however, several models from which such a regime could be built. Drawing upon these models, the following is a discussion and analysis of two broad approaches to arms transfer restraint: supply-side regulation and recipient-side regulation.

#### A. SUPPLY-SIDE REGULATION

##### 1. Unilateral

The most basic arms export controls are at the national level. Generally, arms producing states, especially the United States and the European nations, have export controls based on various criteria that serve certain policy goals.<sup>172</sup> The United States, as the world's largest ex-

166. U.N. TRANSFER STUDY, *supra* note 9, at 52-53.

167. See *supra* notes 54-62 and accompanying text (describing the League of Nations' arms transfer proposals which included the publishing of League members' arms transfers).

168. G.A. Res. 673 (1991).

169. Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, 729 U.N.T.S. 161 [hereinafter NPT Treaty]; Statute of the International Atomic Energy Agency, 8 U.S.T. 1093, T.I.A.S. No. 3873, 276 U.N.T.S. 3, *came into force* July 29, 1957, *amended* Oct. 4, 1961, 14 U.S.T. 135, T.I.A.S. No. 5284, 471 U.N.T.S. 334 [hereinafter IAEA Statute].

170. Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, *opened for signature* Apr. 10, 1972, 26 U.S.T. 583, T.I.A.S. No. 8062, 1015 U.N.T.S. 163.

171. Michael T. Klare, *Can Third World Arms Control Work?*, ARMS CONTROL TODAY, Apr. 1990, at 8, 11 [hereinafter Klare, *Third World Arms*]; Simpson, *supra* note 8, at 227.

172. BLACKABY, *supra* note 131, at 9 (stating that all countries have government control over arms exports and almost all impose export restrictions). At base, governmental control of arms exports is designed to keep domestic arms out of the hands of enemy states. *Id.*

porter,<sup>173</sup> possesses perhaps the most significant body of legislation aimed at arms export control.<sup>174</sup> The United Kingdom, France, and Germany have varying degrees of export regulations.<sup>175</sup> Other exporting countries, such as Sweden, maintain a presumption of export prohibition.<sup>176</sup> Even the former Soviet Union maintained a system of transfer restraints.<sup>177</sup>

Although unilateral restraints are an essential part of the arms control system and tend to encourage other nations to act similarly, they are also subject to many drawbacks.<sup>178</sup> The five largest exporters bear an especially heavy burden in setting the example in this respect.<sup>179</sup> For example, unilateral restraints have proven ineffective where medium and smaller producers are beginning to make significant inroads into

173. See Grimmitt Study, *supra* note 2, at 6 (observing that for the first time since 1983, the United States had surpassed the Soviet Union in arms transfer agreements to the Third World).

174. International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, 90 Stat. 729 (codified as amended 22 U.S.C. §§ 2751-96 (1979 & Supp. 1988) [hereinafter AECA]. The United States also controls "dual-use" items, those with the potential for civilian and military uses. See Export Administration Act of 1979, Pub. L. No. 96-72, 93 Stat. 503 (codified as amended 50 U.S.C. § 2401 et seq. (1982) (detailing the Act's export control provisions).

175. See Frederic S. Pearson, *Problems and Prospects of Arms Transfer Limitations Among Second-Tier Suppliers: The Cases of France, the United Kingdom and the Federal Republic of Germany*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 125, 135-42 (Thomas Ohlson ed., 1988) (examining the export laws and policies of France, Britain and West Germany). In the case of France, unilateral controls are usually based on time and circumstance rather than by uniform policy. *Id.* at 135. Similarly, Britain makes a case-by-case analysis of each transfer and assesses the political and economic benefits before making a government sale. *Id.* at 136. In the former West Germany, Article 26 of the Grundgesetz prohibited acts disturbing peaceful relations among states. *Id.* Generally, subsequent legislation banned sales of weapons outside NATO. *Id.* at 140. Weapons material, however, has received much less scrutiny. *Id.*

176. See Björn Hagelin, *Arms Transfer Limitations: The Case of Sweden*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 157, 159 (Thomas Ohlson ed., 1988) [hereinafter Hagelin] (stating that arms exports in Sweden are presumed to be prohibited, with exceptions made on a case-by-case basis).

177. See Joachim Krause, *Soviet Arms Transfer Restraint*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 95, 95-109 (Thomas Ohlson ed., 1988) (debunking the common perception that the Soviet Union had no substantial transfer restriction system).

178. Ohlson, *Assessment*, *supra* note 31, at 242-43.

179. See *London Communiqué*, *supra* note 16, at 3 (declaring that the five permanent members of the U.N. Security Council recognize that they have special responsibilities with regard to international peace and security). See also RECENT INITIATIVES, *supra* note 155, at 8 (quoting the Canadian Ministry of External Affairs and International Trade as recognizing that "[a] special responsibility for arms build-ups resides with the major exporters and states leading in the development of weapons technologies").

the international export market.<sup>180</sup> With the dissemination of arms export power to more states, uncoordinated unilateral controls may serve only to increase the market-share for those states disparaging restraint.<sup>181</sup> Unilateral actions may also prove more costly to domestic industry than if the restraint were tied to an international regime.<sup>182</sup> Finally, states are not necessarily aware of the restraint policies of other states. No mechanism exists for countries to inform each other of their export policies, nor is there any forum for discussion or cooperation.<sup>183</sup> Thus, the unilateral restraints imposed by one country may go unnoticed and unknowingly countered by the transfers of another.<sup>184</sup>

## 2. Multilateral

Among suppliers, there is currently no formal or enforceable multilateral agreement dealing directly with conventional arms transfers. The recent "rules of restraint" accord issued by the five members of the U.N. Security Council, however, represents the first tangible step toward the creation of such an agreement since the interwar years.

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180. See OTA Study, *supra* note 4, at 15-16 (explaining that the emergence of new centers of arms production has eroded the value of unilateral restraint policies by the United States); *America and Europe: Creating an Arms Suppliers' Cartel: Hearing Before the Subcommittee on European Affairs of the Senate Committee on Foreign Relations*, 102d Cong., 1st Sess. 28 (Comm. Print 1991) [hereinafter *Arms Cartel*] (statement of Mitchell Wallerstein, Deputy Executive Officer, National Research Council) (explaining that given the increasing number of arms producing states, a multilateral approach is necessary).

181. See Jacques Fontanel & Jean-Francois Guilhaudis, *Arms Transfer Control and Proposals to Link Disarmament to Development*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 215, 218 (Thomas Ohlson ed., 1988) [hereinafter Fontanel & Guilhaudis] (stating that reductions in exports by the leading nations would aid the rise of new arms producers). One of the earliest studies in the post-WWII era focusing specifically on the arms trade saw the proliferation of arms producing nations as a significant bar to future arms control progress. See HARKAVY, *supra* note 4, at 239 (stating that the study concluded that even if the major powers are able to agree on arms trade controls, such progress would probably be dissipated by smaller nations coming into the arms market).

182. See *Arms Cartel*, *supra* note 180, at 28 (statement of Mitchell Wallerstein) (noting that unilateral measures often have the most harmful effects on the economy without accomplishing their objective of preventing proliferation).

183. Klare, *Gaining Control*, *supra* note 27, at 13. But in the late days of the League, one of the last trade restraint initiatives involved the publication of voluntarily divulged information by each member state of its arms export policies. *Conference for the Reduction and Limitation of Armaments, National Control for the Manufacture of and Trade in Arms*, League of Nations Doc. Conf. D.184 (1938). This League project prompted Sweden to re-examine its arms policies, which resulted in its current-day bureaucracy: the War Materiel Inspectorate. Hagelin, *supra* note 176, at 157.

184. PIERRE, *supra* note 4, at 279 (noting that uncoordinated arms sales by some suppliers may undermine or conflict with the diplomacy of other suppliers to the possible detriment of both).

Supply-side models for international arms management succeed or fail based on their ability to account for the political, strategic, and economic policies of the supplier country that constitute each arms transfer.<sup>185</sup> Over the last decade, several models for multilateral supplier regulation have emerged, three of which will be discussed here.

a) *Suppliers Cartel*

Creating an arms supplier cartel is perhaps the most easily attainable agreement framework.<sup>186</sup> Initially, an arms cartel could consist of the few largest suppliers that control the great bulk of the arms market.<sup>187</sup> Congress recommended that the President follow this approach in the Fiscal Year 1992-1993 Foreign Relations Authorization Act (1992-1993 FRA).<sup>188</sup> The primary and limited task of the cartel would be the establishment of a common set of guidelines for arms transfer

185. See Catrina, *supra* note 5, at 114 (explaining the basic components of supplier arms transfer policies). In many cases, supplier nations utilize both defensive and economic components in their transfer decisions. *Id.* at 114-15. Defensive factors (strategic and political) counselling against arms transfers often include: (1) national security warnings against transfers to volatile or hostile countries; (2) foreign policy commitments, such as embargo or agreement schemes, which may preclude certain transfers; (3) arms control and proliferation policies that advise restraint; and (4) foreign policy goals which must be aligned with the end result of an arms transfer. *Id.* Economic factors may be another component, where transfers will provide domestic economic benefits while supporting the cost-effectiveness of the indigenous arms industry. *Id.* at 115.

186. Klare, *Gaining Control*, *supra* note 27, at 11. The French have proposed that such a group be formed. See Dan Oberdorfer, *Mideast Arms Sale Curb Favored*, WASH. POST, Mar. 23, 1991, at A15 (reporting on the French plan for arms transfer regulations).

187. See SIPRI Y.B. 1991, *supra* note 2, at 198 (ranking the largest arms exporters between 1986-1990 as the Soviet Union, the United States, France, the United Kingdom and China); ACDA 1989 Study, *supra* note 2, at 14 (ranking the largest exporters for 1988, the last year of ACDA figures, as the Soviet Union, the United States, France, China, and Czechoslovakia); Grimmett Study, *supra* note 2, at 6-9 (explaining that the export leaders to the Third World over the last decade have been the Soviet Union, the United States, China, France, and the United Kingdom).

188. Foreign Relations Authorization Act, Fiscal Years 1992-1993, Pub. L. 102-138, §§ 401-02, 105 Stat. 647, 719-20 (1991) [hereinafter Foreign Relations Act]. The Foreign Relations Act requires the President to continue negotiations among the five permanent members of the U.N. Security Council with an aim to committing the United States to a "multilateral arms transfer and control regime for the Middle East and Persian Gulf region." *Id.* § 402(a)(1). The Foreign Relations Act states that the purposes of the proposed regime, with regard to conventional weapons, should be as follows:

(1) to slow and limit the proliferation of conventional weapons in the Middle East and Persian Gulf region with the aim of preventing destabilizing transfers by —

(A) controlling the transfer of conventional major military equipment;

decisions. The 1992-93 FRA mentions that such guidelines should be established, but does not give further direction.<sup>189</sup>

The "rules of restraint" accord<sup>190</sup> could serve as the basis for establishing the cartel's transfer guidelines. The supplier's cartel model worked effectively to stem the arms flow to the Middle East during the five year existence of the 1950 Tripartite Declaration<sup>191</sup> and functions essentially as the basis of any arms embargo. Similarly, for years other informal supply-side export restriction groups have slowed the proliferation of nuclear,<sup>192</sup> chemical,<sup>193</sup> and high technology<sup>194</sup> weapons and components with varying degrees of success.<sup>195</sup>

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(B) achieving transparency among arms supplier nations through advanced notification of agreement to, or transfer of, conventional major military equipment; and

(C) developing and adopting common and comprehensive control guidelines on the sale and transfer of conventional major military equipment to the region . . . .

(3) to limit and halt the proliferation of ballistic missile technologies and ballistic missile systems that are capable of delivering conventional, nuclear, biological or chemical warheads . . . .

*Id.* § 402.

189. *Id.* § 402(b)(1)(C).

190. *See supra* note 165 and accompanying text (explaining the criteria the five permanent members of the U.N. Security Council agreed to use in making arms transfer decisions).

191. *See supra* notes 90-92 and accompanying text (discussing the success of the Tripartite Agreement until 1955).

192. *See* HAROLD BAUER, et al., COORDINATION AND CONTROL OF ARMS EXPORTS FROM EC MEMBER STATES AND THE DEVELOPMENT OF A COMMON ARMS EXPORT POLICY 42 (Unpublished Working Paper No. 54 of the Institut Fur Politische Wissenschaft, University of Hamburg) [hereinafter Hamburg Report] (describing the creation and functions of two main informal supplier groups: the Zanger Group and the London Nuclear Suppliers Group).

193. *See* IAN ANTHONY, et al., REGULATING ARMS EXPORTS: A PROGRAMME FOR THE EUROPEAN COMMUNITY 19-20 (Saferworld Foundation Report, Sept. 1991) [hereinafter Saferworld Report] (describing the creation and workings of the Australia Group, an informal coalition of twenty-one OECD states designed to impede the spread of chemical weapons).

194. *See* Wende A. Wrubel, Comment, *The Toshiba-Kongsberg Incident: Shortcomings of CoCom, And Recommendations for Increased Effectiveness of Export Controls to the East Bloc*, 4 AM. U.J. INT'L L. & POL'Y 241, 244-247 (1989) [hereinafter Wrubel] (describing the functions of the Co-Ordinating Committee for Multilateral Export Controls (COCOM)).

195. *See* CRS Middle East Study, *supra* note 131, at 47 (observing that nuclear supplier groups have met with relative success in slowing nuclear proliferation); *but see* Wrubel, *supra* note 194, at 253-56 (describing an instance where COCOM failed to stop the export of sensitive technology to the Soviets by Japanese and Norwegian firms in 1981).

b) *Continuous CATT*

An evolved and more ambitious variation of the supplier's cartel model could come in the form of a regularized cartel, like the Canadian proposal for a World Summit,<sup>196</sup> which resembles a perpetual CATT.<sup>197</sup> Cartel members could utilize this on-going forum to begin negotiations on a multilateral restraint treaty between all arms exporting states. This treaty-by-conference method has recently succeeded in Europe. The Conference on Security and Cooperation in Europe (CSCE) served as the umbrella forum for the recent arms control negotiations<sup>198</sup> resulting in the Conventional Forces in Europe Treaty (CFE Treaty).<sup>199</sup> An on-going forum could also bring a regional set of suppliers and recipients together to attempt what one commentator has called "quadrilateral talks."<sup>200</sup> Using this format in a regional conference system is seen by many as the most effective form of restraint.<sup>201</sup>

c) *Categorical Regulation According to Arms System*

The third model is based on arms restraint by weapons systems. In this model, piecemeal reductions in the arms trade are achieved by regulating the trade in certain categories of arms. The CFE Treaty<sup>202</sup> and

196. See *supra* note 158 and accompanying text (describing Prime Minister Mulroney's World Summit proposal).

197. See Regehr, *supra* note 158, at 16 (noting that the Canadian House of Commons Standing Committee on National Defense viewed Prime Minister Mulroney's World Summit proposal as a broadened version of the CATT talks); PIERRE, *supra* note 4, at 292-93 (establishing the author's concept of a Conventional Arms Transfer Restraints (CATR) system that would act as a continuing forum for arms transfer agreement discussions).

198. Hamburg Report, *supra* note 192, at 41.

199. Treaty on Conventional Armed Forces in Europe, Nov. 19, 1990, *reprinted in* 30 I.L.M. 1 (1991) [hereinafter CFE Treaty].

200. See Klare, *Gaining Control*, *supra* note 27, at 11 (arguing that with the lessening of superpower competition, the CATT format could be revived in the "quadrilateral" format); Klare, *Third World Arms*, *supra* note 171, at 11 (suggesting that a better form of CATT would be to bring together two nations engaged in arms races along with their respective suppliers to discuss a four-way agreement on arms transfer restrictions).

201. See PIERRE, *supra* note 4, at 310 (concluding that the best approach would be a "supplier-initiated, regionally oriented" system of international management of the arms trade); Klare, *Third World Arms*, *supra* note 171, at 11 (stating that the best way to restrain the arms transfer problem might be to create a series of regional arrangements for transfer negotiations); RECENT INITIATIVES, *supra* note 155, at 3 (stating that the French Government's plan for arms transfer control is based on a regional approach).

202. CFE Treaty, *supra* note 199. The CFE Treaty governs the territory from the European shores of the Atlantic to the Ural Mountains. *Id.*

the Missile Technology Control Regime (MTCR)<sup>203</sup> provide examples of how categorical regulation of systems may be used to control arms trade.

The CFE treaty and its protocols establish ceilings on a specific set of weapons, particularly offensive weapons, that the signatories can maintain.<sup>204</sup> Applying this method to restrain trade would prohibit major suppliers from exporting certain categories of weapons or weapons systems. Similarly, the MTCR, a multilateral agreement,<sup>205</sup> provides parties with a detailed set of guidelines designed to restrain export of two general categories of missile and missile components.<sup>206</sup> The MTCR may serve as a cartel-type example for suppliers of conventional weapons whereby they can seek to apply exacting regulations to specific categories of weapons. The strict weapon categorizations and definite export rules of the MTCR regime show that supply-side categorical guidelines can be quite defined, while still being effective.<sup>207</sup>

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203. Missile Technology Control Regime, *reprinted in* 26 I.L.M. 599 (1987) [hereinafter MTCR]. See Hamburg Report, *supra* note 192, at 42 (explaining that the MTCR is not a treaty-based agreement, but rather a set of guidelines and a list of restricted goods each member country has agreed to abide by in missile export decisions).

204. CFE Treaty, *supra* note 199, at art. 8. The CFE establishes numerical limits in five categories of conventional arms: artillery, armored combat vehicles, battle tanks, combat aircraft and attack helicopters. *Id.* The CFE itself, however, explicitly allows for the transfer of treaty-controlled weapons. *Id.* art. 3, para. 1E. Despite willingness on the part of both West Germany and the Soviet Union in 1989 to ban transfers of treaty-limited weapons, the subject was not included in the final treaty. SIPRI Y.B. 1991, *supra* note 2, at 205.

205. Saferworld Report, *supra* note 193, at 17 (stating that the original seven countries are the United States, Canada, France, Italy, Germany, the United Kingdom, and Japan, and that by 1991 sixteen states were members). Following negotiations with Secretary of State James Baker, China tentatively agreed to abide by the MTCR. Warren Strobel, *China Agrees to Limit its Missile Sales*, WASH. TIMES, Nov. 18, 1991, at A1. China conditioned its acceptance on withdrawal of United States-imposed sanctions on two Chinese firms suspected of transferring sensitive missile technology. *Id.* The former Soviet Union agreed to follow the MTCR rules in February of 1990. Hamburg Report, *supra* note 192, at 42.

206. MTCR, *supra* note 203, at 604-13. The MTCR seeks to limit proliferation of ballistic or cruise missiles. *Id.* at 600. The MTCR specifies two categories of systems to be controlled. *Id.* The first applies to transfers involving all missiles capable of delivering payloads of over 500 kilograms over a range of 300 kilometers. *Id.* at 604. The second category covers missile technology transfers in general. *Id.* at 605-13. The MTCR's general guidelines for exports in the second category state that Governments should deny exports when: (1) the recipient has pre-existing missile building capability, (2) the recipient has "critical" projects, and (3) the technology to be transferred is seminal to the supplier's missile program. Hamburg Report, *supra* note 192, at 42.

207. See *Missile Proliferation: The Need for Controls (Missile Technology Control Regime): Hearings Before the Subcommittees on Arms Control, International Security and Science, and on International Economic Policy and Trade of the House Committee on Foreign Affairs*, 101st Cong., 1st Sess. 19 (1989) (statement of J.

There are many problems inherent in any supply-side approach to arms regulation. First, as with the unilateral models, cartel supplier models propose restraint in a manner wholly isolated from other arms traffic issues, such as the illicit trade and underlying recipient insecurity. The model for restraint by category aims only to stem arms flows by simple numerical formulations. Consequently, it fails to address the systemic<sup>208</sup> causes of the arms trade problem. Regulation by weapon system, however, provides a sense of certainty as to exactly which weapons will be regulated, an element which is missing in the subjective cartel guideline system.<sup>209</sup> Although such regulation provides more certainty, by definition it is more limited as it only covers certain categories of weapon transfers. Moreover, it necessitates verification procedures, a highly contentious issue for many states.<sup>210</sup>

Second, multilateral restraint efforts, such as the London Communiqué<sup>211</sup> and the MTCR,<sup>212</sup> have thus far only reached the level of a non-binding agreement. Such agreements generally have no force in international law.<sup>213</sup> These agreements are highly susceptible to fluctuations in a signatory's foreign policy and interest in the effects of the arms trade;<sup>214</sup> overly subjective interpretations of such guidelines can easily

Hinds, Deputy Assistant Secretary for Negotiations Policy, Department of Defense) (stating that the MTCR has succeeded at slowing proliferation in key missile projects).

208. Ohlson, *Introduction*, *supra* note 37, at 3 (noting that systemic causes of the arms trade are the economic and political forces that drive some states to import and others to export arms).

209. See BLACKABY, *supra* note 131, at 12 (commenting that the United States' current proposals are based on criteria so subjective that any transfer may be interpreted as justified within the guidelines).

210. See Philip R. Trimble, *Beyond Verification: The Next Step in Arms Control*, 102 HARV. L. REV. 885, 885 (1989) [hereinafter Trimble] (finding that verification has traditionally been one of the most serious and obstructive issues in the arms control debate).

211. See *London Communiqué*, *supra* note 16, at 4 (stating that the parties to the agreement "intend to observe the rules of restraint") (emphasis added).

212. See MTCR, *supra* note 203, at 600 (stating that the United States will unilaterally follow the MTCR's guidelines).

213. See Oscar Schacter, *The Twilight Existence of Nonbinding International Agreements*, 71 AM. J. INT'L L. 296, 300 (1977) (stating that, in general, nonbinding agreements do not impose legal responsibility and are not governed by international law).

214. STEPHANIE G. NEUMAN & ROBERT E. HARKAVY, *The Road to Further Research and Theory in Arms Transfers*, in *ARMS TRANSFERS IN THE MODERN WORLD* 320 (Stephanie G. Neuman & Robert E. Harkavy eds., 1979) (observing that traditionally the literature on the arms trade is subject to occasional bursts of short-lived interest); BLACKABY, *supra* note 131, at 13 (stating that until recently, the arms trade has received sporadic periods of interest, with no tangible results).

undermine the regimes' entire purpose.<sup>215</sup> The determinants in this system will inevitably not be what world security necessitates, but rather what the economic and policy calculations of individual states dictate.<sup>216</sup>

Third, recipient nations resent cartels and supply-side restraints as paternalistic and as an infringement on their sovereignty.<sup>217</sup> Moreover, supply-side determinations may indeed be violative of a nation's inherent right to self-defense as articulated in the United Nations Charter.<sup>218</sup> Even a supplier arrangement to restrict sales to second generation arms<sup>219</sup> would present a problem for the Third World, as such an agreement would still allow developing states to significantly threaten one another.<sup>220</sup>

Despite the glaring example of the unregulated market's tolerance of Iraq's menacing arms build-up, attaining a supply-side arms transfer regime faces powerful countervailing forces.<sup>221</sup> Completed and proposed arms sales, since the Gulf War, to the world's most volatile regions,<sup>222</sup> directly contradict the statements made by the leading arms

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215. See BLACKABY, *supra* note 131, at 12 (arguing that the arms guidelines system lends itself to easy manipulation because its members subjectively interpret its rules).

216. See David A. Koplow & Philip G. Schrag, *Carrying A Big Carrot: Linking Multilateral Disarmament and Development Assistance*, 91 COLUM. L. REV. 993, 1025 (1991) [hereinafter Koplow & Schrag] (explaining that, in the realm of arms control, states compute their own cost-benefit analysis on a continuous basis in determining whether to comply with or violate its treaty obligations); Trimble, *supra* note 210, at 912 (stating that if a state no longer believes a treaty is in its best interest, international law and international organizations cannot, generally, force the state to conform).

217. Ball, *supra* note 60, at 46 (finding that due to third world dependency on weapons from industrialized nations, developing nations view supplier control regimes as inherently discriminatory); S.D. Muni, *Third World Arms Control: Role of the Non-Aligned Movement*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* 198, 205 (Thomas Ohlson ed., 1988) [hereinafter Muni] (discussing the non-aligned movement's opposition to supplier cartels). Third World and non-aligned states have consistently countered that supply controls imposed by the suppliers must include proportional production and procurement controls by the suppliers. *Id.*

218. U.N. CHARTER art. 51. Some non-aligned states see supplier imposed controls as also infringing on legitimate liberation struggles. See Muni, *supra* note 217, at 206 (discussing the non-aligned states' view that if suppliers succeed in restraining their arms trade, the developed world will have yet another means of domination).

219. See OTA Study, *supra* note 4, at 15 (observing that currently only the United States and Japan have adopted a policy of prohibiting the sale of top-of-the-line technologies and weapons).

220. BLACKABY, *supra* note 131, at 12.

221. See Debusman, *supra* note 19 (lamenting that despite the current flurry of arms control proposals, regulation of the global traffic in arms may still be a far off proposition).

222. See Lee Feinstein, *Arms Sales Continue; Big Five Talks Postponed*, *ARMS CONTROL TODAY*, April 1992, at 21 (reporting that since President Bush announced

exporting nations counselling restraint.<sup>223</sup> Furthermore, any fundamental change toward restraint in arms transfer policies, especially in the United States, directly conflicts with significant military<sup>224</sup> and economic<sup>225</sup> pressures counseling against such restraints.

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his Middle East arms control initiative in May 1991, the United States had transferred around \$8.5 billion worth of arms to the region). See also Budiansky, *supra* note 143, at 20-21 (reporting that despite virtuous post-war words of restraint by arms exporters, the United States, Britain, France, and the U.S.S.R. have planned massive arms sales to the Middle East); *Factfile: U.S. Arms Transfers to the Middle East Since August 2, 1990*, ARMS CONTROL TODAY, June 1991, at 26 (listing the U.S. post-Iraqi invasion arms transfers through June 1991 to Bahrain, Egypt, Israel, Saudi Arabia, and the United Arab Emirates totalling approximately \$13.2 billion excluding commercial sales); RECENT INITIATIVES, *supra* note 155, at 7 (listing proposed arms sales to the Middle East from Canada, U.S., United Kingdom, China, Germany, U.S.S.R., Czechoslovakia, Belgium, North Korea, Yugoslavia, and Romania as of August 1991); *U.S. Pours Weapons Into the Third World* (Council for a Livable World Education Fund, Sept. 6, 1991, Press Release) (reporting that President Bush authorized \$6.793 billion worth of new arms transfers in August 1991 to South Korea, Saudi Arabia, Oman, Egypt, Brazil, Turkey, Morocco, and Taiwan).

Arms control initiatives in the Middle East have, for the last few decades, amounted to little more than rhetoric anyway. See BLACKABY, *supra* note 131, at 13 (observing that the statements of James Baker echo those of Dean Rusk and Nikita Khrushchev decades earlier; all three pledged arms control in the Middle East while continuing to arm the region).

223. See *supra* notes 157-60 and accompanying text (discussing post-Gulf War arms restraint plans forwarded by the major powers).

224. See OTA Study, *supra* note 4, at 13 (finding that the Army and Air Force wish to keep their constituent contractors in business in order to maintain production lines open and up to date, in addition to keeping unit prices down). Traditionally, it has not been the policy of the defense branches to encourage foreign sales. *Id.* at 13. However, the Army has told the OTA that it will seek authorization from the executive branch to aid contractors with obtaining overseas business when it is in the Army's best interest. *Id.* at n.19. The OTA has found that, for the first time, the United States Army and Air Force have openly encouraged arms exports in order to support existing weapons plants. *Id.* at 13. See also Barber, *supra* note 5, at 22 (reporting that the Bush Administration fears that defense cuts will disable the industrial base and efficiency of the domestic arms industry). The Pentagon has recently reversed a 25-year old policy by spending millions of taxpayer dollars to promote the sales of United States' made weapons and military hardware at weapons trade shows around the world. See R. Jeffrey Smith, *U.S. Helps Firms Push Arms Sales*, WASH. POST, May 8, 1992, at A1 (noting that despite the Bush Administration's May 1991 pronouncement on restraining world-wide arms sales, the Department of Defense has financed U.S. arms contractor exhibits at arms bazaars and shows since June 1991 in Paris, Canada, Dubai, Paraguay, and Chile).

The OTA also notes that within the Department of Defense, there is an internal bureaucracy, the Defense Security Assistance Agency (DSAA), which survives on the amount of foreign sales the government makes. OTA Study, *supra* note 4, at 30-31. The DSAA has a vested interest in keeping military sales high as their principal means of funding derives from the 3% charge it assesses on all weapons sales by the government. *Id.* at 30.

225. See SIPRI Y.B. 1991, *supra* note 2, at 311 (finding that of the eleven largest arms-producing employers in the world, ten are from the United States). SIPRI data ranks these companies in descending order of arms sold in 1989: McDonnell Douglas (USA); General Dynamics (USA); Lockheed (USA); British Aerospace (UK); Gen-

## B. DEMAND-SIDE RESTRAINT

There are two schools of thought on how to restrain arms transfers from the recipient side. The first school argues that regional, recipient-initiated systems would serve as the most enduring form of regulation. The second attempts to effect recipient restraint by tying reductions in arms to the distribution of development aid.

### 1. Recipient Initiative

As in the case of supplier-restraints, demand-side approaches to arms transfer regulation must begin with a determination of why the country or region is importing arms.<sup>226</sup> But with recipient approaches, this determination defines the approach almost completely, because developing nations import arms based on security considerations.<sup>227</sup> Illustrative

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eral Electric (USA); General Motors (USA); Raytheon (USA); Boeing (USA); Northrop (USA); Rockwell International (USA); Martin Marietta (USA). In 1984, the United States-Iraq Business Forum was established and comprised many significant defense contractors and defense-related industries, including BMY, Bell Helicopter-Textron, Lockheed and United Technologies Corporation. TIMMERMAN, *supra* note 130, at 220.

One study has determined that should the United States severely restrict its arms sales to the Middle East, the result could mean a loss of over \$60 billion in foregone revenues. WILLIAM D. BAJUSZ & DAVID J. LOUSCHER, *ARMS SALES AND THE U.S. ECONOMY: THE MILITARY IMPACT OF RESTRICTING MILITARY EXPORTS* 129 (1988).

The effects of decreased arms budgets will be felt in nation-wide unemployment rates. See Richard W. Stevenson, *Arms Makers Brace for Peace*, N.Y. TIMES, Jan. 30, 1992, at D1 (stating that Bush's proposed arms budget cuts will affect virtually every contractor in the country). Many companies facing reductions in orders from the United States government are attempting to stay afloat through foreign exports. OTA Study, *supra* note 4, at 12-13. Especially in the Middle East, this means arms manufacturers will compete harder than ever to sell their wares to the region. See Anthony L. Velocci, *Solid Growth Ahead for Mideast Markets*, AVIATION WK. & SPACE TECHNOLOGY, Nov. 4, 1991, at 54 (explaining that arms sales to the Middle East are expected to boom due to surplus oil revenues and diplomatic and financial pressures).

The Reagan and Bush Administrations have either aided or attempted to aid United States arms industries sell their arms abroad through policies benefiting exports. See *Arms Sales Turn Into Gifts For Struggling Third World Nations*, BUS. WK., July 25, 1983, at 63 (explaining that when Third World nations run into trouble in repaying U.S. arms loans, the U.S. switches to grants or reschedules payments in order to keep the customer solvent); *Bush Backs Resuming Loan Guarantees Through Eximbank for Weapon Exports*, AVIATION WK. & SPACE TECHNOLOGY, Mar. 25, 1991, at 26 (stating that the Bush Administration proposed legislation to resume Eximbank loan guarantees to help the U.S. arms industry compete in export sales with foreign arms companies that receive government subsidies).

226. See Ball, *supra* note 60, at 46 (asserting that without a clear understanding of the underlying forces driving the arms trade, curbing it will be impossible).

227. See U.N. TRANSFER STUDY, *supra* note 9, at 24 (stating that the primary motivation for arms imports stems from the recipient's "perceived need for security"); Catrina, *supra* note 5, at 121 (recognizing that the recipient's dependence on arms suppliers is directly linked with the recipient's national security and autonomy goals).

of this is the case of the Middle East where some of the world's largest arms importers<sup>228</sup> have been locked in conflict for decades.<sup>229</sup>

The prevailing<sup>230</sup> model for demand-side restraint is the recipient-initiated, regionally-based plan to simply reduce arms imports.<sup>231</sup> The principles of the Ayacucho Declaration of 1974 may serve as the model's foundation.<sup>232</sup> The Ayacucho peace process focused on establishing regional military cooperation, setting common guidelines for arms import decisions, and creating a definitive list of prohibited weapons and weapons to be regulated.<sup>233</sup> Europe's self-imposed arms limits, as embodied in the CFE Treaty, may also serve as the basis for a recipient initiative.<sup>234</sup> Borrowing from the CFE Treaty, a recipient plan could set ceilings for certain specific weapons imported into the region.<sup>235</sup> The plan could create verification and inspection procedures,<sup>236</sup>

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Catrina identifies several main factors driving a recipient's decision to import arms and states that each is related to the recipient's internal security needs. *Id.* at 124-28. For example, the "paramount" factor identified is the recipient's perception of a military threat to its security. *Id.* at 124. *See also* Ball, *supra* note 60, at 46 (noting that the two most important factors in a recipient's decision to import are (1) the recipient's involvement in an internal or external conflict, and (2) the availability of financing).

228. *See* SIPRI Y.B. 1991, *supra* note 2, at 199 (listing six Middle East states in the top eleven of Third World arms importers: Saudi Arabia, Iraq, Egypt, Syria, Iran, and Israel).

229. *See* Ball, *supra* note 60, at 47 (observing that over 75% of the world's largest arms importers have been locked in combat for years). Further examples of this connection are the cases of India and Pakistan, Algeria and Libya, Libya and Chad, and Vietnam and Cambodia. *Id.* at 48.

230. *See Arms Cartel, supra* note 180, at 38 (statement of Andrew Pierre, Senior Associate, Carnegie Endowment for International Peace) (observing that for the past 25 years the prevailing view has been that recipient states must take the control initiative).

Because the largest importers of arms are overwhelmingly developing countries, the recipient restraints discussed herein are generally those composed of developing nations. *See* SIPRI Y.B. 1991, *supra* note 2, at 199 (stating that Third World nations held nine of the top fifteen places in arms import expenditures from 1986 to 1990); ACDA 1989 Study, *supra* note 2, at 7 (showing that the developing world accounted for 77.8% of the world's arms imports in 1988).

231. *See* BLACKABY, *supra* note 131, at 11 (stating that agreed acquisition and export limits imposed by states within a region would be the best form of transfer regulations); Ohlson, *Assessment, supra* note 31, at 243 (concluding that recipient-initiated restraint systems offer the best chance of long term success due to the close link between arms transfers and regional security).

232. Varas, *supra* note 97, at 177-80.

233. *Id.* at 179.

234. *See* Klare, *Gaining Control, supra* note 27, at 11 (noting that the conclusion of the CFE Treaty provides a successful framework on which to base recipient arms control).

235. CFE Treaty, *supra* note 199, art. IV-VI (setting ceilings for the five CFE categories of regulated conventional armaments).

236. *Id.* at General Rules for Conducting Inspections.

and establish its own conventional arms secretariat<sup>237</sup> to monitor weapons imports, coordinate national policies, and serve as a forum for future conventions.

Such a model would require the region to be definable<sup>238</sup> and to possess a certain degree of common interest in import reduction.<sup>239</sup> In addition, the region should be reasonably secure as states generally will not seek import reductions when their security is at risk.<sup>240</sup> Absent these characteristics, it is unlikely that certain regions, such as the Middle East, will issue recipient-based initiatives in the near future.<sup>241</sup> The situation in Latin America, however, fits the aforementioned criteria.<sup>242</sup> The region is currently stable and definable. Most importantly, the region possesses a significant common interest: reducing military budgets to overcome widespread foreign and internal indebtedness.<sup>243</sup> In addition, the Latin American states signed a weapons limitation treaty, the Treaty of Tlatelolco,<sup>244</sup> which prohibits nuclear arms in the region. The recipient-initiated model has been both criticized<sup>245</sup> and ex-

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237. See Simpson, *supra* note 8, at 236-37 (suggesting that an agreement along these lines could include institutions to monitor and inspect those states party to the agreement).

238. See Klare, *Third World Arms*, *supra* note 171, at 11 (finding that regional efforts are best achieved when the region is small and well-defined); PIERRE, *supra* note 4, at 309 (stating that regional approaches need to be divided into manageable units with some degree of homogeneity and common interest).

239. See Muthiah Alagappa and Noordin Sopiee, *Problems and Prospects for Arms Control in South-East Asia*, in *ARMS TRANSFER LIMITATIONS AND THIRD WORLD SECURITY* (Thomas Ohlson ed., 1988) 186, 196 (concluding that common need, whether it be an altruistic desire to prevent violence and suffering, to halt the arms race or to avoid defense over-spending, is one of the necessary elements in a regional arms transfer system).

240. Ohlson, *Assessment*, *supra* note 31, at 243.

241. See Klare, *Gaining Control*, *supra* note 27, at 11 (stating that regional efforts in the Middle East are indeed a reasonable proposition). Klare's assertion, however, most likely presupposes a high degree of superpower involvement and coercion. *Id.*

242. See Simpson, *supra* note 8, at 236 (arguing that the Latin American region possesses the most favorable conditions for a successful recipient arms transfer limitation system).

243. See Ball, *supra* note 60, at 54-55 (finding that in Latin America the issue of indebtedness has substantially increased the prospects for coordinated arms import reductions); Varas, *supra* note 97, at 178 (stating that the region-wide debt crisis of the early 1980s added significantly to the prospects for unilateral and multilateral arms import reductions). The effect of the debt crisis was most apparent in the 1985 Declaration of Lima where twenty Latin American nations agreed to consider reducing military expenditures, while increasing the amount spent for socio-economic purposes. *Id.* at 183.

244. See Treaty for the Prohibition of Nuclear Weapons in Latin America, Feb. 14, 1967, 634 U.N.T.S. 281 (declaring all Latin America to be a nuclear free zone).

245. See PIERRE, *supra* note 4, at 306 (stating that, realistically, recipient-initiated regimes will not lead to progress).

alted.<sup>246</sup> Both schools agree, however, that any truly effective regime must encompass both willing suppliers and recipients.<sup>247</sup>

## 2. *Aid for Import Reduction*

Another approach attempts to affect recipient restraint from a different angle by tying restraint to development aid as a method of reducing recipient arms acquisitions. Generally, this type of proposal is designed to affect general disarmament, but it directly relates to arms transfers as transfer control is inextricably connected to the wider disarmament effort.<sup>248</sup>

The idea of linking disarmament with development aid is not a new one.<sup>249</sup> The main vehicle for this approach is the disarmament fund. In 1984, The United Nations Institute for Disarmament Research (UNIDIR) proposed the establishment of an international disarmament fund for the benefit of developing states.<sup>250</sup> UNIDIR sought to endow the fund with contributions by the major military powers based

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246. Ohlson, *Assessment*, *supra* note 31, at 242 (stating that because suppliers are increasing and supply-side restraints have largely failed, the best chance for a long-term arms transfer regime rests with a recipient-initiated system).

247. *Id.* (predicating the assertion that recipient-based restraint is preferable to supplier initiatives by stating that joint supplier and recipient restraint is the long term goal); PIERRE, *supra* note 4, at 310 (concluding that although supplier-initiatives are the most likely to provide restraint success, recipients need to be involved to avoid supplier paternalism). See also Saferworld Report, *supra* note 193, at 5 (finding that a joint supplier and recipient regime would be the most desirable).

248. See Report of the Disarmament Commission to the General Assembly, 45 U.N. GAOR Supp. (No. 42), U.N. Doc. A/45/42 at para. 42 (1990) (stating the opinion of the Disarmament Commission that arms transfers have serious implications for conventional disarmament); U.N. TRANSFER STUDY, *supra* note 9, at 32-36 (discussing the interrelationship between transfers and disarmament).

249. See Fontanel & Guilhaudis, *supra* note 181, at 216 (noting that in 1955 France's President Edgar Faure proposed the first modern attempt to practically link disarmament and development). The international community has discussed the idea of creating an international disarmament fund for decades. *Id.* See U.N. INSTITUTE FOR DISARMAMENT RESEARCH (UNIDIR), RELATIONSHIP BETWEEN DISARMAMENT AND DEVELOPMENT: ESTABLISHMENT OF AN INTERNATIONAL FUND FOR DEVELOPMENT, at 5-6, U.N. Doc. A/39/229, U.N. Sales No. E.85.IX.2 (1984) [hereinafter UNIDIR Study] (stating that France, the Soviet Union, non-governmental agencies and the United Nations have proposed variations on the theme of the creation of a fund financed by the savings countries would realize by cooperatively reducing their military expenditures). These funds, derived mainly from reductions by developed countries, either voluntarily given or taxed, would be transferred in the form of development aid to the Third World. *Id.* at 6.

250. UNIDIR Study, *supra* note 249, at 15 (stating that superpower contributions should initially endow the fund and continue funding it by calculating the amount of nuclear warheads each nation possessed and paying on the basis of such number or, alternatively, the contributing nations could donate between one-half and one percent of their annual military expenditures).

on their respective nuclear and military expenditures.<sup>251</sup> States seeking development aid from the fund would need to show they maintained friendly relations with neighbor states and that they pursued a policy of seeking security through "non-military" means.<sup>252</sup>

Building on the UNIDIR fund model, a rather blunt proposal known as the "carrot and stick" model has emerged.<sup>253</sup> This plan proposes that the world's most industrialized nations set up an international fund<sup>254</sup> to provide economic aid based on a state's disarmament behavior.<sup>255</sup> The proponents believe states will adhere to this model due to their collective fear of the state of the world's arms races.<sup>256</sup> An international agency<sup>257</sup> would distribute the funds according to a code of conduct which details those acts which violate the purpose of the fund.<sup>258</sup> In applying this scheme to arms transfer restraint, the code could prohibit recipients from importing certain weapons or placing numerical ceilings on certain arms. States drawing on the fund could be required to engage in multilateral transfer control negotiations or commit to keeping their military expenditures below a certain percentage of their annual public expenditure.<sup>259</sup> Senator Joseph Biden has recently pro-

251. *Id.* at 10-11.

252. *Id.* at 12. See also Alain Pipart & Hugo Sada, *The Establishment of an International Disarmament Fund for Development: The Regional Approach*, in THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR DEVELOPMENT (1984) (UNIDIR ed., 1984) (proposing to give the most aid to the poorest developing countries which support regional arms reduction).

253. Koplow & Schrag, *supra* note 216, at 993-1059. A similar proposal for a regional disarmament fund has also been proposed. CENTER FOR UNESCO DE CATALUNYA, PROPOSAL TO CREATE AN ECONOMIC COOPERATION FUND FOR THE WESTERN MEDITERRANEAN (V. Fisas ed., 1991) (copy available in the offices of *The American University Journal of International Law and Policy*). The proposal describes a fund for aiding Morocco, Algeria, Tunisia and Libya with contributions from France, Spain and Italy. *Id.*

254. Koplow & Schrag, *supra* note 216, at 1027-28.

255. *Id.* at 1028.

256. *Id.* at 1040.

257. *Id.* at 1027. The proponents suggest that an international agency, established by treaty and including all recipient states, is a preferable method of distributing the fund's resources. *Id.*

258. See *id.* at 1028 (proposing that the program include a published code specifying the types of recipient behavior which will earn certain types of aid).

259. See Klare, *Gaining Control*, *supra* note 27, at 12 (proposing that states be denied loans and grants when their percentage of arms spending reaches certain levels). Recently, Secretary of State James Baker succeeded in using this "carrot and stick" approach to stop arms sales emanating from one of the hard currency-starved former Soviet Republics. Thomas L. Friedman, *Tajikistan Agrees to Curbs on Arms*, N.Y. TIMES, Feb. 14, 1992, at A7. Under the agreement orchestrated by Baker and Tajikistan's President Nabyev, the United States will provide economic assistance and diplomatic recognition in exchange for the republic's promise to restrict its sales of weapons components. *Id.*

posed a less institutional "debt for nature" variant of this approach.<sup>260</sup>

In 1991, the World Bank and the International Monetary Fund (IMF) attempted to implement the "carrot and stick" approach. Traditionally restricted from considering the military expenditures of recipient states in their calculations,<sup>261</sup> the President of the World Bank<sup>262</sup> and the Managing Director of the International Monetary Fund<sup>263</sup> made bold statements regarding the potential effect of excessive defense spending on the distribution of their funds. In addition, the Development Assistance Committee (DAC)<sup>264</sup> recently stated that its members increasingly take military expenditures into account when making their aid decisions.<sup>265</sup> Similarly, Congress has suggested that any new arms regime should include linking Third World aid with security and disarmament.<sup>266</sup>

260. See 137 CONG. REC. S3137 (daily ed., Mar. 13, 1991) (statement of Sen. Biden) (suggesting that the largest arms exporters should link prospective arms sales, foreign assistance, and loan eligibility, to cooperate on arms control efforts).

261. See Barber B. Conable, Jr., *Growth Not Guns*, WASH. POST, Dec. 24, 1991, at A13 (stating, as the former President of the World Bank, that IMF and World Bank lending conditions traditionally have been limited to economic criteria); Jessica Matthews, *A New String on Third-World Loans*, WASH. POST, Oct. 25, 1991, at A27 (stating that although the IMF and World Bank are mandated to consider only economic criteria in their decisions, IMF Managing Director, Michel Camdessus, has indicated that defense spending will be considered due to its impact on national budgets).

262. See Lewis T. Preston, Press Conference at the 1991 Board of Governors Annual Meetings, Bangkok, Thailand 11 (Oct. 17, 1991) (stating that although defense expenditure is a sovereign decision, if the World Bank found an excessive percentage of a country's expenditure budget was devoted to defense, the Bank would question whether funds to that country would be appropriate). At his first World Bank meeting as President, Preston stated that he believed the end of the Cold War represented a unique opportunity for nations to reduce defense spending and balance budgets or increase socio-economic expenditures. *Id.* at 3.

263. See Michel Camdessus, Managing Director of the International Monetary Fund, Address to the Economic Commission for Latin America of the United Nations, Santiago, Chile 7 (Nov. 29, 1991) (stating that military spending is unproductive and should be decreased).

264. The Development Assistance Committee (DAC) is a coalition of nations which consult on economic assistance for development [1990/1991] 1 Y.B. INT'L ORGS. 1311. It operates within the framework of the Organization for Economic Co-operation and Development (OECD) and meets regularly to discuss members' aid policies. *Id.*

265. See DAC High-Level Meeting Reviews Role of Development Co-Operation in Addressing Current Global Challenges and Supporting Democratization, Human Rights and Good Governance, in Organization for Economic Co-Operation and Development Press Release, at 5, (Dec. 4, 1991) (reporting the policies of the DAC members and stating that DAC supports the new policy pronouncements of the World Bank and the IMF in seeking to reduce military expenditures).

266. Foreign Relations Act, *supra* note 188, § 401 (12)(A)-(B).

Though the authors of the "carrot and stick" model point to several plausible objections to their proposal,<sup>267</sup> they fail to account for a significant problem: the system discriminates heavily against states that do not produce and develop armaments.<sup>268</sup> Indeed, this may be their intent, for their plan appears to force importing states to conform to disarmament which is a recognized international community goal.<sup>269</sup> However, if the international community is to seriously confront the many facets of the arms trade problem, cooperation between suppliers and recipients is crucial; forcing disarmament upon recipients may therefore prove counterproductive in the long run.<sup>270</sup> As this approach is so narrow in focus, it also fails to address the security needs of states which face regional instability and aggressive neighbors.<sup>271</sup> Thus, this model puts potentially needful states in the unenviable position of choosing between development and security.

### 3. Transparency

On December 9, 1991, the U.N. General Assembly voted overwhelmingly to establish a voluntary register of international arms sales.<sup>272</sup> One of the main goals of the register is to increase arms transfer transparency.<sup>273</sup> The theory behind transparency assumes that when

267. Koplow & Schrag, *supra* note 216, at 1042-43 (suggesting, for example, that some may view the "bribe" offered to developing states of development funds as an inappropriate form of international relations).

268. See Muni, *supra* note 217, at 206 (stating that in addition to joint supplier-recipient arms limitation talks, the non-aligned movement views restraint measures as industrialized world domination over the developing world).

269. See *Final Document of the Tenth Special Session of the U.N. General Assembly*, para. 81, reprinted in 1978 U.N. DISARMAMENT Y.B. 482 [hereinafter *Final Document*] (declaring that the limitation and gradual reduction of armaments should be pursued with the goal of complete disarmament).

270. See *id.* para. 85 (stating the opinion of the non-aligned and Third World representatives that they would resist arms limitation methods which did not account for their independence and security needs). The relevant and often quoted portion of the *Final Document* statement reads as follows:

[C]onsultations should be carried out among major arms suppliers and recipient countries on the limitation of all types of international transfer of conventional weapons . . . on the basis of the undiminished security of the parties . . . taking into account the need of all States to protect their security as well as the unalienable right to self determination and independence of peoples under colonial or foreign domination.

*Id.*

271. See Catrina, *supra* note 5, at 124 (finding that the Third World primarily acquires arms to counter security threats).

272. Lewis, *supra* note 17, at A11.

273. See G.A. Res. 673 (1991) (determining that increased transparency in arms sales could lessen tensions, heighten confidence, promote restraint in the production and transfer of arms, and strengthen chances for regional peace and security).

a state knows the levels and types of arms a neighboring state has, or at what rate its neighbor is accumulating or disarming, the chances for dangerous over-accumulation based on uncertainties will be reduced.<sup>274</sup> In practice, transparency is a confidence-building measure<sup>275</sup> which involves states providing information systematically to the international community on certain defined military and weapons affairs.<sup>276</sup>

The vehicle chosen by the international community to implement transparency is the arms register.<sup>277</sup> The registry concept resembles the publicity provisions of the 1925 Geneva Arms Traffic Convention.<sup>278</sup> A U.N. expert panel study<sup>279</sup> and the five permanent members of the

274. U.N. TRANSFER STUDY, *supra* note 9, at 37; Ohlson, *Assessment*, *supra* note 31, at 245; Saferworld Report, *supra* note 193, at 23; BLACKABY, *supra* note 131, at 8. See also JAVIÉR PÉREZ DE CUÉLLAR, REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION 14 (1991) (stating that promoting transparency through a United Nations-based registry would help foster a favorable climate for further restraint). *But see* PIERRE, *supra* note 4, at 282 (finding the register approach flawed because merely shedding light on arms transfers is unlikely to meaningfully discourage arms sales).

275. U.N. TRANSFER STUDY, *supra* note 9, at 36 (stating that transparency is a confidence building measure). A confidence-building measure is defined as "technical or military actions agreed to by two or more countries whose central purpose is to enhance stability by improving predictability and reducing opportunities for misperceptions." CRS Middle East Study, *supra* note 131, at 40.

276. See U.N. TRANSFER STUDY, *supra* note 9, at 13 (giving the expert panel's definition of transparency).

277. G.A. Res. 673 (1991) (concluding that an arms register will promote transparency). The resolution stipulated that the register shall formally be known as "The Register of Conventional Arms", informally as "The Register", and that it shall be maintained at United Nations Headquarters in New York. *Id.* at Annex, para. 1.

278. See *supra* notes 57-62 and accompanying text (describing the Geneva Arms Traffic Convention's provisions for publicity of transfers).

279. U.N. TRANSFER STUDY, *supra* note 9, at 52. The expert panel recommended that to increase transparency and confidence in the international community:

(c) A universal and non-discriminatory arms transfer register under the auspices of the United Nations should be established as soon as possible. The specifics of the register should be developed in detail within the United Nations framework, based on the following broad characteristics:

(i) The register should be so designed as to permit its prompt implementation;

(ii) Participation in the register should be universal, including both suppliers and recipients;

(iii) The parameters of the register should be such as to allow standardized and comparable input from all States;

(iv) The register should be so designed and maintained as to provide meaningful information with regard to its purpose to build confidence, promote restraint in arms transfers on a unilateral, bilateral or multilateral basis to enhance security at lower levels of armaments, and allow timely identification of trends in arms transfers;

(v) The register set up should have potential to expand to more comprehensive coverage, if required.

*Id.*

U.N. Security Council<sup>280</sup> endorsed the registry's ability to effect transparency even before the General Assembly approved it with near unanimity.<sup>281</sup> The resolution establishing the register seeks to increase transparency by annually publishing the names of states and the weapons involved in conventional weapons transfers<sup>282</sup> in seven categories.<sup>283</sup> The resolution also leaves an option open for states to provide additional information on military holdings and procurement through national production,<sup>284</sup> which is an important set of data for developing states.<sup>285</sup> This model is one way of curbing the arms trade that might otherwise occur due to the suspicion and secrecy usually attendant to arms deals.<sup>286</sup>

While it appears to have many benefits, the approved register is fraught with limitations. Participation at this time is strictly voluntary<sup>287</sup> and no provisions for data verification are available.<sup>288</sup> Also, the registry is limited to imports and exports in seven categories of conventional arms.<sup>289</sup> Thus, for non-producing states, the registry is inherently discriminatory because it will only record their receipts while failing to

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280. *Paris Communiqué*, *supra* note 9, at 2.

281. *See Lewis*, *supra* note 17, at A11 (reporting that the registry was approved by a vote of 150, with no objections, abstentions by Cuba and Iraq, and China not voting).

282. *See G.A. Res. 673 (1991)*, at Annex, para. 2(a),(f) (defining imports and exports to include transfers by grant, sale, credit, barter or cash).

283. *Id.* at Annex, para. 2 (a)(I)-(VII) (identifying the seven categories of weapons the register shall record in its ledgers: battle tanks; armored combat vehicles; large calibre artillery systems; combat aircraft; attack helicopters; warships; missiles or missile systems).

284. *Id.* para. 10. The resolution further considers that military holdings and procurement may later enlarge the register's scope. *Id.* para. 11 (a)(ii). *See also id.* (inviting member states of the U.N. to provide to the Secretary-General by April 1994 their views on whether the register should be expanded into these areas).

285. *See Third World Wary of Western Advocacy*, *supra* note 60 (reporting that Third World states are concerned that through arms control, developing nations are attempting to concentrate the world's weapons in the hands of the already powerful few). Pakistan's delegate to the U.N., Syed Refaat, stated that since many small countries depend on industrialized states for arms, any register must include arms procurement and production data. *Id.*

286. *See Chinese Representative on Transparency in Armaments*, Xinhua General Overseas News Service, Nov. 15, 1991 available in LEXIS, Nexis Library, Xinhua File (quoting China's Ambassador for Disarmament Affairs, Hou Zhitong, as stating "transparency in international arms transfers and a register is not an end in itself, but a means by which to enhance peace and security and stability of countries and regions concerned").

287. *G.A. Res. 673 (1991)*, at Annex 2(a).

288. *See CENTRE UNESCO DE CATALUNYA, THE UNITED NATIONS ARMS TRANSFER REGISTER AS A MEANS OF EXERCISING CONTROL ON THE ARMS TRADE 5* (V. Fisas ed., 1991) [hereinafter Fisas] (arguing that in lieu of any verification procedures, an inspecting body to verify data supplied to the register must be developed).

289. *See supra* note 283 and accompanying text (listing the categories).

document production statistics of their suppliers.<sup>290</sup> Further, the transfer of arms is one of the very last steps in the armaments cycle; the mere reporting of transfers may not necessarily affect a state's entire production practice.<sup>291</sup> Lastly, the register compiles data on a *post facto* notification basis.<sup>292</sup> Potentially, therefore, over a year will pass before one state learns of another's transfers or acquisitions.<sup>293</sup> The registry approach is only a means of providing a climate for arms transfer restraint; *standing alone*, it does not lead to arms transfer restraint.<sup>294</sup>

#### IV. RECOMMENDATIONS: A PROPOSAL FOR THE CREATION OF A MULTILATERAL TRANSFER TREATY AND AN INTERNATIONAL ARMS TRANSFER AGENCY

##### A. THE NEED TO LINK ARMS TRANSFER RESTRAINT MODELS

All of the models explored in this Comment deal with a certain aspect of arms transfers. Each model, if effectively implemented, may indeed serve as an independent layer of restraint in the international regulation of the conventional arms trade.<sup>295</sup> But, these models lack integration, and, absent such integration, will achieve only limited goals. For example, supply-side models, by definition, ignore the underlying political and security problems which drive states to seek arms from any supplier. Similarly, the success of the recipient models depend heavily upon supplier restraint. Both models fail to address the troublesome issue of illicit arms trafficking. In addition, achieving true trans-

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290. See *Third World Wary of Western Advocacy*, *supra* note 60 (reporting that Pakistan's delegate to the U.N., Syed Refaqt, believes a fair register should include arms procurement and production data). *But see* G.A. Res. 673 (1991), paras. 11(a)-16 (providing that nations are invited by the Secretary-General to submit their views about whether the register should, at a later date, include information on military holdings and national production).

291. Fisas, *supra* note 288, at 2.

292. See G.A. Res. 673 (1991), at Annex 2(d) (stating that registration of transfers shall take place by April 30 of the year following the calendar year of the register).

293. See Fisas, *supra* note 288, at 3 (proposing alternatively that states also inform the register of exports at the time of contract completion).

294. U.N. TRANSFER STUDY, *supra* note 9, at 3 (recognizing that transparency measures are not disarmament goals in themselves, but rather are the means to promote confidence among states seeking arms transfer limitations).

295. See Klare, *Gaining Control*, *supra* note 27, at 13 (arguing that supplier and recipient models operating independent of each other provide governments with methods for restraining the arms trade).

parency, especially beyond simple import-export reporting,<sup>296</sup> will necessitate the creation of a verification body.<sup>297</sup> Also, any "disarmament fund" will rely on the establishment of an international agency to distribute its resources.<sup>298</sup> Therefore, the success of these models depends upon their integration, and integration demands their coordination in a centralized arms transfer regime.

#### B. THE REASONS STATES NEED TO CREATE A CONVENTIONAL ARMS TRANSFER REGIME

Arms limitation agreements are inherently political.<sup>299</sup> When states recognize that certain limitations are in their common interest, they may seek to make limitation alliances explicit by treaty.<sup>300</sup> Treaties succeed when participating states can actualize a self-interest therein.<sup>301</sup> Since World War II, the world's powers have had little interest in curtailing the transfer of conventional arms as the unregulated market suited their interests.<sup>302</sup> However, the Iraqi invasion of Kuwait showed that the arms market is dangerously out of control and thus it served to galvanize the international community in the opinion that certain arms transfers can endanger regional security and seriously threaten international peace.<sup>303</sup> An international consensus has now

296. See G.A. Res. 673 (1991) para. 11(a)(ii) (leaving the possibility open that the register could include not only import and export data, but military holdings and national production figures).

297. See CAHN, *supra* note 96, at 185-86 (proposing the creation of a regional verification body for recipient-based restraint regimes).

298. Koplow & Schrag, *supra* note 216, at 1027.

299. Simpson, *supra* note 8, at 236.

300. See HANS MORGANTHAU, *POLITICS AMONG NATIONS* 177 (4th ed. 1968) (observing that states seek to make treaty alliances when common interests between states are inchoate in policy and action).

301. See Simpson, *supra* note 8, at 231 (citing the Nuclear Non-Proliferation Treaty as a treaty which generally succeeds because all signatories derive security benefits from adherence). See also Koplow & Schrag, *supra* note 216, at 1018 (stating that most arms control regimes fail because states rarely find enough incentive to join or sustain membership). The concept of self-interested state action is a principle of international organizations theory held by both the neoliberal and neorealist schools of thought. See Robert D. Keohane, *Multilateralism: an Agenda for Research*, 45 INT'L J. 731, 734 (1990) [hereinafter Keohane] (explaining that both schools of thought stress the prominence of state interest; but neoliberalism understands state interest within the context of a state's relation to international organizations).

302. U.N. TRANSFER STUDY, *supra* note 9, at 18.

303. See G.A. Res. 673 (1991) para. 4 (reiterating the Assembly's resolution 43/75 I of 1988, that arms transfers deserve serious international attention due to their destabilizing effects on volatile areas engaged in conflict, their potentially negative effects on peaceful economic and social development of people world-wide, and their danger in increasing the illicit arms trade); *London Communiqué*, *supra* note 16, at 3 (declaring that China, France, Britain, the United States, and the Soviet Union are

emerged that unregulated arms transfers work against the international community interest<sup>304</sup> in maintaining peace and stability.

States may actualize important interests through the establishment of an international arms transfer regime, based on this new consensus, in at least four ways. First, some of the world's worst security problems arise today not from superpower nuclear confrontation, but from weapons proliferation and technology transfers to volatile areas.<sup>305</sup> Conventional weapons, not nuclear weapons, have killed over 20 million people in conflicts since World War II.<sup>306</sup> These conventional weapons are becoming more dangerous and, at the same time, less expensive.<sup>307</sup>

Second, the rise of new supplier states such as India, Brazil, and South Korea,<sup>308</sup> armed with the technology given or licensed to them on the open arms market, provides an important incentive for the larger powers to seek transfer restraint on a wider supplier basis.<sup>309</sup> Decades of arms proliferation, encouraged by the largest producers, has left those states, which formerly had the power to avoid international regulation of their sales, seeking to reign in these new arms producing states.<sup>310</sup>

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aware of the dangers posed by arms transfers to states seeking to arm beyond the level necessary for self-defense); Foreign Relations Act, *supra* note 188, § 401(3) (finding that the continued proliferation of weapons into the Middle East will contribute to the region's destabilizing arms race).

304. U.N. CHARTER art. 1(1). The article states:

The Purposes of the United Nations are:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjust or settlement of international disputes or situations which might lead to a breach of the peace. . . .

*Id.*

305. Koplw & Schrag, *supra* note 216, at 999; OTA Study, *supra* note 4, at 17.

306. U.N. DISARMAMENT Y.B. 1990 315, 336 U.N. Sales Doc. E.90.IX.4.

307. See Koplw & Schrag, *supra* note 216, at 1002-03 (stating that even poor countries will be able to massively increase their destructive power with the new generation of conventional weapons, including inexpensive missiles with highly powerful warheads); OTA Study, *supra* note 4, at 17 (finding that the high precision conventional weapons used in the Gulf War showed the advanced capabilities of today's conventional forces).

308. OTA Study, *supra* note 4, at 8-9 (stating that several developing nations have built-up a significant defense industry due to their acquisition of technology licensed from supplier nations).

309. See *id.* at 17 (stating that the United States and other major exporters of weapons are losing control of the technology they have spread throughout the world).

310. See Anthony, *supra* note 24, at 232 (stating that because the spread of conventional technology is not regulated, the future of the arms trade will be determined by factors beyond the control of any single nation); OTA Study, *supra* note 4, at 31 (concluding that due to weapons technology proliferation, the efforts by any one country to stem the flow of arms will fail).

Third, the use of arms as an exponent of foreign policy has led to significant backfires. For example, the United States heavily armed Iran only to lose all the arms and technology to the Shah's successors. The United States also transferred military technology to Iraq in the 1980s during its "tilt" toward Iraq.<sup>311</sup> Similarly, in the Gulf War, French pilots and soldiers faced their own jet-fighters and missiles in combat.<sup>312</sup> Especially in the volatile Middle East, the life of the arms often outlast the life of the ruling regime.<sup>313</sup>

Lastly, in a world where arms proliferation is great, every nation shares a common vulnerability.<sup>314</sup> This vulnerability is now driving states to take collective action, as is evidenced by the London Communiqué and the registry, to control the unregulated arms market which Iraq proved is so damaging to world security.<sup>315</sup> The international community<sup>316</sup> has already agreed that arms transfers, in so many instances, are dangerous.<sup>317</sup> As Congress recognized in the 1992-1993 FRA, uncoordinated arms transfers, especially to the Middle East, have seriously contributed to the region's current state of crisis.<sup>318</sup> For the first time since the interwar years, the world's leading states have finally shown at least a basic willingness to cooperate on regulating the arms trade — now is the time for these states to capitalize on these first steps toward regulation by creating a comprehensive and enduring arms transfer regime.

### C. THE ARMS TRANSFER TREATY AND AGENCY

This Comment recommends that this regime can be achieved at two levels. First, states should now begin the longer term task of negotiating a comprehensive multilateral arms transfer treaty. In the interim,

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311. Auerbach, *supra* note 132, at C1.

312. Drozdiak, *supra* note 143, at A17.

313. OTA Study, *supra* note 4, at 16.

314. Hans-Henrik Holm, *World Disarmament: A Strategy for Development?* 9 DISARMAMENT 26, 29 (1986).

315. See Koplow & Schrag, *supra* note 216, at 1040 (stating that the fear of a rapidly arming world will motivate states to cooperatively create an arms fund to stem arms proliferation).

316. See G.A. Res. 673 (1991) (declaring that the excessive and destabilizing accumulation of arms poses a threat to international peace and security); *London Communiqué*, *supra* note 16, at 3 (stating that the five members of the U.N. Security Council are aware of the dangers of conventional weapons).

317. U.N. TRANSFER STUDY, *supra* note 9, at 25 (finding that arms transfers to certain regions may exacerbate arms races and may contribute to armed confrontation).

318. See Foreign Relations Act, *supra* note 188, § 401(2)-(3) (stating that supplier nations trying to gain influence in the Middle East through arms transfers have contributed to the region's political, economic, and military destabilization).

the pressing issues surrounding the arms trade should not wait for a comprehensive treaty. Rather, a short term goal should be the establishment of an arms control agency to address the immediate arms traffic concerns.

### 1. *Multilateral Treaty*

In the post-World War II era, states have increasingly relied upon multilateral arrangements to effectuate foreign policy goals.<sup>319</sup> Many commentators and legislators have suggested that the time for a multilateral arms transfer regime is at hand.<sup>320</sup> Congress has directed the President to negotiate seriously with the other permanent members of the U.N. Security Council for an arms transfer regime for the Middle East.<sup>321</sup> These states have already taken the first step toward the building of a regime through the London Communiqué's rules of restraint.<sup>322</sup> Unfortunately, this agreement only covers five states, is not binding, and still leaves the largest exporters the option to trade as usual. Furthermore, the lack of a firm international agreement sends a message to producers with less responsibility for maintaining the peace that the *status quo* has not changed.

The United States, as the largest exporter of weapons to the Third World,<sup>323</sup> should take the lead in formalizing the transfer restraint modalities analyzed in this Comment into a multilateral restraint treaty. The basic plan envisioned by Congress in the 1992-1993 FRA for Middle East transfer restraint may serve as an appropriate starting point from which the United States may propose the regime.<sup>324</sup> Further, the London Communiqué's rules of restraint could be the basis for the

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319. Keohane, *supra* note 301, at 740.

320. See Lewis, *supra* note 17, at A11 (quoting Professor Stephanie Neuman, an arms control expert at Columbia University as stating that "For the first time in history, perhaps, the favorable prospects for controlling the transfer of conventional weapons appear to outweigh the negative); Hamilton, *supra* note 14, at 20 (arguing that realistic chances currently exist for an arms restraint regime in the Middle East); Grimmett, *supra* note 4, at 22-23 (asserting that the aftermath of the Gulf War represents the best opportunity to negotiate arms restraint).

321. Foreign Relations Act, *supra* note 188, § 402(a)(1)-(2).

322. *London Communiqué*, *supra* note 16, at 3-5.

323. Grimmett Study, *supra* note 2, at 6.

324. See Foreign Relations Act, *supra* note 188, § 402(c) (detailing Congress' view of a multilateral transfer regime for the Middle East). Congress suggested several broad methods for controlling proliferation to the Middle East including greater information-sharing procedures, stricter controls on transfers of conventional weapons to the region, and further implementation of confidence-building and security measures. *Id.* § 402(c)(1)-(3).

treaty's transfer guidelines.<sup>325</sup> Other guidelines could require suppliers to consult with treaty members in the recipient's region before completing the transfer. Treaty members should include not only weapons exporters, but also recipient states. Bringing both sides together will provide a chance for dialogue on tying aid to import reduction based on the views of suppliers *and* recipients. An on-going forum, borrowing from the example of the Conference for Security and Cooperation in Europe (CSCE), would be the best mode for negotiation. Agreement will not come quickly, and may not come at all.<sup>326</sup> But, if the international community has learned anything from Iraq's uncontrolled build-up of arms,<sup>327</sup> it is that formal and effective arms transfer restraint must be attempted on an international level.

## 2. *Establish A Central Agency*

Because successful multilateral agreements tend to have supervisory bodies and verification mechanisms,<sup>328</sup> this Comment proposes that the international community establish, with open-ended aims, the International Arms Transfer Agency (IATA). Commentators have suggested creating international bodies to execute a variety of arms control tasks, but most pre-date the Gulf War and none seek to deal directly with the issue of establishing a comprehensive transfer regime.<sup>329</sup> The multitude

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325. See *London Communiqué*, *supra* note 16, at 4-5 (declaring that the five permanent members of the U.N. Security Council will avoid transfers which would prolong existing conflicts; increase tension or regional instability; introduce destabilizing military strength; violate embargoes or other international restraint agreements; add to a state's arming for aggressive purposes; support terrorism; interfere with internal affairs of sovereign states; or undermine a recipient state's economy).

326. PIERRE, *supra* note 4, at 292 (stating that negotiating a truly comprehensive arms transfer treaty would be extremely difficult); SIPRI Y.B. 1991, *supra* note 2, at 221 (stating that the cost of building such a regime would be high and thus unfavorable).

327. See Keohane, *supra* note 301, at 744 (arguing that when serious issues common to many states appear, the need for multilateral institutions increases and therefore lowers the relative costs of maintaining those institutions).

328. Koplów & Schrag, *supra* note 216, at 1016-17 (stating that future multilateral arms control treaties will include implementation and supervisory bodies); Keohane, *supra* note 301, at 733 (observing that international regimes are usually accompanied by organizations to monitor and manage the rules of the regime).

329. See CENTER FOR U.N. REFORM EDUCATION, *Verification and Disarmament: An International Arms Control Verification Agency or International Disarmament Organization* 41-44 (U.N. Reform Monograph No. 4, June 1988) (proposing the establishment of a treaty verification agency); Trimble, *supra* note 210, at 897 (detailing a plan for arms treaty verification); Mitterand Initiative, *supra* note 159, at 4 (suggesting that an international agency should be set up to serve as a regional center for information sharing on troop movements, armed forces and military capabilities of neighbor states); Hamburg Report, *supra* note 192, at 30 (declaring that the European Community needs to set up an EC Arms Export Council to coordinate member states' arms

of international concerns about the arms trade necessitates concerted action; an international agency is needed to finally link these issues in an effective way.

The IATA could be a specialized agency of the United Nations,<sup>330</sup> or preferably, it could be established as a more autonomous treaty-based agency, analogous to the International Atomic Energy Agency (IAEA),<sup>331</sup> or to the newly emerging chemical arms agency currently being designed to enforce the upcoming chemical weapons treaty.<sup>332</sup> The duties charged to this new agency should be those which demand the most urgent attention and which serve to link suppliers and recipients in a common scheme.

First, the IATA could be vested with the supervision of the new arms registry. Oversight of the register should be put in the hands of an agency fully dedicated to its implementation and future development. The register's mandate allows for expansion into areas of military holding and national production reporting by member states.<sup>333</sup> Entrusting the register to an independent bureaucracy will ensure that a diligent effort will be made for development in these and other areas. Further, the IATA could be given inspection and verification powers similar to

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control policies); Koplow & Schrag, *supra* note 216, at 1027 (recommending that assistance derived from an international disarmament fund should be distributed through a treaty-based international agency).

One group of experts has recently advocated that an arms and arms technology transfer agency, directed at the Middle East, could be created out of a "reconstituted" COCOM or through a new organization modelled on COCOM. See Alan Platt, et al., REPORT OF THE STUDY GROUP ON MULTILATERAL ARMS TRANSFER GUIDELINES FOR THE MIDDLE EAST 45-46 (The Henry L. Stimson Center Report, May 1992) (stating that the United States should take the lead in making COCOM applicable to the Middle East or that it should help create "an organization modeled on COCOM for the purpose of developing, monitoring, and enforcing an agreed upon list of systems, subsystems, and technologies that if transferred to the Middle East, could undermine regional stability).

330. See U.N. CHARTER art. 64 (stating that the Economic and Social Council may make arrangements with specialized agencies). The IATA could be established as a subsidiary organ of the General Assembly. U.N. CHARTER art. 22. Similarly, the Security Council has the power to institute the agency in pursuit of its Article 26 mandate to establish an armaments regulation system. U.N. CHARTER art. 29.

331. IAEA Statute, *supra* note 169.

332. See Joseph Fitchett, *Global Ban on Chemical Weapons is Near Signing*, INT'L HERALD TRIB., May 11, 1992, at 1 (outlining the duties and powers of the chemical weapons agency which would include verification and surprise inspection powers).

333. G.A. Res. 673 (1991) para. 10 (encouraging member states to divulge national production and military holding data in addition to the regular import and export figures). These categories may in the future be included as part of states' regular reporting to the register if members so decided after 1994. *Id.* para. 11(a)(ii).

those in the Statute of the IAEA<sup>334</sup> and the CFE Treaty.<sup>335</sup> Verified data on arms transfers would further enhance the confidence-building goals of the register.<sup>336</sup>

Second, the agency can address the internationally recognized<sup>337</sup> problem of illicit arms trade.<sup>338</sup> The arms "black market" continues absent international policing or coordinated monitoring to check its growth.<sup>339</sup> National policies often go far to halt the illegal trade but uncoordinated unilateral measures leave arms traders with many loopholes. The IATA could serve as an information clearinghouse on arms traffickers. States could share information on known illegal arms dealers, consult with officials from other member states, and begin to monitor the movements of arms dealers on an international level. Further, the IATA could be the forum for consultation and harmonization of export control policies and policing tactics of member states.<sup>340</sup>

Third, the IATA is the natural agency to supervise and develop the "disarmament fund." The authors of the "carrot and stick" approach strongly recommend that verification procedures accompany the creation of the fund.<sup>341</sup> The IATA, functioning as an arms trade information center, would be in an ideal position to evaluate member compliance with disarmament. With verification powers, the IATA could further monitor recipient compliance with the fund's terms.

334. See IAEA Statute, *supra* note 169, at art. 12, § A(6) (empowering the IAEA with the ability to, after consulting with the concerned states, gain access to areas required by the Statute to be safeguarded).

335. CFE Treaty, *supra* note 199, at General Rules for Inspections § VI (allowing states parties to inspect defined areas covering weapons regulated by the treaty).

336. See Klare, *Gaining Control*, *supra* note 27, at 12 (suggesting that transparency confidence could be supplemented by a U.N. monitoring agency similar to the International Atomic Energy Agency).

337. G.A. Res. 673 (1991) para. 4(c) (reiterating the Assembly's belief that the arms trade may increase illicit and covert arms trafficking); U.N. TRANSFER STUDY, *supra* note 9, at 46 (finding that the illicit trade in arms may aid drug traffickers and terrorists and can hamper peaceful solutions in areas of conflict).

338. See *supra* note 21 (defining the term "illicit trade").

339. See Marc Fisher, *Germans Collar Ship Carrying Tanks to Syria*, WASH. POST, Jan. 31, 1992, at A13 (reporting the seizure of a German ship carrying an illegal shipment of Soviet-made, Czechoslovakian-owned battle tanks); *Singapore Company Faces Queries on Arms*, N.Y. TIMES J. OF COMM., Dec. 10, 1991, at 4 (reporting that a Singapore firm had been indicted in United States District court for selling American-made military aircraft and parts to Iran); Colin Nickerson, *Japan Probing Sales to Iran of Arms Parts*, BOSTON GLOBE, July 6, 1991, at 1 (describing a Japanese investigation into illegal arms parts deals by Japan Aviation Electronics); Adams, *supra* note 21, at C1 (stating that the United States Customs Service is in the process of investigating over 40 cases of arms smuggling to Iraq).

340. Klare, *Gaining Control*, *supra* note 27, at 13 (asserting that mechanisms need to be developed for the exchange of information on illicit arms dealers and smugglers).

341. Koplów & Schrag, *supra* note 216, at 1037.

### CONCLUSION

The first decade of this century witnessed an arms trade out of control which in turn fueled the most deadly conflict then known. The interwar leaders recognized with astonishing clarity the links between the arms trade and the outbreak of World War I. But the period after World War I was dominated by insecurity, retributive foreign policies, and a lack of faith in the newly created League of Nations. The achievement of international supervision over the arms trade failed as a result.

The last decade of this century opened with the Iraqi invasion of Kuwait and the ensuing Gulf War, a world conflict again fueled by an unregulated arms trade. The world's leaders have been given another historic chance to address the arms trade dilemma, but this time they have an international body, the United Nations, subscribed to by all the major states and looked to now, more than ever, for world leadership. The time is now for the exporters and importers of conventional arms to work together, via a *supra-national* forum, to finally regulate the traffic in arms.

Article 1(1) of the United Nations Charter states that the signatories must strive to remove all threats to the peace. The international armaments business is not ordinary commerce; its consequences can be deadly and thus must be regulated as a threat to the peace. If states can multilaterally begin to control this dangerous trade in arms, they would go a long way toward fulfilling the aspirations of Article 1(1). We may yet, by the close of this century, realize a key lesson from the tragedy which opened it: an uncontrolled arms trade cannot help but lead to war.