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Founded in 1979 by Bernard Adam, the Group for Research and Information on Peace and Security (GRIP) emerged in the specific context of the Cold War.

Since the nineties, GRIP has acquired a recognised expertise in armament and disarmament issues (production, legislation, transfer control, non-proliferation), conflict prevention and crisis management (particularly in Africa), European integration in the area of defence as well as in strategic challenges in the Asia-Pacific region.

Composed by 20 permanent staff members and a network of several associated researchers from different countries, GRIP has been recognised by the Belgian government as a permanent education organisation. GRIP's mission of disseminating information is further pursued through its numerous publisher activities. In 1990 it has also been designated as "Peace Messenger" by the Secretary-General of the United Nations, Javier Pérez de Cuéllar, for its "precious contribution on peace promotion".

CONFERENCE SPEECH – December 12th 2013

DE GROOF Mélanie, *Weapons for Peace. Arms Transfers, Armed Conflicts and R2P,* GRIP Conference Speech, 12 December 2013, Uppsala.

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CONFERENCE SPEECH

WEAPONS FOR PEACE

Arms Transfers, Armed Conflicts & R2P

Conference Henri Lafontaine

"Challenges for a Peaceful World:
An Agenda for the XXIst Century"

Uppsala, Universitetshuset
11th-13th of December 2013

By **Mélanie De Groof**

Abstract

This presentation concentrates on some pressing questions relating to the practice and legality of arms transfers to the different parties – i.e. both State and non-State actors – involved in an armed conflict. In particular, it concentrates on the question whether arms transfers can contribute to the restoration of peace and security. Since the concept of 'responsibility to protect' is often invoked by States providing arms to violent actors abroad (e.g. in Syria and Libya), this presentation also analyses the legitimacy of this argument. This presentation concludes by stressing that, generally, claims of the legality and the legitimacy of arms transfers to States struggling with armed conflicts are fallacious and must therefore be prevented.

Résumé **Des armes pour la paix :**
Transferts d'armes, conflits armés et responsabilité de protéger

Cette présentation se focalise sur des questions urgentes relatives à la pratique et à la légalité des transferts d'armes aux différentes parties impliquées dans un conflit armé ; c'est-à-dire à la fois les acteurs étatiques et les acteurs non-étatiques. L'objet principal de cette présentation est le lien entre transferts d'armes et rétablissement de la paix et de la sécurité. De plus, dans la mesure où le concept de « responsabilité de protéger » (« *responsibility to protect* ») est souvent mis en avant par les États lorsqu'ils fournissent des armes à des acteurs violents à l'étranger (comme la Syrie ou la Libye), nous nous intéresserons également à la recevabilité de cet argument. En conclusion, nous insisterons sur le fait que l'emploi des concepts de légalité et de légitimité en ce qui concerne les transferts d'armes à des pays en proie aux conflits armés est erroné et doit donc ne plus survenir.

This presentation is based on a report: M. De Groof (2013), Arms Transfers to the Syrian Arab Republic. Practice and Legality, GRIP Report 2013/9, 55 p.

Introduction

Ladies and Gentlemen,

It is a real honour, and a pleasure, to be here with you today.

This presentation is titled "*Weapons for Peace? Arms Transfers, Armed Conflicts & R2P".*

During the following 15 minutes I will focus my attention – and hopefully yours – on the practices and legality of arms transfers to States that are involved in an armed conflict. The principal question I would like to raise here with you is whether – as it is sometimes argued – such arms transfers may facilitate the restoration of peace or be an effective tool in protecting endangered populations.

Especially today, doing research on the topic of arms transfers and armed conflicts is an extremely interesting activity.

First, this is so because there are several *identified cases of massive arms transfers* to States which are struggling with intense and often violent crises, or the remnants thereof. To cite only a few examples, we may refer to the current situation in Syria, but also to Libya and Somalia.

Second, it is interesting to analyze arms transfers because of the *variety of States that either sponsor or direct these arms transfers*. For example, if we look at the cases of Syria, we can notice that Saudi Arabia and Qatar; Russia and North Korea; and several European States, such as Croatia, have been involved in transferring arms to the different warring actors.

A third reason why this topic is so important and challenging relates to the *variety of recipient actors*. In times of peace, the entity that takes a delivery of weapons – or controls all arms transfers to its territory – will typically be the State, through the government which acts for the State. However, in times of internal strife and war, the range of actors that benefit from, and control, arms transfers increases. To illustrate, the official armies, armed opposition groups, criminal gangs, terrorist groups, and even civilians are all identified end users of arms that have been – either legally or illegally – brought into Libya, Somalia and Syria. It is obvious that the inability of the government to control the State's territory and population during internal crises heavily contributes to arms being spread among both State and non-State actors.

A fourth stimulus for all practitioners and scholars that analyze arms transfers in times of armed conflict is the *diversity of legal and moral grounds invoked by the arms suppliers*. I will come to this in few moments.

The Syrian Arab Republic – Case study

I would like to briefly take you to the Middle East – and more particularly to the Syrian armed conflict and the devastating consequences of the arms transfers to the different warring parties.

In September 2013, after almost two years of diplomatic deadlock on Syria, high-level diplomatic negotiations finally resumed. The chemical attack in Ghouta was the starting point for new international efforts to stop ongoing atrocities. This is to be praised, of course, but it must be emphasized that before this chemical attack – which killed an estimated 1,400 men, women, and children – more than 100,000 persons had been killed. Let me refer to the words of the UN Secretary-General, Ban Ki-Moon, where he observed: "We can hardly be satisfied with destroying chemical weapons while the wider war is still destroying whole Syria. The vast majority of the killings and atrocities have been carried out with the conventional weapons. I appeal all States to stop fuelling bloodshed and to end arms flows to all the parties."[1]

These arms transfers to Syria are reflective of the deep division that exists at the international level on how to respond to the Syrian crisis. Whereas some States have funneled important amounts of weapons to the Assad regime, others have supplied arms to the armed opposition forces, and the EU has imposed – and subsequently lifted – an arms embargo against Syria.

The *government stockpiles* of weapons have been supplied mainly by Russia and Iran. Russia has supplied arms through the entire period of the crisis in Syria, despite increasing international pressure and repeated calls from States and regional and international organizations to stop delivering weapons to the Assad regime. However, Russian authorities have consistently insisted on the importance of fulfilling its contractual obligations with Syria. Russia also declared that it only sends defensive weapons to Syria, allowing the Assad regime to defend itself against the opposition forces, but also against the Western powers if the latter would decide to attack Syria.

If we look at the *non-State armed groups* in Syria, we can distinguish four main sources of weapons: first, captured government stockpiles; second, local and regional black markets; third, the clandestine craft of weapons; fourth, arms transfers from third countries. Regarding the latter, it must be noted that the substantial supply of weapons from outside Syria has become a *conditio sine qua non* for the survival of the armed opposition in Syria. Saudi Arabia, Qatar, Jordan, Libya, Sudan, Croatia, but also the USA, Iraq, and Turkey have either organized or facilitated the transfer of weapons to the Syrian opposition.

Let us now have a closer look at the EU. EU Member States have remained divided on the question of whether to provide lethal military support to the Syrian opposition. Several States, such as Sweden, Belgium and the Netherlands, have always opposed the transfer of arms to Syria outside the UN framework. They have stressed the risk that such transfers would undermine the conditions for a political process; that such transfers would trigger the escalation of violence in Syria and the region; that these weapons may end up on the black market or in hands of terrorist groups; and that these weapons would be inadequately used and stocked.

1. Address to the UN GA by Secretary-General Ban Ki-Moon, 24 September 2013.

Other arguments against arms transfers to the Syrian opposition were that the way to peace is not through arms deliveries, and that the transfer of lethal material would be illegal under international law.

However, other States including the UK and France lobbied to drop the EU arms embargo, with success. France and the UK argued that the option of resorting to arms transfers would put pressure on the Assad regime. They also observed that Western States could no longer adopt a wait and see attitude in the face of the massacres in Syria, and that arms transfers would at the very least allow the opposition to defend itself as well as the civilians. Until today, there is no official declaration that the French and British effectively directly supplied arms to the opposition. However, several sources have reported that both States have certainly *facilitated* arms transfers to Syria. And some sources argue that there have been several transfers, by France for example, even at a time when the arms embargo was not lifted.

The legality of arms transfers

While States have been debating the necessity and opportunity of arms transfers to Syria, the question on the legality remained underexposed. And still, a detailed analysis of the situation on the ground in Syria and of the most important European and international legal rules on the use of force and arms transfers allows for a clear conclusion. That is, outside the UN context, claims of the legality of arms transfers to Syria – but also to other States struggling with a civil war – are, most likely, fallacious.

In order to be internationally lawful, the transfer of arms to Syria must be justified with respect to both the territorial State and the affected persons.

Firstly, regarding the territorial State, international law on the use of force – and particularly the principle of non-intervention in a civil war – severely limits the possibility for foreign States to transfer arms to Syria lawfully.

Secondly, regarding the Syrian citizens, arms transfers to Syria are lawful only if these transfers do not harm their rights under international humanitarian law and international human rights law. But an analysis of the situation on the ground reveals that there is a clear risk that arms in Syria – whether they are in the hands of the Assad regime or in the hands of the opposition – are used for committing atrocities. Thus, this casts a shadow over the legality of arms transfers to this country in state of armed conflict.

Thirdly, several States have argued that on the basis of the concepts of ‘humanitarian intervention’ and ‘R2P’ arms transfers to the Syrian opposition were necessary, legal, and legitimate, even without UN Security Council approval. But such non-authorized humanitarian interventions have been very controversial. A close analysis of the most important cases of non-authorized humanitarian intervention of the recent past, such as in Iraq and Kosovo, reveals that their legality is highly disputed. Similarly, the arguments of the US and some European States that there was a right to use military means in Syria to stop the atrocities have been rejected by the majority of governments and legal experts worldwide.

The doctrine of R2P does not change this conclusion. The core idea behind this R2P concept is that each State is primarily responsible for the protection of its own people; but if the home State is unwilling or unable to offer protection, this responsibility falls upon other actors. However, this R2P concept, as endorsed by the GA in 2005, does not focus on military responses to grave humanitarian problems, and allows no opening for coercive measures unless authorized by the Security Council. In sum, under the law as it stands, it seems that the sending of arms for humanitarian purposes *does not pass the legality test.*

If we then move away from the legal considerations and come into the more *practical* reflections, one must also point at the important risks arms transfers may pose, such as (1) the illicit proliferation and diversion of the arms inside and outside Syria; (2) an arms race between the supporters and opponents of the Assad regime; (3) the militarization of the conflict; etc.

Weapons for Peace? Conclusions

I now come to my conclusions.

Firstly, from a *legal point of view*, under international law, arms transfers to both State actors and armed opposition groups that are involved in a violent struggle for power are by and large prohibited. As a consequence, States that organize or facilitate such arms transfers commit a wrongful conduct for which they may be held internationally responsible.

The case-law of the International Court of Justice is particularly instructive in this regard. In the *Nicaragua* case, the ICJ held the US responsible for '*training, arming, equipping, financing* and *supplying* the contra forces or otherwise *encouraging*, *supporting* and *aiding* military and paramilitary activities in and against Nicaragua.' Similarly, in the *DRC v. Uganda* case, the ICJ considered that Uganda, which had given military support to armed groups in Congo had violated its international obligations. The Court's wording is very clear in this regard and worthy of being quoted: 'the Republic of Uganda by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, has violated the principle of non-use of force in international relations and the principle of non-intervention'. In both cases, the State which was found guilty was compelled to make reparation for all injury caused by the breaches of its obligations under international law.

Secondly, from a more *practical point of view*, the argument that arms transfers may contribute to ending conflicts is fallacious as well. In times of peace and stability, legal arms transfers allow governments to safeguard their monopoly of power, and maintain law and order. In times war, however, arms transfers have the opposite effect. Fuelling arms to the fighting parties enables both the continuation and intensification of violence.

Let me illustrate this with the situation in Syria, Somalia, and Libya. In these three countries there is a great availability of weapons, from different sources. Besides arms transfers from third countries, we may also refer to government stockpiles; local and regional black markets; and the craft production of weapons.

In *Syria*, the wide availability of arms has resulted in more intensified fighting today than at the very beginning of the civil war. This, in turn, has resulted in massive refugee outflows and IDP's; 126 000 direct casualties; the collapse of the Syrian economy; and the destruction of most basic infrastructure, including schools, hospitals, water utilities, and so on.

Even before the civil war, *Libya* was already known for being over-armed. And still, in 2011 several States, including France, Italy and Qatar, parachuted arms to support the Libyan armed opposition. The accumulation of arms in Libya has dramatic repercussions today. The transitional government still struggles to establish its control over the Libyan territory and has been unable to guide the State towards peace, security or democracy. Daily life in Libya is characterized by violence, insecurity, daily attacks, and the rule of powerful armed groups which refuse to align with the government.

Likewise, in *Somalia* the massive availability of arms – again, from a range of sources – has prevented successive transitional governments to re-establish law and order. For almost three decades, Somalia has been characterized either by a total absence or ineffectiveness of government.

These three cases are illustrative of the fact that the presence of arms on the ground does have a destructive effect. Instead of bringing peace and stability, the availability of arms and – as a consequence – arms transfers, may deepen and broaden the conflict. The argument that arms transfers to actors may contribute to ending conflicts is therefore misleading.

To conclude, I would like to underline the following important statement by the authoritative Independent International Commission on Syria, which applies to the majority of armed conflict situations:

"There is no military solution to this conflict. Those who supply arms create but an illusion of victory".

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About the author

Mélanie De Groof joined the Group for Research and Information on Peace and Security (GRIP) in February 2013. As a legal scholar, her research focuses on the normative framework governing arms transfers, the use of unmanned aerial vehicles, and the threat or use of force in international relations.

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