

KEY ELEMENTS OF THE ARMS TRADE TREATY

AN ANNOTATED GUIDE

**AMNESTY
INTERNATIONAL**



 **iansa**
international action network on small arms

First published by Amnesty International and the International Action Network on Small Arms (IANSA) 2012

© Amnesty International and the International Action Network on Small Arms 2012

Index: ACT 30/068/2012

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, prior written permission must be obtained from either of the publishers, and a fee may be payable.

Key Elements for the Arms Trade Treaty – An Annotated Guide is published jointly by Amnesty International and the International Action Network on Small Arms.

IANSA
Archway Resource Centre
Unit 101, 1a Waterlow Road
London, N19 5NJ
United Kingdom

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

CONTENTS

1 Introduction	5
2 Preamble	6
3 Principles	8
4 Goals and Objectives	10
5 Implementation	12
A. Establish or maintain an effective national licensing or authorisation system	12
B. Transit and transshipment notification	14
C. Disclosure by License/Authorisation Applicants of Full Supporting Documentation can be Verified or Validated	15
D. Establishment of end-use controls	17
E. Establishment of a legal framework to strictly regulate arms brokering	20
F. Regulation of transport routes	22
G. Delivery verification	24
H. Simplified procedures	25
I. Adoption of legislative and other measures to establish criminal or other offences	26
6 Criteria	28
A. Express Prohibitions	28
B. Risk Assessment based on potential consequences of a transfer	30
I. International human rights law	31
II. International humanitarian law	33
III. Peace and security	35
IV. Socio-economic development	36
V. Firearms –related homicides and injuries	37

VI. Acts of gender-based violence	37
VII. Corrupt practices	38
VII. Organised crime	39
IX. Terrorist Acts	39
X. Risk of Diversion	40
c. Factors to take into account	41
7 Security measures	44
8 National record keeping	46
9 Transparency measures	48
International reporting obligations	49
10 International Cooperation and Assistance	51
A. Information sharing with States	52
B. Mutual legal assistance and cooperation	54
C. Victims Assistance	55
11 Settlement of disputes	57
12 Meeting of States parties and Review Conferences	59
Annex A	61
MULTILATERAL, REGIONAL AND SUB REGIONAL TREATIES AND AGREEMENTS	61

1 INTRODUCTION ¹

In 1978 the United Nations General Assembly urged “major arms supplier and recipient countries to consult on the limitations of all types of international transfers of conventional arms”.² In 1991, the General Assembly called for more specific measures in relation to the international arms trade, urging “Member States to ensure that they have in place an adequate body of laws and administrative machinery for regulating and monitoring effectively their transfer of arms, to strengthen or adopt strict measures for their enforcement, and to cooperate at the international, regional and sub-regional levels to harmonize, where appropriate, relevant laws, regulations and administrative procedures as well as their enforcement measures...”³ Nearly 30 years later, these calls to action are coming to fruition as discussions on the Arms Trade Treaty (ATT) progress at the UN, with the General Assembly deciding in 2010 “to convene a United Nations Conference on the Arms Trade Treaty ...to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.”⁴ The Conference on the ATT is being held from July 2nd-27th 2012.

The purpose of this document is to set out some of the key elements of the ATT, recognising that there are a range of options and approaches available to States to consider and propose in the negotiations.⁵ The accompanying commentary elaborates on the inclusion of the elements and the annotations refer to principles and best practice reflected in a variety of international instruments, including: international and regional treaties, reports and resolutions of the United Nations and other multilateral and regional organisations. This document builds on a previous publication by Amnesty International, the International Action Network on Small Arms (IANSA) and other NGOs entitled “*Compilation of Global Principles for Arms Transfers*”⁶ and the document entitled *Key Principles for the Arms Trade Treaty*.⁷

It is hoped that this document can assist in furthering the negotiations to create a strong multilateral arms transfer regime that builds on existing good practice and high standards, creates practical mechanisms to ensure more responsible international trade and transfers, and ultimately reduces the significant human costs currently associated with the international arms trade.

¹ Amnesty International and IANSA would like to acknowledge the substantial work of Clare da Silva, an independent legal consultant, in this report.

²S/10-2, paragraph 85, Final Document of the Tenth Special Session of the UN General Assembly.

³A/RES/46/36 H, paragraph 4 (6 December 1991).

⁴A/RES/64/48. The negotiation conference is to be held in 2012.

⁵ There are other important key elements to an ATT such as the need for an independent Treaty institute (for example, an Implementation Support Unit) and final provisions that are not elaborated in this document.

⁶ Published by Amnesty International, 2006 for the Arms Trade Treaty NGO Steering Committee.

⁷Amnesty International and Control Arms, ACT 30/065/2012.

2 PREAMBLE

As the preamble forms part of the context in which the treaty has been adopted, it is a vital tool for its future interpretation (see Article 31(2) of the Vienna Convention on the Law of Treaties).

The preamble of the ATT should underline the primary intention of the ATT, emphasising the concerns of the international community that led to the process of adopting the ATT, including a recognition that the absence of commonly agreed international standards for the transfer of conventional arms and their diversion to the illicit market are contributory factors to serious violations of international human rights law and international humanitarian law, gender-based violence, the displacement of people, poverty, corruption, organised crime and terrorist acts.

United Nations Secretary General, Security Council and General Assembly:

- The **Security Council** has recognised that “a major contributory factor” to armed fighting continuing despite the conclusion of peace agreements has been “the continued availability of large amounts of armaments” (S/PRST/1999/21).
- The **Security Council** has noted, on a consistent basis, the adverse impacts of the proliferation of arms on the security of civilians, including refugees and other vulnerable populations (see, for example, S/PRST/1996/6 and Security Council resolutions on the protection of civilians in armed conflict including resolutions 1265 (1999), 1296 (2000), 1674 (2006) and 1894 (2009)).
- The very high and disproportionate impacts of armed conflict and violence on civilian populations, including and especially women and children have been highlighted on numerous occasions by the **Security Council** and the **UN Secretary General** (see, for example, Report of the Secretary-General on the Protection of Civilians in Armed conflict S/2012/376 (29 May 2012), see also Security Council resolutions 1265, 1296, 1314, and 1379).
- The **UN Secretary General** has acknowledged that “a vast spectrum of human rights violations, including killing and maiming, rape and other forms of sexual violence, enforced disappearance, torture and forced recruitment of children by armed groups or forces” are facilitated by weapons (Report of the Secretary-General “Small Arms” S/2008/258, paragraph 5).

Multilateral, regional and sub-regional agreements:

- The preamble of the 2004 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons (SALW) in the Great Lakes Region and the Horn of Africa (**Nairobi Protocol**) states, “Gravely concerned with the problem of the proliferation of illicit small arms and light weapons in the Great Lakes Region and the Horn of Africa and the devastating consequences they have had in sustaining armed conflict and armed crime,

degrading the environment, fuelling the illegal exploitation of natural resources and abetting terrorism and other serious crimes in the region.”

- The preamble of the 2006 Economic Community of West African States Convention on Small Arms, their Ammunition and other Related Material (**ECOWAS Convention**) states, “Aware of the need to prevent, combat and eradicate the illicit manufacture and excessive accumulation of small arms and light weapons, trafficking, detention and use of such arms, which have been seen to have negative effects on the security of each country in the sub-region, human security, international humanitarian law, sustainable development, and human rights...”.
- The **2012 Khartoum Declaration on the Control of Small Arms and Light Weapons Across the Neighboring Countries of Western Sudan (Khartoum Declaration)** states, “Gravely concerned with the problem of the spread and illegal trade of SALW which aggravate conflict and political instability and incite terrorism and other serious crimes, affecting the internal and external security of the states and individuals, condemning the destructive effects of armed conflicts on women and children, particularly the illegal exploitation of children in armed conflict and sexual abuse, recognizing that free availability of SALW and their illicit trafficking leads to serious violations of international humanitarian law and human rights and impedes delivery of humanitarian assistance... Acknowledging that peace, stability and security are essential prerequisites for sustainable development” (paragraphs 2-4, 11).
- The **2010 Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair or Assembly (Kinshasa Convention)**, states, “Considering that the illicit trade and trafficking in small arms and light weapons poses a threat to the stability of States and to the security of their populations by, *inter alia*, promoting armed violence, prolonging armed conflict and encouraging the illicit exploitation of natural resources” (paragraph 12).

3 PRINCIPLES

The principles of a treaty affirm its underlying legal foundations. As the United Nations Charter guides everything the UN does, a treaty developed under the auspices of the UN would also be guided by some key principles contained in the Charter and other broadly accepted principles agreed by all the UN Members.

Some key principles for the ATT are:

- *Guided* by the purposes and principles enshrined in the Charter of the United Nations, and reaffirming State Parties respect for and commitment to their obligations under international law;
- *Recalling* the obligations of all States to comply with United Nations Security Council decisions, in particular arms embargoes and sanctions;
- *Reaffirming* the rights and obligations of States under international law, including international human rights law and international humanitarian law;
- Acknowledging the responsibility of all States to effectively regulate and control the international transfer of conventional arms.

United Nations Secretary General, Security Council and General Assembly:

- The **Security Council** has repeatedly reaffirmed “its commitment to international law and the Charter of the United Nations, and to an international order based on the rule of law and international law, which are essential for cooperation among States in addressing common challenges, thus contributing to the maintenance of international peace and security” (most recently in S/PRST/2012/1).
- The **Security Council** has repeatedly emphasised key Charter principles. For example the Security Council has emphasized “that the right of individual and collective self-defence recognised in Article 51 of the Charter of the United Nations and the legitimate security demands of all countries should be fully taken into account” (S/PRST/1999/28) and reaffirmed “subject to the Charter, the right of each State to import, produce and retain small arms and light weapons for its self-defence and security needs” (S/PRST/2002/30).
- The **General Assembly** has stated “... its commitment to the purposes and principles of the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world, and reiterating its determination to foster strict respect for them and to establish a just and lasting peace all over the world” (A/RES/66/102).
- For decades the **General Assembly** has consistently urged Member States to exercise effective control over their weapons and military equipment and their arms imports and exports

(A/RES/46/36 H). Subsequent resolutions reaffirm the need for all States to fulfil their responsibility to control the transfer of arms (for example, A/RES/49/75 G and A/RES/51/45 F).

Multilateral, regional and sub-regional agreements:

- The 2003 Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects (**Andean Plan**) states, “That the Member Countries are committed to observe international law and the principles enshrined in the Charter of the United Nations, particularly respect for national sovereignty, non-intervention in the internal affairs of the Member States, the legitimate right to individual and collective defense established in Article 51 of that Charter, the right of all nations to self-determination and the right of Member States to develop their own defense systems to guarantee their national security” (paragraph 6).
- The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies Guidelines & Procedures, including the Initial Elements, December 2007 (**Wassenaar Arrangement Initial Elements**) states, “This Arrangement will not be directed against any state or group of states and will not impede bona fide civil transactions. Nor will it interfere with the rights of states to acquire legitimate means with which to defend themselves pursuant to Article 51 of the Charter of the United Nations” (paragraph 4).
- The **Nairobi Protocol** states, “Reaffirming the inherent right of states to individual or collective self-defense as recognized in Article 51 of the United Nations Charter; Agreeing that they shall fulfill their obligations and exercise their rights under this Protocol in a manner consistent with the principles of sovereign equality, territorial integrity of States and non-intervention in the domestic affairs of States Parties”.
- The **ECOWAS Convention** states, “Recalling the principles of the Charter of the United Nations, particularly the principle that States shall have the right to defend themselves both individually and collectively, the principle of non-intervention and non-interference in internal affairs of another State, and the principle that each Member shall avoid recourse to the threat or use of force”.
- The **Kinshasa Convention** states, “Recalling the principles of the Charter of the United Nations, especially those concerning disarmament and arms control and those inherent in the right of States of individual or collective self-defence, non-intervention and non-interference in the internal affairs of another State, and prohibition of the use or threat to use force” (paragraph 2).

4 GOALS AND OBJECTIVES

UN Member States have stated the goals and objectives of the ATT in the numerous resolutions pertaining to the treaty (A/RES/61/89, A/RES/64/48, A/RES/63/240, A/RES/66/518). Some goals and objectives for the ATT include:

- *Creating* high common international standards for the import, export and international transfer of conventional arms;
- *Preventing* international trade and transfers of conventional arms that provoke or prolong armed conflict, violate UN arms embargoes, and that contribute to serious violations of international human rights law and international humanitarian law, gender based violence, the displacement of people, organised crime, corruption, poverty and terrorist acts;
- *Contributing* to regional and international security and stability, by promoting transparency and greater responsibility in the trade and transfer of conventional arms;
- *Creating* controls to prevent the diversion of conventional arms from legal markets and uses to illicit markets and unauthorized uses and users.

United Nations Secretary General, Security Council and General Assembly:

- The need for a “normative framework” at the international level, and the exercise of “responsibility” and “effective control” has underlined the discussions in the UN for international controls on the arms trade for decades. The **Security Council** has identified “the absence of a normative framework for all States to guide decisions regarding arms transfers” as a “recurring problem” in the proliferation of arms, in particular in zones of crisis and conflict (see S/2003/1070, and S/2008/258 paragraph 16).
- The creation of “*common international standards*” has been a consistent motivating factor for the creation of the ATT. In December 2006, the **General Assembly** recognised that the “absence of common international standards on the import, export and transfer of conventional arms undermin[es] peace, reconciliation, safety, security, stability and sustainable development” and voted in favour of taking first steps towards a legally-binding Arms Trade Treaty (ATT) to establish ‘common international standards for the import, export and transfer of conventional arms’ (A/RES/61/89).
- The **General Assembly** has emphasized that States should “ensure that their national systems and internal controls are at the highest possible standards to prevent the diversion of conventional arms from the legal to the illicit market, where they can be used for terrorist acts, organized crime and other criminal activities.” (See UN Resolutions 61/89 and 63/240).
- The **Security Council** has recognized that weapons are traded globally for legitimate security and commercial considerations. Bearing in mind the considerable volume of this trade, the Council

has underlined “the vital importance of effective national regulations and controls...” The Council also encourages the Governments of arms-exporting countries to exercise the *highest degree of responsibility* in these transactions.” (S/PRST/1999/28, emphasis added).

Multilateral, regional and sub-regional agreements:

- According to the 1996 UN Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H (**United Nations Guidelines for International Arms Transfers**), “States should respect the principles and purposes of the Charter of the United Nations, including the right to self-defence; the sovereign equality of all its Members; non-interference in the internal affairs of States; the obligation of Members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State; the settlement of disputes by peaceful means; and respect for human rights; and continue to reaffirm the right of self determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self determination.”
- Transparency and responsibility underlie regional agreements. For example the **Wassenaar Arrangement Initial Elements** states, “The Wassenaar Arrangement has been established in order to contribute to regional and international security, by *promoting transparency and greater responsibility in transfers* of conventional arms and dual-use goods and technologies...” (Initial Elements I, Purposes, paragraph 1, emphasis added).
- The duty to prevent diversion of arms in international transfers is stressed in the **United Nations Guidelines for International Arms Transfers** which states: “All arms-transfer agreements and arrangements, in particular between Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons...” (paragraph 33).
- Other international programmes and agreements emphasize diversions risks as well. For example, in Section II, Paragraph 11 of the **2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Programme of Action)** States agreed “to assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade.”

5 IMPLEMENTATION

The General Assembly has defined the aim of the ATT as a legally binding treaty establishing “the highest possible common international standards for the transfer of conventional arms” (A/RES/64/48).

As such, one of the foundations of the ATT must be the requirement of States Parties to take measures to implement a comprehensive system to control the export, import and transfer of conventional arms. Such a comprehensive system should require a State Party to:

- A. Maintain effective control of all aspects of international trade and transfers of conventional arms under their jurisdiction through the establishment or maintenance of an effective national licensing or authorisation system;
- B. Transit and transshipment notification;
- C. Disclosure by license/authorisation applicants of full supporting documentation that can be verified or validated;
- D. Establishment of end-use controls through verifiable written undertakings consistent with the purpose of the Treaty;
- E. Establishment of a legal framework to strictly regulate arms brokering;
- F. Controls on transport routes;
- G. The adoption of simplified procedures for temporary import, export and transfer;
- H. Delivery verification systems;
- I. Adoption of legislative and other measures as necessary to establish as criminal or other offences the import, export, transit, trans-shipment, transfer or brokering of conventional arms, including ammunition, not licensed or authorised in accordance with the terms of the Treaty.

A. ESTABLISH OR MAINTAIN AN EFFECTIVE NATIONAL LICENSING OR AUTHORISATION SYSTEM

A purpose of the Arms Trade Treaty is to set out mechanisms for the effective control of the international movement of conventional arms, including ammunition. Therefore, the foundation of the ATT must be the requirement of States Parties to take measures to implement a comprehensive system to control the export, import and transfer of conventional arms, including ammunition. This

mirrors what the UN General Assembly has called for in order to prevent illicit trafficking. The General Assembly has repeatedly invited all “Member States that are in a position to do so...to enact or improve national legislation, regulations and procedures to exercise effective control over the transfer of arms, military equipment and dual-use goods and technology, while ensuring that such legislation, regulations and procedures are consistent with the obligations of States Parties under international treaties” (for example, see A/RES/52/298, A/RES/60/69 and A/RES/66/41).

United Nations Secretary General, Security Council and General Assembly:

- The General Assembly has repeatedly invited all “Member States that are in a position to do so...to enact or improve national legislation, regulations and procedures to exercise effective control over the transfer of arms, military equipment and dual-use goods and technology, while ensuring that such legislation, regulations and procedures are consistent with the obligations of States parties under international treaties” (for example, see A/RES/52/298, A/RES/60/69 and A/RES/66/41).

Multilateral, regional and sub-regional agreements:

- According to the 1996 **United Nations Guidelines for International Arms Transfers**, “States should establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation” (paragraph 26), and that “in order to help combat illicit arms trafficking, States should make efforts to develop and enhance the application of compatible standards in their legislative and administrative procedures for regulating the export and import of arms” (paragraph 36).
- This also reflects what States similarly undertook to do in the **UN Programme of Action**. States undertook “...to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons” (Section II, paragraph 11).
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (**Firearms Protocol**), the only multilateral instrument dealing with international transfers of firearms, operates on the same premise. Article 10(1) of the Protocol states: “Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.”
- The **Nairobi Protocol** states, “Each State Party shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons” (Article 10(a)).
- The Organization of American States Model Regulation for the Control of the International Movement of Firearms, their Parts, Components and Ammunition (**OAS Model Regulations for the Control of Firearms**), endorsed by the OAS General Assembly in June 1998, provides detailed requirements about procedure to export, import and transit arms, and specifies the information required to make a licensing decision.

- The 2001 Protocol on the control of firearms, ammunition and other related materials in the Southern African Development Community (SADC) region (**SADC Protocol**) states, “States Parties further undertake to incorporate [in their national law]...the co-ordination of procedures for the import, export and transit of firearms shipments” (Article 5(3)(c)).
- The 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (**CIFTA**) states: “States Parties shall establish or maintain an effective system of export, import, and international transit licenses or authorizations for transfers of firearms, ammunition, explosives, and other related materials” (Article IX (1)).
- In 2002 the Council of Arab Interior Ministers adopted the Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material (**Arab Model Law**). It encourages states to regulate the import, export, trade, transport and repair of weapons and ammunition in their territories.

B. TRANSIT AND TRANSHIPMENT NOTIFICATION

To prevent the possible diversion of arms shipments, a state authorising an arms export to be transferred internationally via foreign a transit or transshipment point must notify in advance the state authority which has jurisdiction over that transit or transshipment point. Before issuing an export license or authorisation, each State must verify that, without prejudice to bilateral or multilateral agreements or arrangements favouring the transit trade of landlocked States, any transit or transshipment State has, given notice in -writing, prior to shipment, that they have no objection to the transit or trans-shipment.

Multilateral, regional and sub-regional documents:

- The **OSCE Document on Small Arms and Light Weapons** states, “When a participating State is asked to act as a transit point for shipments of small arms between the exporting and importing States, the exporter, or the authorities in the exporting state, will ensure that where the State of transit requires a shipment to be authorized, the appropriate authorization has been issued” (Section III.B.3).
- The **Nairobi Protocol** calls for each State Party to “establish and maintain an effective system of export and import licensing or authorization, as well as of *measures* on international transit, for the transfer of small arms and light weapons” (Article 10a, emphasis added).
- The **CIFTA** states that, “States Parties, before releasing shipments of firearms, ammunition, explosives, and other related materials for export, shall ensure that the importing and in-transit countries have issued the necessary licenses or authorizations.” (Article IX).The Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition, November 2003, also contain detailed procedures for in-transit shipments and authorizations.
- The New York **Convention on Transit Trade of Landlocked States** (1965) and the **UN Convention on the Law of the Sea** (1982) stipulate that the exercise of the right of free and unrestricted access to the Sea shall in no way infringe the legitimate interests of the transit state. As a

result, it is understood that whilst enjoying freedom of transit, there is also a right for the transit state to set requirements for granting access or transit rights.

C. DISCLOSURE BY LICENSE/AUTHORISATION APPLICANTS OF FULL SUPPORTING DOCUMENTATION CAN BE VERIFIED OR VALIDATED

The need for “full supporting documentation” prior to the issuance of an export licence or authorisation will facilitate informed decision making by licensing authorities and help to reduce the potential for corruption by increasing the levels of disclosure required. Such documentation should be a part of a secured licensing or authorisation system, whereby the authenticity of licensing or authorisation documents can be verified or validated. The licence or authorisation process needs to be set out within a clear legal process both to ensure compliance at the national level and also to properly establish and prosecute a national criminal offence should such procedures not be complied with.

To meet this requirement, the arms export application and authorisation should contain information that, at a minimum, includes the place and date of issuance, the date of expiration, the country of export, the country of import, the final consignee; the final end-user and end-use; the authorised exporter, broker and other intermediaries; the description and the quantity of conventional arms; the unique marking of each item; and where there is transit or trans-shipment, the countries of transit and trans-shipment. The validity of an export licence or authorization should be limited to a reasonable period of time - for example not more than one year – clearly indicated on the licence, and upon expiry of the licence, a new application should be required.

United Nations Secretary General, Security Council and General Assembly:

- As noted by the **UN Secretary-General**, the global patterns of supply of arms has changed and the use of private intermediaries has increased as outlets have multiplied and commercial markets have become “differentiated” (Secretary General Report on Small Arms, paragraph 13, S/2008/258) noting that “States must assure that the shipments handled through these often complex networks are regulated according to the rule of law”(paragraph 14). One way to regulate these various actors is to require the disclosure of full documentation in a future export transaction.
- The **General Assembly** has noted how fraudulent documents support trafficking stating that it recognises “that the diversion of weapon shipments is one source of illicit supplies and that traffickers successfully use fraudulent documentation to move weapons, many participants in the consultations proposed actions to strengthen import/export controls” (A/54/404).

Multilateral, regional and sub-regional agreements:

- The **United Nations Guidelines for International Arms Transfers** states, “States should establish and maintain an effective system of export and import licences for international arms transfers with requirements *for full supporting documentation*” (paragraph 26, emphasis added).
- The **OSCE Document on Small Arms and Light Weapons** states, “The participating States agree to observe the following key standards underpinning export documentation: ... and that import,

export and transit documentation contains a common minimum standard of information which will be explored by participating States with a view to developing recommendations based on the "best practice" among participating States" (Section 3.C.1 Import, export and transit documentation).

- The **Nairobi Protocol** states, "Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation documents can be verified or validated" (Article 10.e).
- The **ECOWAS Convention** states, "Each Member State shall take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation of the documents can be verified and validated" (Article 4.3).
- The General Assembly of the Organization of American States recommended the adoption of the **Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition**, November 2003, which under Article 2.2.1 states amongst other things that: "...Each Export Certificate shall contain at a minimum, the information identified in items 1 through 12 ..." This information includes the unique identifiers for country and date of issuance, and the details of the authorizing agency including signing officer and signature, the exporter's details, the total quantity of firearms or parts and components approved for export listed by classification-description, the certificate expiry date, the date by which total quantity must be shipped, or date of expiry of the Certificate, whichever is earlier; details of the import certificate, identification of importer and final recipient, details of the source of the firearms/parts and components; and if relevant the certificate cancellation information. Article 3.3.1 of the Model Regulations specifies that import certificates should also have a similar level of detail.
- The **Wassenaar Agreement: Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapons Systems** (contained in Appendix 3 to the Wassenaar Arrangement Initial Elements, 2011) provides, "To review requests for subsequent transfer (re-export) permission as expeditiously as possible and on a non-discriminatory basis taking into account in the review process the following: b. legitimacy of the end-use, end-user, end-use certificate and bona fides of all parties concerned and *authenticity of the documents presented*" (paragraph 3, emphasis added).
- The **UN Firearms Protocol**, Article 10(5) states, "Each State Party shall, within available means, take such measures as maybe necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated." Article 10 also requires, *inter alia*, that: "The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States."

D. ESTABLISHMENT OF END-USE CONTROLS

Although some regional instruments address end-user certification and verification, no global instrument on end-use verification standards and usage exists. End-use certificates are a necessary measure of “preventative enforcement” to enhance effective control and security, to prevent diversion and to assist in the enforcement of UN arms embargoes.

Before issuing an export licence or authorisation, where necessary a State Party should obtain from the importing State a valid import certificate and/or an end use certificate from the State in which the end user is located that provides a description of the items, their types and quantities and values; their end use(s) and the location where the items shall or shall not be used; the name(s) and address(es) of the immediate consignees or purchaser and of the end-user(s) and the country of final destination; and an undertaking that the items will not be used for purposes other than those declared, or by end users other than those declared. The end-use documentation should provide a high guarantee of authenticity and non-governmental end-use/user certificates be authenticated by the government in the receiving State.

States should include a provision in the end-use certificate attaching terms and conditions on the re-export of the items subject to the import certificate to ensure that re-export is within the terms of this treaty. States may require the consignee of the arms to furnish evidence to verify that the end-use of the arms complies with the commitments made in the certificate.

United Nations Secretary General, Security Council and General Assembly:

- The **Security Council** has urged Member States “to consistently and responsibly use end-user certificates in their transfers” and “calls on States to establish an effective national end-user certificate system” (S/PRST/2002/30).
- The **Secretary General** has suggested that States that have not already done so should establish the necessary legislative or other measures, including the use of authenticated end-user certificates, to ensure effective control over the export and transit of small arms and light weapons (Report of the Secretary General on Small Arms, S/2002/1053, Recommendation 9).
- End-user certificates are increasingly recognized as an important element in Security Council arms embargoes (see for example, S/2007/584 where the **UN Panel of Experts** on the Sudan recommended to the SC that States supplying arms and military equipment to the Sudan require the Government of the Sudan to provide end-use certification regarding the intended primary location for the use of equipment and supplies (as noted in Secretary General Report on Small arms, S/2008/258).
- To be effective end use certificate must be accompanied by other mechanisms in a licensing or authorisation system. As the **UN Secretary General** has stated: “End-use certificates are designed to form a key line of defence against of diversion of authorized small arms transfers. These documents, however, are effective only in the context of a broader system that includes a comprehensive consideration of diversion risks at the licensing stage, the verification of end-user documentation and post-shipment controls. Without a standard or agreed format for authenticated end-use certificates, government agencies in transit States have little means of establishing their veracity.” (UN Secretary General Report on Small Arms, paragraph 17 S/2008/258).

Multilateral, regional and sub-regional agreements:

- The **Wassenaar Arrangement Best Practices for Effective Enforcement** (agreed 1 December 2000) suggests as a measure of “preventative enforcement” that States, “Confirm the stated end-user and end-use of items to be exported prior to issuing an export licence. As appropriate, this can be accomplished by several means, ranging from documentation to on-premise checks of the end-user and end-use (Paragraph 3) and States “Obtain assurances regarding the end-use and non re-export of licensed items, as appropriate” (paragraph 4).
- The **Wassenaar Arrangement** has complied “*End Use Assurances Commonly Used, Consolidated Indicative List, Essential Elements*” (1999, amended in 2005). Paragraphs 2.1 and 2.2 state the essential elements of end use assurances as: “A description of the goods being exported (type, characteristics) and/or reference to the contract number or order number concluded with the authorities of the final destination country” and “Quantity and/or value of the exported goods.” The 2005 “indicative list” provides additional information on certain of the elements included in the 1999 version and also divides them into ‘essential’ and ‘optional’ elements. Most elements in the Wassenaar list are identical or almost identical to that of the OSCE referenced below.
- Standards agreed by the Participating States of **the OSCE** for end-use/user certification include *Standard Elements of End-User Certificates and Verification Procedures for SALW Exports* (2004) the following: (a) a detailed description (type, quantity, characteristics) of the SALW or technology related to the design, production, testing and upgrading of SALW to be exported; (b) contract number or order reference and date; (c) final destination country; (d) a description of the end use of the SALW (for example, use by the armed forces or internal security forces); (e) exporter’s details, at least name, address and business name; (f) end-user information, specifically, name, position, full address and original signature; (g) assurances that the SALW will be used only by the end user and for the stated end use; (h) assurances that re-export of imported SALW, can take place only after receiving a written authorization from the exporting country unless the exporting country decides to transfer that authority to the export licensing authorities of the importing country; (i) detailed information on other parties (intermediate consignees/purchasers) involved in the transaction, as appropriate; (j) certification by the relevant government authorities as to the authenticity of the end user with details of the latter and original signature of authorizing official; (k) the date of issue and, if applicable, register number and the duration of the end-use/user certificate.
- The **United Nations Guidelines for International Arms Transfers** states: “All arms-transfer agreements and arrangements, in particular between Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons. In this context, a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion” (Paragraph 33).
- The **UN Programme of Action** called for the implementation of “adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures” (Part II, paragraph 12).
- The Best Practices Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol of Small Arms and Light Weapons (**Best Practice Guidelines for the Nairobi Protocol**)

states that an “End-User Certificate should specify:...a detailed description of the goods, quantity of the goods, value of the goods, names and physical addresses of all parties involved in the transaction, A description of the end-use, the location where the goods will be used, and assurances that the goods will only be used by the end-user and for the stated end-use” (Article 2.1 e).

- The European Council Common Position defining common rules governing control of export of military technology and equipment, 2008/944/CFS (**EU Common Position**) states, “Export licenses shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination...” (Article 5).According to the EU “User’s Guide,” the information required on the consignee and end user should be as detailed as possible in order to permit a comparable assessment. Name/address/country/telephone number/fax number/e-mail address should be given, specifying whether the buyer is a government agency, the police, army, navy or air force, a paramilitary force, or a private natural or legal person.
- The **OSCE’s Document on Small Arms and Light Weapons** states, “The participating States agree to observe the following key standards underpinning export documentation: that no export licence is issued without an authenticated end-user certificate, or some other form of official authorization (for example, an International Import Certificate) issued by the receiving State; that the number of government officials entitled to sign or otherwise authorize export documentation is kept to a minimum consistent with the current practice of each participating State;...” (Section 3.C.1).
- The **OAS Model Regulations for the Control of Firearms** states, “As a further means of controlling and preventing firearms diversion, countries undertake to consider the desirability of employing end use documents. The authorizing agency of the exporting country will not issue an export certificate to an exporter unless the agency has previously received, in addition to an import certificate, a completed original or certified copy of an end user document prepared either by the authorizing agency of the exporting or importing country...” (Article 9.6).
- The **Kinshasa Convention** states, “The States Parties shall draw up an end-user certificate and the administrative procedures and supporting documents needed for such certificates. A certificate shall be issued for each import shipment and shall be contingent upon the applicant’s having obtained an import authorization issued by the competent authorities” (Article 6.1).

E. ESTABLISHMENT OF A LEGAL FRAMEWORK TO STRICTLY REGULATE ARMS BROKERING

The Report of the Group of Governmental Experts, established pursuant to United Nations General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163) adopted a number of recommendations for States to consider regulating brokers and brokering activities. Although the recommendations contained in the Report are of an advisory nature, the General Assembly of the United Nations has encouraged States to adopt them (see resolution A/63/72, 2 December 2008).

Given the prevalence of brokers and brokering activities in the international arms trade, the ATT should require States to establish a clear legal framework for lawful brokering activities. Such a framework could include:

- a. Requiring the registration of brokers operating within their territory;
- b. Requiring licensing or authorisation of each proposed brokering activity; and
- c. Requiring applicants for import and export licences or authorisations to disclose to the relevant national authorities the names and locations of brokers involved in the transaction.

United Nations Secretary General, Security Council and General Assembly:

- The **General Assembly** has consistently underlined its commitment to address “the threat posed by illicit brokering activities” (see, for example, A/RES65/75 (2011)) and have noted “the threat to international peace and security posed by illicit brokering activities circumventing the international arms control and non-proliferation framework” (A/RES/65/75).
- The **General Assembly** has stated that it is “concerned that, if proper measures are not taken, the illicit brokering of arms in all its aspects will adversely affect the maintenance of international peace and security, and prolong conflicts, and could be an obstacle to sustainable economic and social development and result in illicit transfers of conventional arms...” and “Calls upon Member States to establish appropriate national laws and/or measures to prevent and combat the illicit brokering of conventional arms and materials, equipment and technology that could contribute to the proliferation of weapons of mass destruction and their means of delivery, in a manner consistent with international law” (A/RES/63/67).
- The **Security Council** has stressed “the importance of further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, and calls upon States that have not already done so to establish, where applicable, a national register of arms brokers and, in the case of supply of arms to embargoed destinations, of intermediary firms, including transport agents” (S/PRST/2002/30).
- The **Secretary General** has stated, “Contemporary traders, agents, brokers, shippers and

financiers may well combine some of the above activities, making it difficult at times to clearly distinguish small arms trading from brokering. Unquestionably, intermediaries have a growing part to play in meeting States' security needs. However, States must assure that the shipments handled through these often complex networks are regulated according to the rule of law" (Secretary General Report on Small Arms, paragraph 14, S/2008/258).

- A **UN Group of Governmental Experts** has described a broker in small arms and light weapons as "a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise. Within the context of these intermediary activities involving small arms and light weapons, a broker might: Serve as a finder of business opportunities to one or more parties; Put relevant parties in contact; Assist parties in proposing, arranging or facilitating agreements or possible contracts between them; Assist parties in obtaining the necessary documentation; Assist parties in arranging the necessary payments" (A/62/163, paragraph 8).

Multilateral, regional and sub-regional documents:

- The **Firearms Protocol** states, "With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as: (a) Requiring registration of brokers operating within their territory; (b) Requiring licensing or authorization of brokering; or (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction" (Article 15).
- The **OSCE Document on Small Arms and Light Weapons** states, "The regulation of the activities of international brokers in small arms is a critical element in a comprehensive approach to combating illicit trafficking in all its aspects. Participating States will consider the establishment of national systems for regulating the activities of those who engage in such brokering. Such a system could include measures such as:(i) Requiring registration of brokers operating within their territory; (ii) Requiring licensing or authorization of brokering; or (iii) Requiring disclosure of import and export licenses or authorizations, or accompanying documents, and of the names and locations of brokers involved in the transaction" (Section III. D. 1. i-iii).
- The **Wassenaar Agreement Elements for Affective Legislation on Arms Brokering** states, "Records should be kept of individuals and companies which have obtained a licence in accordance with paragraph 1. Participating States may in addition establish a register of brokers. Similarly, a licence may also be required regardless of where the brokering activities take place. Participating States may also define brokering activities to include cases where the arms and military equipment are exported from their own territory. Participating States may also seek to limit the number of brokers. 2. Records should be kept of individuals and companies which have obtained a licence in accordance with paragraph 1. Participating States may in addition establish a register of brokers.
- The **Best Practice Guidelines of the Nairobi Protocol** calls for, "(a) Registration of Brokers: State

Parties should register all brokers operating within their territory before such brokers can operate from or within their territory; (b) Licensing of every individual brokering transaction: State Parties should ensure that all registered brokers seek and obtain a license for each individual transaction-taking place; (c) Licensing of individuals and companies involved in the brokering transaction: State Parties should regulate all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing. State Parties can develop their own licensing form and system. The Broker Registration form can serve as guideline for the license application. (d) Full Disclosure of the details of the transaction. State Parties should ensure that all brokering transactions provide full disclosure on import and export licenses, or authorization and accompanying documents of the names and locations, of all brokers involved in the transaction; and (e) Requirements for import, export, transfer and transit of SALW: All transactions of brokers, manufacturers, dealers, traders, financiers and transporters of small arms and light weapons should conform to the guidelines for import, export, transfer and transit of SALW” (Article 3.2.4).

- The **Kinshasa Convention** states, “The States Parties shall register private individuals and companies established or operating in their respective national territories as brokers of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, regardless of their nationality” (Article 11.1) and “The States Parties shall require that all brokers, including financial and shipping agents duly registered with the competent national authorities, shall obtain a license in their country of origin or in their country of residence for each individual transaction in which they are involved, regardless of where the arrangements concerning the transaction are to be made” (Article 11.7).

F. REGULATION OF TRANSPORT ROUTES

Effective regulation of the global trade in conventional arms must include adequate provisions to control the physical movement of arms across international borders, including the provision of transport route details.

States should comply with existing national legislation or international agreements relating to the transport of weapons by air, land or sea and relevant U.N. arms embargoes, and thus regulate the transport of conventional arms (i) through states' territory including airspace and maritime waters; (ii) by arms transport service providers whose controlling interests are registered under their jurisdiction” and (iii) on means of transport (including ships and aircraft) ‘flagged’ or registered in their jurisdiction.

To achieve this, States should establish or maintain an **effective national system** for regulating the activities of transport service providers involved in transporting conventional arms, including:

- Registration of transport service providers operating within their territory and carrying conventional arms;
- A requirement for a request of authorization for each proposed arms transport service used by the shipper and/or freight forwarder, with the vessel/s details and the intended route, including stopovers and trans-shipment points. The request should be presented at least 48 hours in

advance of the departure, after which the authorization will be implicitly granted by a silence/consent mechanism, or refused by a specific intervention by the State authorities.

A requirement for transport service providers to maintain for inspection comprehensive and verifiable documentation, including manifests, airway bills, bills of lading and invoices, which at a minimum contain details of the export authorisation, the consignee/consignor, the end-user and the relevant customs tariff codes identifying each movement of conventional arms.

Multilateral, regional and sub-regional documents:

- The Convention on International Civil Aviation (**Chicago Convention**) details the rights of the signatories in relation to air travel. Article 35 (“Cargo restrictions) of the Convention states, ‘No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article, giving due consideration, for the purposes of uniformity, to such recommendations as the International Civil Aviation Organization may from time to time make.
- Under Article 19 of the **United Nations Convention on the Law of the Sea**, “Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; b) any exercise or practice with weapons of any kind; c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State; d) any act of propaganda aimed at affecting the defence or security of the coastal State; e) the launching, landing or taking on board of any aircraft; f) the launching, landing or taking on board of any military device...;
- Under the **United Nations Transport of Dangerous Goods, Model Regulations** (Orange Book). New York, United Nations, 12th edition, 2001; restrictions apply to the transport of ammunition, classified by ICAO and IATA as “dangerous goods” of Class 1. See also the United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, New York, United Nations, 3th Revised Edition, 2002. Connected to the U.N. Recommendations are the rules issued by International Civil Aviation Organization (ICAO, Technical Instruction); International Air Transport Association (IATA, Dangerous Goods Regulations) (See also *Appendix CC-8 (Procedures For Transporting Government-Owned Small Arms, Ammunition, and Hazardous Materials aboard commercial aircraft in Scheduled and Charter Service)*).
- The 56 participating states of the **OSCE**, as well as the 41 States of the **Wassenaar Arrangement** which includes most of the world’s major arms exporters, have adopted ‘Best Practices’ under which arms exporters should be required to provide licensing authorities with information about the route, carrier, and aircraft involved in exports of small arms and light weapons by air, prior to receiving authorisation for such exports.
- The **ECOWAS Convention on Small Arms and Light Weapons** requires applications for transfer

authorisations, referred to the ECOWAS Executive Secretariat, to include information on “transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling.”

- The **Wassenaar Agreement Elements for Controlling Transportation of Conventional Arms Between Third Countries** (agreed at the 2011 plenary) states, “Participating States are encouraged to consider the need for measures, including legislative measures if appropriate, to prevent their nationals and entities registered in their territory from transporting arms in violation of UN Security Council embargoes” (Chapter 2, Part 11, Element 3).
- The **Best Practice Guidelines of the Nairobi Protocol** states, “Member States should institute measures, to ensure secure transport of SALW, on or through their territory. The measures should be in accordance with the prevailing security situation at the time of transport. In this context, transport means the secure movement of SALW: provider (manufacturer or dealer) to an ultimate recipient (armed or security forces); a governmental or supplier storage site to a military storage site; one military storage site to another military storage site (as well as reserve stocks and inventory of reserve organizations); a military storage site to one or several units/formations; a military storage site to a destruction facility; or, a military storage site to a dealer or buyer (e.g. as in the case of elimination of surplus)” (Article 1.1.3 c ii).
- The **Kinshasa Convention** establishes that, “States Parties shall require that any request for a transfer authorization from a public institution or a private individual be addressed by the applicant to the competent national body and that it contain, at the very least, the following information: (d) Number and time frame of shipments, routes, transit locations, type of transport used, companies involved in importing, forwarding agents and relevant information about storage conditions;...(g) Designation of where they are to be loaded and unloaded. When issuing a transfer authorization States Parties shall include, at the very least, the following information: (g) Practical means of transport, complete details regarding the carrier and time frame for transport;” (Article 5.3-4).

G. DELIVERY VERIFICATION

A key measure to prevent diversion is to ensure that the items declared and authorised in the import, export, transfer and end use documentation have reached their intended destination. Such a delivery verification system makes it possible to verify that the conventional arms have not been diverted en route to its final destination. The ATT could include a provision requiring the importing State to, upon request, inform the exporting State Party of the receipt of the dispatched shipment of conventional arms through the provision of a certified delivery verification certificate.

Multilateral, regional and sub-regional documents:

- The **Wassenaar Best Practices for Effective Enforcement** suggests as a measure of ‘preventative enforcement’ that States “as necessary, confirm that exported goods have reached their intended destinations using appropriate means, ranging from documentation to on-site verification.” (paragraph 6).

- The **OAS Model Regulations for the Control of Firearms** states, “Countries further undertake, in furtherance of Article IX paragraph 4 of the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials, (hereafter CIFTA) at the request of the authorizing agency of the exporting country, to issue delivery verification certificates that would attest to the arrival and proof of entry of the exported goods. This would be achieved by including on the export certificate a condition that the importer shall supply a completed delivery verification form to the issuing agency in the country of import...This process would help to prevent diversions of firearms by enabling the exporting government to match its export information with the delivery verification to ensure an accurate match” (Article 9.7).
- The **CIFTA** states that, “The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition, explosives, and other related materials” (Article IX).
- Decision No. 5/04 of the OSCE on Standard Elements of End-User Certificates and Verification Procedures for SALW Exports (FSC.DEC/5/04, 17 Nov 2004) Participating States are encouraged to have the option of a clause on post-shipment control, specifically a commitment by the final consignee to provide the exporting country a delivery verification certificate, which may be included in an end-use certificate.
- The **UN Firearms Protocol** states, “The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition” (Article 10(4)).

H. SIMPLIFIED PROCEDURES

In order to avoid creating loopholes, the ATT should not exempt certain small arms (for example, sporting or hunting firearms) from its scope of application. A “sporting rifle” can be used not only for sporting purposes but also modified or used for other purposes, including a military one. A “hunting” rifle could have a similar capacity to a military or police rifle.

It is important that such temporary international transfers fall within the scope of the ATT and are subject to measures that ensure the integrity of domestic controls of international transfers of conventional arms, otherwise such conventional arms could be diverted or modified for illegal purposes. States should not allow such items to temporarily exit their borders without ensuring proof of the legal purpose of their use, and also proof that the item returns to its jurisdiction. The ATT could allow States to adopt simplified procedures for the temporary international transfer of strictly limited numbers of conventional arms and related ammunition for verifiably lawful purposes such as hunting, sports shooting, exhibitions or research.

States should consider including a provision that would enable States Parties to adopt simplified procedures for the temporary international transfer of conventional arms for purposes that are verifiably lawful, such as sports shooting, exhibitions, repairs, evaluation, training, and research.

The **Firearms Protocol** provides the option that “States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and

ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs" (Article 10(6)).

I. ADOPTION OF LEGISLATIVE AND OTHER MEASURES TO ESTABLISH CRIMINAL OR OTHER OFFENCES

As the central aim of the Arms Trade Treaty is to control the international movement of conventional arms and ammunition, it is necessary to criminalise any transaction or transfer that does not comply with the requirements of the Treaty or that is not excluded from the scope of the Treaty's application.

Sanctions, both administrative and criminal, should be included in the ATT to ensure that States establish a legal framework from which legitimate transfer of conventional arms can be conducted and which allow illicit transactions to be identified to facilitate the prosecution and punishment of offenders. The basic conducts of illicit trafficking and illicit brokering could be "central" offences established by the ATT, requiring each State Party to adopt such legislative and other measures as may be necessary to establish as a criminal offence the import, export, transit, trans-shipment, or transfer of conventional arms not licensed or authorised in accordance with the terms of the Treaty.

United Nations Secretary General, Security Council and General Assembly:

- The landmark **Security Council** resolution 1196 (arms embargoes in Africa) encouraged states to adopt legislation making violations of Council-imposed embargoes a criminal offence in national law. The GGE on Brokering in its report reiterated that States should impose appropriate penalties for all illicit brokering activities as well as arms transfers that violate Security Council embargoes (see also S/PRST/2002/30).
- The **Security Council** has encouraged States to adopt legislation making the violation of Security Council arms embargoes a criminal offence (see, for example, S/RES/1196 (1998)). In 2001, the Security Council urged Member States to "consider, where appropriate, measures that may be taken to discourage corporate actors, within their own jurisdiction, from maintaining commercial relations with parties to armed conflicts that are on the Security Council's agenda, when those parties are violating applicable international law ... [and to] consider measures against corporate actors, individuals and entities under their jurisdiction that engage in illicit trade in natural resources and small arms, in violation of relevant Security Council resolutions and the Charter of the United Nations... (S/RES/1379).
- This was also underlined in the **UN Programme of Action**. In Section II, Paragraph 15, States undertake: "To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations."

Multilateral, regional and sub-regional documents:

- The **Wassenaar Arrangement Best Practices for Effective Enforcement** suggests that States,

“Establish effective penalties (including, as appropriate, criminal sanctions, civil fines, publicity and restriction or denial of export privileges) sufficient to punish and deter violations of export controls (paragraph 14).

- The **Andean Plan** recommends “the incorporation into domestic legislation, when necessary and as a priority, of regulatory provisions on the following matters: ...To establish as criminal offenses under their domestic law, the illicit manufacture, import, export, transfer, sale, brokerage, transport, possession, concealment, usurpation, carrying and use of small arms and light weapons, including ones that are homemade; To promote the harmonizing of legislation and establishment of minimum standards to regulate the illicit manufacture, import, export, transfer, sale, brokerage, transport, possession, concealment, usurpation, carrying and use of small arms and light weapons” (Article 3).
- The **Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel** calls for, “States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials...Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offenses established pursuant to the foregoing paragraph shall include participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counseling the commission of said offenses” (Article IV 1-2).
- The **SADC Protocol** requires that “States Parties shall enact the necessary legislation and other measures to sanction criminally, civilly or administratively under their national law the violation of arms embargoes mandated by the Security Council of the United Nations” (Article 5(2)).
- The **Kinshasa Convention** states, “ The States Parties shall adopt legislative and regulatory measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly” (Article 13.8).

6 CRITERIA

A. EXPRESS PROHIBITIONS

The ATT will require States to authorize international transfers of conventional arms in conformity with an agreed list of clear criteria that assess the potential risk stemming from such transfers. The criteria of the ATT must include express prohibitions that recognize existing international law obligations of States including the obligation to prohibit transfers that would violate Security Council arms embargoes, or violate other relevant international, regional or sub-regional obligations regarding the control and regulation of international trade and transfers of conventional arms.

Security Council Arms Embargoes

States have a legal obligation to comply strictly with sanctions and arms embargoes imposed by the Security Council under the authority of Chapter VII of the Charter of the United Nations. The Security Council will determine the scope and terms of each arms embargo according to its understanding of the particular conditions that give rise to threats to international peace and security. Such UN arms embargoes have been imposed on States as well as armed opposition groups.

Obligations on States ensue on two levels. First, States are prohibited from transferring all or specified types of arms or arms-related material, military advice and training to the embargoed entity, which could be a State violating international law, and/or a non-state armed group or groups. Secondly, States must also take the necessary measures to implement, apply and enforce the embargo internally so as to make it operative with respect to private actors within their jurisdiction.

United Nations Secretary General, Security Council and General Assembly:

- The **Secretary General** has stated that, “Member States should be called upon to enforce all Council resolutions on sanctions, including those imposing arms embargoes, in accordance with the Charter of the United Nations, and to bring their own national legislation into compliance with the Council’s measures on sanctions.” (Small Arms, Report of the Secretary General, S/2002/1053) while the **Security Council** has repeatedly stated that “existing United Nations arms embargoes should be strictly implemented” (see, for example, S/PRST/1999/21). While underlining the importance of specific monitoring mechanisms, the Security Council has emphasised that “the primary responsibility for the implementation of sanctions measures rests with States,” (S/PRST/2002/30).
- The **UN Charter** states, “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures...” (Article 41). The Charter further states, “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action” (Article 2(5)). Enforcement action is generally used to refer to measures under Articles 41 and 42 of the Charter.

Multilateral, regional and sub-regional documents:

- Under the **Guidelines for Implementation of the Nairobi Protocol**, “State Parties shall not authorise transfers which would violate their direct obligations under international law, including: Obligations under the Charter of the United Nations – including, inter alia, decisions of the Security Council such as those imposing arms embargoes.” (paragraph 2.2.3 (a)) and “States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ...contravene other international, regional or sub-regional commitments or decisions made, or agreements on non-proliferation, arms control and disarmament” (paragraph 2.2.3 (c) (viii)).
- Article 6 (2)(a) of the **ECOWAS Convention** prohibits authorization of a transfer which would violate obligations under the Charter of the United Nations, including “binding resolutions of the United Nations Security Council such as those imposing arms embargoes.”
- The **Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons** mandates that: “Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (d) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, agreements on non-proliferation, small arms, or other arms control and disarmament agreements” (Article I, paragraph 2).
- The **EU Common Position** states that “an export licence should be refused if approval would be inconsistent with, inter alia, the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes, b) the international obligations of member states under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention; c) their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement; d) their commitment not to export any form of anti-personnel landmine” (Criterion one).
- Article 5 of the **OAS Model Regulations on Arms Brokers** provides that “the National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: ... (d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies... (g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.”
- The **ECOWAS Convention** states, “A transfer shall not be authorised if its authorization violates “any other treaty or decision by which the Member States are bound, including: i. binding decisions, including embargoes, adopted by relevant international, multilateral, regional and sub-regional bodies, such as the African Union Peace and Security Council, to which a State is party” (Article 6 (2)(c)(i)).
- The **OSCE Document on Small Arms and Light Weapons**: “Each Participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in

question might: ... (iv) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, agreements on non-proliferation, small arms, or other arms control and disarmament agreements” (Section III, Common export criteria 2(b)).

- The 2001 **South African Development Community Protocol on the Control of Firearms, Ammunition, and other related materials** holds that, “State Parties shall enact the necessary legislation and take other measures to sanction criminally, civilly or administratively under their national law the violation of arms embargoes mandated by the Security Council of the United Nations” (Article 5.2).
- The **Kinshasa Convention** states, “Notwithstanding the provisions of article 3 and the national laws and regulations in force the States Parties agree that a transfer authorization shall be denied by the competent national body if: The transfer of the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might violate an international arms embargo” (Article 5.5c).

B. RISK ASSESMENT BASED ON POTENTIAL CONSEQUENCES OF A TRANSFER

The ATT must explicitly recognize the principle of due diligence. Thus, States have an obligation to assess the risks associated with a proposed trade or transfer, including the risk that the transfer is likely to:

- Violate the existing positive obligation to ensure that their international trade and transfers of arms do not contribute to or facilitate serious violations of international humanitarian or international human rights laws or crimes under international law;
- Be used in a manner that would seriously undermine peace and security, or provoke, prolong or aggravate internal, regional, sub-regional or international instability;
- Seriously impair poverty reduction or divert significant resources from the socio-economic development of the recipient country;
- Be used to perpetuate a high level of firearms-related homicides and injuries;
- Be used to perpetrate acts of gender-based violence, including rape and other forms of sexual violence;
- Involve corrupt practices;
- Be used in the commission of transnational organized crime;
- Be used to support, encourage, or perpetrate terrorist acts;
- Be diverted to unauthorized end-users.

In cases where there is a substantial risk of any of these harms, States must ensure that the transfer does not take place until there is clear evidence that the risk has been sufficiently mitigated so that the substantial risk no longer exists.

Every export or transfer contains some level of risk. Within the ATT, risk assessment should be focused on the possible risks that may arise from transfers of conventional arms and ammunition where the risks are judged too high, i.e. substantial. The decision to transfer or deny transfer of any item should remain the sole responsibility of States. The license or authorisation assessment criteria is to structure or limit the discretion of officials charged with deciding whether to issue the required

license or authorisation and to create universal standards of risk assessment.

Such risk assessment processes are a standard part of national export control systems, and also included in multilateral agreements. For example, as a component of recommended best practices for effective export control enforcement, the **Wassenaar Arrangement** suggests a “preventative enforcement” approach which includes the use of “threat assessment techniques and procedures for evaluating parties involved in a proposed export transaction, paying particular attention to those considered to be suspicious, unreliable, or presenting a high risk of diversion” (Wassenaar Arrangement, Best Practices for Effective Enforcement, Agreed at the Plenary, 1 December 2000, paragraph 1).

In the **UN Programme of Action** States have undertaken to “assess application for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of those weapons into the illegal trade” (Paragraph 11, Section II).

I. INTERNATIONAL HUMAN RIGHTS LAW

States have an existing positive obligation to ensure that their international trade and transfers of arms do not knowingly contribute to or facilitate violations of international humanitarian or human rights laws. Further, there is a positive obligation of all States to cooperate in the protection and fulfilment of human rights within and beyond their borders. Under Articles 1, 55 and other articles of the UN Charter all Member States have an obligation to encourage and promote universal respect for, and observance of, human rights and fundamental freedoms. Article 1(3) requires all Member States “to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Including a concept of “serious violations of international human rights law” within the parameters of the ATT text would acknowledge that, while all human rights violations are unlawful, only those of greatest concern to the international community will engage the special treaty machinery of the ATT. Where a proposed end-user of an export, import or international transfer of conventional arms is under consideration is engaging in violations of an especially harmful nature or in persistent or pervasive violations of particular gravity through the use of arms, the situation would clearly fall within the scope of the concept of “serious violations.”

“Serious violations”

For the purposes of the ATT, “serious violations” should be assessed against one or both of the following criteria:

Gravity of the violation and the harm suffered: Exporting or transferring states should be required to consider possible violations of any human right, be it civil, cultural, economic, political and social; the severity of impact on the affected individuals should also play a role in determining whether the ATT provisions apply to the transfer. Unlawfully depriving a person of his or her life, subjecting the person to torture or other cruel, inhuman or degrading treatment or punishment, excessive or unnecessary use of force in violation of human rights, imprisoning a person for his or her beliefs, systematic discrimination, subjecting people to slavery-like practices or forced labour, systematically

destroying their homes or sources of food, and other violations of comparable gravity should be considered serious by reason of the nature of the harm suffered by the individuals whose rights were violated.

The scale or pervasiveness of the violations: Is there information that indicates/demonstrates a pattern of such violations or abuse? Are the violations persistent or affecting many people? The provision in the ATT to prevent states or individuals from contributing human rights violations should clearly apply where the violations in question are occurring on a widespread or systematic basis.

“Substantial risk”

Under the ATT, states should not authorize a transfer of conventional arms where there is a substantial risk that those arms will be used to carry out serious violations of human rights. States must conduct a meaningful assessment of that risk – in other words, they must act with all due diligence when assessing an arms transfer application.

To meet the due diligence standard, “substantial risk” must be beyond suspicion, but need not be as high as “highly probable”; in other words, it can be reasonably foreseen that the proposed end-users are likely to use the arms to commit serious violations or for patterns of abuse. It does not mean that such misuse is merely a “possibility” as the object of the ATT is not to impede arms transfers altogether.

United Nations Secretary General, Security Council and General Assembly:

- The **UN Charter** requires Member States to promote the full range of human rights, including “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion” (Article 55). The Charter also requires Member States to “take joint and separate action” in cooperation with the UN to promote human rights” (Article 56).
- In 2006 the Sub-Commission on the Promotion and Protection of Human Rights adopted its Principles on the Prevention of Human Rights Violations Committed with Small Arms (**Human Rights Sub-commission Principles**). Principle 14 states, “Governments shall prohibit international transfers of small arms which would violate their obligations under international law, including in circumstances in which such arms are likely to be used to commit serious human rights violations.”

Multilateral, regional and sub-regional documents:

The obligations of States regarding the observance of fundamental human rights when considering the authorisation of international arms transfers include the following regional and multilateral instruments:

- The **ECOWAS Convention** states, “A transfer shall not be authorised if the arms are destined to be used: a) for the violation of international humanitarian law or infringement of human and peoples’ rights and freedoms, or for the purpose of oppression” (Article 6 (3)(a)).

- The **OAS Model Regulations on Arms Brokers** states, “The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: ... (b) violate humans rights contrary to international law” (Article 5).
- The **Guidelines for Implementation of the Nairobi Protocol** provides that, “State Parties shall not authorize transfers which are likely to be used: ... for the violation or suppression of human and peoples’ rights and freedoms, or for the purpose of oppression” (paragraph 2.2.3 (6)(i)).
- The **EU Common Position** states, “Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, Member States will: a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression and b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU. For these purposes, ... Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights” (Criterion Two).
- The **Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons** states, “Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (h) Be used for the purpose of repression; (i) Be used for the violation or suppression of human rights and fundamental freedoms” (Article I, paragraph 2).
- The **OSCE Document on Small Arms and Light Weapons** states, “Each participating State will, in considering proposed exports of small arms, take into account: (i) The respect for human rights and fundamental freedoms in the recipient country.” Common export criterion 2(b): “Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: (i) Be used for the violation or suppression of human rights and fundamental freedoms; ... (viii) Be used for the purpose of repression” (Section III, Common export criteria 2(a)).
- The **Kinshasa Convention** states, “Notwithstanding the provisions of article 3 and the national laws and regulations in force the States Parties agree that a transfer authorization shall be denied by the competent national body if: The small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly are to be or might be used to commit violations of international human rights law or international humanitarian law; to commit war crimes, genocide or crimes against humanity; ...” (Article 5.5b).

II. INTERNATIONAL HUMANITARIAN LAW

Serious violations of international humanitarian law include the criminal ‘grave breaches’ identified in the four 1949 Geneva Conventions applicable in international armed conflict, which include

among other things “wilful killing”, “torture or inhuman treatment, including biological experiments”, “wilfully causing great suffering or serious injury to body or health”, “unlawful deportation or transfer or unlawful confinement” of a civilian, subjecting civilians to the “taking of hostages”, and “extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly” (see Articles 50, 51, 130 and 147 respectively of the four Geneva Conventions of 1949). It also includes violations identified in Article 3 common to the four Conventions. These violations include: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages; outrages of personal dignity, in particular humiliating and degrading treatment, and the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.”

A recent partial codification of criminal violations of international humanitarian law in a treaty text is found in the Rome Statute of the International Criminal Court adopted in 1998. Article 25 (3)(c) is consistent with the existing obligation to respect and ensure respect for international humanitarian law. That Article establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by providing the means for its commission. Providing the weapons used to commit or attempt to commit one of the crimes for which the ICC has jurisdiction, including war crimes, is sufficient to give rise to responsibility as an accomplice.

As the recent judgment in *Prosecutor v. Taylor* in the **Special Court for Sierra Leone** confirms, any government official or other person who provides arms to government forces or to armed opposition groups who knows or is aware of the substantial likelihood that they would be used to commit war crimes or crimes against humanity would be criminally responsible for aiding and abetting such crimes (*Prosecutor v Charles Ghankay Taylor*, SC-03-01-T, 18 May 2012, paragraph 5836).

Common Article 1 to the four 1949 Geneva Conventions, which codify customary rules of international humanitarian law, obliges States to “respect and ensure respect” for the rules of international humanitarian law. A State which transfers weapons in circumstances where it is likely they will be used to commit serious violations of international humanitarian law would clearly be failing its obligation to ensure respect for international humanitarian law (see also the International Committee of the Red Cross Agenda for Humanitarian Action, December 2003).

Multilateral, regional and sub-regional documents:

- The **ECOWAS Convention** states, “A transfer shall not be authorised if the arms are destined to be used: b) for the commission of serious violations of international humanitarian law, genocide or crimes against humanity” (Article 6 (3)(b)).
- The **OAS Model Regulations on Arms Brokers** states, “The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: (a) result in acts of genocide or crimes against humanity; ... (c) lead to the perpetration of war crimes contrary to international law” (Article 5).
- The **Guidelines for Implementation of the Nairobi Protocol** provides that “State Parties shall not authorize transfers which are likely to be used: ...for the commission of serious violations of international humanitarian law”. Further: “States Parties shall take into account other factors

before authorizing an arms transfer. States should not authorize the transfer if it is likely to ...be used in the commission of serious violations of international humanitarian law applicable in international or non-international armed conflict; or be used in the commission of genocide or crimes against humanity (paragraph 2.2.3).

- **The 2006 Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Material** states, “Transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related materiel shall not be carried out from or to States which: Commit and/or sponsor crimes against humanity or human rights violations or commit serious violations of the laws and customs of war contained in the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977” (Article 1a).
- The **OSCE Document on Small Arms and Light Weapons** states, “Each participating State will, in considering proposed exports of small arms, take into account (...) the record of respect for international law governing the conduct of armed conflict.”
- The **Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons** states, “Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might (...) threaten compliance with international law governing the conduct of armed conflict.”
- **EU Common Position** states, “Member States will take into account (...) the record of the buyer country with regard to (...) its compliance with its international commitments (...) including under international humanitarian law applicable to international and non-international conflicts” (criterion 6 (b)).

III. PEACE AND SECURITY

Multilateral, regional and sub-regional documents:

- According to the **United Nations Guidelines for International Arms Transfers**, “Arms-producing or supplier States have a responsibility to seek to ensure that the quantity and level of sophistication of their arms exports do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms” (paragraph 20) and “States receiving arms have an equivalent responsibility to seek to ensure that the quantity and the level of sophistication of their arms imports are commensurate with their legitimate self-defence and security requirements and that they do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms” (paragraph 21).
- The **ECOWAS Convention** states, “A transfer shall not be authorised if it is destined to: b) adversely affect regional security; endanger peace, contribute to destabilising or uncontrolled accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability” (Article 6 (4)(a)).
- The **Guidelines for Implementation of the Nairobi Protocol** states, “States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ...adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute

to regional instability” (paragraph 2.2.3 (c) (v)).

- The **EU Common Position** states, “Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination” (Criterion three). Further, “Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim. When considering these risks, EU Member States will take into account inter alia: a) the existence or likelihood of armed conflict between the recipient and another country; b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force; c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient; d) the need not to affect adversely regional stability in any significant way” (Criterion four).
- The **OSCE Document on Small Arms and Light Weapons** states, “Each participating State will, in considering proposed exports of small arms, take into account: ... (ii) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts.” Common export criterion 2(b): “Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ... (v) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict; (vi) Endanger peace, create an excessive and destabilizing accumulation of small arms, or otherwise contribute to regional instability” (Section III, Common export criteria 2(a)).
- The **Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons** provides that: “Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (e) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict; (f) Endanger peace, create an excessive and destabilising accumulation of small arms, or otherwise contribute to regional instability” (Article I, paragraph 2).

IV. SOCIO-ECONOMIC DEVELOPMENT

Multilateral, regional and sub-regional documents:

- **ECOWAS Convention:** “A transfer shall not be authorised if it is destined to: c) hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer” (Article 6 (4)(c)).
- **OAS Charter:** “The Organization of American States, in order to put into practice the principles on which it is founded and to fulfill its regional obligations under the Charter of the United Nations, proclaims the following essential purposes: ...h) To achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States” (OAS Charter, Article 2(h)).
- The **OAS Declaration on Security in the Americas, 2003** states, “We reaffirm the objective of achieving an effective limitation of conventional weapons that will make it possible to devote

the largest amount of resources to the economic and social development of the member states” (OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, 28 October 2003, Paragraph 4(w)).

- The **Guidelines for Implementation of the Nairobi Protocol** provides that, “States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ...adversely affect sustainable development through the excessive or unjustifiable diversion of resources from social expenditure to military expenditure” (paragraph 2.2.3 (c) (vi)).
- Criterion 8 of the **EU Common Position** requires that “Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country...”
- The **Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons** provides that “Each Participating State will, in considering proposed exports of SALW, take into account: ... d) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments” (Article I, paragraph 1)
- The **OSCE Document on Small Arms and Light Weapons** provides that “Each participating State will, in considering proposed exports of small arms, take into account: ... (iv) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments” (Section III, Common export criteria 2(a)).

V. FIREARMS-RELATED HOMICIDES AND INJURIES

Discussions of armed violence have repeatedly noted that the use of firearms in non-conflict settings is the most prevalent form of armed violence and the form that results in the most deaths and injuries. This fact underscores the importance of adopting an approach to addressing armed violence that will encompass violence outside of armed conflict settings. The ATT should be one component of this approach. It should specify and address the serious violations of international law and other harmful impacts caused by conventional arms. Further, if an ATT is to make a significant contribution to the reduction of armed violence, it should require, prior to the issuance of an import authorisation or export licence, an assessment of the risk that the transfer of conventional arms will entail, including the risk presented by a pattern of significantly high levels of firearms-related homicides within the importing State. The UN has noted that “although firearms are not the only weapons used in homicide, their availability can be a key factor in increasing levels of armed violence and homicide rates.”

VI. ACTS OF GENDER-BASED VIOLENCE

There is a gender dimension to the trade whereby women are disproportionately affected by armed gender-based violence. Therefore it is critical that the ATT directly and appropriately address this. Further, to be consistent with the broader UN practice of mainstreaming gender by paying attention to differing impacts on women and men in all frameworks, policies and programmes, the ATT should

recognise the specific impact of irresponsible international arms transfers on women and their rights. Member States and the UN have progressively recognised and addressed the distinct rights of women in their work. Specifically relating to peace and security initiatives, Member States have called for the inclusion of women's rights and the participation of women in these processes. In the ATT, Member States must build on their Human Rights and protection commitments and include specific criteria on gender-based violence.

The Women, Peace and Security agenda in the UN Security Council includes commitments calling for women's rights and engagement to be systematically addressed and enhanced in conflict prevention, conflict resolution and peace building (See United Nations Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), and 1960 (2010)).

The General Assembly, has on numerous occasions expressed its concerns about the pervasiveness of violence against women in all its different forms and manifestations worldwide, noting that such violence seriously impairs or denies women's ability to exercise their fundamental human rights and freedoms (See, for example General Assembly resolutions on the elimination of all forms of violence against women (A/RES/59/167, A/RES/57/181, A/RES/55/68), and resolution on eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations (A/RES/62/134)).

VII. CORRUPT PRACTICES

The UN Convention against Corruption was adopted by the General Assembly in 2003 (A/RES/58/4) and entered into force on 14 December 2005. 140 States have signed the Convention, with 160 States party to the treaty. Article 9 requires that State parties "in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption."

Other instruments include: the Inter-American Convention against Corruption, adopted by the OAS on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Co-operation and Development on 21 November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 11 July 2003.

Multilateral, regional and sub-regional documents:

- The **United Nations Guidelines for International Arms Transfers** requires that "States should intensify their efforts to prevent corruption and bribery in connection with the transfer of arms. States should make all efforts to identify, apprehend and bring to justice all those involved in illicit arms trafficking" (paragraph 25).

- The **ECOWAS Convention** prohibits authorization of a transfer that “involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient (Article 6 (4)(d)).
- The **Guidelines for Implementation of the Nairobi Protocol** provides that “States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ...involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient” (Article 2.2.3).
- Article 26 of the **Kinshasa Convention** states, “The States Parties shall adopt appropriate administrative departments concerned and the security forces in order to prevent and combat corruption, money-laundering, terrorism, and drug trafficking associated with the illicit manufacturing of, trafficking in, trade, possession and use of small arms and light weapons, their ammunition and all parts components that can be used for their manufacture, repair and assembly.”

VII. ORGANISED CRIME

Multilateral, regional and sub-regional documents:

- The **ECOWAS Convention** states, “A transfer shall not be authorised if it is destined to: a) be used for or to facilitate the commission of violent or organised crime” (Article 6 (4)(a)).
- The **Guidelines for Implementation of the Nairobi Protocol** provides that “States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ...be used for or to facilitate the commission of violent crimes” (paragraph 2.2.3(c)).
- The **EU Common Position** states that, “Member States will take into account inter alia the record of the buyer country with regard to: a) its support or encouragement of terrorism and international organised crime...” (Criterion six).
- The **Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons** states: “Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ...(j) Facilitate organised crime” (Article I, paragraph 2).
- The **OSCE Document on Small Arms and Light Weapons** provides, “Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ...(x) Facilitate organized crime.” (Section III, Common export criteria 2 (b)).

IX. TERRORIST ACTS

There are numerous existing conventions recognising the unlawfulness of attacks targeting civilians or that are indiscriminate, whether or not committed in the context of an armed conflict, including terrorist attacks and hostage-taking. Current treaties include, for example: International Convention against the Taking of Hostages; International Convention for the Suppression of Terrorist Bombings;

Convention on Offences and Certain Other Acts Committed on Board Aircraft; Convention for the Suppression of Unlawful Seizure of Aircraft; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation & the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; Convention on the Physical Protection of Nuclear Material; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation & the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; Convention on the Marking of Plastic Explosives for the Purpose of Detection.

The obligation to prevent the acquisition of conventional arms and ammunition by those groups and organisations engaged in such attacks is in line with Security Council Resolution 1373 (2001). The resolution provides that States shall “refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and *eliminating the supply of weapons to terrorists.*”

X. RISK OF DIVERSION

United Nations Secretary General, Security Council and General Assembly:

- The **Security Council** stated that it is the responsibility of arms exporting countries to ensure that they adopt adequate legislation and administrative procedures to ensure that legally manufactured and transferred small arms and light weapons are not diverted to illicit channels (S/PRST/2001/21).

Multilateral, regional and sub-regional documents:

- The **ECOWAS Convention** prohibits all transfers of small arms and light weapons unless an exemption has been granted. Article 6 (5) states: “A transfer shall not be authorised if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade.”
- The **OAS Model Regulations on Arms Brokers** states, “The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to...result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime” (Article 5 (f)).
- The **Guidelines for Implementation of the Nairobi Protocol** provides that “States Parties shall not authorize transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user than the stated final end-user. States should take into account the recipient’s: Record on compliance with end-use undertakings and diversion; Stockpile management and security procedures; Ability and willingness to protect against unauthorized transfers, loss, theft and diversion” (paragraph 2.2.3 (c) (viii)).
- Criterion Seven of the **EU Common Position** states: “In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered: a) the legitimate defence and domestic

security interests of the recipient country, including any involvement in UN or other peace-keeping activity; b) the technical capability of the recipient country to use the equipment; c) the capability of the recipient country to exert effective export controls; d) the risk of the arms being re-exported or diverted to terrorist organisations (anti-terrorist equipment would need particularly careful consideration in this context).”

- The **Wassenaar Arrangement Best Practice Guidelines for Export of Small Arms and Light Weapons**, Section I, Article 1, states: “Each Participating State will, in considering proposed exports of SALW, take into account: ...j) The risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists.” Section I, Article 2 states: “Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might:... (c) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State; ... (g) Contrary to the aims of this document, be either re-sold (or otherwise diverted) within the recipient country, re-produced without licence, or be re-exported.”
- The **OSCE Document on Small Arms and Light Weapons** states: “Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ... (iii) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State; ... (vii) Be either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of this document” (Section III (A) 2(b)).
- Under the **UN Programme of Action** States have committed “To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade....” (Part II, paragraph 11).
- The **Kinshasa Convention** states, “Notwithstanding the provisions of article 3 and the national laws and regulations in force the States Parties agree that a transfer authorization shall be denied by the competent national body if (a) There is a possibility that the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might be diverted, in the importing or transit State, to unauthorized use or users or to illicit trade, or even re-exported” (Article 5.1).

C. FACTORS TO TAKE INTO ACCOUNT

As part of a risk assessment process and to meet their due diligence requirements, States should consider a number of factors to take into account in their decision making processes. These could include considering:

- A. the compatibility of that export with its international, regional or sub-regional commitments or decisions on non-proliferation, small arms and light weapons, arms control and disarmament;
- B. whether the export would adversely affect regional security and stability, or contribute to the excessive and destabilising accumulation of arms;
- C. Whether the export would undermine peace-building or post-conflict reconciliation and reconstruction initiatives:

- D. the desirability that States should meet their legitimate security and defence needs with the least diversion for arms of human and economic resources;
- E. the record of compliance by the recipient State with end-use undertakings and transparency in the field of conventional arms control;
- F. the ability and willingness of the recipient State to implement stockpile management and security procedures and to protect against unauthorized transfers, loss, theft and diversion.

United Nations Secretary General, Security Council and General Assembly:

- The **UN Secretary General's** report on the causes of conflict and the promotion of durable peace and sustainable development in Africa (S/1998/318) states, "Arms exporting countries have a responsibility to exercise restraint, especially with respect to the export of weapons into zones of conflict or tension..." The **Security Council** also calls for measures to discourage arm flows to countries or regions engaged in or emerging from armed conflict (S/PRST/1999/28).
- The Security Council's mandate to maintain international peace and security enables it to impose arms embargoes. However in recognition that other post conflict measures are necessary the **Security Council** has also called for "measures to discourage arms flows to countries or regions engaged in or emerging from armed conflicts." The Council has also encouraged Member States "to establish and abide by voluntary national or regional moratoria on arms transfers with a view to facilitating the process of reconciliation in these countries or regions" (S/PRST/1999/28)
- The **General Assembly** has stated that, "The international community has long been aware that the exercise of this right [to maintain and equip armed forces for their defence] – particularly when it goes beyond reasonable defence needs – can have negative consequences for the security of individual States, for regional and international stability and for social and economic development (A/46/301, paragraph 6). It has further stated that "the preservation of a balance in the defence capabilities of States at the lowest level of armaments would contribute to peace and stability and should be a prime objective of conventional arms control" (A/64/42, 2010).
- A 1997 United Nations Report of the **Panel of Governmental Experts on Small Arms** stated that "accumulations of small arms and light weapons become excessive and destabilizing: (a) When a State, whether a supplier or recipient, does not exercise restraint in the production, transfer and acquisition of such weapons beyond those needed for legitimate national and collective defence and internal security; (b) When a State, whether a supplier or recipient, cannot exercise effective control to prevent the illegitimate acquisition, transfer, transit or circulation of such weapons; (c) When the use of such weapons manifests itself in armed conflict, in crime, such as arms and drug trafficking, or other actions contrary to the norms of national or international law" (A/52/298, 27 August 1997, paragraph 37).

Multilateral, regional and sub-regional documents:

- The **Guidelines for Implementation of the Nairobi Protocol** provides that "States shall take into account the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament" (paragraph 2.2.3 (c) (viii))
- The **Wassenaar Agreement (Elements For Objective Analysis and Advice Concerning Potentially**

Destabilizing Accumulations of Conventional Weapons) suggests that States take into account the regional balance of forces and the general situation in the region and ask, “What is the nature of the relationship among the states of the region? Are there territorial claims or disputes among them, including questions of unlawful occupation with the intent of annexation? Are there economic, ethnic, religious or other disputes or conflicts among them? Are one or several states of the region prepared to use force or the threat of the use of force in a manner inconsistent with the UN Charter to resolve disputes with other states of the region?” (Article 2a).

- The **EU Common Position** states, “Member States will take into account, inter alia, the record of the buyer country with regard to:...b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts; c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions...” (Criterion six).
- The **OSCE Document on Small Arms and Light Weapons** states, “Each participating State will, in considering proposed exports of small arms, take into account: ... (iii) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict” (Section III, Common export criteria 2(a)).

7 SECURITY MEASURES

The Security Council has stated that “All states shall develop and maintain appropriate and effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary illicit trafficking and brokering in accordance with their national legal authorities and legislation and consistent with international law” (Resolution 1540 (2004)). As a measure to prevent the diversion of conventional arms, including small arms and light weapons, from the legal into illicit transfers, the ATT should require each State party to take appropriate measures that could include:

- Ensuring the physical security and lawful management of conventional arms at the time of import, export, transit, trans-shipment or any other form of international transfer through its territory;
- Ensuring, and if necessary increasing, the effectiveness of national controls of the import, export and other international transfer of conventional arms, including, where appropriate, border controls, and of police and customs trans-border cooperation.

Multilateral, regional and sub-regional documents:

- The **World Customs Organisation (WCO)** has recommended that States and customs authorities “consider designating specific offices/sites for the processing of legitimate firearms shipments in order to enhance control over their trans-border movement” and “promote the conclusion of Memoranda of Understanding between customs and legitimate traders, such as manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms to strengthen controls and increase accountability. (WCO International Cooperation Council recommendations regarding the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organised Crime, 29 June 2002).
- The **International Civil Aviation Organisation** and the **International Maritime Organisation** and non-governmental industry associations (for example the **International Air Transport Association**) set out standards for the conduct of their members and for the transfer of dangerous cargoes, including consignments of ammunition and explosives.
- Article 11 of the **UN Firearms Protocol** states: “In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures: a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation.”

- The **Guidelines for Implementation of the Nairobi Protocol** contains a number of provisions to enhance monitoring and implementation. To improve operational capacity State parties shall “strengthen sub-regional co-operation among police, intelligence, customs and border control officials, in combating the illicit circulation and trafficking in small arms and light weapons, and suppressing criminal activities relating to the use of these weapons” (paragraph 5.2.1 (a)).
- The **OSCE Document on Small Arms and Light Weapons** provides: “In order to prevent the illegal diversion of small arms, the participating States are encouraged to establish appropriate procedures that would permit the exporting State to assure itself of the secure delivery of transferred small arms. These procedures could, where appropriate, include a physical check of the shipment of small arms at the point of delivery. Also: Section V.D.1: (iii) The encouragement of and, as necessary, the provision of advice or mutual assistance to implement and reinforce border controls to reduce illicit trafficking in small arms” (Section III.B.6).
- Article 8 of the **CIFTA** says, “States Parties, in an effort to eliminate loss or diversion, undertake to adopt the necessary measures to ensure the security of firearms, ammunition, explosives, and other related materials imported into, exported from, or in transit through their respective territories.”
- The **Kinshasa Convention** states, “The States Parties shall adopt appropriate measures to establish or strengthen cooperation between the administrative departments concerned and the security forces in order to prevent and combat corruption, money-laundering, terrorism and drug trafficking associated with the illicit manufacturing of, trafficking in, trade, possession and use of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly” (Article 26).

8 NATIONAL RECORD KEEPING

States have already committed themselves to regulate the trade in conventional arms and authorise exports and transit of small arms and light weapons, and to keep appropriate records. The ATT should require that all States keep records of the international arms transfers that the national authorities have authorised and that have been cleared by customs. These records would consist of all the information required to issue authorisations or customs clearance for the import, export, transit, trans-shipment and transfer of conventional arms into and out of their territory. Information on cases of arms brokering, transport and finance should also be kept from the issuance of licenses, permits or other authorisations. This body of data should form the basis of reporting.

Multilateral, regional and sub-regional documents:

- The **Best Practice Guidelines of the Nairobi Protocol** states, “Records of transactions should be maintained in a uniform manner and kept for: 25 years by governments and 10 years by industry. Records should be kept on: licenses, gunsmiths, brokers, dealers, manufacturers, importers and exporters, theft and loss, and destructions” (Article 2.1 f).
- The **Model Legislation on Marking and Tracing of Firearms** passed by CIFTA holds, “Records maintained under this Article shall, in principle, be kept indefinitely, but in any case a State shall ensure the maintenance of: Manufacturing records for at least 30 years; and all other records, including records of import and export, for at least 20 years” (Article 4.3).
- The **Model Regulations for the Control of the International Movement of Firearms, their Parts And Components and Ammunition of the OAS** states, “Countries shall maintain their own individual records of import/export/in-transit shipments of firearms, parts and components and ammunition by recording, by classification and description, the actual quantities proceeding under each shipment transaction. As a minimum, in the case of export and import transactions, records shall be maintained by the appropriate authorities that reflect the quantities of firearms, parts and components and ammunition remaining to be exported or imported, as the case may be, pursuant to a particular certificate. Records shall be kept for a period of not less than 10 years after the last transaction effected under a particular certificate. Countries shall identify to one another the agencies responsible for record-keeping” (Article 9.1).
- The **ECOWAS Convention** states: “Member States shall establish where they do not exist already, national computerised registers and database of small arms and light weapons” (Article 9 (1)).
- The **CIFTA** (Article XI) states: “States Parties shall assure the maintenance for a reasonable time of the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable them to comply with their obligations under Articles XIII (Exchange

of Information) and XVII (Mutual Legal Assistance)”).

- The **Wassenaar Arrangement: Elements for Effective Legislation on Arms Brokering** provides that “Records should be kept of individuals and companies which have obtained a licence in accordance with paragraph 1. Participating States may in addition establish a register of brokers” (paragraph 2).
- **Kinshasa Convention:** “The States Parties shall establish and maintain, at the national level, a centralized electronic database on small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly. The data shall be kept in the national databases for a minimum of 30 years, including marking procedures and all other relevant and related data” (Article 20.1).

9 TRANSPARENCY MEASURES

Transparency in the international arms trade has steadily increased over the past 20 years. Almost all significant arms exporters report some information via one or more of the available reporting mechanisms. Nevertheless, public reporting is patchy, inconsistent and states often withhold particular information. An ATT could help to complete the process of improving transparency in armaments by creating common public reporting standards and procedures.

The majority of States, including most major arms exporters, already routinely report data publicly on their country's international arms trade and transfers. Such reporting has changed from being an exception to a routine activity for many significant arms trading States. For many States, regular reporting on their international arms trade and transfers has become a normal part of the business of government and a necessity towards achieving shared security.

Nevertheless, there is still significant room for improvement and for harmonized public reporting by all States under the ATT. Some States have not publicly reported on their arms trade and other international arms transfers at all in recent years. A much greater number of States publicly report partial information, leaving out some types of conventional arms, while some States fail to report on a regular basis. The ATT provides an opportunity to address this. An ATT can improve international levels of transparent reporting and provide a comprehensive framework for standardized national reporting.

United Nations Secretary General, Security Council and General Assembly:

- As noted by the UN **Secretary General**, a core element in preventing conflict and securing peace and stability is encouraging predictable, transparent behaviour by all States (see for example Secretary General Report on Small Arms, paragraph 37, S/2008/258).
- The **Secretary General** has stated, "Transparency can contribute to the building of confidence and security, the reduction of suspicions, mistrust and fear, and the timely identification of trends in arms transfers" (A/46/301 Report of the **Secretary-General**: General and Complete Disarmament: International Arms Transfers").
- In December 2006, the **General Assembly** reiterated its call for "all Member States to cooperate at the regional and subregional levels, taking fully into account the specific conditions prevailing in the region or subregion, with a view to enhancing and coordinating international efforts aimed at increased openness and transparency in armament" (A/RES/61/77).
- In 2007 the **General Assembly** stated its continuing view "that an enhanced level of transparency in armaments contributes greatly to confidence-building and security among States and that the establishment of the United Nations Register of Conventional Arms constitutes an important step forward in the promotion of transparency in military matters" (A/RES/52/38 R, see also A/RES/66/39 (2012)).

INTERNATIONAL REPORTING OBLIGATIONS

For the purposes of demonstrating compliance with the provisions of the ATT, transparency means:

- a. States must regularly provide accurate, comprehensive, timely and public information on exports, imports and other international transfers of conventional arms covered by the Treaty.
- b. States must also report publicly on the implementation of the Treaty under their national laws, regulations and administrative procedures, including relevant enforcement actions and international cooperation and assistance activities.

United Nations Secretary General, Security Council and General Assembly:

- The United Nations Commodity Trade Database is widely used by UN Member States and self-governing territories report on their international trade. The main international classification systems for commodity trade are the “Harmonized System” (HS) developed by the World Customs Organization and the “Standard International Trade Classification” (SITC) developed by the UN Statistics Division. These classifications include the exports and imports of a wide range of conventional arms. Sometimes different types of equipment are aggregated (for example for military and civilian aircraft) in such a way that it becomes difficult or impossible to monitor certain types of arms transfers. However, in many other cases, trade data on conventional arms is usefully disaggregated into generic categories.
- Under the United Nations Register of Conventional Arms, all Member States are encouraged to provide generic data on international transfers on a voluntary basis. This data is then collated and published by the UN each year. The Register only covers transfers of a few major conventional weapons with military offensive capability (such as military aircraft, ships, armoured vehicles and missiles) and does not cover all types of conventional arms. A total of 126 States submitted reports for 2001 and 72 States provided information for 2009. In 2003 the UN General Assembly passed a resolution requesting States to provide additional information to the Register on their international transfers of small arms and light weapons, and many States have since submitted such information.

Multilateral, regional and sub-regional documents:

- The **EU Common Position** contains operative provisions aimed at harmonising its application by Member States and increasing the transparency of the process. The EU Common Position imposes an annual reporting obligation on states. Although intended to be confidential, recognising Member States’ desire to increase transparency in this area, in 1999 the Council of Europe decided to render the report public (Annual Report in conformity with Operative Provision 8 of the European Union Code of Conduct on Arms Exports, 3 November 1999, 1999/C315/01). In addition, transparency is strengthened by obligating Member States to consult before granting a licence which has been denied by another Member State for an essentially identical transaction in the preceding three years.
- The **Inter-American Convention on Transparency in Conventional Weapons Acquisitions** states: “The objective of this Convention is to contribute more fully to regional openness and transparency in the acquisition of conventional weapons by exchanging information regarding such acquisitions, for the purpose of promoting confidence among States in the Americas” (Article II). Article III requires States to report annually to the depositary on their imports and

exports of major conventional weapons providing information, with respect to exports, on the importing State, and the quantity and type of conventional weapons exported.

- **ECOWAS** Member States are also required to submit an annual report to the ECOWAS Executive Secretary on its activities related to small arms and light weapons as well as other matters within the purview of the Convention (Chapter VI, Article 28 (3)).

10 INTERNATIONAL COOPERATION AND ASSISTANCE

The ATT should include provisions to enhance cooperation among States, including information exchange, mutual legal assistance and other forms of assistance. Provisions for strengthening national capabilities in implementing their national control systems should also be included. States are already required to respect and implement their existing obligations regarding victim assistance and should co-operate where appropriate to that end. Provisions for strengthening capacity and building national capabilities could include provisions relating to:

- Information sharing among States Parties to exchange among themselves, consistent with their domestic legal and administrative systems, relevant case-specific information on matters such as authorised importers, exporters and brokers of conventional arms and ammunition;
- Consultation and cooperation with States Parties regarding the implementation of the provisions of the ATT and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under the treaty;
- Requests to the United Nations system, regional organisations, other States Parties, or other competent intergovernmental or non-governmental institutions for assistance to fully implement their obligations under this Treaty.

United Nations Secretary General, Security Council and General Assembly:

- The **Security Council** stresses the need for cooperation and sharing of information among the Member States...on arms traffickers that have violated arms embargoes established by the Council (S/PRST/2002/30).
- The **General Assembly** has emphasized “the importance of international cooperation and assistance, capacity building and information sharing in preventing and combating illicit brokering activities” (A/C.1/65/L.49/Rev.1).
- The report of the **Group of Governmental Experts on Brokering** (A/62/163) states that, “Information sharing among States can take place bilaterally and on a multilateral basis as appropriate. States can share information about the design and practices used in national systems of control. The sharing of information on the authenticity of the documents submitted as part of a license application, and the cross-checking of this information on a case-by-case basis, would assist the prevention and combating of illicit brokering activities. Such information sharing could include cooperation to facilitate the authentication of end-user certificates provided by a broker if applicable” (Article IV B 55).

Multilateral, regional and sub-regional documents:

- The **OSCE Document on Small Arms and Light Weapons** states, “The participating States agree to consider appropriate technical, financial and consultative assistance to other participating States to increase the capacity of enforcement agencies. Section IV (D) Financial and technical assistance¹. The participating States agree to consider, on a voluntary basis and in co-operation with other international organizations and institutions, technical, financial and consultative assistance with the control or the elimination of surplus small arms to other participating States that request it.² The participating States agree to support, in co-operation with other international efforts and in response to a request from a participating State, stockpile management and security programmes, training and on-site confidential assessments” (Article 14, paragraph 5).
- The **Convention on Cluster Munitions** states, “In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance. 2. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by cluster munitions, aimed at the implementation of the obligations of this Convention. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organisations or institutions, non-governmental organisations or institutions, or on a bilateral basis” (Article 6).

A. INFORMATION SHARING WITH STATES

States have committed themselves to using and developing mechanisms for the exchange of information at the global, regional and sub-regional levels, including case-specific information on a range of possible matters relating to the arms trade. Transparency within the ATT could also be facilitated and encouraged by provisions that support both bilateral and multilateral consultations amongst States Parties.

The ATT could include a provision requiring States Parties to exchange among themselves, consistent with their domestic legal and administrative systems, relevant case-specific information on matters such as authorised importers, exporters and brokers of conventional arms and ammunition.

For the purpose of law enforcement and upholding the purposes of the ATT, the treaty could list matters that States could exchange information among themselves, consistent with their domestic legal and administrative systems. This could include:

- a. Case-specific information on international transfers of conventional arms that might be in breach of a United Nations arms embargo;
- b. Methods and means, points of dispatch and destination and routes used to divert legal transfers of conventional arms into the illicit trade;
- c. Case-specific information on agents, brokers and other actors that are suspected or known to be involved in the illicit trade;
- d. Information on the authenticity of documents submitted as part of a license or

- authorisation application;
- e. Legislative experiences, practices and measures to foster greater responsibility in the international trade of conventional arms.

United Nations Secretary General, Security Council and General Assembly:

- The **Security Council** stresses the need for cooperation and sharing of information among the Member States...on arms traffickers that have violated arms embargoes established by the Council (S/PRST/2002/30).
- The **General Assembly** has emphasized “the importance of international cooperation and assistance, capacity building and information sharing in preventing and combating illicit brokering activities” (A/C.1/65/L.49/Rev.1).
- The report of the **Group of Governmental Experts on Brokering** (A/62/163) states that, “Information sharing among States can take place bilaterally and on a multilateral basis as appropriate. States can share information about the design and practices used in national systems of control. The sharing of information on the authenticity of the documents submitted as part of a license application, and the cross-checking of this information on a case-by-case basis, would assist the prevention and combating of illicit brokering activities. Such information sharing could include cooperation to facilitate the authentication of end-user certificates provided by a broker if applicable” (Article IV B 55).

Multilateral, regional and sub-regional documents:

- The **Wassenaar Arrangement Best Practices for Effective Enforcement** (International Cooperation/Information Exchanges) states “Consistent with national laws, policies and regulations and on a mutually-agreed basis, including international agreements for legal and customs assistance, governments may, as appropriate, share information bilaterally on persons and companies considered to present a high risk of diversion. Examples of information to share include: a. Information obtained in the course of pre-license and post-shipment verifications; and b. Information about export control prosecutions, convictions, and restrictions or denials of export privileges; 16. Consistent with national laws, policies and regulations, governments may, as appropriate, share information in the context of multilateral export control arrangements. Examples of information to share include: a. General information on risks associated with destinations of concern; b. Information on license denials; c. Information on networks, agents, brokers and end-users of concern; 17. Senior enforcement officials may maintain, as appropriate, formal and informal information exchanges with their counterparts in member country governments” (Articles 15 – 17).
- The **Best Practices Guidelines for the Nairobi Protocol** states, “To facilitate information exchange, all relevant documentation for import, export and transit should be standardized across the region. All relevant laws, regulations, procedures and documentation, relative to import, export and transit of small arms and light weapons, should be made available to all parties involved in import, export and transit” (Article 2.1 g). It also clarifies that “States should exchange, among themselves and through the Nairobi Secretariat and National Focal Points, relevant information on matters such as: 1. Authorized producers, dealers, importers, exporters, and carriers/transporters of SALW, ammunition and related materials; 2. The means of

concealment used in the illicit manufacturing of or trafficking in SALW, and methods to detect them; 3. Routes customarily used by traffickers of SALW, ammunition and related materials; 4. Legislative experiences, practices, and measures to prevent, combat, and eradicate the illicit manufacturing of and trafficking in SALW and related materials.”

- The **Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel** states that, “States Parties shall exchange among themselves, in conformity with their respective domestic laws and applicable treaties, relevant information on matters such as: a. authorized producers, dealers, importers, exporters, and, whenever possible, carriers of firearms, ammunition, explosives, and other related materials; b. the means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition, explosives, and other related materials, and ways of detecting them; c. routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition, explosives, and other related materials; d. legislative experiences, practices, and measures to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; and e. techniques, practices, and legislation to combat money laundering related to illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials. States Parties shall provide to and share with each other, as appropriate, relevant scientific and technological information useful to law enforcement, so as to enhance one another's ability to prevent, detect, and investigate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials and prosecute those involved therein” (Article 13).
- The **Firearms Protocol** requires that “States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities” (Article 12 (3)).
- The **CIFTA** establishes a Consultative Committee responsible for “a. promoting the exchange of information contemplated under this Convention; b. facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties; c. encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives, and other related materials; d. promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as academic studies; e. requesting from nonparty states, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; and, f. promoting measures to facilitate the application of this Convention” (Article XX).

B. MUTUAL LEGAL ASSISTANCE AND COOPERATION

- The **Wassenaar Arrangement Best Practices for Effective Enforcement** states, “Consistent with national law, policies and regulations and on a mutually-agreed basis, including international agreements for legal and customs assistance, and mutually respecting national sovereignty, governments may cooperate in the investigation and prosecution of violations of export controls cases, by: Furnishing relevant documents and items relating to violations; Facilitating the availability of witnesses; and Providing for the extradition of violators, consistent with treaty

obligations” (paragraph 13).

- The **Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel** states that, “States Parties shall afford one another the widest measure of mutual legal assistance, in conformity with their domestic law and applicable treaties, by promptly and accurately processing and responding to requests from authorities which, in accordance with their domestic law, have the power to investigate or prosecute the illicit activities described in this Convention, in order to obtain evidence and take other necessary action to facilitate procedures and steps involved in such investigations or prosecutions” (Article 18).
- The 2001 **SADC Protocol on the Control of Firearms, Ammunition, and other related materials** states, “State Parties shall co-operate with each other to provide mutual legal assistance in a concerted effort to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use” (Article 14).
- The **OSCE Document on Small Arms and Light Weapons**, (Section III (E) Improving co-operation in law enforcement, paragraph 3) states “The participating States agree to enhance their mutual legal assistance and other mutual forms of co-operation in order to assist investigations and prosecutions conducted and pursued by other participating States in relation to the illicit trafficking of small arms. For this purpose, they will endeavour to conclude relevant agreements with each other.”
- The **CIFTA**, Article XVII on Mutual Legal Assistance states, “1. States Parties shall afford one another the widest measure of mutual legal assistance, in conformity with their domestic law and applicable treaties, by promptly and accurately processing and responding to requests from authorities which, in accordance with their domestic law, have the power to investigate or prosecute the illicit activities described in this Convention, in order to obtain evidence and take other necessary action to facilitate procedures and steps involved in such investigations or prosecutions.”

C. VICTIMS ASSISTANCE

Over the last few decades, significant progress has been made in developing legal frameworks, establishing institutions and creating formal and informal mechanisms for providing protection, redress and justice for victims of a range of violations and abuses of international law, including, for example:

- victims of crime and abuse of power;
- victims of violations of international human rights law;
- victims of violations of international humanitarian law;
- victims of “collective” crimes (i.e. war crimes, crimes against humanity, genocide);
- victims of terrorist acts; and
- victims of human trafficking

These frameworks and mechanisms have led to the establishment of widely accepted international standards concerning the treatment of victims. These standards articulate the full range of States’

obligations in providing reparations to individuals.

With a full range of legal rights for victims well established by the international community, efforts should and have turned to the better enforcement of those rights at the national level. If UN Member States agree that victim rights should be addressed within the ATT, a reaffirmation of such existing rights could be included in the text of the ATT

11 SETTLEMENT OF DISPUTES

When a dispute arises between two or more States Parties relating to the interpretation or application of the ATT, the text should provide recourse to consultation and other peaceful means of settlements with a view to the expeditious settlement of the dispute. Recourse to the Meeting of States Parties and referral to the International Court of Justice in conformity with the Statute of the Court could be explicitly stated in the text. States Parties should be encouraged to make every effort to clarify and resolve disputes, through exchange of information and consultations among themselves.

United Nations Secretary General, Security Council and General Assembly:

- The **General Assembly** has noted that “Multilateral disarmament agreements provide the mechanisms for States parties to consult one another and cooperate in solving any problems that may arise in relation to the objective of, on in the application of, the provisions of the agreements ...”(A/RES/64/34).
- **General Assembly** resolutions have called for Members States to comply strictly with all bilateral, regional and international agreements, including arms control and disarmament agreements, to which they are party and to provide technical and financial support to support implementation of such agreements (for example, A/RES/60/64, A/RES/58/55 and A/RES/57/50).

Multilateral, regional and sub-regional documents:

- The **ECOWAS Convention** creates a Group of Independent Experts tasked with ensuring monitoring and compliance with the Convention (Chapter VI, Article 28 (1)). Article 29 states, “Any dispute arising out of the interpretation and/or the implementation of the Convention shall be settled by way of negotiation or by recourse to the ECOWAS Mediation and Security Council. 2. In the absence of a negotiated settlement, the dispute shall be brought before the ECOWAS Court of Justice.”
- The **Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel** states that, “Any dispute that may arise as to the application or interpretation of this Convention shall be resolved through diplomatic channels or, failing which, by any other means of peaceful settlement decided upon by the States Parties involved.”
- The **Firearms Protocol** provides, “States Parties shall endeavor to settle disputes concerning the interpretation or application of this Protocol through negotiation. Any dispute between two or

more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.” (Article 16).

- The **SADC Protocol** states, “Disputes arising from the interpretation or application of this Protocol, which cannot be settled amicably, shall be referred to the Tribunal (of the SADC)” (Article 19).
- The **Kinshasa Convention** states, “In the event of any dispute between two or more States Parties concerning the interpretation or application of this Convention, the States Parties in question shall consult each other with a view to settling the dispute quickly through negotiation or by any other peaceful means of their choosing, including recourse to the good offices of the Secretary-General of ECCAS, the Secretary-General of the United Nations or an extraordinary Conference of States Parties” (Article 41).
- The **CIFTA** states, “Any dispute that may arise as to the application or interpretation of this Convention shall be resolved through diplomatic channels or, failing which, by any other means of peaceful settlement decided upon by the States Parties involved” (Article XXIX).
- The **Nairobi Protocol** states, “Disputes arising out of the interpretation or application of this Protocol, which are not settled amicably, shall be settled in accordance with the principles of public international law” (Article 19).
- The **2009 Fissile Material Cut-Off Treaty** states, “When such a dispute arises between two or more States Parties, the parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiating or by other peaceful means of the parties’ choice, including using the good offices of the Conference and, by mutual consent, referral to the International Court of Justice in conformity with the Statute of the Court...”(Article VIII. 2).

12 MEETING OF STATES PARTIES AND REVIEW CONFERENCES

The purposes of review conferences are to enable States Parties to review the operation and status of the Convention and assess how well the provisions of the ATT have been implemented. It enables States Parties to chart a path forward for those issues that have not been properly addressed or implemented. It is common treaty practice that Review Conferences are held five years after the entry into force of a Convention and every five years after (see for example Article 12 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and Their Destruction, Article VIII, paragraph 3 Treaty on the Non-proliferation of Nuclear Weapons).

Recognising that changes continue to occur in weapons technologies, the need to regularly review the subject matter of a treaty is uniform practice. For example, the Convention on Chemical Weapons and its additional protocols that deal with specific categories of weapons allows any High Contracting Party to propose additional categories of conventional weapons not covered by existing protocols (Article 18, paragraph 2(a)). Some conventions specifically require that a Review Conference “take into account any new scientific and technological developments relevant to the Convention” (Article XII, Biological Weapons Convention).

- The **OSCE Document on Small Arms** (Section VI) provides: “The participating States agree that the Forum for Security Co-operation will review regularly including, as appropriate, through annual review meetings, the implementation of the norms, principles and measures in this document and will consider specific small arms issues raised by participating States. In addition, and as necessary, they may convene meetings of national experts on small arms.”
- The **Wassenaar Arrangement Initial Elements**, Part VII states, “Meetings and Administration 1. Participating States will meet periodically to take decisions regarding this Arrangement, its purposes and its further elaboration, to review the lists of controlled items, to consider ways of co-ordinating efforts to promote the development of effective export control systems, and to discuss other relevant matters of mutual interest, including information to be made public. 2. Plenary meetings will be held at least once a year and chaired by a Participating State on the basis of annual rotation. Financial needs of the Arrangement will be covered under annual budgets, to be adopted by Plenary Meetings.
- The **Convention on Cluster Munitions** states, “The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention, including: (a) The operation and status of this Convention; (b) Matters arising from the reports submitted under the provisions of this Convention; (c) International cooperation and assistance in accordance with Article 6 of this Convention; (d) The development of technologies to clear cluster munition remnants; (e)

Submissions of States Parties under Articles 8 and 10 of this Convention; and (f) Submissions of States Parties as provided for in Articles 3 and 4 of this Convention.” It further states, “A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years” (Article 11).

- The **Fissile Material Cut-off Treaty** states, “Unless otherwise decided by a majority of the States Parties, five years after the entry into force of this Treaty, a Conference of the States Parties shall be held to review the operation and effectiveness of this Treaty, with a view to assuring itself that the objectives and purposes in the Preamble and the provisions of the Treaty are being realized. In this context, it shall review how to promote the universality and effectiveness of the Treaty” (Articles XII.2).
- The **1972 Biological and Toxin Weapons Convention** states, “Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realized. Such review shall take into account any new scientific and technological developments relevant to the Convention” (Article 12).

ANNEX A

MULTILATERAL, REGIONAL AND SUB REGIONAL TREATIES AND AGREEMENTS

<p>Kinshasa Convention</p>	<p>Full name: Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair or Assembly</p> <p>Signed: April 30th, 2010</p> <p>Signatories: Angola, Burundi, Cameroon, Chad, Democratic Republic of Congo, Equatorial Guinea, The Central African Republic, Gabon, Rwanda, Republic of Congo, Sao Tome and Principe</p> <p>Ratification: In the process of being ratified by all 11 member states.</p>
<p>Nairobi Protocol</p>	<p>Full name: The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons In The Great Lakes Region And The Horn Of Africa (supplemented by Best Practice Guidelines For The Implementation Of The Nairobi Declaration And The Nairobi Protocol On Small Arms And Light Weapons)</p> <p>Signed: April 24th, 2004</p> <p>Entry into force: May 5th 2006</p> <p>Ratification: Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Seychelles, Sudan, Tanzania, Uganda</p>
<p>Khartoum Declaration</p>	<p>Signed: May 23rd, 2012</p> <p>Signatories: Sudan, Chad, Libya, Central African Republic, Democratic Republic of Congo</p>
<p>Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other</p>	<p>Signed: December 2005</p> <p>Signatories: Belize, Costa Rica, El Salvador, Guatemala,</p>

Related Material	Honduras, Nicaragua, Panamá
ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials	Entry into force: September 2009 Ratifications: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
Southern African Development Community (SADC) Protocol Treaty	Signed in 2001 Entry into force: 8 November 2008 Ratified: Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia
Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects	Signed: June 2003 Signatories: Bolivia, Colombia, Ecuador, Peru
Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies	Created in 1995 Members: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxemburg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, United States.
Organization for Security and Co-operation in Europe (OSCE), Document on Small Arms and Light Weapons	Adopted at the plenary of the OSCE Forum, 24 November 2000 OSCE Member States: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Cyprus, Czech Republic, Croatia, Estonia, Georgia, Finland, Denmark, Holy See, Germany, France, Ireland, Hungary, Greece, Kyrgyzstan, Italy, Iceland, Latvia, Kazakhstan, Lithuania, Luxembourg, Moldova, Monaco, Liechtenstein, Netherlands, Romania, Malta, Portugal, Serbia, Montenegro, San Marino,

	Tajikistan, Poland, Slovenia, Turkmenistan, Republic of Macedonia, Russian Federation, Switzerland, Slovakia, Sweden, The Former Yugoslav, Turkey, Ukraine, Uzbekistan, United Kingdom, United States.
Inter American Convention Against The Illicit Manufacturing of And Trafficking In Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA)	<p>Signed: November 1997</p> <p>Entry into force: July 1998</p> <p>Ratifications: Antigua & Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts & Nevis, St. Lucia, Suriname, Trinidad & Tobago, Uruguay, Venezuela.</p>
European Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (EU Common Position).	<p>Agreed: December 2008 (replaced and expanded the 1998 EU Code of Conduct on Arms Exports)</p> <p>EU Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom</p>
UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol)	<p>Adopted in 2001 by the GA with resolution 55/255</p> <p>Entered into force: 3 June 2005</p> <p>Signed but not ratified: Barbados, Canada, China, Denmark, European Union, Germany, Iceland, Luxembourg, Monaco, Nauru, Republic of Korea, Seychelles, Sierra Leone, United Kingdom of Great Britain and Northern Ireland,</p> <p>Ratification: Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahamas, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cambodia, Cape Verde, Central Africa Republic, Chile, Costa Rica, Croatia, Cuba, Cyprus, Democratic Republic of the Congo, Dominican Republic, El Salvador, Estonia, Ethiopia, Finland, Gabon, Greece, Grenada, Guatemala, Guyana, Haiti, Honduras, Hungary,</p>

	<p>India, Italy, Jamaica, Kazakhstan, Kenya, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mexico, Mongolia, Montenegro, Mozambique, Netherlands, Nicaragua, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Poland, Portugal, Republic of Moldova, Romania, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, St. Kitts and Nevis, St Vincent and the Grenadines, Sweden, The Former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Republic of Tanzania, Uruguay, Zambia.</p>
--	--

