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Jost Delbruck

Indiana University Maurer School of Law

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International Traffic in Arms —
Legal and Political Aspects of a Long Neglected
Problem of Arms Control and Disarmament*

Jost Delbrück

During a Conference on Peace and International Law in 1968 at Heidelberg the late Ulrich Scheuner observed that if one wanted to discuss the future of arms control and disarmament intelligently it was essential not to leave aside the problem of controlling international traffic in arms. While anyone familiar with the complex problems of achieving progress in the field of arms control and disarmament has to agree with this observation, so much it has to be recognised that — in marked contrast to the inter-war period — international efforts towards halting the increasing arms race after World War II have largely neglected the question of controlling international transfers of armaments. Except for a few initiatives taken in the United Nations the control or even prohibition of armaments transfers has not been introduced into the agenda of international conferences and committees engaged in the discussion of arms control and disarmament proposals. And it was also not until the early 1970ies that the scientific community concerned itself in depth with this difficult problem. Yet even a superficial look at the dimensions

* Parts of this paper, particularly part II, are indebted to the thorough findings of a study by Hans G. Kausch, entitled "Internationale Rüstungstransfers". This study was written as part of a research project on arms control efforts of the international society of states by legal means through the last six centuries, carried out at the Institute of International Law of Kiel University, to be published shortly.

1 Ulrich Scheuner then participated in the discussion of an interdisciplinary working group formed of philosophers, theologians, political scientists and lawyers at the Research Institute of the Evangelische Studiengemeinschaft at Heidelberg which later published a comprehensive reader under the title of "Frieden und Völkerrecht" (Peace and International Law), edited by Georg Picht and Constanze Eisenbart, Stuttgart 1971.

2 See infra, 120 et seq., 136.

3 See infra, at 139.

international traffic in arms has taken on — and the world-wide militarisation effected by it — underlines the vital interest the international community has in developing at least some means of controlling the transnational flow of arms. Since only a limited number of states today are in a position to manufacture arms — especially heavy weaponry and any kind of sophisticated war machinery — it is through the international traffic in arms that weapons demands in wide parts of the world are being met. Thus, especially Third World countries become increasingly militarised and drawn into the ongoing arms race of the leading military powers, and international traffic in arms more often than not aggravates the difficult task of international peace-keeping. In supplying arms to countries which did not dispose of any major war potential, arms traffic is counterproductive to the achievement of arms control and disarmament — not to speak of the adverse effects which largescale armaments purchases by the less developed countries have on their economies\(^5\). Although it is clear that achieving international consensus on controls of traffic in arms is essentially a political problem, the development of effective legal means for the enforcement of such controls also is of high importance. The present paper, therefore, addresses itself to a review of the legal instruments which so far have been discussed or in some instances also have been applied to the control of arms sales. The adequacy of such legal controls or their political viability can, however, be grasped only if they are considered against the background of the historical development of international traffic in arms and its economic and political dimensions today.

I. The development of international transfers of armaments — the economic and political dimensions

Since the transfer of armaments across national boundaries can be implemented in various ways and, indeed, has been carried out in a very different manner over the past hundred years period, it is necessary to spell out the notion of traffic in arms (or of the transfer of armaments) as it has developed historically in order to get a more precise idea of what are the nature and characteristics of this phenomenon.

1. The notion of international traffic in arms in historic perspective

a) Arms trade as a private enterprise

International traffic in arms presupposes the existence of weapons surpluses, i.e. the possibility of manufacturing more weapons than are needed in a particular state, so that the weapons produced in excess of the national needs may then be introduced into a wider transnational market. Thus an international arms trade did not develop into a relevant factor in international relations before a major war (or weapons) industry had developed. Such industries were, in fact, established in the highly industrialised countries of Europe — such as France, Germany and Great Britain — in the second half of the 19th century. They were privately owned enterprises as all industrial enterprises were at the time —, and it was only natural that the sale of arms outside the homestate of a given enterprise was a private business. Arms sales in the pre-World War I period mostly were initiated and put through by sales agents — the “merchants of death” as they were referred to — often dealing at the same time with governments being hostile to each other, and thus inducing both sides to ever more arms purchases. Another area where arms sales ran high was the trading of arms to the native peoples in colonial territories — a trade which in Africa also was closely related to the slave trade.

Thus it is fair to state that the roots of international arms trade go back to private enterprises predominantly occupied with the economic dimensions of arms trade, i.e. making it a profitable business. Political considerations with regard to international arms trade were of secondary importance unless sales were directly backed up by governments in a particular instance.

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7 See Engelbrecht / Hanighen (note 6), 22 et seq. and 70 et seq., telling the story of such large enterprises as Du Pont (USA) and Krupp (Germany) and their involvement in the arms industry.

8 The title of the book by Engelbrecht / Hanighen (note 6) reflects a widespread public attitude toward the private arms industry.

9 See H. C. Engelbrecht, One Hell of Business, New York 1934, carrying an illustrative chapter on “How arms are sold”; relevant evidence to these practices was collected during extensive hearings in the United States Senate Munitions Inquiry in 1934—36, see John E. Wiltz, In Search of Peace, The Senate Munitions Inquiry, 1934—36, Louisiana State University Press 1963, 48 et seq.; Philip Noel-Baker, The Private Manufacture of Armaments, London 1936, with a particularly relevant part on “Private manufacture as a factor in the historical process from which war results”, 393 et seq.
b) Early government involvement in arms trade

A number of political and technological factors, however, led to the gradual involvement of governments in international traffic in arms. Although the private arms trade remained the number one object of public concern in the interwar period, a considerable amount of weapons were exported from the arms producing countries either by private but government controlled enterprises or by the governments themselves. The data collected on transfers of armaments in the interwar period show Great Britain and France as the leading arms exporting countries followed by the United States, Sweden, Spain and Czechoslovakia. The reasons for this shift from privately conducted arms sales to government controlled or initiated sales are to be found mainly in the fact that the arms industry — in view of the rapid technological development of weaponry and the high production costs — had become of such vital importance to national security that a great number of governments felt compelled to either tightly control or even nationalise the production of arms in order to ensure that national military needs could be met at any time regardless of whether the production was geared to be profitable or not. One way to make it profitable, however, was to engage in international arms trade, thereby providing for a wider market which would allow for a more profitable mass production which in turn could cut research and development costs.

Another reason which led to more direct government involvement in international arms trade was that it was recognised as an efficient tool for wielding political influence, one of the major attractions international traffic in arms still offers today.

Thus, at the end of the interwar period international traffic in arms had mainly become an interstate business rather than a private enterprise. The role of the privately organised arms industry was more or less changed from that

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10 The numerous books and pamphlets published in the twenties and thirties of this century are a vivid expression of this widespread attitude; in addition to the works named in notes 6—9 see J. E. Matthews, Traffic in Death, New York 1934; Philip Noel-Baker, Hawkers of Death. The private manufacture and trade in arms, London 1934; id., Suppressing the private manufacture of arms — The objections answered, London 1934; Freda White, Traffic in Arms, 4th edition, London 1934.

11 Stanley / Pearton (note 4), 5.

12 See for example the figures for 1922—1926 published by the League of Nations in the Statistical Yearbook on Trade in Arms and Ammunitions 1928, 150 et seq. and for the years 1929—1934 in the Statistical Yearbook 1935, 195 et seq.

13 Such considerations have become even more relevant in the post-World War II period, see for instance Stanley / Pearton (note 4), 122 et seq.; for a fuller discussion see SIPRI-Yearbook 1981, 17 et seq.

14 See infra, 125 et seq.
of an independent actor on the weapons market to that of an instrument of
government arms sales policies, albeit one retaining significant independent
power.

c) Modern characteristics of international traffic in arms

Although arms sales by private enterprises and/or through private sales
agents have not disappeared from the international scene altogether, inter-
national traffic in arms after World War II has become almost exclusively
dominated by government initiated or controlled transactions — these being
motivated by foreign policy and national security as well as national economic
considerations. The arms sold are drawn from national weapons stockpiles
(which have been superseded by new generations of weapons) or from surplus
productions which are created in order to cut down the research and develop-
ment costs of a weapons system by selling more of it than the national need
would allow for. Thus traffic in arms today not only provides countries
without a weapons industry of their own with light and heavy weaponry of
the traditional kind like guns and artillery, but also — and increasingly so —
with highly sophisticated weapons systems such as supersonic jet fighters and
precision guided missiles (or weapons). The latter seem to provide an especially
strong incentive for arms purchases by Third World countries for reasons of
alleged high cost-effectiveness.

International transfer of armaments today is, however, not limited to the
sale of arms. A considerable amount of the weapons shipped abroad by the
leading arms producing countries — such as the United States, the Soviet
Union and smaller powers like Great Britain, France, the Federal Republic of
Germany, Italy, and Czechoslovakia — are being given to the recipient states
on the basis of military aid agreements. These do not provide for the purchase
of the weapons by the recipient states. Rather the recipient state is expected
to pay in “political coin”, i.e. to cooperate politically with the donor state in
return for the supply of arms.

15 As Stanley / Pearton (note 4), 65, put it pointedly: “arms have their selling points”.
16 See for more details SIPRI-Yearbook 1981, 110 et seq.; James L. Foster, New Conven-
tional Weapons Technologies: Implications for the Third World, in: Ra’anan / Pfaltzgraff /
Kemp (note 4), 65 et seq.
17 Foster (note 16), 66 et seq.
18 A fairly reliable rank order of arms exporting countries is given in: SIPRI-Yearbook
1981, 110 et seq.
19 On the subject of military aid see for more detail Philip J. Farley / Stephen S. Kaplan /
William H. Lewis, Arms Across the Sea, Washington 1978, 19 et seq.; Haftendorn (note 4),
passim; furthermore SIPRI, The Arms Trade with the Third World (note 4), giving details
up to 1970 for the military aid or assistance programs of the US, UK, France, Italy, Canada,
the Federal Republic of Germany, and Sweden.
Another new feature in the arms trade scene is the conclusion of licensing agreements providing for the transfer of technical know-how and blue prints of weapons systems to countries which are building up an arms manufacturing industry of their own but which do not yet possess the technical know-how necessary, especially with regard to producing more sophisticated weapons. Such licence agreements are mostly concluded between highly industrialised countries (particularly the United States) and such Third World countries which, due to rich natural resources such as oil, are financially well off and can afford to build up their own arms industry. A considerable number of licence agreements have also been concluded between members of the large military alliances (NATO/Warsaw Treaty Organisation), largely for the standardisation of military equipment of the allied forces.

In summarising the preceding review of the development of the different ways in which arms are exported from arms manufacturing to non-producing countries, the modern notion of international traffic in arms may best be described by the term "international transfer of armaments" which so far has been used here interchangeably with other terms such as "arms trade" or "traffic in arms" but which actually is more comprehensive than these, for it also covers the shipment of arms from the producer states to others on a basis other than that of a purchasing contract. International transfer of armaments is to be understood, then, as the sale or purchase of weapons between states or states and private enterprises as well as the transfer of weapons by a donor state to a recipient state on the basis of military aid agreements. The term "transfer of armaments" also covers the transfer of military technology and technical know-how by way of licensing agreements.

2. Economic dimensions of international transfers of armaments

a) The pre-World War I period

The then prevailing doctrine of economic laissez faire left private transfers of armaments almost completely unfettered by government control in the time up to the outbreak of World War I. Thus in view of the lack of relevant statistical data it is hard to assess the actual scope of armaments transfers at that time in terms of its monetary value or numbers. Since, however, national...
armaments in the leading countries of Europe were mostly increased during the arms race between 1880 and 1914\textsuperscript{22}, and since at the same time states not manufacturing weapons themselves participated in the arms race — at least to some extent — by heavily purchasing weapons\textsuperscript{23} and, furthermore, large amounts of military materials were dumped into the African market\textsuperscript{24}, the economic value of arms transfers and of the resulting profits may be fairly assumed to have been considerable. An indication of what economic dimensions were involved in the transfer of armaments in this early period, is given by the figures reported in particular instances of arms transfers by individual agents such as the notorious Sir Basil Zaharoff\textsuperscript{25} who is supposed to have earned a fortune from his arms business and whose power and influence on the major governments of his time was impressive, even if contemporary assessments of his role may have been exaggerated\textsuperscript{26}. However big the actual economic volume of international transfers of armaments may have been, it is definitely clear that transfers of armaments were predominantly motivated by economic interests of privately owned enterprises, but also, of course, supported and backed up by political interests of the purchasing governments as well as the governments of the arms exporting countries\textsuperscript{27}.

b) The inter-war period

After World War I up to 1930 the picture remained more or less unchanged; private arms manufacturing and transfers of armaments were still not subject to effective control either international or national. The public remained preoccupied with the aspect of private profiteering from arms manufacturing and sales across national frontiers\textsuperscript{28}.

From the data collected on international transfers of armaments by the League of Nations the economic importance of these transfers can be well

\textsuperscript{22} Noel-Baker (note 9), 393 et seq. with illustrative statistical tables.

\textsuperscript{23} Thus, for instance, Turkey acquired considerable amounts of weapons prior to World War I from French and German firms, see Engelbrecht / Hanighen (note 6), 91, 138/139.

\textsuperscript{24} The Congo Act of 1890 was, \textit{inter alia}, motivated by the influx of arms to Africa which was felt to be detrimental to the imperial interests of the Colonial powers as well as to the African peoples themselves; as to the Congo Act see \textit{infra}, at 132.

\textsuperscript{25} See the chapter on Zaharoff in: Engelbrecht / Hanighen (note 6), 95 et seq.; furthermore Engelbrecht (note 9), 54 et seq.

\textsuperscript{26} The major part of the literature dealing with this problem is strongly committed to the case of controlling private arms trade and thus gives very pointed descriptions of the dimensions of the private arms business, see references in notes 6 and 10.

\textsuperscript{27} The support of governments sometimes had to be triggered off by paying "royalties" or bribes to negotiating officials, see Engelbrecht (note 9), 9 et seq.

\textsuperscript{28} For an example of contemporary critique see Noel-Baker (note 9), 449 et seq. on the so-called Mulliner Affair; furthermore, Engelbrecht (note 9), passim; an able argument in favour of the total abolition of private arms manufacturing was made by Noel-Baker in: Hawkers of Death (note 10).
assessed. In the decade between 1925 and 1935 exports of arms and ammunitions alone reached a volume of ranging from 37.8 million gold dollars in the depression year of 1932 to the peak sum of 64.9 million gold dollars in 1929. The volume of arms exports in the other years ran on an average sum of nearly 47 million gold dollars. The 1929 peak volume of international arms exports compared impressively with the 33.021 million gold dollar volume of exports in general in the same year.

The great economic importance of the arms trade may also be seen from the comparison of the development of general exports and exports of arms during and after the Great Depression in the early 1930ies. Both categories of exports show a marked decrease from the high marks of 1929 to those of 1930—1932. But while general exports continued to drop considerably thereafter, the volume of arms exports had already started to increase in 1933 and did so even more in 1934. Besides the fact that this development of the arms trade in the early 1930ies was a clear reflection of the increasing political tensions among nations, it also is indicative of the great economic importance of arms to the national economies in terms of providing employment opportunities on the one hand and chances for a continued vigorous foreign trade on the other hand, despite an otherwise ailing economy. In view of these economic aspects of transfers of armaments, and particularly in view of the apparent economic interests of governments themselves in the trade, one may not be surprised that disarmament negotiations including the international control or even prohibition of such transfers did not succeed in the early 1930ies or later. The public and some political quarters, however, were still prepared to put all the blame for such failure on the private arms manufacturing enterprises.

c) Transfers of armaments after World War II

After World War II the question of private profits gained from arms trades has not drawn much attention. In fact, international transfers of armaments were not a matter of international public, i.e. governmental and nongovernmental, concern until the mid-1960ies, although the economic dimensions of international arms trade have not diminished since 1945, but rather have in-

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29 See the figures given in: League of Nations, Statistical Yearbook of the Trade in Arms and Ammunition 1935, 194.
30 Ibid.
31 Ibid.
32 Thus Noel-Baker (note 9) devotes two chapters (V and IX) on the obstructive effect of private arms manufacturing and trade on Disarmament; there is no mention, however, of the direct government involvement in the transfers of armaments at the time the book was written!
creased vigorously\textsuperscript{33}. Weapons have been exported heavily from the leading powers of the newly created power blocs in the East and in the West, especially following the Korean War. But transfers of armaments have gathered momentum even more after the gaining of independence by the former colonial territories forming the so-called Third World. These weapons — supplied almost exclusively by the major industrialised countries — have been used in the some 130 odd armed conflicts or wars fought since 1945, almost exclusively in Third World areas\textsuperscript{34}.

Between 1945 and 1960 arms transfers were mainly effected within the framework of military aid agreements, however from 1960 onwards the sale of arms — conventional but often highly sophisticated in kind — became the predominant trend. As was pointed out by the survey on international transfers of armaments carried out by the Swedish International Peace Research Institute this switch from military aid to arms sales was clearly motivated by economic considerations\textsuperscript{35}. This development is very distinctly exemplified by the relevant statistical data with regard to the United States Military Assistance Program and Foreign Military Sales in the 1950ies and 1970ies. While military assistance amounted to 25.701 million US dollars during 1949—61, weapons sales reached the sum of 161 million US dollars only. In the 1970ies, however, arms sales were 2.3 times higher than the cost of military assistance\textsuperscript{36}. The major share of arms purchases in the 1970ies was held by the Third World countries who accounted for 75 per cent of the international arms transfers, the Middle East region alone holding a 48 per cent share\textsuperscript{37}. The value of imports of major weapons by the Third World was about ten times higher in 1980 than in 1961, ranging from 1.251 million US dollars in 1961 to a peak sum of 12.165 million US dollars in 1978 with a decrease to almost 9.000 million US dollars in 1980\textsuperscript{38}. The list of arms supplying countries is led by the United States and the Soviet Union, followed — in the order of the 20 largest major-weapon exporting countries of the world\textsuperscript{39} — by France, Italy, Great Britain, Federal Republic of Germany, Norway, Netherlands, Brazil, Israel, Australia, Peoples Republic of China, Sweden, Switzerland, Canada, South Africa, Finland, Czechoslovakia, and Libya.

\textsuperscript{33} See, for example, the comparative figures for 1961—1980 in: SIPRI-Yearbook 1981, XX et seq.
\textsuperscript{34} SIPRI-Yearbook 1981, XX, 105.
\textsuperscript{35} SIPRI-Yearbook 1981, 106.
\textsuperscript{36} Ibid.
\textsuperscript{37} SIPRI-Yearbook 1981, 110/111.
\textsuperscript{38} SIPRI-Yearbook 1981, 184/185 (Table 7. 1).
\textsuperscript{39} SIPRI-Yearbook 1981, 188 (Table 7. 3).
From the foregoing data and observations on the arms trading scene after World War II it can easily be understood how far-reaching the economic interests vested in the international transfer of armaments are. These interests are today primarily those of the governments of the arms exporting countries and not of particular private arms manufacturing enterprises. For it is the overall economic effect of arms trade upon the exporting countries — provision of employment opportunities, acquisition of foreign currency assets which are badly needed in many industrialised countries for purchasing raw materials such as oil, and last but certainly not least in the provision of larger production runs, lower unit costs and increased markets — which primarily determines the extent and direction of the government controlled and/or effected transfers of armaments rather than the interests of private enterprises profiting from arms sales.

International regulations or even cut-backs and prohibitions of arms sales, then, in fact would be acts of self-regulation by the governments involved, not the regulation of a trade carried out by enterprises separate from the states or governments. The difficulties ensuing therefrom with regard to international negotiations for effective legal controls of the international transfer of armaments are clear.

On the other side, it must not be forgotten that the heavy import of arms by the less developed countries definitely has very harmful effects on their economies. The spending of billions of dollars on armaments is ruinous to development tasks, thus — according to their own rhetoric — providing for a strong incentive, on the part of the Third World countries, to bring about a halt to these detrimental transactions together — and, it must be together — with effective arms control and disarmament measures on the part of the industrialised countries.

3. The political dimensions of international transfers of armaments

If the economic impact on government decisions on arms trade was the only significant factor, the prospects for an early success in negotiating legal controls for the international transfer of armaments would be dim enough. But in addition there are strong political incentives for governments — at least as they understand their interests from a short and medium range point of view — to engage in transfers of armaments, such as establishing or maintaining a balance of power status in a certain region of the world, or establishing a firm hegemony/dependence relationship with particular states. On the other hand, there are also some disincentives to continued arms trade as, e.g. increasing

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40 SIPRI, The Arms Trade with the Third World (note 4), 28 et seq.
41 See infra, at 128.
political instability in some regions or states which in turn may imply the
danger of having exported weapons turned against oneself. Thus — in order
to complete the picture — it is necessary to outline the political dimensions of
international transfers of armaments including military and strategic aspects.

a) Transfers of armaments and security —
balance of power and stability considerations

Already during the inter-war period, especially during the 1930ies, it had
become generally recognised that the transfer of armaments and national as
well as international security were closely interrelated. Since, therefore, the
arms trade had become part und parcel of national security policies, it is not
surprising that the tool of directing arms sales to particular countries or
regions in the world developed into a major factor in international relations
after World War II. In the process of reconstructing the international system
after this war under the auspices of bipolarism, the transfer of armaments by
the leading superpowers to their allies with the aim of strengthening the newly
established alliances, played an important role. But also regions not drawn
directly into the bipolar power structure were the target of transfers of arma-
ments in order to maintain or establish a power equilibrium. Arms transfers
to the Near East are a case in point. Thus, for instance, the United States
exported arms to Israel for the purpose of making up for arms exports by the
Soviet Union to other Near East countries. But the US would also transfer
arms to a Near East country other than Israel in a preemptive transaction, in
order to prevent the respective country from acquiring such weapons from the
Soviet Union and thereby establishing closer ties with the Communist World.

However, balance of power considerations were and are not the sole politi-
cal motive for transfers of armaments. These were (and are still today) also
carried out with a view to furthering political stability in a certain region, for
instance, by backing a dominant regional power in the performance of its
stabilising role. This would often also include political and military support
of such power in its internal affairs.

42 As one example in point see Howard S. Eldridge, Nonsuperpower Sea Denial Capability: The Implications for Superpower Navies Engaged in Presence Operations, in: Ra’an/ Pfaltzgraff / Kemp (note 4), 21 et seq.

43 For a more detailed discussion of the motives and ways transfers of armaments were
effected after World War II, especially vis-à-vis the Third World, see SIPRI, The Arms
Trade with the Third World (note 4), 17 et seq.

44 On the arms supply policies of the Super Powers toward Egypt see Stanley / Pearson (note 4), 194 et seq.; also Farley / Kaplan / Lewis (note 19), 86/87.

45 The US support of Iran prior to the collapse of the Shah-regime is a case in point; see
the case study by Sharam Chubin on Iran’s role in the Middle East as then conceived of, in:
Ra’an/ Pfaltzgraff / Kemp (note 4), 257 et seq. and William B. Quandt, Influence through
Arms Supplies: the US Experience in the Middle East, ibid., 121 et seq.
While the more traditional idea of maintaining or establishing a power equilibrium in a particular region also by the transfer of armaments may be regarded as having lost some of its momentum, the search for political and military stability has gained ground in the new geostrategic rearrangement of the international system, i.e. the change towards a multipolar system including the Third World countries in the international power structure. Political transactions in this respect come close to the second set of political considerations underlying transfers of armaments, viz. the hegemony/dependence dyad which means the preservation or establishing of political influence, inter alia, by the supply of armaments by the leading powers especially to countries of the Third World.

b) Transfers of armaments and political influence — the hegemony/dependence dyad

Efforts of governments to gain political influence over the conduct of other countries’ foreign policy also by way of supplying arms has been a well known phenomenon even before World War II. With the development of ever more highly sophisticated weapons systems this tool of wielding influence over other states not disposing of such weapons has been applied in a more and more effective manner, however.

The first major area of international relations where transfers of armaments have played a prominent role in establishing a hegemony/dependence relationship is that of the formation of modern alliances within the wider framework of super-power bipolarism. Alliances in modern times have changed from the traditional concept of a relatively informal political-military relationship between essentially equal partners to highly institutionalised structures under the leadership of the superpowers. These powers’ hegemonic role has also been underpinned by transfers of armaments from them to the junior partners in the alliance: These intra-alliance arms transfers served not only the purpose of strengthening the alliance militarily, inter alia, by achieving a more or less high degree of arms standardisation, but also to make the junior partners’ dependence on weapons supplies from the leading power a factor in holding them in line with the political views of the hegemonic power. The intra-alliance situation of the Warsaw Pact Organisation fitted this description fairly closely until recently, but US-dominated alliances also showed similar

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46 Ra'anan / Pfaltzgraff / Kemp (note 4), 405, 407, speak of the “new international system” and of a “new geostrategic map”.
47 See SIPRI-Yearbook 1981, 105 et seq.
48 On the hegemony/dependence dyad see SIPRI, The Arms Trade with the Third World (note 4), 19 et seq.; Ra'anan / Pfaltzgraff / Kemp (note 4), 408.
traits in the first two post-war decades. However, as the weapons industry was
rebuilt after World War II, the Western European partners of the United
States in the Atlantic Alliance were increasingly less willing to accept the
hegemony/dependence structure and it lost importance\(^49\). Nowadays, however,
the hegemony/dependence dyad is quite characteristic of the relationship
between the leading arms exporting countries and Third World states of particu-
lar regions such as South East Asia, the Far East as well as parts of Africa
and the Middle East. The arms transfer policies pursued by the Soviet Union
and later by the United States towards Egypt\(^50\) and by France towards French
speaking Africa\(^51\) are striking examples in point. Thus in trying to establish
a lasting, reliable relationship with Egypt, the Soviet Union supplied large
quantities of arms to the Egyptian Army which until the dramatic switch of
political position by President Anwar al Sadat became fully dependent on
Soviet arms supplies, military advisers, and technical assistance. Such depen-
dence becomes the more stringent the more sophisticated weapons systems are
transferred — a phenomenon which is also to be observed in all other instances
of transfers of armaments from industrialised to Third World countries\(^52\).

It must be noted, however, that the hegemony/dependence dyad is losing
ground in certain situations, especially where Western European countries are
transferring arms to Third World countries which produce important raw
materials like oil. In these instances — though they are still characterised by
the attempt of the arms exporting countries to establish and maintain political
influence by arms sales — the hegemony/dependence dyad has given way to
some kind of interdependence. The Third World countries try to maintain a
steady flow of arms supplies accompanied with technical assistance, while the
arms exporting countries endeavour to secure the continuing supply of raw
materials from their Third World counterparts in return\(^53\). Although it could
be argued that in this way more symmetry is introduced into the econo-
mic relationships between industrialised and some less developed countries,
It must be recognised that the heavy investment in weaponry by the Third

\(^49\) A very immediate result of this development was the increasing difficulty for the US
to induce the Federal Republic of Germany to make arms purchases which would be large
enough to bring about a balance of payment between the US and Germany with regard to
the costs incurred by the US in maintaining a large force in Germany, see Robert L. Pfaltz-
graff Jr., Resource Constraints and Arms Traffic, in: Ra’anan / Pfaltzgraff / Kemp (note 4),
162/163; SIPRI-Yearbook 1981, 106; Stanley / Pearton (note 4), 78 et seq.

\(^50\) See references note 47 supra.

\(^51\) See SIPRI-Yearbook 1981, 192 and tables ibid., 216 et seq.

\(^52\) The possible constraints on arms purchases by Third World countries implied in this
dependence are discussed in detail by Foster (note 16), 73 et seq.

\(^53\) As to the attitudes of France, the Federal Republic of Germany and Italy see SIPRI-
Yearbook 1981, 190 et seq.
World countries is economically wasteful from a long range point of view, and that the nationally oriented import and export policies of some of the Western European countries are not only detrimental to intra-alliance relations in the Atlantic community but also may prove to be harmful to their own interests as far as the military sector is concerned: the highly sophisticated weaponry — such as precision guided weapons — may well be turned against the industrialised countries, taking into account the often precarious political stability — or instability for that matter — in the regions concerned.\(^5\)

c) International transfers of armaments and worldwide militarisation — increasing political instability and adverse effects on international efforts towards Arms Control and Disarmament

As was indicated in the preceding paragraph there are not only strong political incentives for engaging in international transfer of armaments but also some disincentives as it is the case with regard to the economic aspects of arm transfers described above.\(^5\) Thus, while it was considered to be conducive to the political (and military) stability of certain regions to transfer armaments to one or all of the states of a particular region, this proposition does not hold true everywhere and certainly not over an indefinite period of time. Since the governments of arms receiving countries of the Third World — due to often rapidly changing socio-political conditions — are unstable themselves, projections by arms exporting countries for safeguarding stability by arms transfers often prove untenable.\(^5\) Surprise overthrows of Third World governments tend to destabilise intra-regional relations as well as relations with industrialised arms exporting countries. Internal strife in a Third World country thus more often than not leads to armed conflicts, also involving extra-regional powers, including the arms exporting countries themselves. Not only could these then encounter military attacks carried out with the very weapons they supplied to the region, but it also may turn out that from a long range point of view the transfers of armaments did not bring about the political stability aimed at by the exporting countries.

Furthermore, since the arms exported tend to be ever more sophisticated, it would be particularly undesirable if these weapons would fall into the hands of politically opposed countries which in the course of regional upheaval may gain political influence and control in the particular area or country. Thus it was feared in the United States that the military equipment and weaponry supplied to Iran in the course of the long political and military cooperation

\(^5\) Ra'anan / Pfaltzgraff / Kemp (note 4), 402 et seq.
\(^5\) 122 et seq., supra.
\(^5\) The rather sudden collapse of the Shah-regime in Iran is a recent case in point.
between the two states could fall into the hands of the Soviet Union. For the same reasons, there is strong opposition to the sale by the United States of one of the most sophisticated weapons system — the AWACS planes — to Saudi Arabia for fear of a possible political turn of that countries' government towards the Soviet Union which then very likely could have access to that weapons system\(^7\). Therefore, considering these possible adverse effects of indiscriminate largescale arms sales, it may well be concluded that the envisaged political advantage of transfers of armaments is much less real than it is often believed to be.

From a long range point of view the most disadvantageous effect of an unlimited, uncontrolled international transfer of armaments is that on the efforts for Arms Control and Disarmament\(^8\). The worldwide militarisation definitely adds to the difficulties encountered already in negotiating for Arms Control and Disarmament agreements. But it also must be recognised that there is no chance of restraining international arms trade unless the industrialised countries — foremost the United States and the Soviet Union — agree on some meaningful measures to stop the international arms race.

A realistic evaluation of the general political mood especially of Third World countries, which despite intensive purchases of arms are still to be considered as the military “have nots” as compared with the industrialised countries, must lead to the conclusion that there will be no repetition of the acceptance of the Non-Proliferation Treaty formula by which non-nuclear countries accepted to be permanently “second” in terms of nuclear military power\(^9\). The military “have nots” today will definitely insist on equal treatment of all nations. Thus unless the big powers agree to diminish their military strength, the other nations will not agree to the prohibition of international transfers of armaments on which their national security (as it is still conceived of) depends\(^6\). The question then arises as to what legal controls have been and could be brought to bear on international transfers of armaments and what the political pre-conditions and prospects for agreements are.


\(^{58}\) The figures given, for instance, by SIPRI on the transfers of major conventional weapons in 1980 alone are indicative of the quantitative and qualitative process of arming Third World countries, let alone the military build-up in the industrialised countries. That this process is highly counterproductive to achieve even limited goals in the field of arms control is self-evident; see figures in: SIPRI-Yearbook 1981, 186/187.

\(^{59}\) See the summary of the international debate on Art. VI of the NPT — obliging the Nuclear Super Powers to reach agreement on nuclear disarmament and arms control measures — in: SIPRI-Yearbook 1981, 324 et seq.

\(^{60}\) This attitude was clearly reflected in the Final Act of the 10th General Assembly Special Session on Disarmament, see paras. 22 and 85 of the Final Act, text in: UN Monthly Chronicle, Vol. 15 (1978), no. 7, annex, 3, 7.
II. The control of international transfers of armaments by legal means

While international transfers of armaments as described in the foregoing considerations may appear to be literally unrestrained by law, such conclusion would be misleading. On the contrary, seen in a historic perspective, a number of legal controls over international transfers of armaments have developed. Many of these, however, have been forgotten in the decades. Yet they may be of value in devising new legal means to restrain transfers of armaments. The existing means of legal control of the arms trade — or the means proposed at one time or another — therefore, shall be examined here with regard to their effectiveness and political feasibility.

1. Legal restraints on transfers of armaments in general international law

No general rule of customary international law expressly prohibiting or restraining the transfer of armaments has been developed as of now. Nor is there any conventional rule of international law to that effect. There are, however, two principles of general international law — both also being accepted by treaty law by a large majority of states —, which have or may have a bearing on the subject of international transfers of armaments. These principles are the principle of neutrality and that of the prohibition of the use of force in international relations.

a) Transfers of armaments and the law of neutrality

As transfers of armaments may be effected either by private enterprises without government involvement or by governments themselves as well as through government controlled enterprises or agencies, the possible impact of the law of neutrality on these different types of transactions must be examined separately. For the law of neutrality as a principle of international law certainly does not apply to private enterprises and governments alike — if at all. As regards the private arms trade which constituted the major bulk of international arms transfers for a long time, the law of neutrality itself did not and does not provide for any direct restrictions or prohibitions of such transactions. The sale of arms across national boundaries was considered as just another type of export business, not to be interfered with by governments. Indirectly, however, private arms sales could be affected in times of war, as private shipments of arms were subject to the law of contraband, i.e. that

61 See supra, at 116.
62 Stanley / Pearton (note 4), 5.
63 As to the notion of contraband in international law see Ulrich Scheuwer, Kontrabanderecht, in: Karl Strupp / Hans J. Schlochauer (eds.), Wörterbuch des Völkerrechts, Vol. II, Berlin 1961, 290 et seq. with further references; Yakemtchouk (note 4), 30 et seq.
they could lawfully be seized by the belligerents. State practice and the law governing it were very lucidly summarised by US President Pierce during the Crimean War in 1854 when he stated: "During the progress of the present war in Europe, our citizens have without national responsibility . . . sold powder and arms to all buyers regardless of the destination of those articles. The Laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles contraband of war or to take munitions of war or soldiers on board of their private ships for transportations; and, although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality". State practice of European countries such as Prussia, Great Britain or Belgium conformed to the standards elaborated in the foregoing statement in the course of the Franco-German War of 1871 and other 19th century military encounters. On the other hand, states were and are free to impose national restrictions on private arms sales in protecting their state of neutrality especially in cases where the geographic position of the neutral state suggested such course of action.

As regards arms transfers effected by governments themselves or by government controlled enterprises or agencies the law of neutrality forbids any kind of military support to a belligerent power, thus forbidding the shipment of arms to such power. These rules of general international law also have become embodied in the Hague Conventions of 1907 and thus have met with rather widespread acceptance.

While theoretically a fairly strict legal regime seems to have been established governing the transfer of armaments in times of war by the law of neutrality (and of contraband), in practice it has incurred serious setbacks. For it proved to be very difficult to draw any clear distinctions as to whether a particular article shipped abroad constituted contraband or not. And the existing legal regime also had many loopholes which lessened its efficacy as did the indifference of many governments to the private sale of arms. Such sales, in turn,

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65 See Yakeminchouk (note 4), 30 et seq.; Garner (note 64), 751 et seq.
66 Yakeminchouk (note 4), 34.
68 For a summary discussion of the different types of articles of contraband see Scheuener (note 63), 290/291.
apparently proved to be profitable despite occasional losses due to contraband seizures⁶⁹. Finally it has to be noted that in a world tending to be divided up into power blocs and highly integrated alliances, the status of neutrality becomes an ever more precarious one, thus again weakening the possible beneficial effects the law of neutrality could have on the efforts to restrain or prohibit the international transfer of armaments.

b) Transfers of armaments and the prohibition of the use of force

The other major principle of international law which might be relevant to the restraint or prohibition of international transfers of armaments is that of the prohibition of the use of force. From the world-wide acceptance of the prohibition of the use of force in international relations — at least in principle — one could well be inclined to infer that the spread of armaments as the prerequisites of the use of force must be prohibited by the same token. Such inference, however, would overlook the fact that present-day international law — though prohibiting the use of force — still does provide for the lawful application of military force in cases of self-defense and also within the framework of collective security systems such as the United Nations⁷⁰. Such lawful use of force presupposes the existence of national armed forces, thus implicitly accepting the possession and — as a matter of course — the acquisition of the necessary military equipment. It, therefore, cannot be soundly argued that international transfers of armaments are implicitly made illegal by the general prohibition of the use of force.

2. Efforts to directly regulate and control international transfers of armament by treaty

While state practice over the last one hundred years has shown little interest in generally outlawing the international transfers of armaments because of the economic, military and political interests involved, there have been efforts to regulate by treaty the sale of arms across national frontiers in particular instances or regions and also within the universal framework of international organisations — a subject which will be taken up at a later stage in this paper⁷¹. These efforts to bring about a regulatory regime with regard to international transfers of armaments reach back to the late 19th century and have been occasioned by various political and military interests.

⁶⁹ In the rather numerous literature on the subject after World War I there is no indication that the law of neutrality or that of contraband had any impact on the arms trade to speak of — the concept was not even mentioned; see the titles cited in notes 6—10 above.
⁷⁰ See articles 51 and 52—54 of the UN Charter.
⁷¹ See infra, 136 et seq.
a) Early prohibitions of arms sales by treaty: the case of the colonial territories up to 1914

By the end of the 19th century the sale of arms to the indigenous peoples of the colonial territories of Africa and Asia, but also to countries subject to strong political influence of the major political powers of the time, had become a matter of concern to the colonial powers. The sale of arms into these areas proved not only to be a major factor in the slave trade which was already under attack, but it also strengthened the resistance of the indigenous peoples to their subjection by the colonial powers. Thus attempts were made to negotiate for strict controls, restraints, and even prohibitions of arms sales to the respective areas. While the Berlin Conference of 1884/85 did not fully succeed in doing so — it was only agreed that a state of neutrality for the Congo Basin should be created, while the regulation of the arms trade was left to the newly created Congo State — the Brussels Conference of 1890 reached agreement on a multilateral ban on all arms sales within a certain geographical area of Africa. Weapons imports were subjected to strict regulation and supervision by a central authority. The resulting convention — the Congo Act of 1890 — is the only multilateral treaty regulating international transfers of armaments which ever entered into force and proved to be relatively effective in practice, too. In other instances, the major European powers and Japan were able to extract extensive controls over the import of arms into areas or countries which were of particular political and strategic interest to them, and thus were subject to their political and military dominance.

It may well be said that the relative effectiveness and success of these early attempts to regulate international arms trade were due to very specific political considerations, finding the major powers united in a common interest to bring about a legal regime for controlling transfers of armaments. However, it may also be argued that at least some of the legal instruments agreed upon could

72 White (note 10), 28; Yakemtchouk (note 4), 39 et seq.
73 Yakemtchouk (note 4), 57.
74 Yakemtchouk (note 4), 50 et seq. for details of the scope of the zone prohibited from arms imports.
75 See text in: Charles de Martens, Nouveau Recueil Général de Traités, Deuxième Série, Vol. XVI, 3 et seq.
76 White (note 10), 29, emphasises the importance of the Act in this respect while also pointing out that in an area like Abyssinia “gun-running” has been scarcely disguised despite the inclusion of the area in the zone defined in the Act.
77 See relevant treaties between Germany and Turkey (1890), text in: de Martens (note 75), Vol. XVII, 409 et seq. (art. 17); Russia and Persia (1881), text in: de Martens (note 75), Vol. IX, 228 et seq. (art. 6); and between Germany, Austria-Hungary, Belgium, Spain, United States, France, Great Britain, Italy, Japan, Netherlands, Russia and China (1901), text in: de Martens (note 75), Vol. XXXII, 94 et seq. (art. 5).
be taken as examples of a successful law making process based on a step-by-step approach — a concept often held to adequately alleviate the cumbersome procedure of reaching relatively widespread consensus among governments.

b) Regional attempts to regulate international transfers of armaments

Another approach which has proved successful in tackling complex political problems by legal means is to bring about regional agreements rather than seeking world-wide acceptance of a particular convention. Since the attempt to control international transfer of armaments is definitely such a complex problem it is not surprising that the regional approach has in fact been adopted. Efforts to control the transfer of armaments by the Central American states as early as 1923 are a case in point. A draft convention on the limitation of armaments was signed by several Central American states which also provided for the prohibition of arms exports from these countries. It is interesting to note, that this convention failed to receive the ratifications by the number of states necessary for its entering into force not because of the arms trade regulations but for the more general problem of verifying the implementation of the convention. Again after World War II some Latin American states took the initiative for the regional control of armaments transfers. Thus in the Declaration of Punta del Este (1967) — restated in the Declaration of Ayacucho (1974), and reiterated in 1978 — cooperation in the purchase of arms among these states was agreed upon. Although none of the Latin American states signatory to these declarations has backed off from them, there is little empirical evidence of their implementation, either.

Similar efforts on a regional basis in the Near East and in Western Europe did not become effective or were obstructed by later adverse political developments (as in the case of the Near East).

Text in: AJIL, Suppl. to Vol. 17 (1923), 114 et seq.; SIPRI, The Arms Trade with the Third World (note 4), 113.

Ibid.


Declaration of Ayacucho of December 9, 1974, text in: UN Doc. A/10044.


Adopted on December 4, 1969 by the Assembly of the Western European Union, see Fifteenth Ordinary Session (Second Part), Doc. 500, 2.
Therefore, although the record of achievement for regional arrangements of arms trade controls is not very impressive as of now, it has to be recognised that the regional approach to the problem of regulating the transfer of armaments is a relatively promising one, since it addresses itself to the task in a modest and limited way: it only seeks to bring about political consensus on the issue of transfers of armaments among states most likely to have some common interest in the issue, and also restricts possible regulation to a geographically limited area allowing for a more effective control of any transactions involving arms.

c) The prohibition of transfers of armaments by peace treaties

A number of more or less effective regulations and controls of transfers of armaments are to be found in 20th century peace treaties, especially after World War I. Thus the treaties of Versailles, St. Germain, as well as of Trianon, Neuilly and Sèvres contained provisions prohibiting the import and export of arms to and from the defeated states. These regulations were accompanied also by strict inspection provisions. These proved to be quite effective over a considerable period of time. In fact, it was only because of the failure of the victorious powers to follow suit in the general effort to control international arms trade (provided for in the League of Nations Covenant, Art. 8), that the regime imposed on the former enemy states like Germany finally broke down. A similar attempt to prohibit the import and export of arms was made with respect to Germany after World War II, again combined with tight inspection mechanisms. But again, the regime provided for was gradually dissolved as the Federal Republic of Germany rearmed and also rebuilt some war industries. She has now become one of the major arms exporting countries. Finally, prohibitions of arms imports were provided for in the treaties ending the Indochina War in 1953/54 and also in the agreements following the Vietnam War in 1973. They were of no lasting effect, however.


88 For details see SIPRI-Yearbook 1981, 186/187, 188, 197.

From these past experiences it may be concluded that the political situations prevailing at the end of a war may be conducive to the establishment of controls over international arms transfers for the defeated country. But it is also to be noted that these are of limited general effect unless the other nations join in the effort. Therefore, peace treaties of the kind so far concluded may be ruled out as an adequate means for bringing about even a regional — let alone a universal — system of control of transfers of armaments.

d) Legal controls of transfers of armaments in military aid agreements

Military aid agreements not only became a major instrument of international transfers of armaments from the industrialised countries to less developed countries after World War II, but in addition indirectly contributed to the spread of arms over the world since arms thus shipped abroad quite often were retransferred by the recipient countries. This is especially the case when the military equipment of the recipient state has become outdated and is being replaced by more modern weaponry from the donor state. Thus Iran became an arms exporting country although it actually was a state receiving arms under the terms of military aid agreements with the United States and other western countries\(^9\). Since the granting of military aid is a highly political affair in itself — not least because of the danger always present that the arms supplied might be abused even against the donor state —, the question of the ultimate destination of such arms supplies became a major concern of the supplier states\(^9\). Military aid agreements, therefore, often prohibit re-sale by the recipient state of the arms supplied. These “end-use controls” are being effected in various ways, as for instance, merely by legal prohibitions and/or by gathering information on the fate of the arms supplied by diplomatic and intelligence sources of the supplying country. They do not, however, always succeed in a complete factual ban on a retransferral of the weapons supplied. The usual way of implementing the end-use control requirement is by demanding the signing of an “end-use certificate” by the purchasing country or by the submission of such certificate by the exporting enterprises to their own governments\(^9\).

As much as the efficacy of end-use controls may be put into doubt considering present-day state practice, the underlying principle of this concept appears to be basically a sound one. For one, it presupposes an express government policy on arms sales, thereby introducing a certain degree of control into the

\(^9\) For figures on the arms supplies to Iran see SIPRI, The Arms Trade with the Third World (note 4), 576 et seq., 840 et seq.; as to Iran’s role in arms exports see \textit{ibid.}, 116.

\(^9\) See \textit{Stanley/Pearton} (note 4), 38 et seq.

\(^9\) \textit{Ibid.}
transfers of armaments. For the governments of the arms supplying countries have to decide as to whether when and where they want to apply end-use controls. And second, end-use controls provide for a political leverage for the supplier countries in that they can withhold further arms transfers if the end-use-obligation is not met by the recipient country — a leverage which at least in case of an additional understanding among arms exporting countries of similar political affiliation may prove to be a relative strong one. If properly conceived of, end-use controls could therefore also provide for an incentive to reach agreement among at least some groups of states with regard to their policies of transfers of armaments which could be one of restraint rather than expansion of arms sales.

3. Attempts at the control of international transfers of armaments by international organisations: the League experience and the United Nations debate

In clear contrast to the situation after World War II and in the United Nations, after World War I there was widespread recognition of the close interrelationship of the problem of disarmament and that of controlling international transfers of armaments. The restraint or prohibition of such transfers was considered to be a common responsibility of the League members and was embodied as an obligation of the League in Art. 8 of the League Covenant. Accordingly, efforts to regulate international arms trade were envisaged as an international task to be carried out on a universal level. These efforts — though unsuccessful in the end — compare favourably with the performance of the United Nations in the field.

a) The control of arms trade and manufacture under the League System

As mentioned above, Art. 8 of the League Covenant contained provisions with regard to disarmament and to the private manufacture of arms as well as their transfer to such states which did not possess a weapons industry of their own and therefore could not meet their own needs by a national production of arms. Art. 8 para. 5 charged the League Council with the preparation of proposals for the control of the private manufacture of arms and their sale. Furthermore, the same article, in paragraph 6, obliged the members to exchange and publish detailed information on their state of armaments and their indu-

trial capabilities potentially to be used for weapons production. Finally Art. 23 of the Covenant asked for a general control of the international arms trade. While Art. 8 para. 6 was carried into effect by the annual publication of an Armaments Yearbook and a Statistical Yearbook of the Trade in Arms and Ammunitions from 1924 onward up to 1938, the obligations incurred by the members and the Council under Art. 8 para. 5 and Art. 23 were not successfully fulfilled although two major conventions were drawn up with the aim of controlling the international arms trade. The first Convention to be mentioned is that of St. Germain signed on September 10, 1919. It took up the intentions of the Brussels General Act of 1890 to prohibit the sale of arms to certain — then colonial — areas of the world. But the St. Germain Convention extended the zones to which arms were not to be exported, not only to all of Africa but also to large parts of Asia and the Middle East including Persia, although she was a sovereign state at the time and also a member of the League. The Convention provided for strict controls, an export licensing system and rules for the publication of all arms transactions with regard to the areas defined in the Convention. The Convention, signed by 23 states, never came into effect as it presupposed the accession of all great powers of the time which was not effected. The United States did not accept the Convention. She suspected the treaty to be biased in favour of the colonial powers, as it only applied to extra-European countries and territories and also did not cover transfers of armaments between the arms producing countries themselves. Another major factor in the United States attitude toward the Convention, however, was that she envisaged interference with her policies in Latin America.

The other — more important — attempt at regulating the international arms trade was made in 1925. The Geneva Conference on the Suppression of International Trade in Arms and Ammunition and Implements of War succeeded in drawing up a Convention under the same heading. The main aim of the Convention was to provide for a universal regime of international arms trade.

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96 Art. 6 of the St. Germain Convention.
97 For summary of arguments see SIPRI, The Arms Trade with the Third World (note 4), 92.
thus eliminating the colonial prejudice inherent in the former relevant treaties or draft conventions. In doing so, however, it had to be acknowledged that only rather limited goals could be pursued with the Convention, if universality was not to be jeopardized. Thus the Convention did not cover the question of the control of arms production. It only provided for the control of arms exports since some countries, e.g. the United States, opposed the inclusion of the arms production issue into the treaty. The Convention also did not stipulate a general prohibition of arms sales which, in fact, were considered legitimate as such, but rather contained a number of regulations for international information gathering on arms sales and for a differentiated licensing system for arms exports to be nationally administered. The Convention set a hierarchy of five categories of arms, each of which were to be subjected to very strict or less thorough licensing procedures. Thus weaponry exclusively designed for war purposes was only to be sold to governments and was subject to the issuance of a license by the government of the exporting country, thereby also subjecting private weapons manufactures to some degree of control. Other types of weapons would still be subject to export licenses but could also be sold to private individuals, while still other implements of war were not to be sold to specific areas of the world.

Taken all in all the Convention certainly was not a very far-reaching document. And yet it never received the necessary number of ratifications for entering into force. As the Convention did not cover the problem of the control of arms production, in fact, it actually laid a one-sided obligation upon the countries not producing weapons since only their acquisitions of arms — and thus their state of military strength — would have been subject to publicity. The arms producing countries would have been exempt from such burden with regard to their own military set-up. Furthermore, much resentment was felt regarding the issue of zones prohibited from certain arms or ammunition imports. Again this was seen as constituting a one-sided burden on the countries or territories concerned. A blatant disregard for the prin-

100 Acts of the Conference (note 98), 122 (left column).
101 See art. 1 of the Geneva Convention, Acts of the Conference (note 98), 33 et seq.
102 See articles 2—11 for the different export and licensing regulations applying to the categories of weapons and implements of war as defined in art. 1, and art. 12 with regard to the "special zone" being prohibited from arms imports.
103 See summary of arguments in: SIPRI, The Arms Trade with the Third World (note 4), 96/97.
104 The issue of the delimitation of the zones became so heated that Persia left the Conference in protest; see White (note 10), 35.
ciple of equality of states as well as the impossibility of reconciling the many complex and divergent interests even on the basis of a very limited concept of the control of international arms trade finally doomed the Convention to failure.

Recognition of the latter aspect, i.e. that the divergence of interest with regard to the transfer of armaments is just too great in order to be overcome by one single regulatory instrument, as well as the increasing government involvement in these transactions ¹⁰² may be seen as the main reasons that the international community never again came close to even a modest agreement of universal scope with regard to international arms trade ¹⁰⁶. The United Nations' record on this issue clearly bears evidence to this observation.

b) The issue of international transfers of armaments in the United Nations

No specific reference to the regulation or control of transfers of armaments was made in the United Nations Charter. It only contains some rather general commitments to disarmament — a task which is primarily charged to the General Assembly (Art. 13). It is not surprising, therefore, that the organisation has not concerned itself with this problem in any notable way. At three instances — in 1965, 1967 and 1976 — attempts to pass resolutions in the General Assembly on the issue of arms trade failed. The aim of the first two initiatives — one taken by Malta and the other by Denmark which was backed by Norway, Iceland and again Malta — was to introduce some United Nations supported information system on international transfers of armaments along the lines of the League system ¹⁰⁷. The most recent attempt to raise the issue was made by Japan in 1976 which was supported by a number of other states and aimed at asking the United Nations Secretary General to undertake a study on international transfers of armaments, but no substantive decision was made upon the motion ¹⁰⁸.

The most extensive coverage of the problem of arms transfers took place during the 10th General Assembly Special Session on Disarmament ¹⁰⁹. Refer-

¹⁰² See supra, at 117.
¹⁰⁶ For the discussions of proposals with regard to curbing international arms trade after 1925 until the late 1930ies see SIPRI, The Arms Trade with the Third World (note 4), 98 et seq.
¹⁰⁷ For the 1965 Maltese proposal see UN Doc. A/C. 1/L. 347; for the Danish proposal of 1967 see UN Doc. A/C. 1/5R 1393; for the Japanese initiative see UN Doc. A/C. 1/31/L. 20, 35, 36 and UN Doc. A/31/386, paras. 6 and 7.
¹⁰⁸ On behalf of a number of member states India moved the debate to be adjourned. The motion was adopted by a vote of 51 to 31, with 33 abstentions; see UN Yearbook 1976, 55/56.
¹⁰⁹ For extensive coverage of the proceedings of the 10th General Assembly Special Session on Disarmament see UN Monthly Chronicle, Vol. 15 (1978), no. 7, 24 et seq. and Final Act in annex thereto.
rence was made to the problem in the Final Act adopted by the Assembly. The language, however, is rather vague as compared with the pre-war documents drawn up under the auspices of the League, and the demand voiced for an international restraint on transfers of armaments is immediately modified by stating that any such regulations should not jeopardize the legitimate security needs of states and particularly not the right of liberation movements to attain independence and self-determination. Thus the United Nations achievement in the field of international control of transfers of armaments falls short of those of the League period. Nor were attempts to cope with the problem in the context of the Geneva disarmament negotiations any more successful.

The conclusion to be drawn from the efforts to bring about a universal regime regulating the transfer of armaments is that the subject apparently does not lend itself to an early solution. As it was already observed, the problem is too complex and the interests involved are too divergent to allow for an all encompassing universal regulating regime.

4. The control of transfers of armaments by unilateral or joint international action: embargoes and national control by legislation

A last group of legal instruments for the control of international transfers of armaments is constituted by unilateral actions of restraint or prohibition of arms sales. Two different types may be distinguished here: externally applied restraints or prohibitions, directed against arms transfers to a particular state or area, i.e. embargoes, and internally established restrictions, controls or prohibitions, enacted by national legislation. While embargoes usually tend to be of a temporary, ad hoc-nature, national laws prohibiting or controlling the arms trade normally are intended to enforce a long term policy with regard to such trade. International experience shows that unilaterally declared embargoes — especially if accompanied by strict national legislation to the same effect — stand a good chance of becoming effective as far as the arms trade relations

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110 See note 62 supra.
111 See, for instance, SIPRI, The Arms Trade with the Third World (note 4), 107 and ENDC/PV. 357 and CCD/307.
112 See Stanley / Pearson (note 4), 13 et seq.; for US Legislation and legislative proposals see Farley / Kaplan / Lewis (note 19), 43 et seq.; Yakemtchouk (note 4), 231 et seq. with special reference to national legislation in the US, France, the Federal Republic of Germany, and Switzerland.
with the addressee of the embargo are concerned. On the other hand, such unilateral embargoes tend to prove rather ineffective, when viewed from a broader perspective: other arms supplying countries very often step in to fill the place of the country having declared the embargo. Theoretically, then, the joint declaration of an embargo by a number or even all of the arms producing countries should be an adequate device which avoids the shortcomings of a unilateral embargo. But state practice bears ample evidence to the fact that even widely supported internationally declared embargoes — either by groups of states or by international organisations such as the League of Nations or the United Nations or regional organisations like the Organisation of American States — have been circumvented. Economic interests of governments as well as of private arms manufacturers in the arms trade have often proved stronger than the commitments to international embargoes. Thus, for instance, the embargo on arms supplies to Bolivia and Paraguay in the Chaco-Conflict in 1934/35, or the embargoes declared on Rhodesia and South Africa by the United Nations could not be effectively implemented.

Although from a theoretical point of view the declaration of an arms embargo on a particular state may not be considered to be completely inadequate for restraining transfers of armaments — maybe for the purpose of avoiding a major military conflict involving such state —, for all practical reasons embargoes have proven to be of very limited efficacy. Furthermore, by their very nature they are not devised for the implementation of a long-term policy of control of transfers of armaments.

A more positive view may be taken with regard to national legislation intended to control, restrain and/or prohibit transfers of armaments in general or of particular kinds of weapons. As in the case of end-use-controls such legislation — the United States International Security Assistance and Arms

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113 An indicative case of the League period is that of the Chaco Arms Embargo; see Russell Cooper / Mary Mattison, The Chaco Dispute, in: Geneva Special Studies, Vol. V (1934), no 2, and Mary Mattison, The Chaco Arms Embargo, in: Geneva Special Studies, Vol. V (1934), no. 5; Manley O. Hudson, Munitions Industry — The Chaco Arms Embargo (A Report presented by the American Committee in Geneva to the Special Committee of the United States Senate Investigating the Munitions Industry on September 1, 1935), Washington 1936; a significant case of an ineffective arms embargo is that of the embargo declared by the United Nations on South Africa, see for adoption of resolution by the Security Council in 1977 UN Yearbook 1977, 146/147 (text on 162); though compliance with the decision was pledged by the arms producing countries, the actual practice has given proof to the contrary, see UN Monthly Chronicle, Vol. 15 (1978), no. 1, 12 et seq., and Vol. 16 (1979), no. 2, 48 et seq.; see also Bernd Lindemeyer, Schiffsembargo und Handelsembargo, Baden-Baden 1975.

114 See Hudson (note 113) and Mattison (note 113).

115 See reference in note 113 supra.
Export Act\textsuperscript{116} and the German "Gesetz über die Kontrolle von Kriegswaffen"\textsuperscript{117} are statutes in point — presuppose a defined government policy toward the transfer of armaments, thus introducing an element of control into the field by their very existence. Furthermore, relevant national laws usually open up the competence of governments to enforce restrictions and controls provided for vis-à-vis private arms manufacturing enterprises and sales agents. And finally, the existence of such laws — at least in democratic government systems — helps to enjoin governments themselves to retreat from their commitments to the control of international transfers of armaments. Although it must be admitted that national laws for the control of arms transfers cannot provide for a "water-tight" system of controls — and, in fact, have been violated in the past —, they seem to constitute at least one adequate element in the quest for effective control of international transfers of armaments.

\textit{III. Conclusion:}

\textit{Prospects for an effective international control of transfers of armaments}

The examination of the various legal controls proposed or applied to international transfers of armaments in the light of the complex political, military, and economic interests involved has largely resulted in a rather negative evaluation. None of the mechanisms applied in state practice has provided for a fully satisfactory system of control. Yet an ever growing need to bring about just such a system is felt in many quarters of international and national political life. On the other hand, there are indications that some of the legal means of control may be developed into better functioning mechanisms, if adequately combined with each other and properly applied in terms of political feasibility and practical needs. Thus, in summing up the foregoing analysis, the following conclusions may be drawn:

1. As much as it would be desirable to have a comprehensive international covenant on the control, restraint and at least partial prohibition of international transfers of armaments, it has to be recognised that the political road toward this goal appears to be blocked for some time in the future. Interests involved in the arms trade are too divergent and the fields to be covered by effective control measures are too wide as to allow for any meaningful instrument of universal control of transfers of armaments.

2. Partial measures of control of transfers of armaments, especially on a regional or even locally limited scale, may prove to be effective, however. It


appears to be politically feasible to reach agreement within regional groups of more or less homogeneous states on a cooperation in the field of arms transfers, thereby possibly bringing to a halt national rivalries in the struggle for new weapons markets which in turn have proven to be a major factor in increasing arms sales to, e.g., Third World countries. Furthermore, such cooperation which could be envisaged in the Western European setting, could necessitate a common arms trade policy of the states concerned, thus providing for an element of control inherent to the formulation of generally agreed arms trading policy. Moreover, such a regional approach could also be conceived of as asking for a regionally supervised and administered system of data collection on the total arms production and arms transfers effected by the states of the region. If these measures would be combined with strict national legislative controls, the ensuing system could very well serve as a model with considerable incentive force for other states to follow suit. Thus it could serve as an initiating factor for a wider system, possibly involving other regions. A last advantage of such a regional system would be, that it would lack any kind of discriminatory regulation. As the arms producing countries would subject themselves to the same kinds of controls as would apply to the recipient states, the agreement would not put an unfair one-sided burden on the latter as it was the case with the earlier agreements.

Such system, therefore, could meet with considerable sympathy in many quarters of the world and from such support gather momentum especially with countries in the Third World to join in the effort to restrain the transfer of armaments and the ruinous arms race in this part of the world.