

# Creating a human rights standard for the Arms Trade Treaty

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States widely acknowledge that irresponsible and poorly regulated transfers of conventional weaponry, munitions and equipment (“conventional arms”) assist in perpetrating serious violations of international human rights law, fuel armed conflict and violations of international humanitarian law, destabilize countries and regions and undermine socio-economic development efforts. This acknowledgement has led to an increased recognition of the need to directly link the global arms trade to states’ responsibilities under contemporary international law standards. In December 2006 the United Nations General Assembly passed resolution 61/89 recognizing the growing support across all regions for concluding a legally binding instrument with “common international standards for the import, export and transfer of conventional arms”.<sup>1</sup>

The vote in favour of resolution 61/89 by 153 states is a strong indication that global political will now exists to regulate arms transfers through a comprehensive international treaty.<sup>2</sup> Following the completion of a process to obtain states’ views on an Arms Trade Treaty (ATT),<sup>3</sup> and the release of a report by the UN Secretary-General prepared with the assistance of a group of governmental experts,<sup>4</sup> the General Assembly voted to take another important step toward creating an ATT, establishing an open-ended working group in 2009 to begin considering elements for inclusion in an eventual treaty.<sup>5</sup>

One such element is international human rights law. Conventional arms often assist in the perpetration of serious violations of human rights such as torture, the excessive use of force by security forces, extrajudicial executions, forced evictions and disappearances. If an ATT is to be an effective legal instrument in regulating the international arms trade, the inclusion of this body of law within an ATT is key as it defines a significant part of the normative responsibilities of states with regard to the transfer of conventional arms.

This paper will focus on the relationship between international human rights law and state authorization of conventional arms transfers and describe a workable human rights standard for arms transfers that could be included in an ATT.

## *Conceptual framework of an ATT*

The main objective of an ATT is to create a comprehensive and legally binding international mechanism for ensuring a more responsible legal trade in conventional arms, while ensuring that states’ abilities to lawfully sell, acquire and possess arms is not undermined. As many UN, multilateral and regional documents recognize, the primary responsibility for establishing and implementing systems to control

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international sales and transfers of conventional arms rests with states.<sup>6</sup> It follows then that the most effective means for controlling the trade in conventional arms is through robust national systems of export, import and transfer. An ATT would establish the standards and procedures that states parties must have in place in their national legal systems for licensing or authorizing international transfers of conventional arms.<sup>7</sup> That is, states parties would be obliged to effectively license, monitor, and prevent arms transfers according to national laws, mechanisms and procedures that conform with the international law standards set out in the ATT.<sup>8</sup> While the competence to authorize or refuse a request to transfer arms remains with the national authorities of each state, an ATT would ensure that all national authorization decisions are made using the same international standards.

At a minimum, an ATT should ensure that states have fully recognized and implemented the international norms and commitments of relevance to arms transfers that they have already assumed under, inter alia, the UN Charter, the Geneva Conventions of 1949, the two international covenants on human rights,<sup>9</sup> principles of customary law such as the prohibition on the threat or use of force in international relations, and emerging norms for arms transfers.<sup>10</sup> Many states already have their own laws, regulations and procedures governing arms transfers which would meet these international standards. Those that do not would be required to implement such measures to meet their obligations under the treaty.

A large number of states have in fact signed regional, subregional or multilateral agreements and guidelines with controls on international arms transfers, in addition to existing national controls and international obligations.<sup>11</sup> However, the content of each agreement differs, and states have not been consistent in their interpretation or application of the agreements. A multilateral ATT of universal application would remove the variable standards and gaps created by this patchwork of national and international measures. It would bring together and standardize the criteria that states are obliged to take into account when deciding whether to authorize arms transfers. One criterion is whether authorizing a transfer would result in a state breaching its international human rights obligations.

### *The legal basis for a human rights standard in an ATT*

International human rights obligations have been described as the “only political-moral idea that has received universal acceptance”.<sup>12</sup> Indeed, the corpus of human rights law developed over the last fifty years has achieved a level of recognition and acceptance unmatched in many other areas of international law. Since the signing of the UN Charter in 1945 over one hundred international treaties concerning the protection of human rights have been concluded, including a core of nine universal human rights treaties. Through the Charter, the Universal Declaration of Human Rights, the 1993 Vienna Declaration and Programme of Action and the numerous other human rights instruments, all 192 UN Member States have accepted the application of human rights law to state activities. State activities include the authorization of arms transfers.

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The application of human rights law to transfers of conventional arms is widely accepted. The majority of existing regional and multilateral arms transfer controls agreements and guidelines contain human rights standards.<sup>13</sup> At least 72 of the 101 submissions by states responding to the request by the UN Secretary-General for their views on an ATT referred to the centrality of human rights considerations in a future treaty.<sup>14</sup> Statements by members of the Security Council and the General Assembly also support including human rights considerations in the licensing of arms transfers.<sup>15</sup>

## *Application of human rights law to arms transfers*

When states are involved in arms transfers, there are several ways in which their obligations under international human rights law apply. When acting as an importer, exporter, or transit state for arms transfers, states are bound by their obligation to realize and promote human rights under the UN Charter and bound to comply with their obligations under customary international law and the international human rights treaties to which they are party. Under principles of general international law, a state is responsible for breaches of these obligations by any of its organs, including members of state security forces, the army and the police,<sup>16</sup> and any other person or entity whose actions are attributable to the state,<sup>17</sup> and for aiding and assisting the breach of human rights obligations by another state.<sup>18</sup>

A state which is *importing* conventional arms must act with reasonable due diligence to ensure that those arms will not be used to violate its human rights obligations domestically.<sup>19</sup> Various statements by UN human rights bodies have addressed the content of the due diligence standard. For example, the Human Rights Committee has stated that states are obliged to protect individuals, not just against violations by state agents but also against acts committed by private actors or entities that would impair the enjoyment of rights under the Civil and Political Covenant.<sup>20</sup> Regarding extrajudicial, summary or arbitrary executions, the UN Special Rapporteur has said that “States have a legal duty to exercise ‘due diligence’ in protecting the lives of individuals from attacks by criminals, including terrorists, armed robbers, looters and drug dealers.”<sup>21</sup>

A state *exporting* arms—or authorizing their transfer—to a state where the arms are used for serious human rights violations could be in violation of its international obligations in one or more of the ways outlined below.

### BREACH OF OBLIGATIONS UNDER THE UNITED NATIONS CHARTER

First, the exporter state will breach its obligations under the UN Charter where it fails to authorize transfers of arms in accordance with the principles and purposes of the Charter. One of the main purposes of the Charter is to set out the means by which states fulfil their obligation under the Charter to ensure international peace and security. While the Charter neither expressly prohibits nor permits the use or transfer of any particular weapon, it does contain a number of principles which are relevant to whether or not a state should authorize a transfer of conventional arms. These include the prohibition on the threat or use of force in international relations<sup>22</sup> and the promotion of human rights as a key aspect of maintaining international peace and security. For example, Article 55 states that the United Nations will promote universal respect for and observance of human rights and in Article 56 UN Member States pledge to take joint and separate action in promoting these rights. The UN Charter reflects a positive obligation on all states, including those who export or transfer conventional arms, to cooperate in the protection and fulfilment of human rights within and beyond their borders. States that transfer weapons and provide military assistance resulting in breaches of these Charter principles violate their international law obligations.<sup>23</sup>

### BREACHES ATTRIBUTABLE TO EXPORTING STATE FOR HUMAN RIGHTS VIOLATIONS IN ANOTHER STATE

States that intentionally transfer conventional arms to another state or to non-state actors for the purpose of carrying out serious human rights violations (that violate customary norms or treaty obligations) will be responsible for those breaches under the law of state responsibility, where the human rights violation is directly attributable to the exporting state. This would be the case if the state

had effective control of or directed the use of the arms in the act or acts which breach human rights.<sup>24</sup> The circumstances where this would arise, however, would be exceptionally rare.

#### EXPORTING STATE MAY AID AND ASSIST THE IMPORTING STATE IN HUMAN RIGHTS VIOLATIONS

States that transfer conventional arms to another state with the knowledge that the arms are to be used by the importing state for the commission of serious human rights violations are responsible under the law of state responsibility for aiding or assisting in that breach by the importing state. The exporting state's responsibility is based on its participation in the recipient state's wrongful act under international law. Article 16 of the Articles on the Responsibility of States for Internationally Wrongful Acts states:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State.<sup>25</sup>

Aiding and assisting in serious violations of human rights does not require that a state intends to enable the state to which it has authorized the transfer of arms to commit serious violations of human rights. It only needs to have knowledge of the possible intended use of the arms in serious human rights violations by the receiving state. This is confirmed in the International Law Commission's commentary on the Articles on State Responsibility, which states:

[A] State may incur responsibility if it ... provides material aid to a State that uses the aid to commit human rights violations. In this respect, the United Nations General Assembly has called on Member States in a number of cases to refrain from supplying arms and other military assistance to countries found to be committing serious human rights violations.<sup>300</sup>

<sup>300</sup> Report of the Economic and Social Council, Report of the Third Committee of the General Assembly, draft resolution XVII, 14 December 1982, A/37/745, p. 50. <sup>26</sup>

The Articles on State Responsibility, together with the UN Charter, human rights treaties and customary norms provide a legal framework for delineating the obligations on states to prevent the transfer of conventional arms where they will be used for serious violations of human rights and these should form the basis for the creation of a human rights standard within an ATT.

### ***A proposed human rights standard***

While the relationship between international human rights law and arms transfers is clear, one practical difficulty is setting a workable human rights standard for states to apply when considering transfers. One of the main shortcomings of the existing regional, subregional and multilateral agreements and guidelines on transfers of conventional arms is the lack of specificity and clarity in the language of the criteria that states should consider when authorizing a transfer.<sup>27</sup> This has resulted in varying degrees of application of the provisions of these documents. If an ATT is to be an effective global instrument in creating a more responsible trade in conventional arms, its provisions will need to do better: it needs to contain clearly worded and sufficiently particular provisions which states can translate into domestic legislation that can be practically applied by national licensing authorities.

One suggested human rights standard would require states to assess whether there is a *substantial* risk that the specific transfer of arms under review will be used to facilitate *serious* violations of

international human rights law. Where such a risk exists, states shall ensure that the proposed transfer is prohibited until that risk is removed. This standard would incorporate the “due diligence” standard in human rights law, which requires that states engage in an effective inquiry in order to make a reasoned determination as to whether the proposed transfer carries substantial risk of facilitating serious violations.

What this would require in practice is that the national licensing authority look at the specific transfer in question and in particular at its end use and its end-user in the proposed recipient state.<sup>28</sup> All states have legitimate military, security and policing needs, and not all organs of the state as an end-user of a transfer of conventional arms pose the same levels of risk of perpetrating serious violations of human rights. Therefore the question requiring effective enquiry by the national licensing authority is whether there have been previous serious violations of human rights by the specified end-user and whether there is a substantial risk that further such violations are likely to be facilitated by the transfer of the conventional arms that are the subject of the transfer application.

On the continuum of risk, “substantial” risk represents a suitable level. A threshold of “clear” risk would set the standard of due diligence too high, doing little to control arms transfers used for human rights violations, whereas simply using “risk” would potentially make every proposed transfer a cause for concern. A standard of “serious violations” acknowledges that, while all human rights breaches are unacceptable, only those which are of greatest concern to the international community should engage the responsibility of the exporting state: that is, where a receiving state is engaged in persistent or pervasive violations of fundamental rights through the use of conventional arms.

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The foundations for the standard containing the two qualifiers of “substantial risk” and “serious violation” lie in existing international human rights law practice. This also gives specific examples of applying the qualifiers which can be used as guidelines for those applying the ATT provision.

#### “SERIOUS VIOLATIONS”

A review of the application of international human rights law shows that describing a violation of human rights as “serious” is generally assessed by the nature of the right violated and the scale or pervasiveness of the violation. Actions which violate the right to life are viewed as being among the most serious, given its status as a peremptory and non-derogable customary norm. Obviously, conventional arms are regularly used in the commission of breaches of this right, and such violations may be part of the commission of crimes against humanity, mass killings, torture and extrajudicial killings.

In their reviews of states’ human rights reports, the UN human rights bodies have determined that certain actions constitute serious violations of human rights. For example, murder, rape, forced displacement and attacks against civilian populations,<sup>29</sup> the excessive use of force and ill-treatment by military and security forces,<sup>30</sup> disappearances, torture and murder of women as gender-based crimes,<sup>31</sup> targeting of minority communities with acts of extreme violence (including torture and extrajudicial killings),<sup>32</sup> forcible recruitment of children and torture and ill-treatment of child conscripts.<sup>33</sup>

As to the scale or pervasiveness of breach required to give rise to a “serious violation”, human rights law has looked at conduct that involves a pattern of violations of a right, persistent violations or a single event which affects a large number of people. Examples where UN human rights bodies have described circumstances as serious in part because of the scale and the pervasiveness of the violation include widespread torture in local government prisons,<sup>34</sup> torture committed in a widespread and habitual manner by security forces and agencies,<sup>35</sup> widespread ill-treatment by law

enforcement personnel,<sup>36</sup> widespread use of excessive force by law enforcement officials,<sup>37</sup> and widespread forced evictions.<sup>38</sup>

### “SUBSTANTIAL RISK”

Where states are obliged to assess the likelihood or risk of breach by another state, for example the risk that an individual will be tortured by the state to which they are expelled or returned, contemporary human rights law sets a standard of “substantial risk” as the level of unacceptable risk. The Convention against Torture (CAT) requires states parties to determine whether there are “substantial grounds” to suspect a risk of torture if an individual is expelled or returned to another state and, if so, the state party cannot send the individual to that state.<sup>39</sup> This imposes an obligation on states to carry out a “meaningful assessment” of any claim that the individual may be tortured and requires the state to consider, among other things, the human rights practices of the potential receiving state.<sup>40</sup> This is a helpful model for the ATT: a state should not be able to send conventional arms to a state where there is a substantial risk that those arms will be used to carry out serious violations of human rights, and states must conduct a meaningful assessment of that risk—in other words, they must act with all due diligence when assessing whether arms transfer applications meet the human rights criterion.

The Committee against Torture interpreted the concept of “substantial grounds” in a Comment issued in 1997:

Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture ... the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However the risk does not have to meet the test of being highly probable.<sup>41</sup>

The standard of risk can work in the same way in an ATT: risk must be beyond suspicion, but it need not be as high as “highly probable” to meet the due diligence standard.

Although assessment is never fool-proof, the combination of a clear standard of risk, the availability of interpretations of states’ obligations in reports by the CAT Committee and other commentary provide states with the guidance needed to arrive at a decision. The standard is not perfect identification of risk. Case law demonstrates that the process of assessment is as important as the outcome, meaning that states must first engage in a meaningful process of assessment, and in doing so they must look at relevant and reliable evidence prior to making a decision on how to act. This framework is readily transferable to a situation of arms transfer, where the state needs to make a sound risk assessment related to the proposed transfer before deciding whether a transfer authorization can be given.

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) contains similar provisions to the CAT.<sup>42</sup> ECHR jurisprudence has also established a requirement that states carry out an assessment of “real risk” when determining whether there are “substantial grounds”<sup>43</sup> to conclude that a person would face torture or inhuman or degrading treatment if deported, and it sets out indicators for risk that could equally be applied under an ATT. For example, the European Court of Human Rights has stated that an assessment of risk must be based on facts known at the time the assessment takes place,<sup>44</sup> the assessment must be based on relevant evidence,<sup>45</sup> and that current conditions within a state are decisive.<sup>46</sup> The court also requires that the risk be “real”.<sup>47</sup> There is no precise definition in the ECHR’s case law of what constitutes “real” risk, but the court has held that, while “mere possibility” is not enough,<sup>48</sup> certainty is not required.<sup>49</sup>

## Conclusion

States already have obligations under current international law to look closely at other states' human rights practices and to assess the risk of breach before deciding what action to take, and these procedures work, as demonstrated by the CAT and the ECHR. Incorporating and applying a human rights standard in an ATT would operate in a similar way, requiring all arms transfer authorizations to be assessed on a case-by-case basis. States would be required to assess the types of conventional arms in question, the stated end use, and the stated end-user to make a determination as to whether there is a substantial risk of serious violations of human rights by the specific end-user and whether such violations are likely to be facilitated by the transfer of the conventional arms under review. Existing law and practice show that this is a workable standard that can be applied by national authorities charged with assessing authorization applications.

## Notes

1. UN General Assembly resolution 61/89 of 6 December 2006, UN document A/Res/61/89, 18 December 2006. Resolution 61/89 also recognizes "that the absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism" and undermines, among others, peace, security, and sustainable development.
2. Work toward an ATT is one of a number of initiatives under way within the disarmament bodies of the UN to control the transfer of conventional arms more effectively, which include efforts to harmonize standards on marking and tracing, to enhance national, regional and global controls on brokering and to improve arm transfer controls through the development of reliable systems for end-use certification and verification.
3. UN documents A/62/278(Part I), A/62/278(Part II), 17 August 2007; A/62/278/Add.1, 24 September 2007; A/62/278/Add.2, 19 October 2007; A/62/278/Add.3, 27 November 2007; A/62/278/Add.4, 14 February 2008.
4. UN document A/63/334, 26 August 2008.
5. UN General Assembly resolution 63/240 of 24 December 2008, UN document A/Res/63/240, 8 January 2009.
6. For example, UN General Assembly resolutions 46/36 H, 49/75 G and 51/45 F; 1996 United Nations Guidelines for International Arms Transfers (A/Res/51/47 B); UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Section II, paragraph 11); Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Article 10a); Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (Article 5(3)(c)).
7. The scope of what constitutes a "transfer" and the range of conventional arms that would be included in a control list of an ATT will also need to be determined.
8. This should include basic licensing provisions such as case-by-case assessment of transfer licence applications, effective end-user controls, and conditions for re-transfer.
9. International Covenant on Economic, Social and Cultural Rights, 16 December 1966 and International Covenant on Civil and Political Rights, 16 December 1966.
10. Such emerging norms include, for example, the prohibition of arms transfers that will be used for terrorist attacks, violent or organized crime, or those that would adversely affect sustainable development. United Nations Security Council resolution 1373 (2001) already creates a binding obligation on states to eliminate "the supply of weapons to terrorists", UN document S/Res/1373(2001), 28 September 2001.
11. These include, for example: ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006); SICA (Central American Integration System) Code of Conduct on the Transfer of Arms, Ammunition, Explosives and Other Related Materials (2005); Best Practice Guidelines Associated with the Nairobi Protocol in the Great Lakes and Horn of Africa region (2005); OAS Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition (2003); Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons (2002); SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials (2001); OSCE Document on Small Arms and Light Weapons (2000); EU Code of Conduct on Arms Exports (1998); OAS Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition (1998) and Inter-American Convention against Illicit Manufacturing of and Trafficking in Firearms (1997).
12. Louis Henkin, 1990, *The Age of Rights*, New York, Columbia University Press, p. ix.
13. For example, Article 6(3)(a) of the ECOWAS Convention; Article I(2)(a) of the Wassenaar Arrangement Best Practice Guidelines; Section III (A)(2)(a) of the OSCE Document on Small Arms and Light Weapons.

14. See, for example, the submission of South Africa: “While States have an undisputable right to acquire conventional weapons for self-defence and law enforcement purposes, they also have a responsibility to do everything in their power to ensure that arms transferred by them are not used to violate human rights”; and that of Sweden: “manufacturing and exporting of arms places heavy responsibilities on States, such as the strict observance of international law, including human rights and humanitarian law” (UN document A/62/278(Part II), op. cit.).
15. See, for example, Sixty-second General Assembly, First Committee, “Irresponsible Weapons Transfers, Soaring Death Toll from Small Arms, Light Weapons Underscore ‘Pressing Need’ for Arms Trade Treaty, Disarmament Committee Told”, UN Document GA/DIS/3350, 23 October 2007; and statement by Japan calling for an arms trade treaty to end irresponsible transfers, in UN document S/PV.5781 (Resumption 1), 20 November 2007.
16. Responsibility of States for Internationally Wrongful Acts 2001, Article 4, reproduced in UN document A/RES/56/83, 28 January 2002.
17. *Ibid.*, Articles 5–11.
18. *Ibid.*, Article 16.
19. The Code of Conduct for Law Enforcement Officials (reproduced in UN document A/RES/34/169, December 1979) and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are two examples of detailed rules governing the use of state-sponsored force.
20. Human Rights Committee, *International Covenant on Civil and Political Rights, General Comment 31*, document CCPR/C/21/Rev.1/Add.13, 26 May 2004, paragraph 8.
21. Report of the Special Rapporteur, Philip Alston, *Civil and Political Rights, Including the Questions of Disappearances and Summary Executions*, UN document E/CN.4/2006/53, 8 March 2006, paragraph 47.
22. UN Charter, Article 2(4). Article 51 also sets out the inherent right of states to individual or collective self-defence, affirming that states can manufacture, import, export, transfer and retain conventional arms for their legitimate self-defence and security needs and in line with international law and standards. An ATT must be consistent with this Charter provision.
23. For example, the International Court of Justice (ICJ), in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* found that “the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter’s territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention” between 1998 and 2002 (ICJ Judgment of 19 December 2005, paragraph 345).
24. In the ICJ Case *Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the court found that in training, arming, equipping, financing and supplying the Contra forces the United States had breached the customary international law obligation to not intervene in the affairs of another state (ICJ Reports 1986, Judgment of 27 June 1986, paragraph 292(3)) but in the absence of evidence that the “United States directed or enforced the perpetration of the acts contrary to human rights and humanitarian law” (paragraph 115) and therefore had the requisite intent, the United States was not held directly responsible for the human rights violations by the Contras.
25. Responsibility of States for Internationally Wrongful Acts, op. cit.
26. International Law Commission, 2001, *Report on the Work of Its Fifty-third Session*, UN document A/56/10(SUPP), chapter IV “State Responsibility”, pp. 158–159.
27. For a review of these agreements from the perspective of their human rights content, see Lerna K. Yanik, 2006, “Guns and Human Rights: Major Powers, Global Arms Transfers and Human Rights Violations”, *Human Rights Quarterly*, vol. 28, no. 2, pp. 357–388.
28. An ATT should also require states to have adequate law, regulations and administrative procedures to ensure the veracity of the stated end-user and to prevent diversion from the authorized end-user. This could include such controls as the use of standardized, authenticated end use certificates.
29. Report of the Human Rights Committee on Sudan, UN document CCPR/C/SDN/CO/3, 29 August 2007, paragraph 9.
30. Report of the Committee against Torture on Uzbekistan, UN document CAT/C/UZB/CO/3, 26 February 2008, paragraph 7. Given that the absolute prohibition on torture is a peremptory norm of international law, all acts of torture are serious violations of international human rights law. Acts of torture during armed conflict are also considered serious violations of international humanitarian law and constitute a war crime. See UN General Assembly resolution 63/166 of 18 December 2008, UN document A/Res/63/166, 19 February 2009.
31. Report of the Committee on the Elimination of Discrimination against Women on Guatemala, paragraph 23, UN document CEDAW/C/GUA/CO/6, 2 June 2006.
32. Report of the Committee on the Elimination of Racial Discrimination on the Lao People’s Democratic Republic, UN document CERD/C/63/Dec.1, 10 December 2003, paragraphs 2–3.

33. Report of the Committee on the Rights of the Child on Paraguay, UN document CRC/C/15/ADD.166, 6 November 2001, paragraph 45. The UN Secretary-General has also called for the general cessation of arms transfers to groups where there is the use of child soldiers (see statement by Olara Otunnu, Special Representative of the Secretary-General for Children and Armed Conflict, in UN document S/PV.4684, 14 January 2003).
34. Report on the Committee against Torture on Uganda, UN document CAT/C/CR/34/UGA, 21 June 2005, paragraph 11.
35. Report of the Committee against Torture on Argentina, UN document CAT/C/CR/33/1, 10 November 2004, paragraph 6.
36. Report of the Committee against Torture on Nepal, UN document CAT/C/NPL/CO/2, 13 April 2007, paragraph 13.
37. Report of the Human Rights Committee on Brazil, UN document CCPR/C/BRA/CO/2, 1 December 2005, paragraph 12.
38. Report of the Special Rapporteur on Housing on South Africa, UN document A/HRC/7/16/Add.3, 29 February 2008, paragraph 97.
39. Article 3 of the CAT states: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”
40. See, for example, European Court of Human Rights, *Jabari v. Turkey*, Judgment of 11 July 2000, paragraph 40. The Court found that Turkey had not engaged in any meaningful assessment of the applicant’s claim and violated Article 13 and effectively Article 3 of the Convention against Torture.
41. *General Comment on the Implementation of Article 3 in the Context of Article 22, Report of the Committee against Torture*, UN document A/53/44, 16 September 1998, Annex IX.
42. Article 3 states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.
43. See, for example, European Court of Human Rights, *HLR v. France*, Judgment of 27 April 1997.
44. European Court of Human Rights, *Cruz Varas and Others v. Sweden*, Judgment of 20 March 1991.
45. *HLR v. France*, Judgment of 27 April 1997, op. cit.
46. European Court of Human Rights, *Thampibillai v. The Netherlands*, Judgment of 17 February 2004.
47. European Court of Human Rights, *Soering v. The United Kingdom*, Judgment of 7 July 1989, paragraph 88; European Court of Human Rights, *Shamayev and Others v. Georgia and Russia*, Judgment of 12 April 2005, paragraph 335.
48. European Court of Human Rights, *Vilvarajah and Others v. The United Kingdom*, Judgment of 30 October 1991, paragraph 111.
49. *Soering v. The United Kingdom*, Judgment of 7 July 1989, op. cit., paragraphs 94–99.

