# Book Review: The Arms Trade and International Criminal Law: Reframing Accountability for Complicit Weapon Suppliers[1][2]

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As for Tomas Hamilton field experiences, he has worked as a Human Rights Officer at the UN Fact-Finding Mission on Venezuela, Senior Legal Consultant at the UN Assistance to the Khmer Rouge Trials (UNAKRT) at the Extraordinary Chambers in the Court of Cambodia (ECCC), Associate Legal Officer at the International Criminal Court (ICC) in The Hague, and at a leading criminal law firm in London. His theoretical background and practical experiences establish the professionalism and credibility of his book.

Based on the title of the book and the author's professional background, it was obvious that the book examines international legal options for combating the illegal arms trade, especially its main organizers and conspirators, as this would increase international security and reduce the commission and spread of mass violence.

I would highlight the comprehensive nature of the applied research methodology. This includes an extensive analysis of relevant legislation, a thorough review of the literature, interviews with judges, lawyers and prosecutors of the International Criminal Court (ICC), the author's empirical experience, and a case study of the Second Congo War, which guarantee the credibility of the conclusions and findings.

The book explores the fundamental question of how to combat the illegal arms trade and apply international criminal law to the arms smugglers and brokers who provide weapons for the commission of mass violent crimes. The question may arise at all because, when the ICC was established (effective: 1 July 2002), the Rome Statute essentially defined four core crimes that it must investigate and prosecute: genocide, crimes against humanity, war crimes and the crime of aggression (effective: Kampala Conference 2010). Therefore, illicit arms trafficking is not among the core crimes that

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the ICC should address as a priority. The author believes that the ICC should also address the illicit arms trade, as it fundamentally contributes to the commission of mass violent crimes. This is complicated by the fact that the primary exercise of jurisdiction over the arms trade is the responsibility of nations and thus reflects state interests rather than the enforcement of international criminal law.

In the early 2000s, targeted efforts were made worldwide to regulate the illicit arms trade. In the African region, this included the 2001 Southern African Development Community (SADC) *"Protocol on Arms, Ammunition and Other Related Equipment"* [4]. This required member states to introduce legislation to control the activities of arms brokers operating in their territories. However, by the end of 2009, only two member states had targeted arms trade regulations in place, Mauritius and South Africa. As we can see, both the Rome Statute and the SADC Protocol primarily delegate responsibility for combating the illicit arms trade to nations that were not too eager to comply with the provisions of the agreement.

To support the author's hypothesis, the first part of the book provides an in-depth analysis of the relevant national and international laws, their interpretation and their relationship to each other. The book focuses on the examination of the Arms Trade Treaty (ATT), which is considered the guiding international regulation of the arms trade. The agreement aims to prevent the flow of weapons to conflict zones and their transfer to perpetrators of international crimes. However, it states that the obligations imposed on parties by the ATT (establishment of a national control system, law enforcement) are constructively ambiguous. It also fails to adequately address the problem of brokering activities in third states, although it calls on states to regulate brokering activities in their national legal systems, but does not impose an obligation for official registration or licensing. It also does not provide *ex post facto* accountability for international crimes. These inconsistencies allow states to regulate at different levels and degrees of severity, which is contrary to the intention of the treaty. It is therefore not surprising that the author concludes that the current arms export regime is ineffective in achieving the fundamental objective of the ATT. He therefore sees an opportunity in the application of international criminal law, including the involvement of the ICC, particularly in *ex post facto* investigations and criminal proceedings, in a way that complements the existing regulatory system.

Chapters 4 and 5 examine the specific legal interpretation of *actus reus* and *mens rea* in the context of arms trafficking. This is important because in most criminal cases both conditions must be proven for a conviction. The author thoroughly analyses Articles 25 and 28 of the Rome Statute, which define the possible cases of liability. It states that Article 25(3)(c) and (d) provide an opportunity to act against complicity. Criminal assistance can be interpreted as including the illegal arms trade, but of course the

[4] Besenyő János — Molnár Erik, Fegyverkereskedelem jelenlegi helyzete és szabályozása Afrika déli részén, KNBSZ Szakmai Szemle 2012/1., Budapest, 2012.

interpretation can cover a much wider range of suppliers, given that it is not only arms that can be used to facilitate the commission of mass crimes. However, it should also be taken into account that mass crimes can be committed without the use of weapons. In cases such as looting, arson, and rape, it is very difficult to prove in court how important the weapons carried by the group were, or whether the crime would have occurred without them simply because of aggressive attitude and numerical superiority. For obvious reasons, the above articles define in detail the criteria for liability, taking into account a number of possibilities (degree of contribution, "neutral" contribution, accidental absence, common purpose, etc.), but at the same time they make it difficult to prove and apply personal liability. This is especially true in the case of an arms manufacturer, dealer or broker who has no connection (political, religious, emotional, etc.) with the group committing the crimes but simply provides arms and war materials on a commercial basis.

For me, the most informative and interesting chapters were Chapters 6 and 7, in which the author presents the legal culture of the ICC, the understanding of its mandate, and its practice in selecting the cases in which the ICC is willing to act. The identification of the legal culture of the ICC is based on the author's personal interviews with 32 ICC legal staff (judges, lawyers, and other legal professionals). This was a huge undertaking, but essential for the credibility of the findings. The interviews clearly demonstrated the ICC's insistence on prosecuting high-ranking political and military leaders involved in mass crimes, in line with the core crimes set out in the ICC's mandate. In this way the high international visibility of the ICC cases would serve as a deterrent in preventing similar cases. ICC staff believe that the arms trade is fundamentally regulated by the ATT and consider national authorities to be best placed to tackle illicit trade and brokering. Action against arms dealers and brokers was considered too dangerous, complicated (hard to obtain evidence) and too complex. Although they did not add, in my opinion, it is also included that bringing an arms dealer or broker to justice involves a lot of work and danger, but it does not convey the same message as convicting a world-famous dictator or a notorious military leader. Based on the interviews, the author emphasizes that the opinion of ICC officials to refrain from taking action against arms trafficking is not legally based, but is mainly dictated by institutional culture, and he maintains his opinion on the possible role of the ICC in prosecuting illegal arms dealers and brokers.

In Chapters 8 and 9, the author analyses the successful UN investigation into weapons of mass violence through the case study of the Second Congo War, and then the fact that criminal accountability was missing. The Second Congo War was one of the bloodiest wars on the African continent between 1998 and 2003, involving 9 African countries, some 25-armed groups, and claiming an estimated 3.9 million lives and almost as many refugees. However, this massive disaster did not receive the necessary publicity, so it became known only to a relatively narrow circle. The analysis shows that the Security Council embargo system and national export controls have failed to prevent the flow of Small Arms and Light Weapons (SALW) to the eastern Democratic Republic of Congo (DRC). However, the regulations contained in the ATT have not been

sufficient even for *ex post facto* investigations. This was the first case in which the newly established ICC (1 July 2002) has initiated criminal prosecution under the Rome Statute. In this situation, the Court's activities were determined by the "childhood diseases" characteristic of all beginnings. The first Court Prosecutor began the investigation against the arms dealers with great enthusiasm, but the public arrest warrant did not follow the enthusiasm. At the same time, political games and considerations also strongly influenced the Prosecutor's final decision, which led to the indictment of four leaders of non-state armed groups. This decision was made following an agreement with the leaders of the Congolese government, but the illicit involvement of the governments of Rwanda, Uganda and the Democratic Republic of Congo was not examined. This clearly shows the factual relationship between politics and law, an issue that arises repeatedly in the book.

In my opinion, the author, guided by good intentions, presented how illegal arms trafficking and brokering could be more effectively combatted by applying criminal law. When examining the theoretical issues, he demonstrated great professional knowledge and understanding of the relevant literature. He presented the case study based on his practical experience, highlighting its main points. Nevertheless, by examining both theoretical and practical aspects in its contexts, he highlighted the ineffectiveness of the legislation in terms of compliance with embargoes and the prevention of mass armed crimes. The *ex post facto* procedure he also emphasized, although legally important, does not prevent the flow of weapons into the conflict zone and the commission of mass crimes in practice. I believe that *ex post facto* procedures can have at most a limited deterrent effect in these cases. However, it should not be forgotten that arms dealers and brokers could not exist without the knowledge and consent of the major arms companies and the state agencies that oversee them. Arms smugglers are in fact involved in both the legal and illegal arms trade. This is also supported by the Viktor Bout case, which is also mentioned in the book (p. 172). Viktor Bout supplied weapons to Sudan on behalf of the UN and to Iraq on behalf of the United States. But of course, he also supplied weapons to the Liberian dictator, as well as to the dictators of Burundi, Sierra Leone and the Central African Republic. He was convicted in 2012, and after his release in 2022, he returned to Russia and built a political career.

The case study of the Second Congo War can be considered a “textbook case” in many ways, but in 2025 I am no longer convinced of its relevance. Today’s conflicts have become much more complex (international alliances, cutting-edge technologies, expansion of operational dimensions, etc.), international organizations such as the UN and the EU have lost significant weight and have no real influence on the development of international security. The international arena has been dominated by power politics, which serves the interests of a few great powers while ignoring international law. Accordingly, the validity of international criminal law and the role of the ICC have also become questionable. The president of the world's leading power has declared that he does not need international law, considering his own morality and way of thinking as authoritative. But we can mention the arrest warrants issued against the Russian

President and the Israeli Prime Minister (just to mention the most prominent), which no country has executed, thereby degrading the significance of the ICC. Based on all this, I believe that the author's basic idea, the extension of criminal law to the illegal arms trade, is useful and legally sound, but at the same time it seems very little in the current situation. A fundamental transformation of the international security architecture is inevitable, in line with the international legal system and the organizational/law enforcement structure and mandate that support it.

The book is a truly thought-provoking work. I highly recommend it to anyone who enjoys thinking about the interactions between security and law, and perhaps how international law can become a source and support for international security.