

# How an Arms Trade Treaty can help prevent Armed Violence





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### Cover Photo

Protesters march with mock coffins symbolizing the 57 massacre victims for a rally at the National Bureau of Investigation in Manila, Philippines. © AP Photo/Bullit Marquez

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# Introduction

Over the past decade, there has been growing international momentum to conceptualise, document and address the various manifestations of “armed violence”. To date the discourse has focused largely on the causes and effects of armed violence and explored the range of available programming options to prevent and reduce it.<sup>1</sup> Discussions on the Arms Trade Treaty (ATT) currently underway in the United Nations (UN)<sup>2</sup> provide an important opportunity to examine armed violence in the context of decisions concerning international transfers and the export and import of conventional arms used in armed violence.

One of the objectives of the ATT is to address the “absence of common international standards on the import, export and transfer of conventional arms.”<sup>3</sup> As the UN General Assembly has noted, this absence contributes to “conflict, displacement of people, crime and terrorism” thereby undermining peace, reconciliation, safety, security, stability and sustainable development.”<sup>4</sup> In other words, the absence of such common international standards contributes to armed violence.

Common international standards in the ATT should require States to establish and maintain effective national regulatory mechanisms. The ATT should also require States to licence or otherwise authorise exports and other international transfers of conventional weaponry, munitions and related equipment (“conventional arms”) in conformity with an agreed list of clear criteria that take into account the potential risks stemming from such transfers. An ATT establishing such standards and rigorous procedures will help generate consistency in national arms control regulations. Importing States should be required to authorise imports of conventional arms into their jurisdiction. Such authorisations must be in conformity with each State’s primary responsibility to provide for the security of all persons under its jurisdiction and to promote respect for and observance of human rights as affirmed in the UN Charter and in other relevant international law.

This report is divided into two parts, and includes three case studies drawn from recent examples of armed violence in Bangladesh, Guatemala and the Philippines. Part I examines how an ATT with a clearly elaborated risk assessment process can make a contribution to the prevention and reduction of armed violence. After a brief discussion of the definitions of armed violence and several forms of armed violence documented in recent years, the report examines the role an ATT can play in preventing and reducing those forms of armed violence in which conventional arms are used and which result in serious violations of international human rights and humanitarian law.

Part II focuses on one form of armed violence: firearms-related homicide. Discussions of armed violence have repeatedly noted that the use of firearms in non-conflict settings is the most prevalent form of armed violence and the form that results in the most deaths and injuries. This fact underscores the importance of adopting an approach to addressing armed violence that will encompass violence outside of armed conflict settings.<sup>5</sup> The ATT should be one component of this approach. It should specify and address the serious violations of international law and other harmful impacts caused by conventional arms. Further, if an ATT is to make a significant contribution to the reduction of armed violence, it should require, prior to the issuance of an import authorisation or export licence, an assessment of the risk that the transfer of conventional arms will entail, including the risk presented by a pattern of significantly high levels of firearms-related homicides within the importing State.

# PART I: ARMED VIOLENCE

## What are we talking about?

The term “armed violence” has been defined in numerous ways, reflecting the phenomenon’s many dimensions and the wide spectrum of conflict, post-conflict and crime-related settings and circumstances in which it occurs. The term has been defined broadly, providing an overarching framework to capture various forms of violence, which is an acknowledgement that armed violence fits into a continuum that includes everything from warfare on the one extreme to more “everyday” forms of criminal and gang activity on the other. The definitions also broadly describe the tools of such violence, referring to “arms” or “weapons”, which encompass violence generally characterised by the use of firearms and other small arms.

Three of the more widely used definitions are set out below.

Source:	Definition of armed violence:
The UN Secretary General	“the intentional use of physical force, threatened or actual, with arms, against oneself, another person, group, community or State that results in loss, injury, death and/or psychosocial harm to an individual or individuals and that can undermine a community’s, country’s or region’s security and development achievements and prospects.” <sup>6</sup>
2006 Geneva Declaration on Armed Violence	“The intentional use of illegitimate force (actual or threatened) with arms or explosives, against a person, group, community, or state, that undermines people-centred security and/or sustainable development” <sup>7</sup>
OECD (DAC)	“The intentional use, of weapons to inflict injury, death or psychological harm which undermines development.” <sup>8</sup>

These definitions link armed violence to its impacts upon development and human security. This recognises the fact that such violence fundamentally encumbers socio-economic development efforts around the world. As a result, the prevention and reduction of armed violence has become a central component of development agendas.<sup>9</sup>

However, in the ATT context of controlling international transfers of conventional arms, the definitions are too general in a legal sense and too difficult to apply in national regulations. Therefore, two qualifications to the definitions are necessary.

### I. Armed violence must be differentiated from the lawful use of force

A State has a monopoly on the legitimate use of force in order to protect and safeguard all persons and institutions under its jurisdiction, thereon in a manner consistent with its international legal obligations, including international humanitarian and human rights law. Thus, a State can exercise physical force intentionally when meeting its legitimate and lawful defence and security needs. For example, law enforcement officers are authorised to use physical force, including force against civilians, in line with international standards and the

national laws of the State. The UN Basic Principles on the Use of Force and Firearms in Law Enforcement<sup>10</sup> and the UN Code of Conduct for Law Enforcement Officers<sup>11</sup> contain important international standards governing how States must exercise restraint and apply safeguards in their use of force, including lethal force.<sup>12</sup> The UN Charter also recognises that UN Member States, in their international relations, have an inherent right to collective or individual self-defence if they experience an armed attack.<sup>13</sup> The use of physical force by UN peacekeepers is also lawful when it is in self-defence and in defence of the UN's peacekeeping mandate.

In the context of the ATT, the definition of armed violence must therefore be limited to the *unlawful* use of physical force involving the use of such arms. As such, an ATT should have the reduction of unlawful armed violence as a broad, central objective. However, this should not affect the right of every State to manufacture, import, export, transfer, and retain conventional arms for lawful self defence and security needs in accordance with the UN Charter and other international legal obligations, and in order to participate in peacekeeping or peace support operations mandated by the UN Security Council.<sup>14</sup>

## 2. Armed violence should not be defined by its impacts

Each of the definitions of armed violence describes what armed violence entails, i.e., the physical use of force, but without differentiating such force from the lawful use of force. Moreover, these definitions are further elaborated by inclusion of language referring to the effects of armed violence, e.g., the undermining of “sustainable development”. This suggests that determinations of what constitutes armed violence should also demonstrate an identifiable impact on sustainable development.

In the context of the control of the conventional arms trade, however, this component of the definition is unnecessary. As will be discussed below, the forms of armed violence are many, as are their consequences. While current processes such as the Geneva Declaration on Armed Violence, and the Oslo Commitments on Armed Violence refer to various forms of violent activities as armed violence and while many of the discussions of reducing armed violence have been framed very broadly as a development imperative, it must be remembered that fundamentally these acts are most often violations of international human rights law, international humanitarian law, and national criminal laws. Labelling an activity “armed violence” should not colour or reduce its fundamental nature as a violation of the basic rights of a person.

For example, serious violations of international human rights through armed violence might not have a demonstrable impact on development. But this does not disqualify such violations as a form of violence. In the context of the ATT, the essential component of armed violence is whether the form of violence results in serious abuses or violations including violations of international human rights law and humanitarian law and whether an international transfer of conventional arms has facilitated or will facilitate such violations.

### Forms of armed violence

Discussions of “armed violence” have resulted in a typology of different types of violence that fall under this broad rubric.<sup>15</sup> These specific types of violence have been described in a variety of ways, including: violence in “armed conflict”<sup>16</sup>, “interpersonal” violence and “collective” forms of violence<sup>17</sup>, “gang related” violence<sup>18</sup>, “gender based” violence, “internal” violence<sup>19</sup>, “state-led” violence, “post-conflict” violence<sup>20</sup>, violence in “non-conflict” settings<sup>21</sup> and “political” violence<sup>22</sup>.

This table, drawn from the literature, illustrates some of the many forms armed violence can take.<sup>23</sup>

Example of different types of armed violence	Some illustrative example of forms of violent activities
1. Armed conflict	<ul style="list-style-type: none"> <li>• Murder</li> <li>• Torture</li> <li>• Cruel treatment to persons taking no active part in the hostilities</li> <li>• Sexual violence including sexual slavery</li> <li>• Forced recruitment of children by armed groups or forces</li> </ul>
2. Interpersonal violence	<ul style="list-style-type: none"> <li>• Homicide</li> <li>• Criminal, sexual and domestic forms of violence</li> </ul>
3. Gender based violence	<ul style="list-style-type: none"> <li>• Homicide</li> <li>• Sexual violence including rape</li> <li>• Intimate partner violence</li> <li>• Violence against women in the workplace (either in the formal or informal labour sector)</li> <li>• Violence against girls in schools</li> </ul>
4. Collective forms of non-state violence	<ul style="list-style-type: none"> <li>• Trans-national organised crime</li> <li>• Human trafficking</li> <li>• Drug and firearms trafficking</li> <li>• Organised political violence</li> <li>• Terrorist attacks</li> </ul>
5. State-led violence	<ul style="list-style-type: none"> <li>• Excessive use of force by law enforcement officials</li> <li>• Enforced disappearances and forced displacement</li> <li>• Torture and ill-treatment</li> <li>• Extrajudicial, summary or arbitrary executions</li> </ul>
6. Economic and crime related violence	<ul style="list-style-type: none"> <li>• Armed robbery</li> <li>• Extortion including corruption,</li> <li>• Kidnappings for ransom,</li> <li>• Control of marketplaces through violence</li> <li>• Attacks on trade unionists or workers</li> <li>• Attacks on peaceful protestors</li> <li>• Attacks on agricultural workers</li> <li>• Attacks on sex workers</li> </ul>
7. Community and informal justice – related violence	<ul style="list-style-type: none"> <li>• Lynchings,</li> <li>• Vigilante action,</li> <li>• Mob justice</li> <li>• Sexual violence</li> <li>• “Honour” killings and crimes</li> <li>• Mutilation</li> </ul>
8. Post conflict violence	<ul style="list-style-type: none"> <li>• Clashes over land</li> <li>• Rape and other forms of sexual violence</li> <li>• Attacks on peacekeepers</li> <li>• Revenge killings</li> <li>• Attacks on refugee and displaced persons camps</li> <li>• Intimate partner violence</li> </ul>
9. Gang-related criminal violence	<ul style="list-style-type: none"> <li>• Homicides</li> <li>• Drug dealing</li> <li>• Mugging, theft, harassment, rape and other forms of sexual violence, assaults</li> <li>• Gang initiation attacks or killings</li> </ul>

## ILLUSTRATIVE CASE - GUATEMALA

Transfers of firearms and associated ammunition are being allowed by many exporting States to countries such as Guatemala whose people suffer from very high levels of armed violence and a proliferation of small arms.

## The Case of Mateo Bernabé Lopéz



A mother and her children walk through evidence markers at the scene of a deadly shoot out near Zacapa, Guatemala Sept. 23, 2010. © Private.

In the night of 28 October 2010, at 2:15 am, Mateo Lopéz walked out of his house in Catarina<sup>24</sup> with his sister-in-law.<sup>25</sup> Their intention was to board a bus to Guatemala City and participate in the general assembly of a trade union, the Sindicato Nacional de Trabajadores de Salud (SNTSG).<sup>26</sup> Lopéz, secretary of SNTSG's branch at the national hospital of Malacatán, had campaigned against corruption in the health system, and for access to public health services. He had participated – along with the medical personnel of the San Marcos province - in weeks of protest. One agenda point of the meeting of the SNTSG was a discussion on a corruption case which he campaigned against.

Lopéz and his sister-in-law reached the main street of the town and saw a red motorbike with two men coming towards them at high speed. The motorbike went past them, but quickly came back and in seconds was just behind them. The man riding passenger was holding a gun and opened fire at Lopéz's back. Lopéz fell to the ground and then was shot in the stomach. Two shots grazed him over the right shoulder, and the final two shots grazed him in the knees.

The attackers then left Lopéz lying on the ground and went away. With the help of his sister-in-law Lopéz got up and ran. The attackers noticed him and went towards him once more, possibly with the intention of firing additional shots. He and his sister-in-law were however able to reach their



neighbours, who turned their lights on and made noise. This apparently persuaded the attackers to escape. López was hospitalized and returned home, but he is at risk of further attacks. There had been no developments in the investigations in the case and the public Prosecutor's Office had issued no indictments at the time of writing.

A week before being shot, López had given a speech at a public event to commemorate the killing of the *Frente Nacional de Lucha* (FNL)<sup>27</sup> activist Víctor Gálvez, who was shot 10 times in Malacatán on 24 October 2009 as he left the office of the consumer rights organization *Frente de Resistencia en Defensa de los Recursos Naturales y Derechos de los Pueblos* (FRENA).<sup>28</sup>

The case of Mateo Bernabé López is far from being an isolated episode of armed violence against trade unionists and defenders of human rights. Luis Felipe Cho, representative of Santa Cruz Municipal Workers Union, and Samuel Ramírez Paredes, general secretary of the Panchoy district banana workers' union (SITRABI) were assassinated on 6 and 26 March, respectively, while campaigning with MSICG (Movimiento sindical, indígena y campesino de Guatemala)<sup>29</sup> against serious violations of the labor and trade union rights of the country's municipal and banana sectors.<sup>30</sup> Between August and September 2010, four members of the SNTSG and also members of the FNL, were attacked:<sup>31</sup> Bruno Ernesto Figueroa died from injuries received in an attack perpetrated in Guatemala City on 7 August 2010.

According to the "Annual survey of violations of trade union rights 2010" by the International Trade Union Confederation,<sup>32</sup> sixteen trade unionists were killed (including by state security forces)<sup>33</sup> in Guatemala in 2009, fourteen of them belonging to MSICG.

Amnesty International has expressed concern,<sup>34</sup> that Guatemala has been flooded for years with pistols and revolvers. Only very recently in April 2009 did the Guatemala Congress pass a comprehensive law on arms control (Congreso de la República de Guatemala, Decreto n. 15-2009)<sup>35</sup> but that has still to effect the Guatemala's arms trade and help curb the widespread diffusion of firearms in the country.

It has been estimated that there are between 800,000 and 1.5 million illegal firearms in circulation.<sup>36</sup> The northern part of Guatemala suffers from an influx of arms from Mexico linked to the illicit drug trade, and many inhabitants feel abandoned by the state authorities. There has also been a surge in the theft and diversion of weapons.<sup>37</sup>

In addition, Guatemala's imports of firearms have been disproportionate in comparison with the size of its population and armed forces. Illegally-held arms have accumulated over years in the absence of effective controls.

Despite the appalling record of intentional homicide in the country (45.2 homicides per 100,000 population compared to a world average of 7.6)<sup>38</sup> many governments have shown no restraint in authorizing the sale of pistols and ammunition to Guatemala. Several States do not even declare their firearms exports to Guatemala. Leaving aside government-to-governments transfers, in the last decade Guatemala has experienced a continuous flood of commercial imports of pistols, revolvers and ammunition. These weapons have been destined for arms dealers, security companies, and private citizens, as well as to police or special units forces in Guatemala.

According to the U.N. Comtrade database (recording arms imports and exports that are under the supervision of Customs authorities), in the ten-year period 2000-2009 Guatemala imported



Carrying shotguns and machettes, a citizen security patrol walk the streets of 'Barceñas' in Guatemala City Sept. 5, 2007. © Private.

military type pistols and revolvers<sup>39</sup> worth \$18.1 million according to declarations made by the 14 States declaring these exports.<sup>40</sup> However, Guatemala reported the total value as \$26,6 million imported from 32 countries, according to Guatemala import declarations.<sup>41</sup> In the exporter declarations, the total amounted to an annual average of \$1.8 million and in Guatemala's import declarations, there was an annual average of \$2.7 million.

For a country whose annual per capita Gross Domestic Product was \$1,531 in 2000 and \$2,688 in 2009 (current prices of the year), this level of expenditure just for pistols and revolvers is significant.<sup>42</sup> Military-type pistols may cost on average between \$500 and \$1,500.

It is worth noting that for the period 2000-2009, the reported quantity of pistols and revolvers imported in Guatemala, corresponded to a total weight of about 150 tons, while the amount declared by exporter States corresponded to about 100 tons.<sup>43</sup>

Based on exporter declarations, the top seven exporters of pistols and revolvers to Guatemala in rank order were the Czech Republic, the Republic of Korea, Argentina, the United States, Turkey, Italy, and Israel. These seven countries accounted for the supply of 93.3% of the value of all pistols and revolvers declared as exports to Guatemala. However, according to Guatemala import declarations, the first seven positions were instead held by Israel, Czech Republic, the Republic of Korea, Argentina, United States, Dominican Republic, and Turkey, respectively, accounting for 72.9% of the total value of imports of pistols and revolvers.

Without accurate reporting on the international arms trade, there will be a lack of accountability increasing the possibility of diversion of small arms in Guatemala. This may also contribute to armed violence. Table 1 overleaf compares the declarations of all exporting States with the import declarations made by Guatemala for the decade 2000-2009, ranking the countries according to Guatemala import declarations. The Table shows some large discrepancies in reporting the trade in pistols and revolvers.

Moreover, Guatemala also imported civilian firearms<sup>44</sup> worth \$13.5 million in the same decade, from 19 countries according to their export declarations. Guatemala reported imports from 20 countries of civilian firearms worth \$11.6 million according to its import declarations.

As far as ammunition is concerned, according to the export declarations of the 10 exporting countries for 2000-2009<sup>45</sup>, Guatemala imported \$12.8 million in cartridges<sup>46</sup> with a total weight of 1,082 tons. This total of \$12.8 million excluded the import of cartridges for shotguns,<sup>47</sup> totaling \$5 million, according to declarations of exporting countries. However, Guatemala's import declarations only amount to a total of \$3.8 million (from 18 countries).

Serious problems of accounting and reporting may be identified by comparing the exporter declarations and Guatemala's import declarations for pistols and revolvers. For example, between 2007 and 2009, Guatemala's Customs declarations consistently and routinely undervalued the number of imports of pistols and revolvers of military grade compared to the number in exporter declarations, as shown in Table 2.



Table I - Guatemala's imports of pistols and revolvers, 2000-2009

Country	Value \$	Value \$
Rankings	By Guatemala	By Exporting Country
Israel	5,427,487	971,000
Czech Rep.	4,257,085	6,338,109
Korea South	2,588,880	2,707,806
Argentina	2,501,069	2,202,456
USA	2,145,793	1,776,950
Dominican Rep.	1,512,442	0
Turkey	946,241	1,776,309
Philippines	909,508	113,016
Italy	883,955	1,123,760
Uruguay	856,618	0
Austria	792,458	0
Hungary	675,385	0
Peru	560,075	0
Bulgaria	529,962	0
Brazil	420,086	0
Germany	348,412	449,000
Slovakia	328,923	341,077
Chile	302,075	0
China	164,751	0
Costa Rica	92,924	0
El Salvador	87,212	90,135
Colombia	80,520	81,007
France	58,828	0
Korea North	30,268	0
Russian Federation	28,472	0
Switzerland	16,402	0
Belgium	9,679	0
Canada	8,047	0
Spain	3,745	0
Iran	1,000	0
Areas, nes	704	0
Mexico	0	39,614
Honduras	0	104,272
Total	26,569,006	18,114,511

Source: Elab. From UN Comtrade Database. Note: "0" means no declarations

Table 2 - Comparison between exporters' and Guatemala declarations for pistols and revolvers of military grade imported in Guatemala, 2007-2009

Year	Reporter	Partner	Code	Value	Kg	Number
2007	Guatemala	Argentina	89114	\$791,778	3,904	2,373
2008	Guatemala	Argentina	89114	\$459,088	2,512	1,463
2009	Guatemala	Argentina	89114	\$132,378	697	339
				\$1,383,244.00	7,113	4,175
2007	Argentina	Guatemala	89114	\$531,176	4,210	4,754
2008	Argentina	Guatemala	89114	\$430,235	4,024	4,735
2009	Argentina	Guatemala	89114	\$122,700	2,072	2,100
				\$1,084,111.00	10,306	11,589

Year	Reporter	Partner	Code	Value	Kg	Number
2007	Guatemala	Italy	89114	\$42,183	216	126
2008	Guatemala	Italy	89114	\$77,138	394	246
2009	Guatemala	Italy	89114	\$14,600		37
				\$133,921.00		409
2007	Italy	Guatemala	89114	\$200,500	693	651
2008	Italy	Guatemala	89114	\$216,259	670	700
2009	Italy	Guatemala	89114	\$114,950	268	250
				\$531,709.00	1,631	1,601

Year	Reporter	Partner	Code	Value	Kg	Number
2007	Guatemala	Turkey	89114	\$31,112	163	93
2008	Guatemala	Turkey	89114	\$443,440	2,368	1,413
2009	Guatemala	Turkey	89114	\$386,984	4,123	992
				\$861,536.00	6,654	2,498
2007	Turkey	Guatemala	89114	\$410,152	2,430	1,760
2008	Turkey	Guatemala	89114	\$623,095	3,546	2,750
2009	Turkey	Guatemala	89114	\$418,095	2,961	2,830
				\$1,451,342.00	8,937	7,340

Source: Elab. From UN Comtrade Database.

## Armed violence in ATT discussions

Discussions of the ATT in the United Nations have touched upon many kinds of violent activity that constitute armed violence. For example, the UN General Assembly recognised that the “absence of common international standards for the import, export and transfer of conventional arms is one of the contributory factors to conflict, the displacement of people, crime and terrorism.”<sup>48</sup> Essentially, the absence of common international standards for the import, export and transfer of conventional arms is one of the factors that contribute to armed violence.

States have referenced armed violence in ATT discussions as an overarching issue that the ATT must address. Many States have expressed the view that the ATT has the potential to reduce and prevent armed violence. For example, it is the view of some States that, to be a worthwhile international instrument, “an ATT must reduce the number of incidents of armed violence”.<sup>49</sup> Others have suggested that “through the ATT armed violence will be reduced”<sup>50</sup> and that the ATT must “set conditions for reducing armed violence”.<sup>51</sup> Another State asserted that “all states are exposed to different types of armed violence, be it rural, ethnic, religious, political, social or economic” and that an ATT should create a viable framework to “ensure that states...can counter these manifestations of violence”.<sup>52</sup>

## How should the ATT address armed violence?

Addressing armed violence requires a multi-faceted approach. A great deal of analysis of these approaches and the creation of frameworks to address the impacts of armed violence on development and human security have been done.<sup>53</sup> The ATT can be another instrument to prevent armed violence, offering a significant opportunity to focus on the tools - i.e. conventional arms - used in much armed violence and identify risk factors for armed violence associated with the availability and supply of these weapons.<sup>54</sup> A vast array of abuses and violations are facilitated because these arms are available.<sup>55</sup> A State can improve human security by preventing arms transfers where there is credible and reliable information that the end users will use these arms to commit acts of “armed violence” and where there are serious violations or abuses of international law. Moreover, if there is a *substantial risk* that the arms in question are likely to be used to commit or facilitate such violations or abuses, then the transfer of such arms should be prohibited until that risk is removed.

Creating a viable decision-making framework for the import, export and international transfer of conventional arms is one of the key challenges in the negotiation of an ATT. To be effective, such a framework must base licensing and authorisation decisions on contemporary standards, including international humanitarian and human rights standards, and clearly elaborate the responsibilities of States to uphold these standards. The risk assessment process within the ATT prior to the authorisation or issuance of an export license must consider the full range of potential risks associated with the export application under review. By incorporating such a comprehensive approach, the ATT can make a meaningful contribution to addressing armed violence in its various manifestations.

States have for years been called upon to monitor and regulate arms transfers. Any risk assessment required by an ATT would essentially be an element of monitoring and regulating arms transfers.<sup>56</sup> Arms-exporting States should exercise the highest degree of responsibility and effective control in these transactions.<sup>57</sup> Effective control over arms exports should involve thorough and objective assessment on a case-by-case basis for each export application. However, *ad hoc* or isolated incidents of armed violence should not trigger a responsibility to prohibit an arms export. Rather, such responsibility should be triggered by specific types and levels of armed violence, e.g. those that warrant the attention of the exporter States based upon the nature, severity, scale, and pervasiveness of the armed violence. For example, do the violent activities amount to persistent or serious crimes or violent acts resulting in the loss of life or violating physical integrity? Will

the activities be *serious* violations of international human rights law or international humanitarian law? Do the activities constitute crimes under international law such as torture, enforced disappearance, war crimes, crimes against humanity, or genocide? Will the transfer of conventional arms under review facilitate or perpetuate such violations?

Breaking down these forms of armed violence and the associated violent activities can help to frame the national risk assessment process that should be required by all States Parties to the ATT. Table 3 sets out suggestions as to how provisions of the ATT could address specific forms of armed violence where there is a risk that a transfer of conventional arms could result in such violent activities. By breaking down the general term “armed violence” into these specific violent activities, it becomes clear that for the ATT to effectively address a range of forms of armed violence it must require an assessment to determine if there is a substantial risk that the transfer under review will, for example:

- *Be used to facilitate or commit serious violations of international human rights law;*
- *Be used to facilitate or commit serious violations of international humanitarian law;*
- *Be used to facilitate or commit acts of genocide, crimes against humanity or other crimes of international law;*
- *Be used in the commission of transnational organised crime;*
- *Facilitate terrorist attacks.*

Part II discusses how the ATT should require a State to assess an application for an export license for conventional arms (in this case firearms and related ammunition) against the risk that the items will perpetuate a pattern of or facilitate high levels of firearms-related homicide.

Different types of armed violence	Illustrative example of forms of violent activities	How the ATT should address this
<p>1. Armed conflict<sup>58</sup></p> <ul style="list-style-type: none"> <li>• Non-international armed conflict<sup>59</sup></li> <li>• International armed conflict<sup>60</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Violations of Article 3 common to the four 1949 Geneva Conventions including murder, torture, cruel treatment to persons taking no active part in the hostilities, and sexual violence;</li> <li>• Violations of customary international humanitarian law including torture, acts of reprisals against civilians, attacks against civilians;</li> <li>• Violations of the Geneva Conventions and Protocols I and II;</li> <li>• The recruitment and use of child soldiers<sup>61</sup></li> </ul>	<ul style="list-style-type: none"> <li>• A State Party shall not issue a license or authorisation where there is a substantial risk that the export under assessment is likely to: <ul style="list-style-type: none"> <li>• <i>Be used to facilitate or commit serious violations of international humanitarian law</i></li> <li>• <i>Be used to facilitate or commit acts of genocide, crimes against humanity or other crimes of international law</i></li> </ul> </li> <li>• Transfers should be denied if destined for use in a State with a documented pattern of the recruitment and use of child soldiers</li> </ul>
<p>2. Interpersonal and gender based violence</p>	<ul style="list-style-type: none"> <li>• Criminal, sexual and domestic forms of violence;</li> <li>• Armed assaults;</li> <li>• Homicide;</li> <li>• Intimate partner violence.</li> </ul>	<ul style="list-style-type: none"> <li>• A State Party shall not issue a license or authorisation where there is a substantial risk that the export under assessment is likely to: <ul style="list-style-type: none"> <li>• <i>Be used to facilitate or commit serious violations of international human rights law;</i></li> <li>• <i>Perpetuate a pattern of or facilitate high levels of firearms-related homicide.</i></li> </ul> </li> </ul>

3. "Collective" forms of violence	<ul style="list-style-type: none"> <li>• Trans-national organised crime;</li> <li>• Human trafficking;</li> <li>• Drug and firearms trafficking;</li> <li>• Organised political violence; Terrorist attacks.</li> </ul>	<ul style="list-style-type: none"> <li>• A State Party shall not issue a license or authorisation where there is a substantial risk that the export under assessment is likely to: <ul style="list-style-type: none"> <li>• <i>Be used in the commission of transnational organised crime;</i></li> <li>• <i>Facilitate terrorist attacks;</i></li> <li>• <i>Be used to facilitate or commit serious violations of international human rights law</i></li> </ul> </li> </ul>
4. "State-led" violence	<ul style="list-style-type: none"> <li>• Excessive use of force by law enforcement officials;</li> <li>• Enforced disappearances and forced displacement;</li> <li>• Torture.</li> </ul>	<ul style="list-style-type: none"> <li>• A State Party shall not issue a license or authorisation where there is a substantial risk that the export under assessment is likely to: <ul style="list-style-type: none"> <li>• <i>Be used to facilitate or commit serious violations of international human rights law</i></li> </ul> </li> </ul>
5. "Post-conflict" violence	<ul style="list-style-type: none"> <li>• Clashes over land;</li> <li>• Rape and other forms of sexual violence;</li> <li>• Attacks on peacekeepers;</li> <li>• Revenge killings ;</li> <li>• Attacks on refugee and displaced persons camps.</li> </ul>	<ul style="list-style-type: none"> <li>• A State Party shall not issue a license or authorisation where there is a substantial risk that the export under assessment is likely to: <ul style="list-style-type: none"> <li>• <i>Be used to facilitate or commit serious violations of international human rights law</i></li> <li>• <i>Perpetuate a pattern of or facilitate high levels of firearms-related homicide</i></li> <li>• <i>States shall consider whether the export would undermine peace-building or post conflict reconciliation and reconstruction initiatives</i></li> </ul> </li> </ul>

## ILLUSTRATIVE CASE - BANGLADESH

## The case of Ruhi Das and other garment workers killed in demonstrations



A Bangladesh special forces 'Rapid Action Battalion' soldier guards a street in Dhaka, Bangladesh, Nov. 9, 2005. © AP Photo/Manish Swarup.

On the morning of Sunday 12 December 2010, at around 8:00 am, thousands of garment workers employed in a South Korea-based company in the Chittagong Export Processing Zone (CEPZ)<sup>62</sup> found a lockout notice for an indefinite period hanging at the gates of the factory.<sup>63</sup> The workers started a demonstration and were soon joined by other workers of the CEPZ, asking for the implementation of a wage increase that some employers failed to apply.<sup>64</sup> The wage increases had been agreed in the summer, following several weeks of protests, and the government had promised the increases would

come into force at the beginning of November.<sup>65</sup> Clashes between demonstrators, police and security forces erupted and several CEPZ companies suspended their operations.

At around 11:30, Ruhi Das, a 45-old worker at CM Superior Garment, one of the hundred garment factories located in Bangladesh's eight export processing zones<sup>66</sup> walked out CEPZ's main entrance and was suddenly hit by bullets fired by security forces.<sup>67</sup> Rushi was rushed to hospital but at 1:30 pm doctors at Chittagong Medical College Hospital declared him dead.<sup>68</sup> Two other garment workers together with a rickshaw puller, 35-year old Airful Islam,<sup>69</sup> were killed during the clashes. Demonstrations and clashes expanded to Dhaka and Narayangang. In addition to the four people killed, 200 people were injured, including 56 policemen and three journalists.<sup>70</sup> At least eight people, including Rushi, were hit by bullets fired by the security forces.

According to media reports, 550 policemen and 100 members of the Rapid Action Battalion confronted the demonstrators in Chittagong. The commissioner of Chittagong Metropolitan Police said police fired 519 rounds of rubber bullets, 60 rounds from Chinese rifles and shotguns, and 96 teargas canisters.<sup>71</sup> Water cannon were also used to disperse the demonstrators. The Rapid Action Battalion (RAB) is an "elite" force formed in 2004 from members of the Army and Police, with the special task of fighting criminality and terrorism. Its actions led to more than 600 people killed since its inception. In most cases, victims have died in the custody of the RAB, but police authorities routinely reported that the victims were killed during "crossfire", police "shoot-outs" or "gun-battles"<sup>72</sup>

Police announced that they filed cases against a total of 33,000 people on charges of involvement in the violence. More than 40 people were reportedly arrested by the police. Some have been released but an unknown number remained detained. Among the detainees is Moshrefa Mishu, president of the *Garment Sramik Oikkya Parishad* (Garment Workers Unity Council). Police arrested her on 14 December 2010 in connection with a complaint filed against her the previous June during an earlier wave of unrest at the garment factories.<sup>73</sup> She continues to be detained amid reports that her health is deteriorating due to being ill-treated while in custody of the police.

By 14 December 2010, most of the workers had returned to work in the CEPZ,<sup>74</sup> but protests erupted in other EPZs. On the same day fire broke out at a factory<sup>75</sup> of the Ha-Meem Group, located in a high rise building in Ashulia (a suburban Dhaka area). According to media reports, between 23 and 29 workers lost their lives.

The December 2010 protests were the latest wave of garment factory demonstrations and police crack-downs against peaceful protesters in Bangladesh.<sup>76</sup> Hundreds of people were injured in June,<sup>77</sup> July,<sup>78</sup> August,<sup>79</sup> and November<sup>80</sup> 2010 as police and the Rapid Action Battalion clashed with hundreds of striking textile workers calling for higher wages. At that time, the government agreed to introduce a pay increase, but workers claimed that their wages had not increased accordingly. The new wage structure announced on 29 July by government and EPZs authorities shows below-the-poverty line wages,<sup>81</sup> with a *monthly pay* of Tk 3,000 (presently equal to \$42.4) at entry-level (including allowances for house rent and medical assistance) and Tk 9,300 (\$131) at the first level, for a 6 to 7 day-week and working hours that may reach 14 hours a day.<sup>82</sup>

A report published in 2010 depicted the expenses of a couple of relatively well-paid garment workers that lived in Korail Bosti, a slum near Gulsham in a neighborhood of Dhaka:

*“Subarna pays Taka 1,500 for house rent and her other monthly expenses include Taka 360 for three electric points - -one light, one fan and one television and Taka 200 for cosmetics and toiletries. Her daily expenses include Taka 42 for 6 Kg firewood, Taka 64 for 2 Kg rice, Taka 20 for half litre cooking oil, Taka 10 for onion and garlic, Taka 12 for vegetables, Taka 16 for potatoes and occasionally Taka 50 for fish ... and Taka 25 for cigarettes. Every month Subarna and her husband earn approximately Taka 14,000 and spend Taka 11,000 for their own consumption and remit Taka 2,000 to her ailing father.”<sup>83</sup>*

According to a media report, between July and November 2010, earnings from garment industry exports “increased by 36 per cent to reach \$6.4 billion, which is 77 per cent of the country’s entire export proceeds.<sup>84</sup> The previous wage structure (and the right to unionize) was set up in 2006, again after a series of protests that lasted from May to July. This saw the intervention of the Rapid Action Battalion,<sup>85</sup> with three workers shot dead and hundred injured and jailed. The 2006 wage structure put the *monthly* entry level wage at Tk 940, at that time equal to \$14. Between 2006 and 2010 garment workers made several other protests and in June 2009, one worker was shot dead by members of a paramilitary group, the Ansar,<sup>86</sup> firing live ammunition into the crowd.<sup>87</sup>

### **Continuing arms supplies**

Despite its appalling record of extra-judicial killing, torture and other human rights violations, Bangladesh’s police, and security forces such as the Rapid Action Battalion, continue to receive supplies of a wide range of every sort of military and police equipment, including pistols, machine guns, toxic agents (tear gas), grenade launchers and helicopters, from many arms manufacturing countries. In July 2010 Home Minister Sahara Khatun, reportedly presented to parliament a document entitled “*Government plans to modernise, strengthen RAB*”, and was quoted as saying that “the government has planned to purchase helicopters, modern bomb disposal equipment, a high technology radio communication system and cameras.”<sup>88</sup>

According to the U.N. Register of Conventional Arms, between 2006 and 2008, Bangladesh imported major military equipment from Turkey (17 armoured combat vehicles, OTOKAR APC), and Russia (60 armoured personnel carrier (APC)).<sup>89</sup>

The European Union, China and the United States also supplied various kinds of military equipment to Bangladesh between 2006 and 2008 including small arms and ammunition. In 2008, the European

Union states reported<sup>90</sup> that they exported to Bangladesh military equipment valued at €555,000 (of which €414,000 was from Czech Republic, including helicopters) and licensed for export military equipment for €4.4 million (the main EU suppliers were: Italy, Belgium, Czech Rep., and Poland). In 2007, EU countries exported to Bangladesh military equipment valued at €4 million (of which €2.7 million was from Italy) and licensed exports for €5.9 million (the main suppliers were: Italy, Austria, Slovakia, and Poland). In 2006, EU exports reached €2.2 million (of which €1.3 million was from the Netherlands for fire control equipment) and licenses for definitive arms exports for €5.5 million (of which €2.2 million was issued by the United Kingdom and €1.9 by the Netherlands).



Villagers throw rocks at a police van during a clash in Munshiganj, Bangladesh, during protests against government plans to acquire land for a new airport, January 31, 2011. © Private

In 2008, the United States<sup>91</sup> authorized exports of military equipment (Direct Commercial Sales) to Bangladesh valued at \$8.4 million (of which \$7.5 million was in aircraft and associated equipment) and delivered military equipment worth \$1.7 million. In 2007, US authorized exports worth \$37.8 million (of which \$30.7 million was in aircraft and associated equipment) and in 2006 the US authorised \$27.3 million (of which \$26.4 million was for C-130 aircraft spare parts). US Foreign Military Sales (actual exports from the Department of Defence)<sup>92</sup> to Bangladesh amounted \$6.4 million in 2004; \$860,000 in 2005; \$510,000 in 2006; \$8.9 million in 2007; and \$67,000 in 2008.

In 2007, Serbia<sup>93</sup> reportedly authorized eight export licenses valued at \$3,999,225, with the end-user named as Cyprus/Bangladesh. In the same year Serbia exported military equipment to Bangladesh valued at \$2,349,556 (for ammunition, model rockets, equipment, material and documentation for rockets, parts for rifles, guided missiles, and parts for anti aircraft tanks).

Italy was among the main providers of military and police equipment to Bangladesh<sup>94</sup> which in 2009 authorized exports to Bangladesh worth €29.6 million (including firearms over 12.7mm, munitions, bombs and missiles; fire control systems; aircraft; electronics; and other equipment, of which €15.4 million was for helicopters made by Agusta-Westland, and €1.4 million of various systems equipment and communications supplied by Selex Systems and Selex Communications). In 2008, Italy authorized exports of military equipment valued at €3.7 million. In 2007, Italian export licenses for definitive exports reached €2.3 million, (including firearms of more than 12.7mm; electronic equipment, and toxic agents). Among the exporters was Simad Spa, manufacturer of a variety of anti-riot cartridges,<sup>95</sup> such as the Simad 12-gauge anti-riot START impact cartridge.

According to the UN data on commercial sales of military and non-military arms, between 2007 and 2009 Bangladesh imported arms and ammunition worth \$2 million, of which \$1.8 million was in military arms, the main suppliers being Ivory Coast (\$996,000 of military weapons other than revolvers in 2009) and Italy (\$614,000 of munitions of war).

These ongoing arms transfers to Bangladesh have been allowed by the States named above despite the fact that people living in poverty are struggling to survive in the EPZs, and when they exercise their right to organize and protest for better wages and conditions, they are at risk of being killed and injured by security forces.

## PART II

# Why a criterion on firearms-related homicide is necessary in an ATT?

There have been recent attempts to quantify the “burden of armed violence” to better understand the global dimensions of the deaths and injuries arising from armed conflict and from non-conflict situations. While noting that “undertaking research and gathering data on armed violence is difficult and often controversial”, the Geneva Declaration on Armed Violence has made a number of findings elaborating the dimensions of armed violence.<sup>96</sup> In their estimation, in recent years, more than 740,000 people have died every year directly or indirectly from conflict-related and crime-related armed violence.<sup>97</sup> Much greater numbers of people are injured in armed violence, many of them seriously, although statistical estimates on injuries are patchy.

Most of these violent deaths occur in non-war situations, as the result of small- or large-scale criminally or politically motivated armed violence.<sup>98</sup> An estimated 490,000 non-armed conflict killings<sup>99</sup> have taken place worldwide each year in recent years, of which an average of 60 per cent - nearly 300,000 each year – are estimated to have been perpetrated using firearms.<sup>100</sup>

These conclusions were reached, in part, by examining intentional homicide rates from available data. The term homicide can be generally defined as the unlawful killing of a person by another person or persons. This term covers a range of acts. Intentional homicide requires the perpetrator to want to cause the death of another person.<sup>101</sup> Despite varying definitions of homicide, as the Geneva Declaration notes, “homicide is the most widely collected data source on non-conflict-related armed violence across and within countries.” As such, homicide rates are particularly useful as “a proxy to capture overall levels of armed violence and insecurity.”<sup>102</sup> According to UN agencies, the number of *intentional homicides per 100,000 population* represents the most widely available and uncontroversial crime indicator. Taking into account the seriousness of the crime, thus the almost inevitable statistical recording, this indicator provides reliable information from a large number of countries.<sup>103</sup>

### Intentional homicide, rate per 100,000 population (countries with rate over 10 per 100,000 population)

Country	Rate per 100,000 pop	Country	Rate per 100,000 pop	Country	Rate per 100,00 pop
1. Honduras	60.9	11. Belize	34.3	21. Bahamas	13.7
2. Jamaica	59.5	12. Anguilla	27.6	22. Suriname	13.7
3. Venezuela	52	13. Brazil	22	23. Panama	13.3
4. El Salvador	51.8	14. Dominican Republic	21.5	24. Swaziland	12.6
5. Guatemala	45.2	15. Guyana	20.7	25. Paraguay	12.2
6. Trinidad and Tobago	39.7	16. Puerto Rico	20.4	26. Botswana	11.9
7. Colombia	38.8	17. Ecuador	18.1	27. Mexico	11.6
8. Lesotho	36.7	18. Namibia	17.9	28. Cape Verde	11.4
9. South Africa	36.5	19. St. Lucia	16	29. Bolivia	10.6
10. St. Kitts and Nevis	35.2	20. Russian Federation	14.2	30. Kazakhstan	10.6

World average homicide rate: 7.6 (2004)

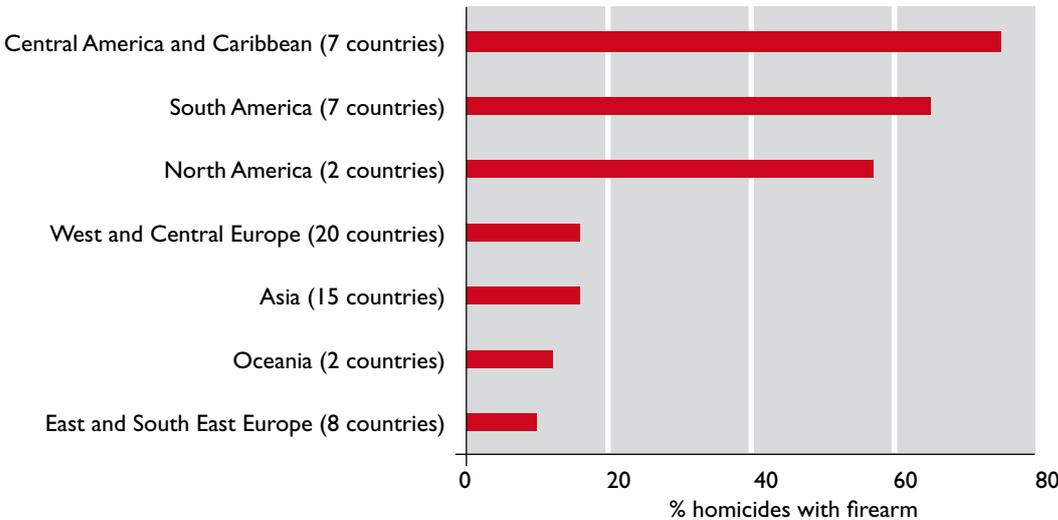
Source: UNODC: Homicide Statistics, Criminal Justice Sources – Latest Available year (2003-2008), from countries with available criminal justice data<sup>104</sup>

The geographic component to these figures is striking. Sub-Saharan Africa and Central and South America, including the Caribbean, are the most seriously affected by non-conflict armed violence, experiencing homicide rates of more than 20 per 100,000 per year, compared with the global average of 7.6 per 100,000 population. Countries in Southern Africa, Central America, and South America— including Honduras, Trinidad and Tobago, El Salvador, Guatemala, Jamaica, South Africa, Lesotho, Colombia and Venezuela—report some of the highest recorded rates of violent death in the world, per 100,000.

### Homicide with Firearms

The UN has noted that “although firearms are not the only weapons used in homicide, their availability can be a key factor in increasing levels of armed violence and homicide rates. Sub-regions with high homicide rates tend to be among those where a high percentage of homicides are committed with firearms. Available data indicates that the percentage of homicides committed with firearms varies from 19 per cent in Western and Central Europe to around 77 per cent in Central America”.<sup>105</sup> While these statistics need to be viewed cautiously<sup>106</sup>, they do yield a rough picture of the extent of firearms-related homicide worldwide: an estimate that 60 percent of all homicides are committed with firearms.

### Percentage of homicides committed with a firearm, latest available year (2003-2008)



Source: International Statistics on Crime and Justice, European Institute for Crime Prevention and Control and UNODC, February 2010.

## ILLUSTRATIVE CASE – THE PHILIPPINES

Arms transfers take place to countries where private militias perpetrate massacres against civilians, such as this case in Mindanao.

## The Maguindanao Massacre: private armies and abundant arms



Sympathizers grieve as they clench their fists during the arrival of one of 30 massacred journalists at UNTV media headquarters in suburban Quezon city, Philippines, Dec. 2009. © AP Photo/Aaron Favila.

On the morning of 23 November 2009, at about 9:00 am, a convoy of seven vehicles<sup>107</sup> left the town of Buluan in Maguindanao, a province in the southern Philippine island of Mindanao. The convoy was bound for Maguindanao's capital, Shariff Aguak, to file a certificate of candidacy for governor of the province in the May 2010 election. The convoy included 37 journalists, invited to cover the event.

This attempt to exercise democratic rights led to a massacre that was one of the deadliest in the recent history of the Philippines and was the world's largest ever single attack on journalists.<sup>108</sup> It was widely condemned in the country and abroad.<sup>109</sup> On 24 November, President Gloria Arroyo issued Proclamation 1946 declaring a state of emergency in Maguindanao and nearby provinces.

Ismail Mangudadatu, vice-mayor of Buluan and head of the Mangudadatu clan, had decided to run against Andal Ampatuan Jr., mayor of Datu Unsay<sup>110</sup> and son of the Ampatuan clan's patriarch Andal Ampatuan Sr., who was governor of the province from 2001 to 2009.<sup>111</sup> Mangudadatu organized the trip but did not go to Shariff Aguak himself. Instead he asked several of his family members to file the candidacy on his behalf. The convoy was headed by Ismail Mangudadatu's wife, Genalyn Tiamzon-Mangudadatu, and included several other women.

At about 10:00 am, the convoy was stopped near the town of Ampatuan, ten kilometres from Shariff Aguak,<sup>112</sup> for a routine inspection. According to affidavits given by policemen assigned to the check points, around 100 heavily armed men appeared, headed by Andal Ampatuan Jr. These witnesses also said that Genalyn Mangudadatu managed to place a call and informed her husband about what was happening. Army units were sent in search of the convoy.

At around noon the vehicles, including two others unrelated to the Mangudadatu convoy, were commandeered by the armed men and taken to a nearby hill, where three mass graves had been excavated a day earlier. On this hill the armed men massacred at least 63 people in the convoy, including 33 journalists,<sup>113</sup> using automatic weapons of various types.<sup>114</sup>

According to another affidavit submitted by Rasul Sangki, Datu Unsay's vice-mayor, who claimed to have witnessed the massacre, Andal Ampatuan Jr. allegedly pulled Mangudadatu's wife out of her car and started firing at her and other women.<sup>115</sup> He then kept on shooting at the other hostages, first using a US-made M4-M203. When the weapon jammed, he resorted to a South-Korean-made belt-fed K-3 light machine gun.<sup>116</sup> When the soldiers from the armed forces units finally arrived at the site they found the bodies in graves. But all of the armed group, except two men, had disappeared after receiving a call that alerted them to the imminent arrival of the Army.

According to the testimony of one of the journalists who escaped the massacre, Ismail Mangudadatu “*had requested security escorts from Chief Superintendent Paisal Umpa, Autonomous Region in Muslim Mindanao (ARMM) police regional director, but his request was turned down. He turned to the Philippine army for help but his request was also denied.*”<sup>117</sup>

The Ampatuan clan had dominated the province’s political and economic affairs since the 1980s, threatening and killing political foes<sup>118</sup> and amassing a fortune<sup>119</sup> through activities such as violently forcing local landowners to sell their land. None of the men responsible for these crimes has ever been prosecuted or convicted.<sup>120</sup> By 2005, the clan had extended its reach to the entire Autonomous Region in Muslim Mindanao (ARMM), of which Maguindanao is a province. In 2005, the clan succeeded at getting Andal Ampatuan Sr.’s son, Zaldy Ampatuan, elected governor of ARMM (2005-2009).

On 26 November, after many negotiations with Andal Ampatuan Sr. and a threat by the Interior Minister to attack Ampatuan’s family compound, “Ampatuan [Jr.] gave himself up to presidential adviser Jesus Dureza in Shariff Aguak”<sup>121</sup>. On 28 November, government authorities charged Andal Ampatuan Jr. with murder in connection with the massacre. Prosecutor Al Calica told Associated Press that “*three witnesses, who escaped because their car was at the tail end of the election convoy said they saw Andal Ampatuan Jr. and about 100 gunmen, including police officers, stopping the cars.*” Another seven witnesses “*provided written testimonies linking Ampatuan to the killings*”.<sup>122</sup> Ampatuan was later brought to Manila and on 1 December 2009 he was charged with murder.<sup>123</sup>

On 5 December, President Arroyo issued Proclamation No. 1959, declaring a state of martial law in Maguindanao province. The same day the police raided a warehouse owned by Andal Ampatuan Jr., arresting 20 of his militiamen. On 9 December the Senate and Lower House voted for the revocation of the martial law proclamation<sup>124</sup> and on 12 December the President withdrew the proclamation.

In early February 2010, the authorities charged 196 people with involvement in the massacre, including Andal Ampatuan Sr.<sup>125</sup> According to an affidavit submitted to the National Bureau of Investigation,<sup>126</sup> the elder Ampatuan had allegedly ordered his son, Andal Ampatuan Jr., to carry out the massacre. Governor Zaldy Ampatuan was also indicted.

The trials have been marked by extensive delays and concurrent attempts “to convince” witnesses to recant their testimonies and affidavits.<sup>127</sup> Suwaib Upham, a key-witness and participant to the November massacre, was killed on 14 June 2010, two months after a relative of another witness was shot dead.<sup>128</sup> The trials were delayed several times and as of February 2011 they were still in the preliminary phases.<sup>129</sup> In November 2010, out of the 196 people indicted, 82 were detained. However, another 114, including private militia members, clan members and police and government soldiers, remained at large.<sup>130</sup>

According to a Human Rights Watch report,<sup>131</sup> the 5,000 member-strong Ampatuans’ private militias were composed of policemen, members of the civilian volunteer organizations (CVO)<sup>132</sup> and Army soldiers. The report found that Ampatuan clan members owned several US-made M14 and M203 grenade launchers, Kalashnikov AK47 assault rifle, South Korean-made K-3 machine guns, Israel-made Tavor assault rifles, automatic pistols, mortar bombs and police vehicles.

According to an early reconstruction of the November massacre by Anlyn Perez and TJ Dimcalis,<sup>133</sup> based on the analysis of bullets found at the site, the perpetrators were armed with M14 and M16 rifles, AK47s, in addition to the above-mentioned M4-M203 and a K-3. They also reported that a police raid on 3 December 2009 in a lot near the Ampatuan clan mansion in Shariff Aguak, discovered a weapons cache consisting of “*light artillery, heavy infantry weapons, explosives, and ammunition [...] Some of the ammo boxes were stamped ‘Department of Defense Arsenal’.*” During the official investigation of the massacre,

investigators searched the homes of several members of Ampatuan clan. They seized dozens of other high-powered weapons, such as Heckler & Koch MP5 submachine guns, and hundreds of thousands of ammunition rounds for the Colt M16 assault rifle.<sup>134</sup>

In an open letter to President Aquino dated 30 January 2011, the group Mga Tagatulak ng Kapayapaan (Peace Movers) urged the President to expedite legislation on arms control.<sup>135</sup>

Despite the Philippines' persistent record of human rights violations and the diffusion of private armies, between 2005 and 2009 several States authorized and made commercial sales of a variety of military and non-military arms and associated parts to the Philippines. According to UN Comtrade's declarations of exporting States (commercial sales, excluding government-to-government sales), between 2005 and 2009 the Philippines imported infantry weapons and non-military arms and related parts worth \$109.5 million from 29 countries and from Hong Kong SAR. In the same period, the Philippines' Customs recorded arms imports in the same categories with a value of \$58.1 million, and its records show 36 countries as the origin of the arms and parts.

According to exporter declarations for 2005-2009, the United States ranked first as a provider of military and non-military arms and ammunition to the Philippines, with a total for the period of about \$39.6 million, followed by South Korea with \$33.2 million. Brazil and Italy ranked third and fourth, with \$9.4 million and \$9.1 million, respectively. In the fifth and sixth positions, sales by Turkey totalled \$2.9 million and Czech Republic's \$1.9 million, followed by China (including Hong Kong) with \$1.9 million, Argentina with \$1.2 million and Germany with \$1.2 million. The rankings in the Philippines' declarations show that Israel exported \$1.6 million of arms (compared with Israel's own declarations of about \$0.6 million). Noteworthy, Philippines Customs declared arms imports worth \$2.7 million from "Other Asia", probably in provenance from Free Trade Zones.

Between 2005 and 2009, declarations of exporting States show that the Philippines imported \$30.9 million of military weapons other than revolvers and pistols – the main providers were South Korea and United States - and \$19.2 million worth of pistols and revolvers – the main suppliers were the United States and Italy. Non-military firearms accounted for \$13.8 million (the main provider being Brazil with \$8 million). Imports of cartridges for shotguns totalled \$7.6 million (the main supplier being South Korea with \$5 million).

These transfers to the Philippines of small arms, light weapons and ammunition, including when they are made to the regular police and army in the Philippines as well as to civilians, may be used for unlawful killings. Many police and soldiers are also members of the militias or private armies. Thus, continuing arms supplies will contribute to armed violence.

## How should firearms-related homicide be addressed in the ATT?

Homicides in non-conflict settings constitute the most commonplace form of armed violence. Approximately 60 percent of these homicides are committed with firearms. This fact highlights the need for a more comprehensive approach to addressing armed violence, an approach that recognises that a significant proportion of armed violence occurs outside of conflict settings, the traditional realm of attention of donors and development practitioners.<sup>136</sup>

In creating new and comprehensive approaches, OECD-DAC developed its “Armed Violence Lens” approach to reducing the incidents of armed violence. It suggests that emphasis should be placed in four areas:

- a) on the people affected by armed violence;
- b) on the perpetrators of armed violence;
- c) on the instruments used in armed violence, with a focus on their availability or supply; and
- d) on the wider institutional/cultural environment.<sup>137</sup>

The widespread availability of firearms has been repeatedly identified as a risk factor for violence.<sup>138</sup> UN Member States have also noted the correlation between arms availability and armed violence, and the uncontrolled proliferation and misuse of small arms and light weapons as a key element fuelling armed violence.<sup>139</sup> It is sensible to conclude that focusing on firearms and ammunition must be an integral part of any effort to reduce armed violence. Addressing the availability and supply of the “instruments of armed violence” can be done in a number of ways for example, through domestic legislation on gun control and civilian possession of weapons, prohibition of certain types of weapons, programs for collecting and destroying weapons and ammunition.<sup>140</sup> Another way of addressing availability is to improve controls on the initial supply of these weapons and ammunition including their import, export and international transfer. This is where the ATT can make an important contribution to reducing armed violence.

The ATT is specifically focused on the import, export and international transfer of conventional arms, including weapons, ammunition, and related parts and components. Proponents of the ATT have been calling for a treaty that will make the international trade in such arms more responsible and ensure that *effective* control is exercised over their import, export and international transfer. The UN Security Council has cited the “recurring problem” of the absence of a normative framework for States to guide their decisions regarding arms imports, exports and international transfers leads to the proliferation of arms, particularly in “zones of crisis”.<sup>141</sup>

Many firearms are being diverted to unauthorised users and the illicit market by legal end users or from unsecured stockpiles. The issue of diversion must therefore be addressed in the ATT. It would not be sufficient for the ATT to address only diversion as a risk factor. For the ATT to effectively address what has been identified as a main cause of armed violence -- homicides perpetrated with firearms -- it should include:

1. Small arms and light weapons and related ammunition within the scope of the types of equipment that an ATT would regulate.
2. A criterion that requires an exporting State to assess an application for conventional arms (in this case firearms and related ammunition) against the risk that the items will perpetuate a pattern of or facilitate high levels of homicides with firearms. Where there exists a significant risk that a specific export under assessment would do so, the license or authorisation should be denied.

3. The requirement of standardised end-user and end-use controls, including authenticated certificates with sufficient information on the arms, contract, user, and intended uses, and a guarantee of non re-export, a delivery verification, and effective stockpile security, so as to reduce the likelihood of firearms being diverted.
4. A requirement that the authorities of the importing State issue an import authorisation corresponding to the end-use certificate with sufficient information on the consignee, transport providers, brokers and other contracting parties, prior to the issuance of an export license by the exporting State.

## 1. Scope

In order to be an effective global instrument, the ATT will need to elaborate a comprehensive system to control the cross-border movement of *all* conventional arms – weapons, munitions and associated equipment and services. If an ATT is to contribute to the prevention and reduction of homicides perpetrated with small arms and light weapons (SALW), and specifically firearms,<sup>142</sup> these items must also be subject to the terms of the Treaty. All imports, exports and international transfers of ammunition should also be subject to prior official authorization or licensing decisions.

## 2. Transfer criteria

An ATT should require an exporting State to assess the risk that the export of the equipment under review will perpetuate a pattern of or contribute to high levels of firearm homicides.

Such an assessment should apply to all license applications for a transfer to all countries, and each application should be assessed on a case-by-case basis. However, this criterion should be especially applicable where the transfer under assessment is for firearms or other small arms.

Some States have raised the need for criteria to deny transfers where the arms could be used to facilitate “crime” or “violent crime”.<sup>143</sup> UN General Assembly resolutions on the ATT also refer to crime as one of the consequences of an absence of common international standards on the import, export and international transfer of conventional arms. Some regional instruments on conventional arms controls such as the Nairobi Best Practice Guidelines and the ECOWAS Convention<sup>144</sup> also refer to violent crime. However, what constitutes “crime” differs from one jurisdiction to the next and not all crimes are perpetrated with conventional arms. Thus, the inclusion of an assessment of risk of causing, facilitating or perpetrating a pattern of significantly high levels of firearms-related homicide is suggested for the following reasons:

- Intentional homicide represents the most serious end of the spectrum of violent crime and is a key crime indicator.<sup>145</sup>
- UN homicide statistics indicate that about 60 percent of all intentional homicides are committed with firearms. Statistics on other violent crimes, including assault and rape, do not indicate whether weapons have been used; in the context of the ATT it is the risk associated to the weapon and its use that is crucial;
- In a national regulatory context, assessing crime so broadly in an importing State is neither feasible nor practical.<sup>146</sup>

## Practical application of criterion

Ultimately the final text of the ATT will be applied at the national level, most often by licensing officers in the national licensing authority and officials in other government agencies.<sup>147</sup> To assist licensing authorities and other government officials involved in the arms import, export and international transfer decision-making process, the ATT must underpin or elaborate a clear, consistent procedure for determining whether there is a substantial risk that the transfer will perpetuate a pattern of or contribute to significantly high levels of firearms-related homicides. The following steps, including key factors that should be taken into account, are suggested:

- (i) An assessment of the general level of violence and instability in the recipient State;
- (ii) A more specific assessment of the stated end-use and the stated end-user, and the risk of diversion;
- (iii) Reaching a decision based upon an overall assessment as to whether there is a “substantial risk” that the transfer in question will perpetuate a pattern of or contribute to high levels of firearms-related homicides.

### i. An assessment of the general level of violence and instability in the recipient State

- a. What is the reported incidence of violent acts and armed violence in the country? Are there general, persistent civil unrest or internal disturbances<sup>148</sup> within the State?

Studies in Europe and the US on fluctuations in homicide rates over time show that crucial factors linked to increases in homicide include political instability, governmental failure to provide security and justice, a loss of government legitimacy, and a loss of faith in the social hierarchy. Likewise, evidence shows that a gradual process of state failure is frequently accompanied by a parallel rise in armed violence.<sup>149</sup> Further, the UN Secretary General has noted that “the presence and persistence of armed violence often indicates a failure in the provision of public security, the rule of law, and effective prevention measures. Acute levels of collective armed violence signal a fragile situation in which the State does not exercise a monopoly over the legitimate use of force in its territory, or uses force excessively to quell dissent or stop crime.”<sup>150</sup>

Some questions that should be considered include:

- Has there been a recent serious loss or decline in the State’s law enforcement authority?
- Does the State have effective cadre of law enforcement personnel who have been trained to follow appropriate standards governing the use of force?<sup>151</sup>
- What is the rate of intentional homicide within the importing State?<sup>152</sup>
- Where there are pervasive patterns of firearms-related homicide, is the State acting with due diligence to address it?

- b. Are the levels of firearms in the country excessive and destabilising?

Such an assessment is relative and contextual. For example a large number of weapons and ammunition under strict and effective control of a responsible government might not be destabilising or have the potential of leading to violence. Whereas a small number of weapons in circulation in a country where

that the State cannot effectively keep them under control could also be destabilising. A UN Expert Panel on Small Arms (1998) concluded that the following circumstances provide an indication as to when accumulations of small arms and light weapons become excessive and destabilizing:

- “When a State does not exercise restraint in the production, transfer, and acquisition of such weapons beyond those needed for legitimate national and collective defence and internal security;
- When a State cannot exercise effective control in preventing the illegitimate acquisition, transfer, transit, or circulation of such weapons;
- When the use of such weapons manifests itself in armed conflict, in crime - such as arms trafficking and drug trafficking - or in other actions contrary to the norms of national or international law.”<sup>153</sup>

While it might be difficult to make such determinations, the reality is that in most cases accumulations of weapons and ammunition cannot be classified as excessive or destabilizing until some of the negative effects begin to manifest themselves, for example, in an increase in homicides rates.<sup>154</sup>

## ii. A more specific assessment of the stated end-use and the stated end-user, and the risk of diversion

States that are experiencing high levels of firearms-related homicide or have destabilising accumulations of weapons will obviously also require conventional arms including firearms for their lawful and legitimate military, policing and domestic security needs. In this regard, an assessment of the end-use and the end-user should assist further in determining the level of risk associated with the potential transfer of arms. Such an assessment of the end-use, the end-user and the risks of diversion should be taken with respect to all risk factors, including the risk that the transfer will be used in or facilitate serious violations of international human rights, international humanitarian law, or in this case, the risk that the transfer will contribute to high rates of firearms-related homicide.

The following indicators might be taken into account:

- *The nature of the equipment:*
  - Are the type, quantity, and quality of the equipment or other items requested compatible with the stated end-user’s legitimate military, security, policing or other requirements?
- *The stated end-user:*
  - What is their role in the recipient state and is it lawful and legitimate?
  - Does the end-user (e.g. the police or individual civilians) operate under clear and accountable laws and regulations, such as chains of command and control, in line with international standards?
  - Can the recipient demonstrate or guarantee that the stated end-user is the actual lawful end-user?
- *Capacity of the end-user:*
  - Does the end-user have the knowledge and capacity to manage and use the equipment or other items in accordance with international standards?
  - Does the end-user have an effective system of control over the weapons and ammunition, such as an effective system of stockpile management and security procedures in place, including the capacity to dispose of surplus weapons and munitions?
  - Are thefts or leakages from stockpiles and civilian firearms owners a known problem in the recipient state?

- *Risk of diversion to illegal end users or end-uses:*
  - Does the recipient have the capacity to ensure that the equipment or related items will not be diverted or transferred to other persons, entities or destinations where there is a substantial risk that the items are likely to be used to perpetrate or contribute to high levels of firearms-related homicide?
  - Does the recipient State maintain strict and effective control of its military and police weaponry and equipment and their re-transfer to other end-users?
  - Has the recipient State acted with due diligence to address a pattern of armed violence or firearms-related homicide?

### iii. Reaching a decision

A final decision should be based upon an overall assessment of all risks. An analysis of “substantial risk” that the transfer of arms under review will perpetrate or contribute to high rates of firearms-related homicide should be based upon case-by-case consideration of available evidence of history and present circumstances in the recipient country. Where there is evidence of a pattern of high rates of firearms-related homicide and evidence that the recipient has not taken appropriate steps or acted with due diligence to address significantly high firearms-related homicide rates, the likelihood of substantial risk becomes greater.

Ultimately the decision to license or authorise an export of conventional arms is within the sovereign authority of the exporting State. But such a decision should be based upon a judgement that is objectively informed through the systematic application of clear and consistent criteria. Credible and reliable evidence should be used and a decision should be reached upon reasoned consideration of the facts.

## 3) End-user certificates

End-user certificates are seen as a vital instrument in ensuring effective control and security over the export, import, and transfer of conventional arms. Before any such arms can be exported, the exporter should be required to show the relevant national authorities documentary evidence of the intended destination and use of the items. Such documentation, usually in the form of an authenticated end-user certificate, is a necessary element of the wider risk assessment process that should accompany any export license application.

For many years the UN has urged Member States to require the authentication and verification of end-user certificates in their imports, exports and transfers of conventional arms and to establish effective national end-user certificate systems.<sup>155</sup> Such measures would help prevent the diversion of conventional arms to unauthorised end-users and end-uses. The process of negotiating the ATT provides an opportunity for States to agree to a standard format for authenticated end-user certificates and their verification. Such standardised information should, at a minimum include:

- The details of the exporter, the consignee and the end-user;
- Country of final destination;
- A detailed description of the items being exported (type, characteristics);
- Quantity and/or value of the exported items;
- The date of issue and length of validity of the end-user certificate;
- Indication of the end-use of the items;
- An undertaking, where appropriate, that the items being exported will not be used for purposes other than the declared use;
- An undertaking that the items will not be re-exported without the authority of the exporting State or of the importing State when the authority is specifically designated to that State by the exporting State.

#### 4) Import authorisation

It is equally important that States should be required to specifically authorise all imports of conventional arms into their jurisdiction.

Thus a risk assessment procedure required in the ATT must be supplemented by a requirement that import documentation be provided prior to the export licensing or authorisation of an arms transfer. The export authorities should verify the validity of each import license or certificate from the proposed recipient State prior to the issuance of the export license. This should require the importing State itself to assess the risks associated with the items entering their country and whether they are able to meet their primary responsibility to provide for the security of all persons under its jurisdiction and to promote respect for and observance of international human rights as affirmed in the UN Charter and in other relevant international law.<sup>156</sup> States should ensure that an import meets specific legitimate and lawful military, security and policy needs, and that arms intended to be held and used by civilians or civilian entities in the importing country are strictly regulated, so as to protect their populations consistent with international standards for the rule of law.

### Conclusion

The ATT provides an important opportunity to help prevent various forms of armed violence, including homicide with firearms. By requiring States to implement high standards and rigorous procedures to effectively regulate the export, import and international transfer of conventional arms in each case, the ATT could help stop relevant arms reaching a State where those arms are likely to be used for a range of violent activities, contrary to the lawful use of force.

To be effective, an ATT should include a rigorous assessment procedure addressing a range of possible risks that every potential export might pose. This includes, for example, the risk of the conventional arms being used to commit or facilitate serious violations of international human rights and humanitarian law or terrorist attacks, or being used in the commission of transnational organised crime.

As firearms-related homicide is the most commonplace form of criminal armed violence, the ATT should also require an assessment of whether there is a “substantial risk” that the transfer in question will be used to perpetuate a pattern of, or contribute to, high levels of firearms-related homicides.

Proof of authorisation from the import State should be required prior to the issuance of an export license. The importing State must also be required to rigorously assess any risks associated with the potential import of items into its jurisdiction, particularly where the import is for firearms that could pose a substantial risk of being used to contribute to high levels of firearms-related homicide.

## Endnotes

- 1 See, for example, the Geneva Declaration on Armed Violence (“Geneva Declaration”), the Oslo Conference on Armed Violence and the Millennium Development Goals (February 2010), and the Helsinki Process (now completed). The World Health Organisation (WHO)/United Nations Development Programme (UNDP) Armed Violence Reduction Programme noted that at the global level, “there is a lack of understanding on the nature of the problem, and more particularly the characteristics and manifestations of armed violence, its causes and impacts on individual and collective well-being, as well as human security.” *Global Armed Violence Prevention Programme (AVPP)*, Programme Document, Phase I -Support for the development of a framework to address the impacts of armed violence on human security and development”, UNDP and World Health Organisation (June 2005). See the Geneva Declaration on Armed Violence and Development online at [www.genevadeclaration.org](http://www.genevadeclaration.org).
- 2 General Assembly resolution A/64/68 (January 2010) sets out the timetable towards the creation of the ATT including Preparatory Committee meetings in 2010 and 2011 and a United Nations Conference on the Arms Trade Treaty in 2012.
- 3 See General Assembly resolutions A/61/89 (2006), A/63/240 (2008), A/64/48 (2010).
- 4 Ibid.
- 5 As noted by WHO/UNDP, “Until recently, countries experiencing or emerging from violence armed conflict (inter-state or civil wars) have been the primary focus of humanitarian and crisis/post conflict recovery assistance. However, there is increasing recognition that high levels of inter-personal armed violence in countries that are considered relatively stable (such as Brazil or South Africa) or far advanced in post-conflict transition processes (such as El Salvador), merit greater attention due to the negative impacts on public health and human security, development and the potential for serious destabilisation, crisis and conflict.” *Global Armed Violence Prevention Programme (AVPP)*, Programme Document, Phase I -Support for the development of a framework to address the impacts of armed violence on human security and development”, UNDP and World Health Organisation (June 2005).
- 6 Report of the Secretary General: *Promoting development through the reduction and prevention of armed violence*, A/64/228 (5 August 2009). This report states that its definition is based on a 2002 World Health Organisation report which defines armed violence as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.
- 7 Geneva Declaration on Armed Violence and Development, *Global Burden of Armed Violence*, (September 2008), pg. 2.
- 8 Organisation for Economic Coordination and Development (OECD) Development Co-operation Directorate –DAC, *Armed Violence Reduction, Enabling Development*, Paris (2009) pg. 28
- 9 In particular much work has been done in the context of the Millennium Development Goals (MDGs). See for example, Geneva Declaration, *Armed Violence Prevention and Reduction: A Challenge for Achieving the Millennium Development Goals*, Background paper (2008) and Geneva Declaration, *More Violence, Less Development* (September 2010).
- 10 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (September 1990).
- 11 Adopted by United Nations General Assembly resolution A/34/169 (17 December 1979).
- 12 Article 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Article 5 states, “Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
- 13 Article 51 of the UN Charter states, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.
- 14 Some national export laws specifically make the distinction. For example, South Africa’s National Conventional Arms Control Act (2002) includes within its guiding principles and criteria that applications for an export of conventional arms must be considered against the need to “avoid the export of conventional arms that may be used for purposes other than the legitimate defence and security needs of the government of the country of import”. South Africa, Act No. 41 of 2002: National Conventional Arms Control Act, 2002, Section 15, paragraph k.

- 15 However, the changing dynamics of war and post-war contexts blur these categorisations. See Gilgen, Krause and Muggah, *Measuring and Monitoring Armed Violence: Goals, Targets and Indicators*, Background Paper, Oslo Conference on Armed Violence (April 2010) pg. 8
- 16 The Geneva Declaration includes international armed conflict and intrastate conflict in “armed conflict” stating “It is possible to distinguish between international and intrastate armed conflicts. The former refer to classic interstate warfare, as well as armed conflicts in which at least one of the belligerents is an external state party, while the latter refer to a situation in which two (or more) parties within a single country fight against each other. While such characterizations become increasingly difficult to maintain, given the complex and globalized nature of many armed conflicts, they nevertheless capture the main actors involved in and the locus of armed conflict.” Geneva Declaration, *Global Burden of Armed Violence* (September 2008), pg. 26. There is a division in international humanitarian law into rules applicable in international armed conflict and those relevant to armed conflicts not of an international nature. The usefulness of this distinction is often questioned. See, James, G. Stewart, *Towards a single definition of armed conflict in international humanitarian law: A critique of internationalized armed conflict*, International Review of the Red Cross, No. 850, (2003) .
- 17 The distinction between “interpersonal violence” and collective forms of violence is made, for example, in Florencia Fontan Balestra, Elisabeth Gilgen, and Robert Muggah, *Preventing and reducing armed violence in Latin America: Taking Stock and Looking Forward*, (2009).
- 18 Gang violence is often described as a phenomenon related to urban violence. See, for example, D. Abrahams, *A Synopsis of urban violence in South Africa*, International Review of the Red Cross, Vol. 92, Number 878, (June 2010), p. 500. See also, Decker, Scott H. and David C. Pyrooz. *Gang Violence Worldwide: Context, Culture, and Country. Small Arms Survey 2010: Gangs, Groups, and Guns*. The Geneva Declaration includes gang violence in “other forms of armed violence”, *Global Burden of Armed Violence* (September 2008) pg. 128.
- 19 See, for example, Olivier Bangerter, *Territorial gangs and their consequences for humanitarian players*, International Review of the Red Cross, Vol 92, No. 878, (June 2010), p. 389, footnote 2 describing “internal violence” as non conflict situations in which organised violence is used by at least one of the parties.
- 20 See, Geneva Declaration, *Global Burden of Armed Violence* (September 2008), pg. 49.
- 21 See, for example, Freda M’Cormack, “Targeting non-conflict armed violence”, Institute for Development Studies (July 2010).
- 22 See, Geneva Declaration, *Global Burden of Armed Violence* (September 2008), p.5. “Political violence” is included, along with “routine state-led violence”, “economic and crime-related violence” and “post conflict property related disputes” as types of post conflict armed violence in “Post Conflict Security” Small Arms Survey, 2009 Yearbook, p. 228 (citing Chaudhary and Sukrke (2008)).
- 23 This is not an exhaustive list, merely an illustrative list of a range of violent activities.
- 24 A municipality with a population of 25,000, in San Marcos Province, north-western Guatemala, about ten kilometres from the border with the southern-eastern part of the Mexican State of Chiapas and more than 200 km from Guatemala City
- 25 See: Amnesty International, *Fear for Safety*, Urgent Action, 5 November 2010, UA 233/10.
- 26 Health Trade Union
- 27 National Front for the Struggle, to which Lopéz, along with other members of the SNTSG, was associated. “FNL campaigns on broader themes like access to better standards of public services at affordable costs. The FNL has promoted campaigns against the high costs of electricity. In the last year, eight trade unionists belonging to the FNL have been killed. Those killings have not yet resulted in any convictions.” (Amnesty International, *Fear for Safety*, quoted, background information).
- 28 Resistance Front for the Defence of Natural Resources and People’s Rights. Gálvez had just spoken at a public meeting about FRENA’s campaigning to highlight the alleged poor quality and high charges by the regional electricity company. Víctor Gálvez had also received death threats, and had been verbally threatened and physically attacked in relation to his work. (Amnesty International, *Fear for Safety*, quoted, background information; Amnesty International, Urgent Action on the killing of three FRENA activists in February 2010, UA 41/10).
- 29 Labour, Indigenous, and Peasant Movement of Guatemala.
- 30 <http://www.ituc-csi.org/guatemala-assassination-of-two.html?lang=en>
- 31 See: Asier Andrés, quoted, *El Periodico*, 31 Oct 2010.
- 32 ITUC, *Annual Survey of violations of trade union rights*, 2010, <http://survey.ituc-csi.org/+Guatemala-+.html>
- 33 <http://www.ituc-csi.org/guatemala-two-msicg-members.html>
- 34 Amnesty International, *Blood at the Crossroads: Making the case for a global Arms Trade Treaty*, Guatemala, September 2008.
- 35 *Diario de Centro América*, Organo Oficial de la República de Guatemala, 21 April, 2009. The law, in its 152 articles, aims to regulate both the possession of arms and the arms trade (including brokering), under the supervision of DIGEAM (Dirección General de Armas y Municiones). The DIGEAM is a department of the ministry of Defense, and the control of the implementation of the law is still assigned to the Army, despite the campaign of several human rights and other civil society organizations that have asked that the control being assigned to a civilian authority (see *Blood at the Crossroads*, quoted, 2008).
- 36 See for sources of the estimates *Blood at the Crossroads*, quoted, 2008.

- 37 See for example, elPeriodico de Guatemala, '26,994 armas salieron del almacen del Ejército ilegalmente', Guatemala, jueves 18 de febrero de 2010, 'Armas robadas al Ejército surgen a partir de septiembre 2008, Guatemala', Guatemala, viernes 05 de junio de 2009 and 'Pesquisas apuntan a armas del Ejército', Guatemala, viernes 22 de enero de 2010
- 38 See in this report the table on "intentional homicide" that includes the definition of the term.
- 39 Recorded under code 89114 of the SITC Rev. 3.
- 40 Argentina, Colombia, Czech Rep., El Salvador, Germany, Honduras, Israel, Italy, Korea Rep., Mexico, Philippines, Slovakia, Turkey, USA.
- 41 Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Czech Rep., Dominican Rep., El Salvador, France, Germany, Honduras, Hungary, Iran, Israel, Italy, Korea North, Korea South, Mexico, Peru, Philippines, Russian Federation, Slovakia, Spain, Switzerland, Turkey, Uruguay, USA.
- 42 International Monetary Fund GDP database, <http://www.imf.org/external/pubs/ft/wec/2010>.
- 43 The total number of pistols in declarations by exporting States was 82,844 but the number of pistols is not always available in Guatemala's import declarations.
- 44 Code 89131.
- 45 Czech Republic, El Salvador, Mexico, Philippines, Republic of Korea, Serbia, Slovakia, Spain, the UK and the USA.
- 46 Code 89124.
- 47 Code 89122.
- 48 General Assembly resolution A/63/240 (2008).
- 49 Statement by a representative of Norway (July 2010).
- 50 Parliamentary Forum on Small Arms and Light Weapons, Policy Statement on the Arms Trade Treaty (2007).
- 51 Statement of Costa Rica, Preparatory Meeting on the Arms Trade Treaty, July 13 2010.
- 52 Colombia, National Report on General Assembly resolution 61/89 of 2006.
- 53 Armed violence has a wider scope than conflict prevention, and includes peacebuilding, development, public health and criminal justice strategies and approaches and involves a range of stakeholders. See for example, General Assembly Resolution A/63/23 (2008) and Report of the Secretary General: *Promoting development through the reduction and prevention of armed violence*, A/64/228 (5 August 2009), para. 11, stating, "The concept of armed violence encompasses the spectrum of conflict, post-conflict, crime-related, and interpersonal, including gender-based forms of violence. It has a wider scope than conflict prevention, and includes peacebuilding, development, public health and criminal justice strategies and approaches. It involves stakeholders from the disarmament, development, urban security, public health, conflict prevention, criminal justice and rule of law, gender and children, counter-terrorism, and human rights communities."
- 54 The causal and catalytic factors resulting in armed violence are many, including the widespread proliferation and availability of weapons. See, for example, UNDP/WHO *Global Armed Violence Prevention Programme (AVPP)*, Programme Document, Phase I -Support for the development of a framework to address the impacts of armed violence on human security and development", UNDP and World Health Organisation (June 2005).
- 55 The UN Secretary General has acknowledged that "a vast spectrum of human rights violations, including killing and maiming, rape and other forms of sexual violence, enforced disappearance, torture, and forced recruitment of children by armed groups or forces" are facilitated by weapons. Report of the Secretary General on Small Arms, S/2008/258, para. 5.
- 56 The need for States to monitor and regulate the arms trade was raised as early as 1978 in the First Special Session on Disarmament, General Assembly Official Records: Tenth Special Session, Supplement No. 4 (A/S-10/4), para.85. See also General Assembly resolution A/RES/46/36 H (1991) and Security Council Presidential Statement S/PRST/1999/28 (1999).
- 57 See, for example, UN Security Council Presidential Statements, S/PRST/1999/28 and S/2003/1070.
- 58 International humanitarian law distinguishes two types of armed conflicts, namely non-international and international armed conflict. Legally speaking, no other type of armed conflict exists. The ICRC states, "It is nevertheless important to underline that a situation can evolve from one type of armed conflict to another, depending on the facts prevailing at a certain moment." International Committee of the Red Cross (ICRC), *How is the Term "Armed Conflict" Defined in International Humanitarian Law*, Opinion Paper, (March 2008).
- 59 Non-international armed conflicts are *protracted armed confrontations* occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a *minimum level of intensity* and the parties involved in the conflict must show a *minimum of organisation*. The ICRC has stated that "IHL treaty law also establishes a distinction between non-international armed conflicts in the meaning of common Article 3 of the Geneva Conventions of 1949 and non-international armed conflicts falling within the definition provided in Art. 1 of Additional Protocol II." See, International Committee of the Red Cross (ICRC), *How is the Term "Armed Conflict" Defined in International Humanitarian Law*, Opinion Paper, (March 2008)
- 60 "International armed conflicts" exist whenever there is *resort to armed force between two or more States*. See, International Committee of the Red Cross (ICRC), *How is the Term "Armed Conflict" Defined in International Humanitarian Law*, Opinion Paper, (March 2008)
- 61 See the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict.

- 62 CEPZ is one of Bangladesh's eight export processing zones (EPZs, set up by the government in 1978), special areas set up to attract foreign companies and investments. In EPZs, employers enjoy particularly favourable economic, legal, and fiscal provisions, often including suspension of workers' right to unionize. Several Bangladesh garment factories are owned by South Korean, Japanese and Chinese companies. CEPZ houses 156 factories, with 1,540,000 workers (see "Four killed in RMG flare-up", The Daily Star, Dhaka, 13 December 2010), most of them women. The South Korea-based company where the demonstrations started employs 36,000 workers in Chittagong and 9,000 in Dhaka EPZs (3 killed in CEPZ violence", BD News, 12 December 2010, at [www.bdnews24.com/details.php?id=181413&cid=2](http://www.bdnews24.com/details.php?id=181413&cid=2)
- 63 "3 killed in CEPZ violence", quoted.
- 64 "Some factories fail to implement new wages", New Age, Dhaka, 12 December, 2010; Mirdha, R. U., "Pay confusion triggers troubles", The Daily Star, Saturday, January 29, 2011.
- 65 To address the workers' grievance, the government of Bangladesh has decided to form a committee comprised of representatives from the government, workers and factory owners to implement the new pay scale. See: Amnesty International, Bangladesh: *Investigate the killing and the violence during garment factory workers unrest*, 15 December 2010, ASA 13/011/2010; Nadim Jahangir, "Simmering discontent in RMG sector", New Age, Dhaka, 9 August, 2010; <http://newagebd.com/newspaper/1/>; "A failed Solution", New Age Extra, Dhaka, 13-19 August, 2010.
- 66 Bangladesh's other seven EPZs are located (from North to South) at Uttara, Ishwardi, Dhaka, Adamjee, Comilla, Monga, and Kamaphuli. See: Bangladesh Export Processing Zones Authority (BEPZA) 2008-2009 Report at [http://www.epzbangladesh.org.bd/web\\_admin/web\\_tender\\_files/BEPZA\\_2008-2009.pdf](http://www.epzbangladesh.org.bd/web_admin/web_tender_files/BEPZA_2008-2009.pdf)
- 67 "CEPZ erupts in violence, 4 killed", Daily Star, 12 December, 2010; "RMG workers go berserk", Daily Star, December 12, 2010. See also "Three killed, dozens hurt in Bangladesh clashes", BBC News, December 12, 2011; "Bangladesh police break up workers protests: three dead", Reuters, Dhaka, 12 December, 2010.
- 68 "CEPZ erupts in violence, 4 killed", quoted.
- 69 Authorities claimed that "Islam was killed after being hit by a brick during the clash, but employer of Ariful said that he was shot dead." "CEPZ erupts in violence, 4 killed", quoted.
- 70 Amnesty International, Bangladesh: *Investigate the killing and the violence during garment factory workers unrest*, quoted; "Four killed in RMG flare-up", The Daily Star, 13 December, 2010.
- 71 *Four killed in RMG flare-up*", The Daily Star, Dhaka, December 13, 2010; "3 killed in CEPZ violence", BD News, 12 December 2010, [www.bdnews24.com/details.php?id=181413&cid=2](http://www.bdnews24.com/details.php?id=181413&cid=2).
- 72 Amnesty International, *UK-trained security forces urged to stop extrajudicial executions in Bangladesh*, News, 28 January 2011. For previous reports on RAB activities see: Amnesty International, *The State of The World's Human Rights, 2010, Bangladesh*, p. 74 (on January to December 2009); Human rights Watch, Bangladesh: "Bring Paramilitary Unit Torturers to Justice." 23 October 2009; "Ignoring Executions and Torture", May 18, 2009; and Bangladesh, "Judge, Jury, and Executioner, Torture and Extrajudicial Killings by Bangladesh's Elite Security Force", December 2006 Volume 18, No. 16 (c).
- 73 Amnesty International, Bangladesh: *Investigate the killing and the violence during garment factory workers unrest*, quoted.
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- 97 Ibid p. 2. Direct deaths are "violent deaths" and indirect deaths are from non-violent causes (such as malnutrition, dysentery, or other easily preventable diseases) that resulted from the effects of war on populations.
- 98 Ibid. p. 5.
- 99 Ibid. p. 68. There are, however, no reliable estimates for the number of people who are injured (with either minor injuries or permanent disabilities), or who become victims of armed crimes such as robbery, carjacking, or armed assault.
- 100 Ibid. p. 5 noting "As much as 60 per cent of all homicides are committed with firearms—ranging from a high of 77 per cent in Central America to a low of 19 per cent in Western Europe." This is similar to a finding by Amnesty International, where detailed research on a structured sample of 10 countries found that 60% of all individual cases of human rights violations and abuses both within and outside of armed conflict documented by Amnesty International between 1991 and 2002, directly involved the use of small arms and light weapons. See, Killer Facts, Amnesty International, Index: ACT 30/005/2010, (May 2010), pg. 5.
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- 103 See, for example, the UN Department of Economic and Social Affairs, Commission on Sustainable Development, Governance/ Crime Indicators, Factsheet: Number of intentional homicides per 100,000 population. However, as noted in *Report of the Secretary-General: State of crime and criminal justice worldwide*, "Recent attention on the issue of armed violence and the growing importance of homicide as an indicator of such violence has resulted in increased efforts to improve statistics at the international, regional and national levels." Twelfth United Nations Congress on Crime Prevention and Criminal Justice, A/Conf.213/3 (Feb 2010), para. 18.
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- 139 This was clear in UN Member States submissions to the request for their views on the relationship between armed violence and development. See Report of the Secretary General: *Promoting development through the reduction and prevention of armed violence*, A/64/228 (5 August 2009), para. 41.
- 140 See, Bellis et al., *Preventing and Reducing Armed Violence: What Works? Background Paper for Oslo Conference on Armed Violence*, (April 2010), pg. 4 noting that “the effective use of legislation and regulation to reduce access to lethal means can reduce armed violence.”

- 141 See, for example, Report of the Secretary-General: Small arms, S/2008/258 (April 2008), paragraph 16. In discussing responses to armed violence both within the United Nations and outside, the UN Secretary General noted the international conventions and agreements targeting the availability of illicit small arms and light weapons including the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime as well as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Programme of Action). However, no mention is made of the arms trade treaty discussions underway for the past few years in the UN.
- 142 The UN Firearms Protocol defines a “firearm” as “any portable barrelled weapon that expels, in designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas.” Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime, Article 3, paragraph a.
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- 144 The ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials and the Best Practice Guidelines For the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons require transfers to be denied where they will “be used for or to facilitate the commission of violent or organised crime.” Other documents refer to “internal tensions”. For example, the EU Council Common Position, 008/944/CFSP, (2008) Article 2, paragraph 3 (Criterion Three) states, “Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts: Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.”
- 145 Report of the Secretary-General: State of crime and criminal justice worldwide, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, A/Conf.213/3 (Feb 2010), para. 18.
- 146 This is because the term “crime” describes many different forms of illegal behaviour. Further, laws in different countries prohibit a vast range of different actions that would then be considered “crime”. Report of the Secretary-General: State of crime and criminal justice worldwide, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, A/Conf.213/3 (Feb 2010), para. 7.
- 147 A recent United States Government Accountability Office (GAO) report provides some perspective on the scope of the licensing effort in a number of countries. For example in 2008, France approved 14,576 licenses with between 63 – 68 licensing officers. Germany approved 28,652 export licenses by 70 licensing officers. The United States approved 86,247 licenses with 108 license officers. Therefore the practicalities of the licensing decision making process need to be borne in mind. GAO-10-557, Export Controls: Observations on Selected Countries’ Systems and Proposed Treaties (May 2010).
- 148 ICRC interprets this as serious acts of violence that are carried out by ‘more or less organized groups’ and that ‘call upon extensive police forces, or even armed forces, to restore internal order’. See, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff Publishers, Geneva/ Dordrecht, 1987, Protocol II, paragraphs 4475–4477.
- 149 See, Gilgen, Krause and Muggah, *Measuring and Monitoring Armed Violence: Goals, Targets and Indicators*, Background Paper, Oslo Conference on Armed Violence (April 2010), pg. 12.
- 150 Report of the Secretary General: *Promoting development through the reduction and prevention of armed violence*, A/64/228 (5 August 2009), para.24.
- 151 This is a requirement under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Article 19 which states, “Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.”
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- 153 Report of the Panel of Governmental Experts on Small Arms, A/52/298, (27 August 1997), para. 37.
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- 156 Report of the Secretary General: *Promoting development through the reduction and prevention of armed violence*, A/64/228 (5 August 2009), paragraph 3.



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