

# International Legal Prohibitions on Conventional<sup>2</sup> Weapons Transfers: State Responsibility

## 1. Express Prohibitions under international law

There are express prohibitions on the transfer of specific types of conventional arms arising both from treaty law and from resolutions of the United Nations Security Council, adopted pursuant to Chapter VII of the United Nations Charter.

### 1.1. *Anti-personnel Mine Ban Treaty (Ottawa Convention)*

Article 1.1.b of the 1997 Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction *inter alia* prohibits the transfer to anyone, directly or indirectly, of anti-personnel mines. The Treaty has been ratified by 131 countries and signed by 146.

### 1.2. *UN Security Council Arms Embargoes*

Under Article 41 of the UN Charter, the Security Council may call upon Member States to apply measures not involving the use of armed force in order to maintain or restore international peace and security. Such measures are commonly referred to as sanctions. As of February 2003, the Security Council had invoked Chapter VII of the United Nations Charter to impose sanctions in fourteen cases: Afghanistan, Angola, Ethiopia and Eritrea, Haiti, Iraq, Liberia, Libya, Rwanda, Sierra Leone, Somalia, South Africa, Southern Rhodesia, Sudan and the former Yugoslavia. Under Article 25 of the United Nations Charter, the decisions of the Security Council are binding in international law and the member nations of the UN are bound to implement them in their domestic legal systems.

An arms embargo is a specific type or sub-category of sanction. Obligations ensue on two levels. First states are prohibited from transferring all or specified types of arms or arms-related material, military advice and training to the embargoed entity, generally a state violating international law, but also non-state actors such as the UNITA guerrillas in Angola or, more recently, Osama Bin Laden. Secondly, states must also take the necessary measures to implement, apply and enforce the embargo internally so as to make it operative with respect to private actors within their jurisdiction. A state may also incur responsibility for an international wrongful act if it assists another State to circumvent sanctions. (See the discussion *infra* of secondary state responsibility.)

## 2. Other International Law Prohibitions: Primary State Responsibility

In addition to these *express* limitations on weapons transfers, there are a variety of state obligations under international treaty and customary law that have the effect of restricting the *use* of weapons in certain circumstances.

### 2.1. *International Law and Terrorism*

Numerous multilateral treaties prohibit terrorist acts in specific circumstances (*e.g.* attacks on civilian aviation). Although there is not yet a general treaty in force on the subject, the coming-into-force of recent multilateral conventions addressing terrorist bombings and financing of terrorism signals a growing international acceptance of broad legal prohibitions in this area.<sup>3</sup> This regime is complemented by a general customary international law prohibition on state support for terrorist activities.<sup>4</sup> State practice

---

<sup>2</sup> This paper is concerned with international legal prohibitions that apply to small arms and light weapons, a sub-category of conventional armaments. Therefore, excluded from discussion are those prohibitions relating to specific conventional arms that do not include small arms and those relating to non-conventional arms such as weapons of mass destruction or radiological weapons.

<sup>3</sup> See, *e.g.*, *International Convention on the Suppression of Terrorist Bombings*, and the *International Convention on the Suppression of the Financing of Terrorism*.

<sup>4</sup> See, *e.g.*, the Declaration on Principles of International Law concerning Friendly Relations among States in Accordance with the Charter of the United Nations adopted by the General Assembly in resolution 2625 (XXV), 1970, discussed *infra*.