**GUNS VS troops: the Ethics of SupplyING Arms**

ABSTRACT: The prospect of direct military intervention by major Western powers looks less likely as they cut military spending and the BRICS rise in influence. As a result, Western states are likely to look to other measures to pursue their ends. Given their responses in Libya and Syria, one of the most notable measures that they seem likely to use is supplying arms to rebel groups. This chapter will consider this method, which raises a host of ethical issues that have been overlooked in the literatures on civil wars, humanitarian intervention, and Just War Theory. The chapter will focus on two particular issues. First, how does the case for providing arms to rebel groups compare morally to humanitarian intervention? Second, are the current international laws on providing arms to rebel groups morally judicious? It will argue that providing arms to rebel groups is even more dangerous than engaging in direct military intervention, and offers potentially fewer countervailing benefits, even if there is some minor principled reason in favour of it. Nevertheless, it will also argue that the current international laws on providing arms are unfair to rebels. But rather than weakening the law, the chapter will argue that the laws on providing arms should be even more restrictive for the provision to arms to states.

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# I. Introduction

Western states are less likely to wage major wars in the future. This is for (at least) four reasons. First, despite several ongoing conflicts, the world is generally becoming more peaceful. There are fewer mass atrocities and conflicts to which to wage war in response.[[1]](#footnote-1) Second, the US and UK’s misadventures in Iraq and Afghanistan have severely diminished any public appetite for large-scale war or humanitarian intervention. The significant public opposition to the mooted humanitarian intervention in Syria against Assad in 2013 indicates that any Western leader is likely to have to go against public opinion.[[2]](#footnote-2) Third, in the wake of the financial crisis and neoliberal austerity measures, there have been significant cuts to military expenditure, further reducing the ability of Western powers to undertake large-scale military operations abroad. Fourth, in the future it will be more difficult to secure international support for major wars and military interventions, most notably from the UN Security Council, which is an important factor in their legitimacy and ultimately effectiveness (Pattison 2010). It is widely expected that the BRICS—Brazil, Russia, India, China, and South Africa—will rise in global influence and there will be a relative decrease in the power of the US and Europe. The BRICS are notoriously much more noninterventionist, at least in their rhetoric, and often define their foreign policy agendas in opposition to Western interventionism.[[3]](#footnote-3) It seems likely, then, that any potential Western interventions will have to navigate carefully the positions of the BRICS and, if they oppose the intervention, potentially endure significant reputational and other political costs.

 Although less likely to engage in direct military intervention, major Western powers will still, of course, attempt to secure their foreign policy goals—including the tackling of violations of human rights beyond their borders—by other means. Some of these measures have already been subject to ethical analysis, namely, the use of force short of war, such as targeted strikes and drone warfare. But the focus on the options to tackle the mass violations of basic human rights (such as in debates about the responsibility to protect) has still been on direct military intervention; the alternatives to direct military intervention have not been sufficiently explored. These alternatives raise several important ethical issues and include the use of economic sanctions, diplomatic criticism, and various forms of humanitarian, financial, and military assistance.[[4]](#footnote-4) In this chapter, I will focus particularly on one form of military assistance: the supply of military equipment to insurgents.

The ethical issues surrounding the supply of military equipment to insurgents in order to tackle human rights violations has become particularly pertinent in the wake of the Arab Spring. In response to the uprisings in Libya in 2011, several states, including France, Qatar, and UK, supplied lethal and nonlethal weapons to the rebel groups fighting the incumbent regime (Corten and Koutroulis 2013: 90). In response to the uprisings in Syria, states provided arms to the various belligerents fighting the civil war. The supplying of arms became one of the central political issues. Various rebel factions were supplied arms by, amongst others, Qatar, Saudi Arabia, United Kingdom, Turkey, and France, and the Assad regime was provided with weapons by Russia and Iran (BBC 2013).

I have recently considered the general permissibility of arming rebel groups elsewhere (see Pattison 2015*a*).[[5]](#footnote-5) I have argued that arming rebels is, on the one hand, exceptionally permissible because it can help rebel groups to pursue legitimate ends, such as the protection of individual human rights and self-determination, but, on the other, is generally impermissible. This is because (i) it can be very difficult to determine precisely who the rebels are and whether they are fighting with regard to the principles of *jus ad bellum* and *jus in bello* and, if they were to get in power, whether they would be likely to be better than the current government. The arming of rebels can (ii) significantly escalate hostilities when, in response, other parties in the conflict also seek arms or intensify their response by clamping further down on any opposition groups. In addition, (iii) it is difficult to ensure not only that the weapons are delivered to or stay in the possession of the seemingly legitimate rebels.

In this chapter, I want to go beyond the question of the permissibility of arming rebels to consider two further issues. First, how does the case for providing arms to rebel groups in order to tackle human rights violations compare morally to humanitarian intervention? Second, are the current international laws on providing arms to rebel groups morally judicious? I will argue that providing arms to rebel groups in order to help protect human rights is even more dangerous than engaging in direct military intervention, and offers potentially fewer countervailing benefits, even if there is some minor principled reason in favour of it. Nevertheless, it will also argue that the current international laws on providing arms *are* unfair to rebels. But rather than weakening the law, the chapter will argue that the laws on providing arms should be even more restrictive for the provision to arms to *states*.

Before beginning, a quick clarification is required: arming rebels should be (and in policy circles *is*)seen as an alternativeto war and direct military intervention. To start with, it is an alternative to states waging wars and directly intervening militarily in other states. That is, even if there is already a civil war going on in which the rebels are participating, arming rebels avoids a further war—an *inter*state war—such as between the external party and the repressive state. Indeed, during the public debate on Syria[[6]](#footnote-6), the sending of arms was widely viewed as an alternative to war by the West against Assad. It was defended by those more optimistic that it would help to remove Assad and therefore remove any purported need for direct Western military intervention. In addition, it is worth noting that, although this chapter will focus largely on civil wars, the rebels may not be engaged in a civil war, but instead in low-intensity conflict. The support for them in this enterprise may be sufficient to achieve the foreign policy goals of the supplying state. In short, the rebels need not be engaged in intra-state *war*. For instance, the airdrops of weapons by the UK to the French Resistance, which opposed the Vichy Regime and Nazi occupation during World War II, helped to disrupt the occupation, facilitate the escape of Allied forces caught behind enemy lines, and provide intelligence for the Allied invasion.

Notwithstanding, although the arming of rebels is sometimes an alternative to war and direct military intervention, it is sometimes carried out *alongside* war and direct military intervention. For instance, not only did the West arm the Libyan rebels, it also intervened militarily in support of them. Arming rebels is therefore a *separate* option to engaging in war and direct military intervention, but may be undertaken *alongside* these other options as well, just as other notable alternatives to war, such as economic sanctions, targeted killings, and strong diplomatic rebuke, are sometimes used as alternatives and are sometimes undertaken alongside war and direct military intervention.

# II. Arming Rebels and Direct Military Intervention

First, let us consider how arming rebels compares to direct military intervention. For instance, in response to the mass atrocities and civil war in Syria, and before the emergence of Islamic State, would it have been better to arm the Free Syrian Army or intervene militarily? And, as the West seems less likely to engage in major wars and interventions in the future, should it fill this void by supplying arms or should it attempt to retain some notable capacity to intervene, such as by increasing the pooling of resources between states?

In what follows, I will consider four potential principled reasons why arming rebels might appear to be preferable. These reasons largely stem from a clear and obvious difference to direct military intervention, and which largely explains its popularity as a foreign policy option for states supplying arms to rebels in Syria, Libya, Ukraine, the Balkans, and beyond: the arming of rebels does not involve sending troops to fight beyond the borders of the state.

First, does it matter that sending arms is a lot cheaper and does not risk one’s soldiers coming home in body bags? I think that this provides *some*, *small* reason to prefer arming rebels. This is patent if there would be *overall* less unjust harm to innocents, that is, when the harms of arming rebels would be lower than the costs of sending soldiers for both the sending state and for those subject to the potential intervention (and third parties, such as neighbouring states). For instance, arming rebels may, perhaps only exceptionally, be less costly since direct military intervention would result in the intervening state being dragged into a lengthy, bloody international war.

But I want to consider, beyond this point about the efficacy of arming rebels compared to military intervention, if may be preferable to arm rebels even when the direct military intervention by the external party would result in overall *less* harm than arming rebels. Suppose, for example, that there are two ways that France could address a brutal regime in Guinea that is engaged in mass atrocities. On the one hand, it could intervene militarily, risking the lives of soldiers at great expense. This would be more effective overall at tackling the mass atrocities. On the other, it could supply military hardware to a rebel movement, at much cheaper cost and not risk the lives of French soldiers. This option would still be likely to tackle the mass atrocities, but not as quickly. In the meantime, some innocents in Guinea would die. Which option should France choose? The supplying of arms *might* be preferable (depending on the overall number of lives saved). This is because of the (albeit limited) special obligations that France has to favour the interests of its citizens. That is, as is widely accepted, states have fiduciary obligations to promote the interests of their citizens, even if this will not be directly optimal overall in advancing human rights worldwide. As such, providing weapons to rebel groups may be a morally justifiable form of risk transfer in that it transfers risks to noncitizens—i.e. rebels—letting them carry the burdens of fighting rather than citizens.

However, I think that this provides only a minor reason in favour of arming rebels. Although states should give greater weight to the interests of their citizens, they still need to factor in the effects on the interests of individuals beyond their borders. More specifically, one should not endorse what Allen Buchanan (1999) calls the ‘discretionary association view’ of the state—in short, that the state must concern itself *exclusively* with the interests of its citizens.[[7]](#footnote-7) Rather, one should hold instead only the view that the *primary* role of the state is to promote the interests of its citizens. On this more moderate view, states still possess some duties to those beyond their borders, including the duty to undertake direct military intervention in certain circumstances, even if it will be costly for its citizens (Buchanan 1999). Moreover, the amount of additional weight that they may give is small: they cannot permissibly give *much* greater weight to the interests of their own citizens compared to the interests of those beyond their state. Accordingly, partiality tips the balance only in borderline cases, such as the France case above, where the arming of rebels will be similarly proportionate (in agent-neutral terms) to direct military intervention.

A second potential argument focuses on humanitarian intervention and runs as follows. Rebels more clearly consent to fight in their own defence than intervening soldiers who may not agree to fight in humanitarian interventions. This is because (i) humanitarian intervention involves the coercion of those fighting, since, it is claimed, soldiers only agree to sign up for national defence (Cook 2000) and (ii) a rebellion is more likely to be fought by volunteers. Thus, considerations of individual autonomy render it preferable to arm rebels than to intervene. This is because, although (as I have argued elsewhere in Pattison 2014) it is all-things-considered permissible to force some to fight when there is no other option, it would be better *not* to force individuals to fight and instead look to the alternatives to doing so, such as arming rebels.

Is this argument plausible? It is, of course, a contingent matter whether rebel forces are made up of conscripts or volunteers. Some clearly do involve coercion (e.g. Liberia and Uganda), but others (such as the African National Congress in South Africa) are based on voluntary participation (Eck 2014). This is in part because of the costs of coercion for the rebels. These include the costs of policing and tackling attrition, the negative effects for the success of the rebellion due to desertion on the battlefield, and the alienation of the civilian population (Eck 2014).

However, it is also the case that wars and humanitarian interventions are also often based on volunteers: soldiers can expect when they sign up that their state will engage in humanitarian interventions. Indeed, enlistment documents typically do not distinguish between the types of wars that those enlisting will be required to fight. Hence, there does not seem to be sufficient basis for a general presumption in favour of arming rebels because of the individual autonomy of those fighting.

Nevertheless, it is certainly possible that a humanitarian intervention may involve conscription and that a rebellion will not. Perhaps more likely is that, even if enlistment documents do typically allow for humanitarian intervention, there may still be particular individuals who do not wish to fight. Such documents can also be vague about what exactly it is to which individual soldiers agree. By contrast, *certain* rebels more clearly consent since they take up arms for a specific fight—the war against their state—than regular soldiers who may or may not expect to fight wars of other defence when they sign up. In such cases, considerations of individual autonomy render it preferable to arm rebel groups. This is because, although it is all-things-considered permissible to force some to fight when there is no other option, it would be better *not* to force individuals to fight by looking at alternatives to doing so, such as arming rebels. Yet, given that rebels may oftentimes be conscripted, there does not seem to be sufficient basis for a general presumption in favour of arming rebels because of the individual autonomy of those fighting.

Third, does it matter that the rebel soldiers benefit from the action against their state? The thought is this: arming rebels in order to help protect human rights is preferable to intervening directly because the rebels are potential beneficiaries of the action. That is, they may benefit, for instance, from the overthrow of their repressive government. For example, if successful, providing weapons could mean that the Free Syrian Army benefit from a stable, human rights-respecting government instead of the brutal Assad regime. By contrast, intervening soldiers are much less likely to benefit in this way. By arming rebels, rather than intervening, states transfer risks to those who may benefit from these risks being undertaken.

 This does not provide a weighty (or likely) reason in favour of arming rebels. This is because, obviously, benefiting does not depend on anything about individual responsibility for the conflict that means that it is acceptable to impose *significant* costs on the rebels who ‘benefit’. Furthermore, the rebels being ‘benefited’ in this context might still be significantly disadvantaged, such as being under an authoritarian leader (e.g. through no fault of their own, they have already had to endure years of rule by Assad). Although their situation may improve, it will have often started at a very low level (e.g. subject to poverty and human rights abuses). Those who have not been benefited by the overthrow of their authoritarian government (e.g. British, American, and French soldiers) may often be far better off. In fact, if we hold that many of those who bear the burdens of mass atrocities or an authoritarian leader are not morally responsible for this situation, then, given that these individuals already bear the costs of the mass atrocities or their authoritarian leader, it may seem fairer that *others* should bear the costs of tackling the situation.

To be sure, being benefited may have some moral relevance when those benefited already have their just entitlement. For example, it might be relevant when rebels are generally much better off than the regular soldiers from other states, when the latter are extremely poor, subject to various abuses in their home state, and so on. However, it seems generally that rebels will be in an even worse situation. Therefore, although it is conceivable that being benefited may provide a reason to prefer arming rebels, it is unlikely to be relevant in practice.

A fourth potential reason in favour of arming rebels is that it more fairly shares the duties to promote the enjoyment of human rights. It is only a limited number of states that can launch humanitarian interventions to protect the enjoyment of human rights in cases of mass atrocities. This is because few states (e.g. the US, France, and the UK) have sufficient air- or sea-lift capacity. Thus, when humanitarian interventions are required, a significant burden will fall on a limited number of states that are able to wage just humanitarian interventions. If these states have already waged a significant number of just interventions already, they could not be reasonably asked to bear any further costs in tackling mass atrocities. Other states should bear these costs. Yet other states are not able to do so since they are not sufficiently capable militarily. By contrast, the argument runs, the arming of rebels better shares the costs of tackling mass atrocities so that they are not borne by only a few states. In particular, states that are not capable of waging war can still play a significant role in fulfilling their duties to tackle mass atrocities by the arming of rebel groups. Even if these states do not possess the arms themselves to transfer, they can purchase arms from states that do, or develop these weapons themselves, in order to supply them to rebel groups.[[8]](#footnote-8)

Yet, this reason seems unlikely to apply. Even if a few states carry more of the burden of warfighting, they can still share some of the burden by having the soldiers of other states carry out the frontline duties. In fact, this is already the predominant practice with recent direct military interventions. That is, direct military interventions have typically become ‘hybridised’, with major Western states providing logistical support to non-Western troops on the ground (Bellamy and Williams 2009).

More fundamentally, even though a few states may have to bear the greater burdens of fighting wars, this is not problematic since the unfairness of bearing the burdens of fighting wars or direct military interventions should not be viewed in isolation. The more militarily capable states—such as the US, France, and the UK—typically do very well out of the current global political and economic system. It therefore is fairer that, as major beneficiaries of a system that has some major injustices, they should bear much of the costs of tackling the current injustice. Moreover, there is a plausible case for holding that these states in fact owe reparative duties to tackle the injustice because of their prior violations of human rights, such as by sustaining the unjust global economic system and by propping up illegitimate actors. Concern about unfairness to major military powers is therefore a weak reason to favour arming rebels. Worries about unfairness therefore seems unlikely to provide a reason to favour arming rebels since militarily capable states could still be legitimately required to fight wars or direct military interventions.

The upshot is this: the principled reasons for preferring arming rebels to direct military intervention are either unlikely to apply or not very weighty. The most notable principled reason in favour of arming rebels for human rights purposes concerns limited partiality towards fellow soldiers, but the import of this concern seems relevant only for borderline cases. More important is the (i) likely efficacy of supplying arms to rebel groups, in terms of helping them to achieve just goals, such as tackling the conflict or removing an oppressive regime. Also crucial is, of course, (ii) whether there are likely to be negative effects of arming rebels in terms of harms to innocents, such as from rogue rebels who target civilians, escalation of the conflict, and the diffusion of arms. It seems that (i) the efficacy of supply arms is generally very questionable, in large part because any arms supplied are likely to be matched by arms supplied to the state opposing the rebels (Moore 2012), and (ii) the likely negative effects (in terms of harms to innocents) will be more pronounced than those of direct military intervention. These effects will often be worse because intervening forces can exert greater control over the military forces that they deploy than the arms that they supply. By contrast, supplying arms to rebel groups puts undue hope on the prospect of rebels fighting justly and destroying the weapons at the end of the conflict. Ultimately, then, providing arms to rebel groups is even more dangerous than engaging in direct military intervention, and offers potentially fewer countervailing benefits, even if there is some minor principled reason in favour of it.[[9]](#footnote-9)

# III. International Law and Arming Rebels

Having compared the ethics of arming rebels to military intervention, let us now consider the morality of arming of rebels under current international law.

The arming of rebels is widely viewed as generally illegal according to international law. This is because, first, the arming of rebels is illegal when the rebels may use the weapons supplied to disregard the rules of international humanitarian law (IHL), as in the cases of Syria and Libya (Corten and Koutroulis 2013; Ruys 2014). This is based on a customary norm to ‘ensure respect’ for IHL. This is supported by the Arms Trade Treaty (ATT), which in Article 6 (3) asserts that a state cannot authorise the transfer of arms if it has knowledge that the arms would be used to breach IHL; although not yet ratified, the ATT provides clear *opinio juris* of current customary international law (Ruys 2014: 28–9).

Second, arming rebels violates Article 2 (4) of the UN Charter (the prohibition on the use of force) since supplying arms is widely viewed as a ‘threat to use of force’, and violates the related Article 2 (7) (the principle of nonintervention) (Akande 2013; Ruys 2014: 32; Schmitt 2014). There are potential exceptions, but these are unlikely to apply in the case of arming rebels. One exception is if the UN Security Council authorises the supply of arms (e.g. with a resolution under Chapter VII) (Corten and Koutroulis 2013: 90; Schmitt 2014). But this is, of course, contingent on UN Security Council authorisation being forthcoming, which it may not be (e.g. in Syria). On the contrary, the Council may explicitly deny the legality of supplying arms in an arms embargo. Another potential exception is if states consent to the arming of groups within their borders. The supplying of arms might not then contravene the prohibition on the use of force or the principle of nonintervention (Ruys 2014: 40). But, obviously, states are highly unlikely to give their consent to the arming of opposing rebel forces. Perhaps a seemingly more plausible exception is if the opposing rebel forces were recognised as the new *de jure* government; states could then legally assist the former rebels (now, the ‘government’ forces) in their conflict against the ‘rebels’ (the former government forces). Yet such a view contravenes the widespread understanding of recognition as requiring that the government exercise effective control over most of the state’s territory (Akande 2014; Ruys 2014: 37­­–8; Schmitt 2014: 154).[[10]](#footnote-10) Moreover, such a view would have serious legal repercussions for understandings of recognition more generally since almost any party may be recognised and then consent to intervention by another state, thereby massively weakening the prohibition on the use of force and the principle of nonintervention (Ruys 2014: 39).

There is an apparent, general unfairness in international law since it is illegal to arm rebels but is legal to arm the opposing state forces. This is because states can invite intervention, which does not undermine the prohibition on the use of force or the duty of nonintervention (Ruys 2014: 40).[[11]](#footnote-11) To be sure, there are two exceptions to the general (legal) permissibility of arming states. First, transfers to governments are not permitted when there is a substantial risk that the arms will be used to violate IHL (Ruys 2014: 45). Second, UN arms embargoes legally oblige states not to supply arms to the entire territory of embargoed states. Indeed, arms embargoes are often imposed on rebel groups *and* on government forces, such as in the cases of the DRC, Iraq, Liberia, Rwanda, Sierra Leone, and Somalia (Holtom 2012: 10).

How should we judge such apparent unfairness? On the one hand, we may think that, if it can be exceptionally permissible to arm rebels, the law should *not* prohibit arming rebels. Let us call this the ‘Less Restrictive Option’: the law should allow for the arming of rebels. This is because the current legal regime is problematic since it massively favours states, such as the Assad regime. Those subject to grave violations of their basic human rights by their states are denied access to the means to address these violations. In similar vein, John Bolton (the then US Undersecretary for Arms Control and International Security) argued, in his 2001 plenary address to the UN Conference of Action on the Illicit Trade of Small Arms and Light Weapons, that

[w]e do not support measures limiting trade in [small arms/light weapons] solely to governments. This proposal, we believe, is both conceptually and practically flawed… Perhaps most important, this proposal would preclude assistance to an oppressed non-state group defending itself from a genocidal government. Distinctions between governments and non-governments are irrelevant in determining responsible and irresponsible end-users of arms.[[12]](#footnote-12)

Similarly, the discussions in 1998 about the Canadian-sponsored effort to develop a ‘Global Convention Prohibiting the International Transfer of Military Small Arms and Light Weapons to Non-State Actors’ faced opposition from states and NGOs ‘because it would ban arms transfers to [nonstate actors] in cases where armed opposition against an illegitimate or repressive government was deemed “the only option”’ (Holtom 2012: 7).

Conversely, we might think that there should be an absolute prohibition on the arming of rebel groups, but not states. Let us call this the ‘Statist Option’. Why can states be armed? One might hold that there are Hobbesian (moral) reasons for maintaining that governments—and not rebels—should be able to obtain military supplies. This is to uphold a monopoly on the use of force so that there can be some degree of stability within the state, which is ultimately necessary for legitimate governance and to reduce the overall levels of conflict within both the state and the international system (e.g. so that armed rebels do not destabilise neighbouring states). The apparent unfairness in international law is therefore necessary for international order and internal legitimacy.

Alternatively, one might hold that *both* rebels and governments should be precluded from being armed. We might call this the ‘Highly Restrictive Option’. To that extent, Ruys argues that, in the case of civil wars,

considering the fact that third-State weapon supplies often tend to prolong the duration of a civil war and complicate the achievement of a political solution, it is much to be desired for arms transfers to both parties in the actual civil war to be treated in identical fashion, and, more specifically, to be equally prohibited under international law… The perception that international law is far more permissive vis-à-vis support (armed or other) on the side of the State authorities, even in situations of civil war, seems fundamentally irreconcilable with the right of people to choose their own political future without outside interference (2014: 44).

In addition to the worries about illegitimate governments strengthening their regime, similar worries about the proportionality of supplying arms to rebels also *to some degree* apply to the arming of states. Just as when rebels are supplied arms, governments are also likely to misuse the arms and harm innocent civilians. Arming states is also likely to escalate the conflict, since other agents will provide arms to the rebel groups in response (see Moore 2012: 335–6). The weapons are also likely to be present in the society long after the conflict, as they, for instance, are stolen from government stockpiles (see Jackson 2010). Accordingly, the likely efficacy of supplying arms to governments, in terms of helping them to achieve just goals, is generally questionable, and there will be pronounced negative effects.

There is a fourth option: the ‘More Restrictive Option’. This holds that rebels and *some* governments should be precluded from being armed. That is, it adds that there should be a prohibition on arming *certain* states, that is, states that are likely to violate the human rights of their citizens. To have legal force, this blacklist could—as a nonideal but currently optimal measure—be endorsed by the UNSC (even if some notable states are not listed). To start with, then, it would resemble the legal status quo, acting in a similar manner to UN arms embargoes (or regional arms embargoes, such as by the OSCE and ECOWAS). Nevertheless, it could develop so that many more states are blacklisted and in the end that all states need import licences in order to purchase arms legally. There could be a supranational, independent licensing body that would provide licences only for states that are not likely to misuse the arms and that would keep tight control of them—in essence, a strengthened, more robust and far less permissive version of the current end-user certification system. There would be a well-resourced body to monitor the enforcement of the licensing regime (e.g. to protect against fake licences) and robust political, economic, or criminal sanctions for those who violated its rules by, for instance, exporting to those who do not possess a licence.[[13]](#footnote-13)

Although space precludes fleshing out this option more here, it seems to be the most favourable. It accepts the concerns about arming states but does not fully preclude doing so, which could render it too hard for legitimate states to maintain their justified monopoly on force. This is because states would be reliant simply on the weapons that they can produce themselves, which leaves them vulnerable to rebels who obtain major conventional weapons through the black market. Yet it also accepts, along with the Highly Restrictive Option, that there are serious worries with providing arms to states, as well as to rebels.

How should this view (or the Statist Option or the Highly Restrictive Option) on the illegality of supplying arms be reconciled, if one holds that arming rebels can be exceptionally permissible (if generally problematic)?[[14]](#footnote-14) I suggest that occasional permissibility of such instances should be viewed as illegal but legitimate. That is, it should be viewed as similar to the occasional instances of humanitarian intervention that lack clear state consent or UN Security Council authorisation, such as, famously, NATO’s intervention in Kosovo in 1999. (The Independent International Commission on Kosovo concluded that NATO’s action was ‘legitimate, but not legal, given existing international law’ (2000: 189) What this means is that, when arming rebels is all-things-considered morally justifiable, those supplying arms should not be subject to the various reputational and other political costs associated with action that contravenes international law. In short, those justifiably but illegally arming rebels should make a plea of mitigation (i.e. present the case for their action). Various other actors in the international community (states, NGOs, the media, etc.) can have what Thomas Franck (2006) calls a ‘jurying’ function in order to assess whether the plea is plausible and so whether the state supplying arms should be subject to international opprobrium and to other sanctions.[[15]](#footnote-15)

The law therefore does not need to reflect *fully* the applied morality of the issue of arming rebels. It is unlikely that the law could be specified sufficiently so that all the morally permissible cases of arming rebels are legal and, conversely, all the morally impermissible cases are illegal. Too fine-grained distinctions would need to be made that may undermine the generality of international law or may require impartial and very well-informed judgments on rebel groups’ fidelity to the principles of *jus ad bellum* and *jus in bello*, and on the likely impact of the arming of the rebels by outside parties. Even if such institutions are feasible in the longer term, in the short term something like the blacklist approach and relying on pleas of mitigation in other cases seems to be all that could be achieved.

**IV. Conclusion**

Thus, although arming rebels may occasionally be permissible, this should not be reflected by changes in international law. Instead, the law should be amended to retain the prohibition on arming rebels and be more restrictive for arming states*.* In the meantime, permissible cases of arming rebels should be seen as similar to permissible cases of direct unilateral military intervention without Security Council authorisation and states consent. That is, it should be viewed as illegal but legitimate.

Accordingly, in the face of decreased ability to undertake wars and interventions, major Western powers should not provide arms to rebel groups instead in order to tackle human rights violations. Rather, they should seek alternative, more peaceful means, such as naming and shaming, arms embargoes, and targeted financial sanctions.[[16]](#footnote-16) And, if there is still, on occasion, a choice between undertaking direct military intervention and arming rebels for human rights purposes, it seems more likely that the former—direct military intervention—will be the better option.

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1. This is a central premise of Pinker (2011). I should note here that this ‘declinist thesis’ in somewhat controversial. The counters of the debate are spelt out by Gleditsch (2013), who notes that it is widely accepted (even amongst critics) that there has been a decline in war and other forms of violence. According to Gleditsch, the main controversies surround (1) what causes this phenomenon and (2) whether there will continue to be a decline, in the light of both climate change and the potentially significant changes to geopolitics if and when the relative power of the West decreases. Indeed, 2014 saw a clear spike in the death rate, although Goldstein and Pinker (2016)—the most well-known defenders of the declinist thesis—point to seemingly positive trends in early 2016 (at the time of writing) and argue that “virtually all the war in the world is now confined to an arc stretching from Nigeria to Pakistan”. [↑](#footnote-ref-1)
2. For instance, an Opinium/Observer poll found that the UK public opposed action against Assad in September 2013. <http://www.theguardian.com/politics/2013/aug/31/poll-british-military-action-syria>. There was, however, more public support for the action against ISIS, but this was not a humanitarian intervention. For instance, in December 2015, a CNN/ORC Poll found that there was support for a ground war against ISIS. <http://edition.cnn.com/2015/12/06/politics/isis-obama-poll/> [↑](#footnote-ref-2)
3. To be clear, I do not think that this scepticism should be overstated. A degree of support for occasional humanitarian interventions will remain as the relevant norms and doctrines continue to influence, and occasional interventions will be likely. [↑](#footnote-ref-3)
4. I address this lacuna in Pattison (under contract). [↑](#footnote-ref-4)
5. This is available to download for free on [www.jamespattison.co.uk](http://www.jamespattison.co.uk) [↑](#footnote-ref-5)
6. See, for instance, Vilmer (2012). [↑](#footnote-ref-6)
7. Note that Buchanan (in my view, persuasively) rejects this view. [↑](#footnote-ref-7)
8. Reasons of fairness also may provide a reason to arm rebels compared to not doing so. That is, the rebels have already had to take on the costs of *fighting* injustice. It is unfair that they should also have to bear the costs of supplying the arms, such as purchasing them from the black market. [↑](#footnote-ref-8)
9. It might also be held that causal remoteness provides to prefer arming rebels to engaging in direct military intervention since the former is more causally remote. When arming the rebels, the supplying state is not the agent that *commits* the foreseeable killing of innocents, unlike when engaged in direct military intervention. In other words, being complicit in a wrongdoing might be thought to be better than directly committing the wrongdoing oneself. Notwithstanding, it seems that this does not provide a weighty reason in favour of arming rebels. For instance, if France is considering (i) arming a rebel group which would harm 100 innocents or (ii) intervening militarily which would harm 99 innocents, it seems that it should do the latter, despite the causal remoteness of the former. [↑](#footnote-ref-9)
10. It is worth noting here that the recognition of the Syrian opposition by various states was only political, rather than formal, legal, recognition (Ruys 2014: 37; Schmitt 2014: 154). [↑](#footnote-ref-10)
11. This seems to be true even in the case of civil wars (Akande 2014), which, interestingly, the lack of strong international criticism over the arming of Assad provides an important precedent in establishing that governmental forces can be legally supplied arms in civil wars (Ruys 2014: 14). [↑](#footnote-ref-11)
12. Also see Holtom (2012: 8). [↑](#footnote-ref-12)
13. Even these measures may struggle because of the growth of the illicit global arms network and because dual-use technology is increasingly important but often treated as innocuous; there may therefore need to be a more holistic approach, including moratoria on arms imports, a global levy on arms transfers, and better instruments to prosecute defence firms that breach international law (Cooper 2006). [↑](#footnote-ref-13)
14. As I argue in Pattison (2015*a*). [↑](#footnote-ref-14)
15. To be sure, if there are several, regular instances of the illegal arming the rebels where the international community does not repudiate the supplier, there may develop a new exception to the general prohibition on doing so based on customary international law, although it would also need to be accompanied by relevant *opinio juris*. On the ethics of illegal legal reform, see, more generally, Buchanan (2001). [↑](#footnote-ref-15)
16. See Pattison (2015*b*). [↑](#footnote-ref-16)