



Arms Trade Treaty

Ratification and implementation
guide for African States

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1. Foreword

The intention of this document is to serve as a guideline for policy makers, legislative officers, firearms control practitioners, and other parties that are interested in the implementation of a practical, effective and robust Arms Trade Treaty (ATT).

Several critical matters will be addressed and suggestions will be made as to how best to deal with them. Since the issues addressed are only of a general nature, countries need to take their own constitutional and legislative system, as well as their political and strategic environments into account when considering the changes that need to be made to ensure compliance with the ATT.

The recommendations contained in this document represent the minimum requirements that should be put in place for effective arms control. Achievement of this objective will enhance the ability of States to regulate the flow of arms within and through their sovereign territories, which in turn will assist the international process of working toward sustainable peace and security across all regions.

The ATT clearly states its objectives and purposes, as follows.

The objects of this treaty are to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms, and
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion

for the purposes of:

- Contributing to international and regional peace, security and stability,
- Reducing human suffering, and
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among State Parties.¹

These are the main themes States may want to consider when deciding on arms transfers and when evaluating the best arms transfer control measures to be imposed by them.

It is well known that States, and not only those in Africa, will consider the importance of their political and other links with countries that may have dubious human rights

reputations or are prone to continuous internal conflict. However, countries should remember the following statements made in the preamble of the ATT.

Preamble

The preamble of the ATT calls for State Parties to this Treaty to Recall Article 26 of the Charter of the United Nations, which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security, and recognizing that development, peace and security, and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/ 36 H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty,

Determined to act in accordance with the following principles;

Principles

The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;

The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;

Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other

manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;

Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;

Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;

The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;

The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;

Implementing this Treaty in a consistent, objective and non-discriminatory manner.

2. The scope of the ATT

Article 2 of the Arms Trade Treaty refers to the scope of the treaty. It is very important to understand this section and to ensure that national legislation takes the categories into account. These are the minimum requirements and it is suggested that more weapons' categories are considered for inclusion in the latter part of the document.

Article 2 specifies eight categories of conventional arms where the ATT shall be applicable.² The treaty lays down that the treaty shall apply to all conventional arms within the following categories:

- a. Battle tanks
- b. Armoured combat vehicles
- c. Large-calibre artillery systems
- d. Combat aircraft

- e. Attack helicopters
- f. Warships
- g. Missiles and missile launchers and
- h. Small arms and light weapons.

Article 2 also defines the concept of 'transfer' as the activities of international trade that comprise export, import, transit, trans-shipment and brokering for the purposes of the treaty. Article 2 establishes an exception to the general rule of arms control regulation where it stipulates that the ATT shall not apply to the international movement of conventional arms by or on behalf of a State Party for its own use, provided that it retains ownership of the arms. This enables peacekeeping operations to continue their missions without being subjected to the scrutiny of exporting or transiting countries. There will also not be a need for an end-user certificate.

3. About the Institute for Security Studies

The Institute for Security Studies (ISS) was established in South Africa in 1991. Over the past two decades the Institute has become one of Africa's leading independent bodies focusing on research, policy advice, the provision of capacity building and support on issues relating to human security. The ISS has offices in South Africa, Ethiopia, Kenya and Senegal. It is supported by a number of international partners, including the governments of Sweden, Norway, Germany, the Netherlands, Switzerland, Denmark, Finland, Spain and the United Kingdom, and foundations such as the Open Society Institute and Humanity United. The Institute works with a large number of national and regional stakeholders across Africa

As a leading pan-African policy research and training organisation, the ISS is guided by the broad concept of human security and works towards the vision of a 'peaceful and prosperous Africa for all its people'. The mission and overall goal of the ISS is 'to advance human security in Africa through evidence-based policy advice, technical support and capacity building'. Through its Arms Management Programme the ISS has been working on arms control and disarmament issues for more than 15 years, and has undertaken research and provided technical support to governments, intergovernmental organisations and civil society groups in Africa. The ISS has also facilitated training with government officials on subjects related to arms control. Further information on the ISS may be found at its website at <http://www.issafrica.org>.

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- Amnesty International
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- The International Committee of the Red Cross (ICRC)
- The Stockholm International Peace Research Institute (SIPRI) and
- The UN Office for Disarmament Affairs (UNODA).

5. About this guide

The main objective of this guide is to serve as a reference document for representatives of African States that will be responsible for ratifying and implementing the provisions of the ATT.

This ratification and implementation guide is a continuation of the ATT negotiation toolkit that was developed by the Arms Management Programme of the ISS to

assist African States during the ATT negotiation process. It emerged in its current form following a series of consultations with African government officials and civil society activists who expressed a keen interest in the development of such a document.

This publication endeavours to provide impartial descriptions and explanations of relevant conventional arms control issues. It also attempts to provide an objective analysis of the various key aspects of the ATT that are applicable to Africa.

The guide uses the ATT document as its primary frame of reference and relies on the contextualisation of the concepts first developed in the 'Negotiating an Arms Trade Treaty' toolkit.

To increase its usefulness, the guide makes use of a variety of sources of information, such as treaties and protocols, UN publications and documents, official national and intergovernmental documents, publications of academic institutions and think tanks, and advocacy material produced by international organisations and civil society groups.

The focus of the guide is on the factors that influence the ratification and implementation of the ATT, e.g. scope, criteria and implementation. It provides considerable detail on each of the content areas in relatively straightforward terms to increase the guide's accessibility and usefulness. However, in so doing, some of the more intricate details and explanations have had to be left out. I recognise that there is considerable national diversity in the manner in which States have sought to regulate transfers of conventional arms but, owing to space constraints, it has not been possible to make reference to all these variations.

Throughout the guide reference is made to considerations that African States need to be mindful of. Some of these are African obligations and commitments to regional and sub-regional small arms, light weapons and ammunition control instruments. In some sections of the guide, African States are presented with information on and analysis of historical and current arms control challenges and dynamics that may be useful when considering ratification and implementation.

As this publication essentially covers universal conventional arms control content, it may also be a useful resource for States in other regions of the world, as well as ATT observers and civil society lobbyists.

6. List of abbreviations

ATT	Arms Trade Treaty
CFR	Central Firearms Registry
DCAC	Directorate Conventional Arms Control
DRC	Democratic Republic of Congo
DVC	Delivery verification certificate
ECOWAS	Economic Community of West African States
EU	European Union
EUC	End-user certificate
ICRC	International Committee of the Red Cross
ISS	Institute for Security Studies
NCACC	National conventional arms control committee
NGF	Non-governmental forces
NGO	Non-governmental organisation
SADC	Southern African Development Community
SALW	Small arms and light weapons
SARPCCO	Southern African Regional Police Chiefs Cooperation Organisation
SIPRI	Stockholm International Peace Research Institute
SOPs	Standard Operating Procedure
UN	United Nations
UNODA	United Nations Office for Disarmament Affairs

7. Glossary of terms

The terms and definitions used in this guide were sourced from several international documents, agreements, treaties and instruments. The references for the sources are listed and this should assist countries in developing comprehensive national definitions, as well as providing a clear understanding of international thinking with regard to each concept.

To coordinate international, regional and national arms control it is of the utmost importance that agreement is reached at all levels on the term and definitions that

will be used in the arms control process. If agreement cannot be reached it will leave significant grey areas that will be exploited by criminals involved in the illicit weapons' trade.

7.1 Vienna Convention on the Law of Treaties 1969³

- (a) 'Treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
- (b) 'Ratification', 'acceptance', 'approval' and 'accession' mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.
- (c) 'Full powers' means a document emanating from the competent authority of a State designating a person or persons to represent the State for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect to a treaty.
- (d) 'Reservation' means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.
- (e) 'Negotiating State' means a State that took part in the drawing up and adopting the text of the treaty.
- (f) 'Contracting State' means a State, which has consented to be bound by the treaty, whether or not the treaty has entered into force.
- (g) 'Party' means a State, which has consented to be bound by the treaty and for which the treaty is in force.
- (h) 'Third State' means a State not a Party to the treaty.
- (i) 'International organisation' means an intergovernmental organisation.

7.2 Arms Trade Treaty, United Nations, 2013

- a. 'Transfer' for the purposes of this treaty means the activities of international trade comprising export, import, transit, trans-shipment and brokering.⁴

- b. 'Brokering' is the facilitation by an intermediary who brings together relevant parties and arranges or facilitates a potential transaction of conventional arms in return for some form of benefit, whether financial or otherwise.⁵

The definition used in the ATT might be supplemented with the definition proposed for incorporation in the national legislation of SADC countries by SARPCCO. The suggested SADC brokering definition includes actions such as 'acting for a commission, advantage or cause, whether pecuniary or otherwise'.

The SADC definition goes further to say: 'To facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials'.

The SADC definition is an attempt by the Firearm Registrars of the law enforcement agencies in SADC countries to include the largest group that they, from their vast practical experience, consider to be part of the arms transfer process. In this way, individuals and organisations that act as intermediaries 'between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials, and buyer or recipient thereof' are included.

7.3 SARPCCO Standard Operating Procedures⁶

The Southern African Regional Police Chiefs Cooperation Organisation released a compendium of terms and legal consideration to assist countries with the redevelopment of their national arms control legislation. Entitled 'Standard Operating Procedures for the Implementation of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials', this publication explains several useful terms and definitions from the perspective of the law enforcement officials that are tasked to implement and police effective arms control nationally.

- a. 'Dealer' means any person who is authorised to trade in firearms and/or ammunition, or other related materials and their components.
- b. 'Confiscation' means to take with legal authority.
- c. 'Import' means to bring firearms and/or ammunition, or cause them to be brought, from outside the country into the country, and includes the bringing thereof into the country at any harbour, airport or other place on board any vessel or aircraft, or other means of conveyance, irrespective of whether or not the firearms and/or ammunition are off-loaded from such a vessel, aircraft or other means of conveyance for conveyance through the country to any place

outside the country or for any other purpose, or are intended to be so off-loaded.

It can also be defined as bringing or transferring registration and or ownership of conventional weapons and ammunition from a place outside of the territory of the State to the territory of the State.

- d. 'Export' means to take ammunition and or licensed or registered firearms out of one country to another country, or cause them to be taken out of a country to another country through any harbour, airport or other place on board any vessel or aircraft, or by any other means of conveyance.

Another definition is to send or take or transfer registration or ownership of conventional arms from a State to any place outside of the territory of that State.

- e. 'Re-export' is to send previously imported conventional arms (in the same condition) to another State or territory other than that from which they were originally imported.
- f. 'Temporary transfer' is to bring or send conventional arms from one State to another place for subsequent return to the State of origin. Such transfers are typically made when the arms are required for demonstration, short-term loan and military/peacekeeping exercises.
- g. 'Transit' occurs when conventional arms that have been dispatched from their place of export by the exporting State have not yet been received by the importing State. 'Arms-in-transit' entails arms entering and leaving an intermediary State prior to entering the territory of the recipient State, and typically takes place under the supervision of the intermediate State's customs authority.
- h. 'Transshipment', the act of transshipment, entails the transfer of conventional arms from the exporting State to the importing State via other destinations, and involves a change or changes in transport type during the transfer process. Transshipment usually occurs in transport hubs and/or designated customs areas.⁷
- i. 'Firearm' means any portable lethal weapon that expels or is designed to expel a shot, bullet or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorisation by respective State Parties. A firearm is any device that may be converted readily into a weapon

and any small arm, as defined in Article 1 of the SADC Protocol on the control of firearms, ammunition and other related materials. In addition, the definition covers any light weapon as defined in Article 1 of the SADC Protocol on the control of firearms, ammunition and other related materials.

- j. 'Illicit trafficking' means the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from, to or across the territory of a State Party without the authority of the State Party concerned.

7.4 Categories of conventional arms

States founded the UN Register of Conventional Arms (UNRCA) when inter-state warfare was considered the main threat to peace and security. The main purpose of the register is to identify and monitor primarily the transfer of conventional weapons that may be used in military operations across international borders.

Modern conflict increasingly distorts the traditional boundaries and understanding of the difference between warfare, civil strife, rebellion, religious and ethnic clashes, fighting related to resources and armed gang violence.

Since the end of the 20th century, warfare along fronts and large-scale battles between opposing armies facing off against one another has largely come to an end. Militaries have ceased to rely on heavy conventional weapons in favour of more mobile systems that can be deployed more quickly.

In 2014 the UNRCA comprised seven arms categories and voluntary additional background information that may be supplied to the register. The categories States are required to report on are defined as follows:⁸

- Battle tanks
- Armoured combat vehicles
- Large-calibre artillery systems
- Combat aircraft
- Attack helicopters
- Warships
- Missiles and missile launchers

The four additional components that States may report on are:

- Information on military holdings
- Information on procurement through national production

- Information on relevant policies
- Small arms and light weapons

Article 2 of the ATT specifies eight applicable categories of conventional arms. These categories are:

- Battle tanks
- Armoured combat vehicles
- Large-calibre artillery systems
- Combat aircraft
- Attack helicopters
- Warships
- Missiles and missile launchers and
- Small arms and light weapons

7.5 Conventional arms included in the ATT

7.5.1 Battle tanks

Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high level of self-protection, weighing at least 16.5 t (metric) unladen weight, with a high muzzle velocity direct fire main gun of at least 75 mm calibre.

7.5.2 Armoured combat vehicles

Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 125 mm calibre or a missile launcher.

7.5.3 Large-calibre artillery systems

Guns, howitzers, artillery pieces that combine the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems capable of engaging surface targets by delivering primarily indirect fire and having a calibre of 75 mm and above.

7.5.4 Combat aircraft

Fixed-wing or variable-geometry wing aircraft designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, including versions of such aircraft that perform specialised electronic warfare, suppression of air defence or

reconnaissance missions. The term 'combat aircraft' does not include primary trainer aircraft, unless designed, equipped or modified as described above.

7.5.5 Attack helicopters

Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface or air-to-air weapons that are equipped with an integrated fire control and aiming system, including versions of these aircraft that perform specialised reconnaissance or electronic warfare missions.

7.5.6 Warships

Vessels or submarines armed and equipped for military use with a standard displacement of 500 t (metric) or above, and those with a standard displacement of less than 500 t (metric), equipped for launching missiles with a range of at least 25 km or torpedoes with similar range.

7.5.7 Missiles and missile launchers

Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 km, and the device designed or modified specifically for launching such missiles or rockets. This sub-category includes remotely piloted vehicles with the missiles characteristics defined above, but does not include ground-to-air missiles.

Man-portable air-defence systems (MANPADS) that include surface-to-air missile systems designed to be man-portable and carried and fired by a single individual, as well as other surface-to-air missile systems portable by several individuals and designed to be operated and fired by more than one individual acting as a crew.

7.5.8 Small arms and light weapons

Throughout the ATT negotiation process many States expressed strong support for the inclusion of small arms and light weapons (SALW) within the ATT scope. There has also been significant commitment from UN member States to report on SALW transfers within the context of the UNRCA over the past decade.

In 2003 the UN General Assembly resolved that the UNRCA should allow for member States to voluntarily report on their SALW transfers as background information to their reports. Since 2003, 80 UN member have reported on SALW imports and exports. SALW are defined as:⁹

7.5.8.1 *Small arms*

Weapons designed for individual use. These arms include revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns.

7.5.8.2 *Light weapons*

Weapons designed for use by two or more persons serving as a crew, although some of these weapons may be carried and used by a single person. They include heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems and mortars of a calibre of less than 100 mm.

7.6 Ammunition

ATT – Article 3: Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorising the export of such ammunition/munitions.

The inclusion of ammunition in the ATT and the fact that it refers to the conventional weapons mentioned in Article 2 effectively means that ammunition transfers must be reported for both conventional weapons and SALW.

7.6.1 Understanding ammunition

According to the UN's International Ammunition Technical Guideline of 2011, ammunition for conventional arms is 'a complete device (e.g. missile, shell, mine, demolition store, etc.) charged with explosives, propellants, pyrotechnics, initiating composition ... for use in connection with offence, defence or training, non-operational purposes, including those parts of weapons systems containing explosives'.¹⁰

The terms 'ammunition' and 'munitions' tend to be used interchangeably. Ammunition typically includes cartridges (rounds for small arms), shells and missiles

for light weapons, anti-personnel anti-tank grenades, landmines and mobile containers with missiles or shells for single action anti-aircraft and anti-tank systems.

7.6.2 Ammunition-marking

To effect proper control over ammunition will be complicated. There are several issues that need to be kept in mind when ammunition control procedures are developed. Some of these are the markings that are currently used on ammunition and ammunition packaging, as well as the possibility of removing ammunition from its packaging in an effort to conceal the country of origin.¹¹

Countries that are involved in an arms transfer transaction should consider the practical challenges that may be faced. The first of these is the method used to mark the ammunition and the likelihood that the markings can be removed or that there may be insufficient markings on the casings, making effective control impossible.

In SADC the law enforcement community evaluated what the minimum requirements would be for effective tracing and control over ammunition. Several recommendations to be included in arms control regulations were developed.

7.6.3 Markings on ammunition

The head of each cartridge must be marked with an individual head stamp and each round must be marked according to the following minimum standards:

- Head stamps: individual marks (e.g. ZA, 07, PMP and 308)
- Country of manufacture: ZA (e.g. South Africa)
- Year of manufacture: 07 (e.g. 2007)
- Caliber of ammunition: 308
- Manufacturer: PMP (e.g. Pretoria Metal Pressings, South Africa)
- The depth of the stamp must be at least 0,2 mm
- The Registrar must approve any optional additional markings on cartridges and unique markings for military use. Such additional markings may only be applied after approval has been obtained from the Registrar.

7.7 Parts, components, technology and equipment

ATT – Article 4: Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorising the export of such parts and components.

The globalised nature of the arms trade was emphasised in the 2008 report of the group of governmental experts (GGE) on the feasibility of an ATT. The GGE reported that it was becoming progressively common practice for weapon systems and related components to be manufactured by several independent business entities. Development took place as a collaboration, under joint ventures and licensing, with most arms-producing States ‘increasingly relying on technology transfers and upgrades from external sources, rather than from their own indigenous production’.¹²

The dominant trend is for States not to import ‘off-the-shelf’ arms, but rather to negotiate that their domestic industry assembles the system locally using external technology under license from the exporting State. In essence, technology transfer entails the sale of the ‘know-how or knowledge that could be used to independently develop or design military equipment or components and or weapon systems’ by an exporting State to an importing State.¹³

Arms-related technology transfers have the potential to empower recipient States that have the appropriate domestic capacity eventually to manufacture the imported arms that were linked to the technology transfer independently. However, there have been instances of recipient States having re-exported such arms to States and non-state actors that pose a threat to international peace and security. There have also been cases where States that previously benefited from technology transfers have had UN Security Council arms embargoes imposed on them.

The knowledge, expertise and capacity gained through this transfer process has subsequently been used by some States to manufacture arms domestically without permission of the patent owner. In addition, the GGE report on the feasibility of

an ATT observed that trade in the illegal arms market ‘frequently comes from unlicensed production’.¹⁴

The globalisation and increased sophistication of the weapons manufacturing sector has resulted in a range of completed weapon systems comprising components and parts manufactured within a variety of States. While this arrangement has economic and financial benefits, it also has serious implications for international arms control processes. The reason is that core weapon parts and components, sold outside an arms manufacturing and transfer agreement, could be used by unscrupulous entities to assemble and transfer arms in non-compliance with the provisions of the ATT. Evidence suggests that some arms manufacturers have in the past purposefully exported arms in component form to avoid the imposition of more rigorous national arms export controls.

8. Exclusions from the ATT

Strong arguments were made during the negotiation process to include ‘less lethal’ types of arms and related ammunition, as well as a range of other security related equipment, in the ATT. The lobbyists for these inclusions failed, however, to gather the necessary support for the notion.

For countries in Africa this exclusion from the final text of the ATT may have severe repercussions, considering the international drive to control weapons and security equipment that can be used in torture and other human rights violations.

Several researchers and activists suggest that African countries should seriously consider including ‘less lethal’ arms and related ammunition in the list of controlled items that will be scrutinised by the national arms transfers controlling body in each country.

The main reason for such inclusion is the possibility of States being implicated in human rights abuses in recipient countries after permitting the transfer of this category of equipment and related ammunition. Even if States do allow the transfer of ‘less lethal’ arms and related ammunition and these are then used in abusive situations, it would still be to their benefit to be able to show to the international community that due diligence was done by following an official consideration process.

8.1 Less lethal arms and ammunition

Less lethal arms and ammunition are typically used for policing, domestic security and riot control purposes. The main categories of such arms and ammunition include electric shock equipment, kinetic impact weapons (launched projectiles), launchers for chemical irritants and kinetic impact munitions.¹⁵

8.1.1 Electric shock equipment

Electric shock equipment is designed to disable an individual temporarily by delivering a high-voltage electric shock. Equipment commonly used in this regard includes 'direct contact' stun guns and stun batons, projectile electric shock devices, body-worn electric shock equipment (such as belts/cuffs) and electric shock shields. Some electric shock devices also include built-in chemical irritant sprays. Alternative terms for electric shock equipment are electric stun devices, electric discharge weapons, conducted energy devices, conducted electrical weapons and electronic control devices.

8.1.2 Kinetic impact weapons

Launched kinetic impact weapons are similar to conventional ammunition but are considered less lethal as they are designed to cause blunt force trauma on impact. Such devices can be hand-thrown or launched by weapon, and can include rubber, plastic, wooden and foam/sponge rounds, rubber belts and beanbag rounds. They are fired by means of a variety of launchers that are either used for 'direct fire' impact rounds or 'indirect fire' or 'skip fire' rounds. 'Direct fire' rounds are fired directly at individuals, while 'indirect' rounds are designed to be fired at the ground in front of individuals, with the projectile then rebounding into the target.¹⁶

8.2 Launchers for chemical irritants, kinetic impact and other munitions

Launchers for chemical irritants, e.g. tear gas, kinetic impact and other munitions are weapons designed to fire kinetic impact munitions and chemical irritants. The launchers are available in many different shapes, sizes and calibres. They can be adapted to fit conventional small arms such as assault rifles or shotguns. Common calibres include 37/38 mm, 40 mm, 56 mm and 12-gauge shotguns. The launchers are often referred to as riot guns, anti-riot guns and less lethal and less than lethal launchers.

9. Becoming a state party to the ATT

The following is a short summary of the process to date, as well as the process that States must follow to become a party to the ATT.

ATT process flow table	
Pre-April 2013	States negotiate the text of the ATT and agree on the text that is to become the ATT
2 April 2013	The ATT is adopted in the UN General Assembly
3 June 2013	The ATT is opened for signature
Since being opened for signature, 118 States have signed the treaty and 41 States have ratified the treaty (as of 25 July 2014) ¹⁷	
Ongoing	States are signing the ATT
Ongoing	States are depositing their instruments at the UN
To be determined	50 instruments deposited by States
90 days after the 50th instrument was deposited	The ATT enters into force
Non-signatory States can thereafter accede to the ATT and deposit their instruments with the UN ¹⁸	

10. ATT: its importance to Africa

The establishment of a well-developed and effectively enforced international arms control regime should be a priority for all African States. In his opening remarks, Ambassador Roberto Moritan of Argentina who chaired the July 2012 conference on the ATT, argued that international security is built on a succession of multilateral actions. Understanding this might be the key to ending current conflict and to preventing future continental conflict that is fuelled by an illicit trade in arms.

African States must strive to regulate the international trade and transfer of arms through and in their sovereign territories effectively. This commitment requires States to perform efficient risk assessments of all the aspects involved in the transaction. This amounts to States tracking the use of the exported material throughout its life cycle.

Some of the criteria that should be considered are a) whether an entity involved in a transaction is under an UN arms embargoes and b) whether there are known instances of serious human rights violations charges against the recipient State.

Africa fell victim to a historical lack of regulation in the arms trade. Considering the rise in African military expenditure, armed conflict and human rights violations, there is now a need for a concerted and collective action to prevent further damage. Effective arms transfer controls will in the long run contribute to reduced conflict and a lower displacement of citizens. Well-executed arms controls will also contribute to less arms-related crime and limit the availability of weapons to terrorists.

When considering the ratification and implementation of the ATT, States should keep in mind the key objective of the ATT, namely the preservation of human security and the prevention of human suffering. National policies and procedures must support this concept and ethos.

Special attention must be given to controlling the trade in ammunition, which is estimated to exceed US\$ 4 billion annually. This trade segment continuous to fuel violence in conflict-prone areas that has already experienced uncontrolled arms proliferation. It is much easier to control the illicit transfer of ammunition than trying to remove existing arms and ammunition from distrusting communities or criminals.¹⁹

11. Lack of control mechanisms to regulating the arms trade

It is disconcerting that there is a clear lack of mechanisms to control the arms trade. It is recognised internationally that there is a legal vacuum around agreed arms control measures.

This vacuum exists because States have never yet agreed on a set of international arms control procedures. This situation needs to be corrected by agreeing on functional procedures supported by a legal framework that will not inhibit the legal arms trade, but will prevent the illicit trade. All entities involved in a transaction must work within the national and international legal framework to be developed and all transactions must be scrutinised carefully before being permitted to proceed.²⁰

12. The ATT's benefit for Africa

Almost to a man, African States indicate that they recognise the potential contribution the ATT can make toward achieving sustainable peace in Africa. Almost all African countries have signed the ATT. However, it is always prudent to examine each treaty and international commitment from a practical perspective to determine how much a State will benefit from being party to the instrument.

One of the perceived benefits is the possibility that the ATT may reduce the effect a poorly regulated arms trade has on socio-economic development. It is estimated that armed violence costs Africa US\$ 18 billion per year. This is roughly equal to the collective annual development aid to the entire continent. The challenge for African States is the realisation that being involved in armed conflict will reduce their national economy by 15% per year.²¹ The reason for this is simple: violence, instability and climbing crime levels discourage foreign investment.

Another benefit may be a general reduction in the number of arms that are lost yearly from legal stockpiles and from legal possession. If these losses can be reduced it stands to reason that fewer arms and less ammunition will be available for criminal use and to organisations that are associated with terrorist organisations. It is estimated that one million of the seven to eight million firearms manufactured annually are lost or stolen, which is a significant number of weapons to enter the illegal and conflict markets.

Over and above the physical threat posed by the unregulated and illegal trade in weapons, there is the significant threat posed by corruption. International estimations indicate that the cost of corruption in the defence industry could be higher than US\$ 20 billion per year.²²

This estimate is supported by the US Department of Commerce's assessment that corruption in the arms trade accounts for roughly 50% of all corrupt transactions globally. Considering that the value of the global arms traded annually does not exceed 1% of world trade, the corruption estimate is a very concerning factor. The effects of bribery and corruption are higher transactional and hidden costs, which often represent a high percentage of the total contract value. This of course increases the cost to purchasing countries considerably.²³

13. ATT enforcement

National law and the regulations of every ratifying and implementing country will drive the enforcement of the ATT. This process will eventually also persuade non-partisan countries to ratify and implement the ATT for fear of becoming isolated from the technological advancements driven by defence development.

Enforcement will take the form of a self-regulating process and the submission of regular national reports to the Secretariat at the UN. These reports will be made public and countries that are part of the process, as well as Non-governmental Organisations (NGOs), will review them. This review process will make it very difficult not to comply with the requirements of the ATT and if proper national legislation is in place, it might become illegal for a State to trade with specific countries and organisations.

Any decisions relating to the approval of an arms trade transaction that contravenes the ATT and subsequent national legislation will then be able to be challenged in a national court. It is also possible that transactions that are found to be in violation of the ATT and national legislation will be able to be overturned.

Under the ATT, governments will be required to report their arms sales in an open and transparent way. This in turn will lead to greater public and parliamentary scrutiny.²⁴

14. Government control

A country's government has the obligation to protect its citizens. Part of that obligation is to control the import, export and trans-shipment of materials that may have an impact on the safety and security of its citizens. With a focus on conventional weapons control, some of the areas of government control include:

- Conventional arms and services
- Rendering of foreign military assistance
- Firearms, ammunition, explosives and teargas
- Weapons of mass destruction and dual-use items
- Nuclear materials and related technology

15. Policy framework

At the time of becoming a party to the ATT, governments need to evaluate their country's policies with regard to non-proliferation, disarmament and arms control. These policies will inform the decision-making process during an arms transfer evaluation process when consideration is given to whether a transaction should be allowed or not or, more correctly, if the particular State is willing to become part of the arms transfer process.

Aspects that would be useful to consider during the process are the State's policies on:

- Democracy
- Human rights
- Sustainable development
- Social justice
- Environmental protection

16. International commitments to other instruments

In addition to expressing an interest in becoming a party to the ATT, States need to carefully consider their positions with regard to the other international and regional instruments that have an impact on the control of conventional weapons. States may historically have been of the opinion that the instrument and the concern in question had no bearing on them. However, it needs to be emphasised that arms control is a concern that must be addressed as holistically as possible. Even if a particular issue does not affect a State at a certain point of time, that State should work with other States that are affected in their efforts to develop solutions for the problems.

Some of these instruments are:

- The Convention on the Prohibitions or Restrictions on the Use of Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW)
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction
- The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Aspects

- The SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials
- The Missile Technology Control Regime (MTCR)
- The Hague Code of Conduct against Ballistic Missile Proliferation (HCOOC)

17. Signing the ATT

The Arms Trade Treaty was opened for signature on 3 June 2013 at the UN headquarters in New York. The ATT will remain open for signature until its entry into force.

Established international practice is that only Heads of State, Heads of Government or Ministers for Foreign Affairs have the legal power, by virtue of their position and function, to sign multilateral treaties on behalf of the States they represent, without having to present a document imparting them with 'Full Power'. Another State representative wishing to sign the treaty must be in possession of a 'Full Power' document, which must be presented to the Office of Legal Affairs of the UN Secretariat in advance of the event.

Signing a treaty is an indication that a particular State intends to become a party to the treaty in the future. The relevant State declares that it will not take any action that may undermine the objective and purpose of the treaty.

Article 18²⁵

Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty, or
- (b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

However, signing a treaty does not make a State a party to it; in no way does it bind the signatory State legally, or require it to begin implementing the provisions of the treaty.

The treaty only becomes legally binding after the signatory State has deposited its instrument of ratification, acceptance or approval with the Depository of the UN. After this step the State becomes party to the treaty and the treaty enters into force according to the provisions made in the treaty.

In instances where a State has not signed a specific treaty, it may nevertheless consent to be bound by the treaty through an act of accession.

18. Entry into force

ATT – Article 22: Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depository.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

The ATT enters into force 90 days after 50 States have deposited their instruments of ratification (acceptance or approval) with the depository. The specific date on which the treaty becomes binding on a State is determined as follows:

- a) For the first 50 States that deposit instruments with the UN Secretary-General, the treaty will enter into force 90 days after the 50th instrument of ratification (acceptance or approval) is deposited.
- b) For all other States the treaty will enter into force 90 days following the date on which that State has deposited its instrument of ratification (accession, acceptance or approval) with the UN Secretary-General.

ATT – Article 23: Provisional Application

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

In order to reinforce the basic norms laid down in the treaty, Article 23 invites each State upon signature or ratification (accession, acceptance or approval) to declare that it will provisionally apply Articles 6 and 7 pending the treaty's entry into force for that State.

19. Consent to be bound

A State may become party to the ATT by formally declaring that it agrees to be bound by the treaty. This may be affected by means of ratification, acceptance, approval or accession. States need to follow a two-step process. The first step takes place on a national level and the second is to notify the depository of the State's consent to be bound.

19.1 National action

National action in principle means that the provisions of the ATT must be domesticated through the development and processing of the ATT provisions into national legislation. Any State that wants to declare its consent to be bound by the ATT must agree to adhere to the treaty. This process can take many forms and will be determined by the specific policies and procedures in place in each country it usually involves discussions within a country and actions by its parliamentarians and its executive.

19.2 Notification to the depository

The second step after the completion of domestic procedures, is for the State to come to the decision to be bound by the ATT. The State then has to prepare an instrument of ratification, acceptance, approval or accession. Notification can then follow one of two processes:

- Signatory State: where a State has signed the treaty, the State will declare its consent to be bound by preparing an instrument of ratification, acceptance or approval.
- Non-signatory State: in the case where a State has not signed the ATT, the State will declare its consent to be bound by preparing an instrument of accession.

Note: For the purpose of treaty agreements, the terms ‘acceptance’, ‘approval’ and ‘ratification’ have the same legal effect and consequently express a signatory State’s consent to be bound by a treaty. The need for different terms is based on the divergent constitutions and constitutional requirements of different countries.

The instrument of ratification (accession, acceptance or approval) must then be deposited with the treaty’s depository, namely the UN Secretary-General. Depositing the instrument is an essential step before the treaty can enter into force for the State.

In some instances, depending on national procedures, States can ratify treaties immediately. The UN rules of procedure do not prohibit a State that is signing a treaty from depositing its instrument of treaty ratification (accession, acceptance or approval) on the same day.

20. Treaty documentation

Documentation deposited with the UN Secretary-General must give a clear indication of the intention of the State. This section provides samples of the information and documents that should be included.

In addition, an example of a document that denotes a State’s declaration of intent to provisionally apply the ATT is included. This provisional application should be deposited with the UN Secretary-General together with a State’s signatures and ratification documents.

20.1 Full powers

‘Full power’ is a term in international law and it refers to the authority granted to a person by a sovereign State to sign a treaty or convention on behalf of that State. Persons other than the Head of State, Head of Government or Foreign Minister of the State must produce a full-power document in order to sign a treaty and with his

or her signature bind their government to the treaty requirements. Such a person is called a plenipotentiary, as is stated in articles 2 and 7 of the Vienna Convention on the Law of Treaties.²⁶

Example of a full-power document

The Head of State, Head of Government or Minister of Foreign Affairs must sign this declaration.

FULL POWERS

I, [name and title of Minister for Foreign Affairs, Head of State or Head of Government],

HEREBY AUTHORISE [name and title], to sign the Arms Trade Treaty.

Done in New York on [date] on behalf of the government of [name of State].

Done at [place] on [date].

[Signature]²⁷

20.2 Ratification

The instrument of ratification indicates that the depositing State accepts or approves of the terms, conditions and text used in the treaty. It provides documentation that the State undertakes to perform and carry out the stipulations contained in the treaty.

The Head of State, Head of Government or Minister of Foreign Affairs must sign this declaration.

Example of a ratification document

WHEREAS the Arms Trade Treaty was adopted at New York on 2 April 2013 and opened for signature at New York on 3 June 2013,

WHEREAS the said Treaty has been signed on behalf of the Government of [name of country] on [date].

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs], declare that the government of [name of country],

having considered the above-mentioned Treaty, ratifies [accepts, approves] the same Treaty and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature] + [seal]²⁸

20.3 Accession

Non-signatory States to the ATT may become bound by the treaty by means of accession following the entry into force of the treaty in accordance to article 22 (1) of the treaty. Accession is defined in article 15 of the Vienna Convention on the Law of Treaties.²⁹ The Head of State, Head of Government or Minister of Foreign Affairs must sign this declaration.

Example of an accession document

WHEREAS the Arms Trade Treaty was adopted at New York on 2 April 2013, NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister of Foreign Affairs], declare that the Government of [name of State], having considered the above-mentioned Treaty, accedes to the same Treaty and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at [place] on [date].

[Signature] + [seal]³⁰

20.4 Provisional application of the ATT

ATT – Article 23: Provisional Application

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

States may indicate at the time of depositing its instrument of signature, ratification or accession that it has certain concerns and that the particular State intends to apply the ATT with certain exclusions or exceptions. Both signatory and non-signatory States can deposit this declaration at the UN Secretary-General. The provisional application is defined in articles 24 and 25 of the Vienna Convention on the Law of Treaties.³¹

The Head of State, Head of Government or Minister of Foreign Affairs must sign this declaration.

Example of the provisional application of the ATT document

I [name and title of the Head of State, Head of Government or Minister of Foreign Affairs] declare herewith that the Government of [name of State] will provisionally apply [(example) Articles 6 and 7] of the Arms Trade Treaty, pending its entry into force.

[Signature] + [seal]³²

20.5 Reservations

ATT – Article 25: Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.
2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

In Article 2 of the Vienna Convention on the Law of Treaties of 1969, ‘reservation’ was defined as ‘a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State’.³³

For the implementation of the ATT, it might, for example, imply that a country will register a reservation relating to the reporting of ammunition transfers from and through its sovereign territory. The country may state that it would not be able to

comply with that stipulation in the ATT because of capacity constraints or other reasons.

21. Duration and withdrawal

ATT – Article 24: Duration and Withdrawal

1. This Treaty shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depository, which shall notify all other States Parties.

The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depository, unless the notification of withdrawal specifies a later date.

3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Although there is an exit clause built into the ATT in the form of a possibility of withdrawing from the treaty, it does not exempt States that were party to the ATT from their responsibilities relating to transfers that were conducted during their membership period.

22. Burden of armed violence

African States should consider the burden that armed violence places on the limited resources of the African continent when considering the possibility of allowing arms-transfer transactions to take place. According to the 'Global burden of armed violence 2011 report', an estimated 526 000 people died as a result of lethal violence between 2004 and 2009. Twenty-eight African States were within the top 58 countries experiencing the worst lethal violence during that period.³⁴

23. Arms transfers

Arms transfers can be broken down into a few general steps. First, an arms transaction is arranged by a broker. This is followed by the export of the materials

from the country of origin. For the materials to reach its destination, the shipment may have to transit through another State's sovereign territory before it can be imported into the country of final destination. These simple steps are actually very complicated and involve far-reaching responsibilities and implications.

To assist States in coming to a reasonable conclusion that might impact on national and international political relationships the following transfer assessment guidelines is provided as a guideline in the process.

23.1 Transfer assessment guidelines

- Assessments must be on a case-by-case basis.
- Safeguard the national security interests of the country and those of its allies when making assessments.
- Avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms.
- Prevent the transfer of any military equipment or technologies that could be used for the development of weapons of mass destruction to countries where there are a proliferation concern.
- Avoid the transfer of conventional arms that are likely to contribute to the escalation of regional military conflicts, endanger peace by introducing destabilising military capabilities into a region, or otherwise contribute to regional instability.
- Take account of calls for reduced military expenditure in the interests of development and human security.
- Avoid contributing to terrorism and crime.
- Adhere to international laws, norms and practices, and the international obligations and commitments of the country, including UN Security Council arms embargoes.
- Consider the conventional arms control system of the recipient country and its record of compliance with end-user certificate (EUC) undertakings, and avoid the export of conventional arms to a government that violates the EUC stipulations.
- Take into account the inherent right of individual and collective self-defence of all sovereign countries in terms of the UN Charter.

- Avoid the export of conventional arms that may be used for purposes other than the legitimate defence and security needs of the government of the country of import.

23.2 Export and export assessment

‘Export’ means to take ammunition and/or licensed or registered firearms out of one country to another country, or cause them to be taken out of a country to another country through any harbour, airport or other place on board any vessel or aircraft, or by any other means of conveyance.³⁵ Another short definition is to send or take or transfer registration or ownership of conventional arms from a State to any place outside of the territory of that State.

Article 7 of the ATT outlines several steps that must be followed by the exporting State prior to authorising the export of a controlled material. The article also describes measures that must be taken if a State becomes aware of new information after authorisation was granted on the basis of which the authorisation would have been declined. It encourages States to then re-evaluate and reconsider the authorisation.

ATT – Article 7: Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:
 - (a) Would contribute to or undermine peace and security,
 - (b) Could be used to:
 - (i) Commit or facilitate a serious violation of international humanitarian law,
 - (ii) Commit or facilitate a serious violation of international human rights law,
 - (iii) Commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party, or

- (iv) Commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime to which the exporting State is a Party.
2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.
 3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorise the export.
 4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
 5. Each exporting State Party shall take measures to ensure that all authorisations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.
 6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.
 7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

23.3 Importation

The ATT specifically refers to the act of importation, which is a key component of the international arms transfer system. ‘Import’ means to bring firearms and or ammunition, or cause them to be brought, from outside the country into the country,

and includes the bringing thereof into the country at any harbour, airport or other place on board any vessel, aircraft or other means of conveyance, irrespective of whether or not the firearms and or ammunition are off-loaded from such a vessel, aircraft or other means of conveyance for conveyance through the country to any place outside the country or for any other purpose, or are intended to be so off-loaded.

Import can also be described as bringing or transferring registration and/or ownership of conventional weapons and ammunition from a place outside of the territory of the State to the territory of the State.

Several actions need to be carried out by the importing State to comply with the ATT. Each State will have to put in place a system to monitor the importation of arms, as well as a committee to authorise the transaction. States will have to focus on building the capacity within their structures to address the requirements of complying with the ATT.

ATT – Article 8: Import

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.
2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.
3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

23.4 Transit or trans-shipment

‘Transit’ takes place when conventional arms that have been dispatched from the place of export in the exporting State has not yet been received by the importing State. ‘Arms-in-transit’ is a term used to describe the process whereby arms enter and leave an intermediary State prior to entering the territory of the final recipient

State. Arms-in-transit are typically under the supervision of the customs authority.

'Transshipment' in the context of arms transfer control is the transfer of conventional arms from the exporting State to the importing State via other destinations, and involves a change or changes in the type of transport during the transfer process. Transshipment usually takes place in transport hubs and or designated customs areas.³⁶

ATT – Article 9: Transit or trans-shipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

23.5 Brokering

The challenge that is of the greatest concern with regard to the effective implementation of the ATT is probably the regulation of the arms brokering practices used in the arms industry.

23.5.1 Brokering controls

Controls on arms brokers must be instituted from the beginning of the ratification and implementation process. Arms brokers operating within a country, irrespective of their nationality or citizenship, must register with the relevant authority.

In addition to the licensing and registering of brokers, each arms brokering activity must also be registered, authorised and licensed by the regulating authority.³⁷

Brokering activities may take the following forms:

- Facilitating a transfer from country X to another country Y by a person or broker under the jurisdiction of country X
- Facilitating a transfer to country X from another country Y by a person or broker under the jurisdiction of country Y
- Facilitation a transfer between two foreign countries by a person or broker under the jurisdiction of third country

- Facilitation of a transfer between country X and Y by a person with the citizenship of another country but operating from outside that country

Brokering licence applications must include the following information:

- The source country
- The manufacturer and supplier
- Proof that the transaction was authorised by the exporting and importing countries
- The names and locations of all brokers involved in the transaction

Note: Brokering controls will apply regardless of whether or not any compensation is received by any of the entities that are part of the transaction.

ATT – Article 10: Brokering

Each State Party *shall* take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1).

Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

24. Current UN Security Council arms embargoes

The Stockholm International Peace Research Institute (SIPRI) is a very useful resource for research on conflict, armaments, arms control and disarmament. As an independent institute established in 1966, SIPRI has a very good reputation and is regarded as an authority on international arms transfers. SIPRI utilises open sources of data to provide analysis of and recommendations to policymakers, researchers, media and the public.

The SIPRI Arms Embargoes Database is a very comprehensive information source and allows researchers to start queries on the propriety of arms transfers. Most arms transfer authorisation enquiries should start with the basic question of the applicability of arms embargoes. If an embargo is instituted against a particular ‘end-user’ or arms recipient, the investigator must find out by whom the embargo was instituted and who is bound by the particular embargo.

The main purpose of an arms embargo is to compel a State or a non-State entity involved in conflict to change its behaviour in the interest of international peace and security.³⁸

The SIPRI Arms Embargoes Database provides information on arms embargoes implemented by international organisations, such as the EU or the UN, or by groups of nations. The database includes legally binding embargoes and political commitments by collaborating States that constitute an embargo. For additional and up-to-date information please visit the SIPRI website at www.sipri.org.

Arms embargoes³⁹			
Mandatory UN embargoes			
Country	Entry into force	Date lifted	Establishing document
Afghanistan (Taliban)	19 December 2000	19 December 2002	UNSCR 1333
Al-Qaeda and associated individuals and entities	16 January 2002	–	UNSCR 1390
Taliban	16 January 2002	–	UNSCR 1390
Angola (UNITA)	15 September 1993	9 December 2002	UNSCR 864
Central African Republic	5 December 2013	–	UNSCR 2127
Cote d'Ivoire	15 November 2004	–	UNSCR 1572
DRC (NGF)	28 July 2003	–	UNSCR 1493
Eritrea	17 May 2000	15 May 2001	UNSCR 1298
Eritrea	23 December 2009	–	UNSCR 1907
Ethiopia	17 May 2000	15 May 2001	UNSCR 1298
Haiti	16 June 1993	29 September 1994	UNSCR 841
Iran	23 December 2006	–	UNSCR 1737

Iraq (NGF since 2004)	6 August 1990	–	UNSCR 661
Lebanon (NGF)	11 August 2006	–	UNSCR 1701
Liberia (NGF since 2009)	19 November 1992	–	UNSCR 788
Libya	31 March 1992	12 September 2003	UNSCR 748
Libya	26 February 2011	–	UNSCR 1970
North Korea (DPRK)	14 October 2006	–	UNSCR 1718
Rwanda (NGF)	16 August 1995	10 July 2008	UNSCR 1011
Sierra Leone (NGF)	5 June 1988	29 September 2010	UNSCR 1171
Somalia	23 January 1992	–	UNSCR 733
South Africa	4 November 1977	25 May 1994	UNSCR 418
Southern Rhodesia (Zimbabwe)	16 December 1966	21 December 1979	UNSCR 232
Sudan (Darfur region)	30 July 2004	–	UNSCR 1556
Yugoslavia (FRY)	25 September 1991	1 October 1996	UNSCR 713
Yugoslavia (FRY)	31 March 1998	10 September 2001	UNSCR 1160

Non-mandatory UN embargoes

Country	Entry into force	Date lifted	Establishing document
Afghanistan	22 October 1996	1 October 2001	UNSCR 1076
Nagorno-Karabakh (Azerbaijan)	29 July 1993	1 January 2002	UNSCR 853
Eritrea	12 February 1999	17 May 2000	UNSCR 1227
Ethiopia	12 February 1999	17 May 2000	UNSCR 1227
South Africa	7 August 1963	4 November 1977	UNSCR 181

EU embargoes			
Country	Entry into force	Date lifted	Establishing document
Afghanistan	17 December 1996	26 February 2001	96/746/CFSP
Afghanistan (Taliban)	26 February 2001	27 May 2002	2001/154/CFSP
Al-Qaeda, Taliban, Osama Bin Laden	27 May 2002	–	2002/402/CFSP
Belarus	20 June 2011	–	2011/357/CFSP
Bosnia and Herzegovina	5 July 1991	23 January 2006	EC declaration
Central African Republic	23 December 2013	–	2013/798/CFSP
China	27 June 1989	–	EC declaration
Cote d'Ivoire	15 November 2004	–	2004/852/CFSP
Croatia	5 July 1991	20 November 2000	EC declaration
DRC (NGF since 2003)	7 April 1993	–	EC declaration
Egypt	21 August 2013	–	EU agreement
Eritrea	1 March 2010	–	2010/127/CFSP
Eritrea	15 March 1999	31 May 2001	1999/206/CFSP
Ethiopia	15 March 1999	31 May 2001	1999/206/CFSP
Guinea	27 October 2009	–	2009/788/CFSP
Indonesia	17 September 1999	17 January 2000	1999/624/CFSP
Iran	23 April 2007	–	2007/246/CFSP
Iraq (NGF since 2004)	4 August 1990	–	EC declaration

Lebanon (NGF)	15 September 2006	–	2006/625/ CFSP
Liberia	7 May 2001	–	2001/357/ CFSP
Libya	27 January 1986	11 October 2004	EC declaration
Libya	28 February 2011	–	2011/137/ CFSP
Myanmar (Burma)	29 July 1991	–	EC declaration
Nigeria	20 November 1995	1 June 1999	95/515/CFSP
North Korea (DPRK)	22 November 2006	–	2006/795/ CFSP
Sierra Leone (NGF)	5 June 1998	29 October 2010	98/409/CFSP
Slovenia	5 July 1991	16 February 1996	EC declaration
Somalia	10 December 2002	–	2002/960/ CFSP
South Sudan	18 July 2011	–	2011/423/ CFSP
Sudan	15 March 1994	–	94/165/CFSP
Syria	9 May 2011	–	2011/273/ CFSP
Uzbekistan	14 November 2005	31 October 2009	2005/792/ CFSP
Yugoslavia (FRY)	5 July 1991	08 October 2001	EC declaration
Zimbabwe	18 February 2002	–	2002/145/ CFSP

Other multilateral embargoes

Country	Entry into force	Date lifted	Establishing document
Nagorno-Karabakh (Azerbaijan) (OSCE)	28 February 1992	–	OSCE statement
Burundi (7 C/E African States)	6 August 1996	23 January 1999	–
Guinea (ECOWAS)	17 October 2009	25 March 2011	–

Nigeria (Commonwealth)	24 April 1996	1 November 1999	–
Syria (League of Arab States)	3 December 2011	3 December 2011	LAS statement
Togo (ECOWAS)	19 February 2005	19 February 2005	–
Togo (African Union)	25 February 2005	25 February 2005	–
<p>Acronyms:</p> <p>DRC Democratic Republic of Congo (former Zaire) FRY Federal Republic of Yugoslavia CFSP Common Foreign and Security Policy EC European Community EU European Union LAS League of Arab States NGF Non-governmental Forces OSCE Organisation for Security and Co-operation in Europe UNITA National Union for the Total Independence of Angola UNSCR UN Security Council Resolution</p>			

25. Implementation

ATT – Article 5: General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.
2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)–(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used

in relevant United Nations instruments at the time of entry into force of this Treaty.

4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.
6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

25.1 Control List

Article 5 of the ATT on General Implementation makes it clear that each State ‘... shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty’. The national control list shall be provided to the ATT Secretariat, which shall in turn make it available to other State Parties. National control systems in each of the countries party to the ATT are a critical component of effective international arms control. The national system must set out in detail which items and technologies are subject to transfer controls.

In addition, States are encouraged to make their national control list publically available and to be transparent in its efforts to control the import and export of controlled material. Without a control list, companies, individuals and legal entities might inadvertently engage in transferring material that should be licensed. It could also happen that material not included in the list might be subjected to a licence application if the contents of the list remain unknown.

The control list is a critical component needed to impose effective control over arms transfers and to build confidence in the arms control process. Should the control list be unclear or ambiguous it could impact negatively on the credibility of the licensing

system, which in turn could result in a situation where entities will try and avoid or circumvent the system if they believe that they will not be identified.

To be effective, control lists should be as detailed as possible, in some instances listing individually controlled items and in others providing detailed categories for the controlled goods. Lists must be kept up to date and in line with modern trends and concerns.

25.2 Control list items and categories

A control list should be comprehensive and should contain a breakdown of the broad categories contained in the ATT, namely:

- Battle tanks
- Armoured combat vehicles
- Large-calibre artillery systems
- Combat aircraft
 - Unmanned aircraft designed or modified for military use
- Attack helicopters
 - Unmanned helicopter-type aircraft designed or modified for military use
- Warships
 - Naval vessels designed or modified for military use
- Missiles and missile launchers
 - Man-portable air defence systems
- Small arms and light weapons
- Ammunition and explosives
 - Ammunition/munitions used by the equipment on the controlled item list
 - Ammunition/munitions that are controlled items in themselves
- Parts and components that may be used in the equipment listed above and which can include:
 - Fire control and related alerting and warning equipment
 - Test, alignment and counter-measure equipment specifically designed for military use
 - Imaging and counter-measure equipment specifically designed for military use
 - Armoured or protective equipment

- Simulators or specialised equipment for military training
- Directed energy weapons systems
- Police and security equipment (including torture equipment and riot-control agents)
- Components, equipment and expertise essential for the production, maintenance and use of the items above
- Conventional dual-use goods, technologies and software that can be used in or for the production and maintenance of the above items

26. Transfer-control categories

Transfer controls have historically been viewed primarily as being the control of exports. However, experience has shown that to be effective a more inclusive and holistic approach must be used. Issues such as import, re-export and transit controls are key components of a functioning and effective transfer-control system. Where these issues are not addressed and do not form part of the design of the transfer-control system, loopholes are created that are exploited by criminal elements.

Comprehensive arms transfer-control measures include the following:

- **Import controls:** States are naturally concerned about military equipment that enters its jurisdiction. This need is the basis for legal licensing requirements and verification processes to govern imports.
- **Transit and trans-shipment controls:** States must reserve the right to manage, control and verify the transit and transshipment of arms and ammunition through their territories. Each State must be able to examine a shipment and refuse it entry should it be deemed inappropriate by the regulating authority.
- **Re-export:** Controls governing the re-exportation of regulated materials are a key component of the arms-transfer control process. Effective re-export controls are intended to limit the possibility of regulated material being transferred to another entity by the officially documented end-user, as reflected in the EUC documentation.

Re-export may still be permitted if all the criteria as stipulated by the original seller or supplier are adhered to, but it may also be totally denied by the original seller or supplier.

Re-export controls could include:

- The complete restriction or denial of re-exportation of controlled material
- Re-exportation is permitted provided written approval is given by the original exporting State
- The recipient may not re-export without first advising the original exporter

27. National implementation authority

Note: In this discussion South Africa has been used as the baseline because it has a large and complicated arms manufacturing industry, necessitating complicated and extensive arms control measures.

In the case of most of the other countries in Africa, control mechanisms should be developed to address each country's own requirements. The control measures must be as effective as required by their own particular situations. Countries should consider the system discussed in this document and implement those measures that are best suited to address their own needs.

For example, South Africa's National Conventional Arms Control Committee (NCACC) is a large body that was developed to address the need of government to be transparent and fair, whilst minimising the possibility of corruption during the process of considering arms transfer, sales and import requests.

The NCACC should effectively be a committee consisting of the Ministers of Police, Defence and National security, or Ministers with similar areas of responsibility. This composition should adequately guarantee proper control. Alternatively, the duties of the NCACC can be added to the workload of an existing committee, such as the security committees already operating in most African countries.

The point is that the ATT and its implementation should compliment existing systems and procedures without adding an additional burden to States.

Article 5 of the ATT requires that States take appropriate measures to implement the provisions of the treaty. States must designate competent national authorities to establish an effective and transparent national control system to regulate the transfer of conventional arms as required by the ATT.

Measures must be taken to enforce national legislation and regulations, and a

national focal point must be established to exchange information relating to the implementation of the ATT. The UN Secretariat must be notified of the establishment of the national point of contact and its contact information.

27.1 Possible composition of a competent national authority

As an example, the South African NCACC consists of the following Ministers and deputy Ministers:

- Minister of Defence
- Minister of Foreign Affairs
- Minister of Trade and Industry
- Minister of Water Affairs and Forestry
- Minister of Public Enterprise
- Minister of Safety and Security
- Minister of Science and Technology
- Minister of Intelligence Services
- Deputy Ministers of Defence, Foreign Affairs and Finance

Note: To ensure objectivity the chairperson of the committee is selected from the Ministers on the committee that do not have any responsibility in the areas of arms control or security and the financing thereof.

27.2 Secretariat or inspectorate

It is obvious that an inspectorate or secretariat, which is accountable to the NCACC only, must support the NCACC to attend to the day-to-day functions and responsibilities of the authority. Its purpose is to ensure that trade in conventional arms is conducted in compliance with a countries' national arms transfer control acts and that the regulatory processes of the NCACC are followed.

27.3 Responsibilities of the NCACC

The responsibilities of the NCACC include the following:

- Establish the necessary processes and structures to control the trade in conventional arms effectively
- Establish the guidelines, structures and processes that are required to scrutinise and assess applications for the issuing of permits

- Where necessary, liaise with relevant government agencies about the enforcement of the national legislation giving effect to the ATT
- Authorise or refuse the issue of any permit
- Ensure that the conditions under which a permit is issued are complied with
- Keep a register of persons involved in the trade in conventional arms
- Keep a register of every permit issued
- Issue reports on arms transfers

ATT – Article 5: General Implementation

5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.
6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

28. Prohibitions

Article 6 of the ATT clearly indicates the situations under which States are prohibited from being involved in any transfer of conventional arms, namely:

- If the transfer would violate the State's obligations under measures adopted by the UN Security Council
- If the transfer would violate its relevant international obligations under international agreements to which it is a party
- If the State has knowledge at the time of authorisation that the arms or other items would be used in the commission of:

- Genocide
- Crimes against humanity
- Grave breaches of the Geneva Conventions of 1949
- Attacks directed against civilian objects or civilians protected as such
- Other war crimes as defined by international agreements to which the State is a party

By ratifying the ATT, States agree to consider these prohibitions in each instance where it receives an application to export or to allow the trans-shipment of conventional weapons from or through its sovereign territory.

It is important to note that there is no provision to register a 'Trusted Trade Partner', which would allow the considerations to be waived for the sake of bilateral trade agreements. Each and every transaction must be evaluated and considered on its own merit, and the approval, if granted, must hold up to scrutiny in the context of the situation at the time the transaction was approved.

In addition, if new information, such as, for example, reports on election violence or human rights abuses in the receiving country, comes to light during the arms transfer process, and the shipment is still under the control of the exporting or transiting State, the particular State should reconsider whether the transaction should be permitted to continue.

ATT – Article 6: Prohibitions

1. A State Party shall not authorize any transfer of conventional arms, covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.
2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has

knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

29. End-user certificates

An EUC in the context of the ATT is a document that certifies that the final documented recipient of conventional arms, ammunition and material is the final destination country of the transfer. It indicates that the recipient does not intend to re-export the shipment.

When the ATT comes into force, EUCs will be required as evidence that an exporting or transit country has 'applied its mind' when considering if a transfer should be allowed to travel through its territory or from its territory. The EUC is documented proof that States that have allowed the transfer to take place have, by virtue of evaluating the intended end-user, considered the possibility that the materials may end up in undesired hands and in undesired destinations.

In this process, consideration is given to the possibility that the materials may be diverted or re-exported to States under some level of arms embargo, or to rebel groups. The reputation and history of recipient States must be taken into account, including, their human rights violation histories. Other considerations that may be of concern to the international community must also be taken into account.

Additional reading

End-user certificates: improving standards to prevent diversion

See <http://books.sipri.org/files/insight/SIPRIInsight1003.pdf>

29.1 Challenges in the EUC process

In itself, the EUC is problematic. There have been several instances of certificates being forged or falsified with the involvement of corrupt officials. The certificates are also vulnerable to misuse.

The EUC should be standardised and made more difficult to falsify. More information must be provided on the EUC. This should include at least the contact details of the issuing authority in the country of issue, as well as details of an easy verification or authenticity process to be followed by countries considering exporting or transiting materials.

However, the main concern about EUCs remains the fact that the certificates do not guarantee that the recipient country will not re-export the materials after it has received it. The EUC process need to be supported by an end-user verification process that will allow the exporting country to verify, at any time in future, that the exported materials are still in the possession of the intended end-user and that they are still being used for the declared purpose.

The fallibility of EUCs becomes apparent when it comes to criminality. It is relatively easy to label parts, components and even complete weapon systems as some form of commercial merchandise and attempting to circumvent the arms control process in that manner. The enormity of freight movements internationally makes it extremely unlikely that every container and shipment that transits through the normal trade process will be scanned. This opens the arms trading process to fraud, corruption and misuse.

29.2 End-user certificates and the ATT

The use and need of EUCs is mentioned throughout the ATT. In the preamble, the States that will become party to the ATT recognise that there is a serious need to ‘... prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorised end use and end users, including in the commission of terrorist acts...’.⁴⁰

This matter is referred to in greater detail in articles 8 and 12 of the ATT. Article 8 , which refers to the importation of materials covered in the ATT, stipulates that importing States shall ‘... take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation...’.⁴¹ Article 12 addresses recordkeeping, which is a critical component of the EUC verification process, and calls for States to keep records of the quantity, value, model and type of material that is transferred. Details of the

exporting State, importing State, transit and trans-shipment State and end-users should also be kept.

29.3 EUC principles

In the process of establishing an EUC certification process, countries should consider several factors to be addressed, some of which can be identified by asking the following questions:⁴²

1. What is an EUC?
2. What should the EUC contain?
3. Who is responsible for obtaining the EUC?
4. What does authentication of an EUC involve?

1. What is an EUC?

A EUC is a document containing a well-defined and unambiguous, written undertaking of a buyer and/or importer in a foreign country that clearly stipulates that any controlled material transferred from the country of origin or transit is for the sole use of the end-user indicated in the EUC. In addition, the buyer and/or importer must certify that the controlled material is not intended for transfer or re-export to any other entity or State without the prior written consent of the regulating authority in the relevant country of origin.

2. What should the EUC contain?

An EUC should clearly identify the controlled material, as well as the number of items involved in the transaction. The information on the EUC must correspond with the documentation that reflects the order as placed by the buyer or importer.

Every EUC must contain the following general information:

- The place and date of issue
- A unique reference number
- The signature and name of the buyer or importer
- The title and position of the buyer or importer
- Any conditions the exporter may impose on the end-user or with regard to the material

EUCs must contain an official stamp or seal that authenticates the EUC. The stamp or seal must be applied to it by the appointed government regulation authority in the buyer's or importer's country. The foreign buyer or importer must state clearly in

the EUC that none of the controlled materials obtained from the country of export or transit will be re-exported or made available to any buyer or entity outside of the stated recipient country without express consent being obtained of the regulating authority in the exporting country.

The EUC must also clearly state that none of the controlled material will be transferred or re-exported to any country or entity that is on the UN Arms Embargo list, or that has been identified as a terrorist or a terrorist organisation.

3. Who is responsible for obtaining the EUC?

It is the responsibility of the seller and exporter in the country where the material is sourced to obtain the correct EUC from the buyer or the importing country. The regulating authority in the importing country must authenticate the EUC.

4. What does authentication of an EUC involve?

The term authentication is similar to the term legalisation. Both words can be used to describe the notarial process used to establish the veracity or validity of a public document.

The authentication process in this context is the procedure by which an original signature on a public document is verified. The process includes the verification of the capacity in which the signatory has acted and, if applicable, the identification of the seal that the document may bear.

For the authentication to be considered valid, an Apostille Certificate must be affixed to the public documents if the transaction is between countries that are party to the Hague Convention of 5 October 1961, which abolished legalisation as regards foreign public documents. Where the countries are not part of the Hague Convention,⁴³ a Certificate of Authentication must be affixed to the document. An Apostille Certificate will generally have to be issued by the central authority in the home country and cannot be obtained through diplomatic or consular representatives abroad.

Apostille⁴⁴

An 'apostille' is a form of authentication that is issued to authenticate documents for use in countries that participate in the Hague Convention of 1961.

If the country where the document is intended to be used is not part of the Hague Convention, documents sent to that country can be 'authenticated' or 'certified'.

The State provides an apostille and authentication service to citizens and foreign nationals on documents that will be used abroad. Documents that are eligible for an Apostille or alternatively certification include corporate documents such as company bylaws and articles of incorporation, powers of attorney, diplomas, transcripts, letters relating to degrees, marital status, references and job certifications, home studies, deeds of assignments, distributorship agreements, papers for adoption purposes, etc.

29.4 Typical information reflected in an EUC

Responsible arms exporters use EUCs when entering into arms trade transactions to limit their liability if the exported arms are used in a manner that contravenes international law and human rights. Although many States use this practice, the verification of EUC authenticity is a challenge. The practical limitations of effective EUC verification is that end-user procedures will, in most instances, involve multiple government departments and, where the material must transit through other countries to reach its final destination, multiple embassies, foreign officials and international agencies.

To address the challenge posed by EUC verification, countries should make available lists of government departments that are authorised to handle the arms transfer process, as well as lists of authorised brokers.

EUCs must contain the following specific information:

- A detailed description of the material that is the subject of the transaction, including its broad classification, quantities and values.
- The intended end-use of the material and the place where it is to be used.
- The details of intermediate consignees or purchasers, and of the end-user, including all names, addresses and contact information, and the country of final destination.
- An unambiguous undertaking or declaration that the material will not be used for undeclared purposes, or by end-users other than those named in the document.

- The EUC usually contains information concerning the process that should be followed if there is any intention by the recipient State to re-export the material.

29.5 EUC model legislation

Legislation around EUCs can take several different forms. The following section provides suggested model legislation that States can consider as a starting point in nationalising the EUC component of the ATT.

In the first instance, ‘accountability’ must be established in the exporting country. Accountability ensures that the internal processes are followed and that due diligence is performed when export or transit requests are received for controlled material.

29.5.1 Accountability

Legislation establishing accountability might read as follows:

Where conventional arms are exported and

- (a) ownership thereof is transferred, the Committee must satisfy itself that the government of the country of import has given an undertaking, reflected in an end-user certificate, that the conventional arms in question will not be transferred, re-sold or re-exported to any other country without the prior approval of the Committee acting on behalf of the [exporting State];
- (b) transfer of ownership does not take place, the Committee must
 - (i) obtain a letter from the government of the country of import stating that the arms in question are intended for demonstration or evaluation purposes, and whether they will be returned; or
 - (ii) obtain a letter from the applicant stating that the arms in question are being exported for repair or integration only and will be returned;
- (c) where there is an undertaking that the arms in question are to be returned, the Committee must satisfy itself that the conventional arms have been returned to the [exporting State] in accordance with the undertaking;
- (d) where the arms in question have been expended during the demonstration or evaluation process, the Committee must obtain a certificate from the government of the country of import verifying that fact.

29.5.2 EUC

Once accountability has been established, legislation can be developed to legislate the end-user certificate and what it entails, as follows:

Whenever conventional arms are exported, a person authorised by the government of the country to which the arms are exported must issue a certificate that –

- (a) sets out the name and address of the declared end-user
- (b) gives a description of the conventional arms and quantities involved
- (c) undertakes that the conventional arms will not be transferred or re-exported to any other party or country without the authorisation of the government of the [exporting State]
- (d) undertakes that proof of importation will be supplied by way of a Delivery Verification Certificate
- (e) contains the authorisation to issue the certificate in question
- (f) contains such other matters as may be prescribed by the exporting country

30. Delivery verification process

EUCs form an essential part of the arms control process but are not an effective measure in isolation. There has to be an end-use verification process to reinforce the conditions stipulated in the EUC.

Essentially, an EUC provides minimal assurance against misuse or diversion of material. Reasonable and appropriate steps must be taken to verify the authenticity of the documentation by the authority that licence the arms transfer transaction. All possible care must be taken to prevent fraudulent or duplicitous documentation from being accepted as valid.

Some of the checks that are available in this regard are the following:

- Phone calls to the people and departments declared in the documents to verify their existence
- Website checks to verify the existence of, as well as the contact information of the people and departments involved in the transaction

- Pre and post-transfer visits to the embassies and consulates of the countries involved to verify the legitimacy of the transaction
- The employment of international licensing, customs and intelligence networks

To supplement EUCs, the recipient of the transferred material must provide the exporting entity with a Delivery Verification Certificate (DVC). This document indicates that the shipment has reached its intended destination and that the material is being used for its intended purpose.

30.1 End-user monitoring

When an application for export and in particular the documentation relating to end-users is considered, there are several indicators that should flag the transaction for more thorough investigation. These indicators fall into four basic categories, namely the type of merchandise, the end-user, the country of destination, and the shipment routing, as discussed in more detail below.⁴⁵

30.1.1 Merchandise indicators

- The volume of the acquired merchandise appears to be disproportionate to the end-user's requirements
- The volume of the acquired merchandise appear to be inconsistent or incompatible with the end-user's inventory
- The merchandise is in demand by countries that are under embargo
- The merchandise falls into a sensitive category of product, e.g. unmanned aerial vehicles.

30.1.2 End-user indicators

Particular care should be taken under the following conditions:

- Where the end-user is unfamiliar or new
- Where there are clear indications that the applicant is unwilling to provide all the required information to the regulating authority
- Where there are indications that the information provided might be inaccurate
- Where the end-user or its agent pays for the materials in cash
- Where the merchandise is purchased at a premium to current market prices

- Where limited or negative information exists on the intended end-user's business and activities
- Where the supporting documentation is incomplete or there is suspicion about the trustworthiness of the documentation
- Where the end-user is acquiring products and technology with which it is unfamiliarity
- Where the end-user declines typical follow-on services such as the installation of equipment and the provision of warranties, spares, repairs and overhaul deals.

30.1.3 Country indicators

- Location of the end-user or consignee in a free trade zone
- Known or suspected contravention of EUCs by the country in question

30.1.4 Shipment indicators

- An uncommon and unnecessarily complicated routing, or trans-shipment through multiple countries or companies
- The existence of a new or unknown intermediary in the process
- The provision of vague delivery information for the shipment
- Suspicious delivery dates and unlikely locations for delivery, e.g. a post office box
- Extraordinary shipping instructions and packaging requirements
- Instances where the indicated end-user or consignee is a freight forwarder

31. Diversion

The diversion of regulated material is of major international concern and has proven to be a significant contributing factor to sustained conflict in Africa. The ATT specifically addresses the issue of diversion and places the responsibility of preventing diversion on the shoulders of each State Party that forms part of the transfer process.

In an effort to prevent the diversion of regulated material, the personnel of a regulating authority must be trained thoroughly in the process to be followed as regards each transaction, as well as in the identification of materials that are to be licensed for export. Personnel should be able to identify transactions where there

are indicators that the shipment may be destined to be diverted, such as fake delivery addresses etc.

31.1 Penalties relating to diversion and unauthorised use

The ability of an exporting State to exercise control over regulated material once the material is received by the documented end-user is very limited. Where exported equipment is diverted or unauthorised use occurs, the exporting State has limited recourse.

Some of the actions available to try to address the issue are the following:⁴⁶

- Diplomatic complaints at various levels
- Public disclosure of the situation
- Revoking of the transfer licence
- Suspension of further deliveries of the arms in question
- Suspension of deliveries of other arms consignments
- Refusal to deliver spare parts or allow training and technical assistance associated with the arms transfer in question to proceed
- Refusal to deliver spare parts or allow training and technical assistance for other arms contracts to proceed
- Refusal to licence any further arms transfers until such time as the authority is confident that the problem has been addressed

ATT – Article 11: Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in

the export, requiring additional documentation, certificates, assurances, not authorising the export or other appropriate measures.

3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.
5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organised groups engaged in diversion.
6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

31.2 Prevention of diversion

In this section on the prevention of diversion, the SADC Regional approach to the control of civilian firearms is included for comparative purposes. Some of the control measures suggested by law enforcement authorities may be carried over to strengthen the ATT process. The main reason for this approach is the realisation that monitoring of the end-use of transferred conventional weapons is in principle an act of policing, even though in the case of the ATT monitoring process, the 'policing' might not be performed by law enforcement officials.

The benefit of using policing methodology is that it should effectively address the shortcomings and loopholes in the arms control systems, thereby limiting the possibility of the system falling victim to criminalisation.

The law enforcement community in SADC, represented by SARPCCO, developed a very practical approach to preventing the diversion of conventional weapons. The solution is simply to destroy redundant and unserviceable arms and ammunition before they can be diverted from stockpiles. SARPCCO based its approach on Article 11 of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, under which State Parties must undertake to adopt co-ordinated national policies for the disposal of redundant, confiscated or unlicensed firearms.⁴⁷

The SARPCCO group agreed that minimum standards should be set for the destruction of such firearms and that the destruction monitoring and certification responsibility must reside within the law enforcement department of each country and in particular with the head of the firearms registry.

The group developed the following criteria:

- The Registrar must establish and maintain an effective system for the destruction of firearms, ammunition and other related materials
- The Registrar must create an official record of firearms, ammunition and other related materials that are destroyed
- The Registrar must be informed of all destroyed firearms, ammunition and other related materials, and must be provided with an inventory of the material destroyed where the destruction is conducted by another authorised authority
- The Registrar must verify that the firearms, ammunition and other related materials that are presented for destruction correspond to the official record
- Photographic evidence of the destruction process should be obtained to record the complete destruction process, i.e. what took place during and after the event
- The relevant authority must be present throughout the destruction process
- The relevant authority must issue a certificate certifying that:
 - The firearms, ammunition and other related materials were destroyed, the manner in which they were destroyed, and the date, time and place where the destruction took place

- The firearms, ammunition and other related materials were permanently and irrevocably destroyed
- A certified process of melting or other methods of permanent destruction must be used and the relevant authority must take full responsibility for the destruction process
- Firearms, ammunition and other related materials that were forfeited to the State must be destroyed within a period of 12 months
- The Registrar must maintain records of the destroyed firearms and components for at least ten years
- When a firearm that is designated for destruction is discovered to be registered in another SADC country, that firearm shall be repatriated to the country of registration.

32. Recordkeeping

Record keeping is another critical component of an effective ATT. Without proper recordkeeping systems the post-delivery verification becomes extremely difficult to execute. Therefore, the ATT in Article 12 sets out several criteria on record keeping.

ATT – Article 12: Recordkeeping

1. Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).
2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.
3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.
4. Records shall be kept for a minimum of ten years.

The SARPCCO recommendations regarding recordkeeping provide a more comprehensive approach to recordkeeping as it is based on the experience of seasoned law enforcement officials that are primarily tasked with national arms control in their respective countries.

SARPCCO bases its regional recommendations on Article 6 (b) of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials. The article states that State Parties must undertake to establish and improve national databases and communication systems, and acquire equipment for monitoring and controlling firearm movements across borders. The suggested system creates areas of responsibility for the various participants in the arms transfer transaction. These are:

32.1 Manufacturers

- The following details must be recorded of an arms manufacturer that applies to the Registrar for a manufacturing license and/or permit and/or authorisation:
 - Trading name of the manufacturer
 - Issued registration number
 - Physical address
 - Contact details of the responsible person
 - Inspection reports and returns that state the stock on hand as well as sales
- Details of manufactured firearms:
 - Make
 - Model
 - Type
 - Calibre
 - Action of firearm
 - Serial number
 - Unique markings
 - Date of manufacture
- Additional recordkeeping requirements for arms manufacturers:
 - Manufacturers must be registered with the Central Firearms Registrar
 - Safety inspection report of the manufacturer's business premises
 - Proof of safe and secure storage facility and/or vault
 - The Registrar must be informed of the purpose and motivation for manufacturing firearm(s)

- Business license number
- Conditions for manufacturing as prescribed by the Registrar
- Weekly manufacturing returns to be made to the Registrar
- Weekly transfer reports to be made to the Registrar
- The Registrar must keep the records of manufacturers that have ceased to function for a minimum of ten years

32.2 Dealers

- The following details must be recorded of an arms dealer that applies to the Registrar for a dealer's license and/or a permit and/or authorisation:
 - Trading name of the dealer
 - Issued registration number
 - Physical address
 - Contact details of the responsible person
 - Inspection reports and or returns of stock on hand and sales
- Additional recordkeeping requirements for arms dealers:
 - Dealers must be registered with the Central Firearms Registrar
 - Inspection report of the dealer's business premises
 - Proof of safe and secure storage facility and/or vault
 - The Registrar must be informed of the purpose and motivation for requiring firearm(s)
 - Business license number
 - Conditions for dealing as prescribed by the Registrar
 - Weekly returns on the dealer's purchase to be made to the Registrar
 - Weekly returns of the dealer's sales to be made to the Registrar
 - The Registrar must keep records of dealers that have ceased to function for a minimum of ten years

32.3 Gunsmiths

- The following details must be recorded of a gunsmith that applies to the Registrar for a gunsmith's license/permit/authorisation:
 - Trading name of the gunsmith
 - Issued registration number
 - Physical address
 - Contact details of responsible person
 - Inspection reports and or returns of stock on hand and sales

- Additional recordkeeping requirements for gunsmiths:
 - Gunsmiths must be registered with the central firearms Registrar
 - Inspection report of a gunsmith's business premises
 - Details of firearms the gunsmith is licensed to work on
 - Ammunition required for testing purposes
 - Business license number
 - Conditions for dealing and conducting a business as a gunsmith as prescribed by the Registrar
 - Proof of safe and secure storage facility and/or vault
 - Weekly returns to the Registrar on repairs done by the gunsmith
 - The Registrar must keep records of gunsmiths that have ceased to function for a minimum of ten years

32.4 Brokers

- The following details must be recorded of a broker who applies to the Registrar for a broker's license/permit/authorisation:
 - Trading name of the broker
 - Issued registration number
 - Physical address
 - Contact details of the responsible person
 - Inspection reports and or returns of transactions in progress as well as sales

32.5 Individuals

- The following details must be recorded of an individual who applies to the Registrar for a firearm license/permit/authorisation:
 - Name and surname as per identification documents
 - Identification number and/or passport number
 - Date of birth
 - Contact numbers of the applicant
 - Contact numbers of spouse, if applicable
 - Contact numbers of friends and family
 - Contact number of employer, if applicable
 - Postal address of the applicant
 - Previous physical address, if applicable
 - Previous employer, contact details and physical address

- Recent photograph (less than five years old)
- Record of inspection conducted at the physical address where the firearm will be stored
- Proof of a secure/safe storage facility
- Particulars of nearest police station
- Fingerprints of the applicant
- Competency certificate (records must show if the applicant has previously applied for a competency certificate and whether or not they attained it)
- Information on approvals and refusals of other firearm license applications
- Information regarding the previous cancellation of firearm licenses
- Proof of acquisition of a firearm or firearms
- Unfit declarations

32.6 Institutions (providers of security services)

- The following details must be recorded of an institutions (provider of security services) that has applied to the Registrar for a license/permit/authorisation:
 - Trading name of institution (provider of security services)
 - Issued registration number
 - Physical address
 - Contact details of the responsible person
 - Inspection reports of safe storage inventory on hand and returns on ammunition expenditure
 - Information regarding the purpose and motivation for requiring firearm(s)
 - Particulars of firearms and ammunition that are to be used
 - Proof of registration with the applicable authority
 - Providers of security services must be licensed to possess firearms and ammunition
 - Record of permits issued to security officers to possess firearms and ammunition
 - Record of applicable competency certificates issued to security officers
 - Annual inspection reports carried out by the Registrar

- Additional recordkeeping requirements for institutions (providers of security services):
 - Proof of safe and secure storage facility and/or vault
 - Proof of the employment of security officers/guards as required by national law Firearms
- The following details of firearms must be recorded:
 - Origin and history of a firearm
 - Firearm particulars:
 - Type
 - Calibre
 - Serial number
 - Manufacturer (make)
 - Unique markings
 - Action of firearm
 - The unique registration number as issued by the Registrar

32.7 General requirements

- The following general recordkeeping requirements must be implemented:
 - Lost, stolen and found firearms must be reported to the nearest police office within 24 hours
 - Records of the lost, stolen and found firearms must be maintained at the registry
 - Destroyed firearms must be marked as ‘ destroyed’ on the registry’s records
- Records must reflect the number of applications the applicant has made:
 - The history of the application process
 - Re-registration of firearms
 - Failed application attempts and reasons for denial of applications

Recommendation: There is a need to establish and maintain an electronic arms control database in all African countries.

33. Reporting

For a State Party, the first report to the UN Secretariat after the ATT enters into force must contain details as determined in Article 13 of the ATT. States should also

take cognisance that the reports will be distributed by the Secretariat to other State Parties.

33.1 Implementation report

- The following measures need to be introduced to implement the ATT:
 - New and or amended national legislation
 - National control lists clearly stipulating controlled material
 - Arms control regulations
 - Clear administrative measures to be followed for the transfer arms
- Each State Party shall report to the Secretariat about any new measures undertaken to implement the ATT.

33.2 Learning organisation

An interesting development with regard to the ATT is that States are encouraged to share information on arms control measures that have been effective in addressing the diversion of transferred conventional weapons. This process will allow States to combine knowledge and share experience, and bring about the cumulative development of arms control measures, thereby effectively establishing one of the largest learning organisations in the world.

33.3 Transfer report

Before 31 May annually, each State Party that has ratified the ATT and for whom the ATT has come into effect, *shall* submit to the Secretariat a report for the preceding calendar year. It is made very clear when reports are due and what should be reported on in each report, namely:

- The report must contain information concerning authorised or actual exports and imports of conventional arms covered under Article 2 (1).
- The report may contain the same information submitted by the State Party to relevant UN frameworks, including the UN Register of Conventional Arms.
- Reports may exclude commercially sensitive or national security information.

States are not expected to be completely compliant the moment the ATT comes into effect. However, it is clear that States are expected to continually strengthen and tighten arms transfer control measures.

ATT – Article 13: Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that has been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

34. Transparency

During the implementation of the ATT it is important that States develop working relationships with the arms industry and arms brokers. The main aim of this is to enhance the efficiency of the arms control process.

Actions that the State can take to enhance information flow and assist in receiving correctly completed documentation are the following:

- Establish and maintain an official website for use by arms transfer entities wishing to verify the process and to obtain the correct documentation
- Make legislation and regulations available to public

- Produce guides that explain the licensing process and company responsibilities
- Compel all parties involved in an arms transfer to be registered
- Subject the arms industry to regular audits
- Make compliance visits to companies
- Keep the communication lines open between the State and companies
- Provide information on regulations, embargo updates, prosecutions, etc.
- Advise companies of changes by means of a regular email service
- Hold themed seminars and workshops for defence equipment manufacturers, exporters, brokers and traders, etc.
- Hold national arms transfer control conferences
- Participate in national defence exhibitions to explain the arms transfer control system
- Develop protocols of co-operation with local chambers of commerce
- Provide assistance in classifying specific commodities
- Provide information on licensing processes
- Provide information concerning possible catch-all controlled transactions
 - Catch-all control mechanisms can be useful where there is a general concern regarding the proliferation of a specific item or technology. Where export or transit of these items or technology is considered all transactions are subject to an export licence and approval.
- Answer the questions of arms manufacturing companies with regard to legal and regulatory compliance

Tools that governments can use include the following:⁴⁸

- Contact information on websites or in publications
- Helplines
- Emails and letters
- Personal meetings
- Question-and-answer sessions during seminars and training sessions
- Information gathered from non-governmental or affiliated organisations

- On-site inspections of company compliance measures with advice on how to improve

ATT – Article 1: Object and Purpose

The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Promoting cooperation, *transparency* and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

35. Enforcement

Countries should develop the necessary capacity to enforce national arms control measures that govern international arms transfers. National arms transfer control regulations should be accessible to all entities involved in the arms transfer transaction. This will encourage compliance with the control system and provide clear guidelines as to what will happen should violations occur.⁴⁹

35.1 Key enforcement elements may include:

- Legal requirements that must be adhered to nationally
- Enforcement institutions that must have knowledge of the transaction
- Penalties and sanctions that would be implemented if transgressions take place
- Procedures for enforcement of the control measures and the penalties
- Information sharing and transparency
- Training and capacity-building

The enforcement of arms transfer control is not the responsibility of only one government department, nor will it be enforced from only one place in a country. To be effective, all relevant departments must be involved in the control process and each must be capacitated with the legal framework to carry out its duties.

35.2 Legal requirements

Note: The South African legal framework was examined to provide background on what a solution focussing on arms control could look like.

South Africa's legal framework is a complicated and comprehensive one that was developed specifically to address the concerns that were identified arising from the country's large arms manufacturing industry.

Other countries in Africa may not need an arms control framework nearly as complicated or comprehensive. The legal frameworks must, however, be effective enough to exert control over the flow of arms into, out of and through its sovereign territory.

States must look to all relevant legislation that might have an impact on arms transfer controls, as well as to all existing legislation that might be affected by new arms control legislation.

The valuation and amendment of legislation and regulations is a critical component in the development of an arms control system. Existing legislation on customs, customs' border security legislation, legislation governing law enforcement agencies and the criminal procedure act could be affected. In some instances the country's constitution may have to be included in the evaluation process.

National transfer controls rely on a well-developed legal framework to function properly. The legal framework must assign strategic trade control enforcement responsibilities to special government entities.

Laws must create specific international arms transfer offences, such as criminalising the submission of false or misleading information, and transferring items without proper authorisation. The systems should make provision for the investigation of breaches and contraventions of the transfer control system, and for the prosecution of perpetrators.

Developing and complying with legal processes relating to arms transfers and the arms transfer control system it is meant to support, will be challenging.

35.3 Legislation related to arms control

Each individual country will have its own legislation and legal framework within which the arms control measures and responsibilities will reside.

The structures and the responsible departments will subsequently not be the same for all countries across the world.

Legislation	Control	Structure	Responsible department
Conventional Arms Control Act	Conventional arms and dual-use items	NCACC DCAC	Department of Defence
Non-Proliferation of Weapons of Mass Destruction	Weapons of mass destruction and dual-use items	Non-Proliferation Council	Department of Trade and Industry
Explosives Act	Explosives (commercial and military applications)	Police Service (inspectorate of explosives)	Ministry of Safety and Security
Firearms Control Act	Commercial arms and ammunition	Police Service (CFR)	Ministry of Safety and Security
Teargas Act	Teargas	Police Service (Inspectorate of Explosives)	Ministry of Safety and Security
Nuclear Energy Act	Nuclear materials and related technology	Nuclear Energy Corporation	Department of Mineral and Energy Affairs
Regulation of Foreign Military Assistance	Foreign military assistance	NCACC DCAC	Department of Defence

35.4 Verification

The verification of arms transfers will consume time and resources, but it has to be done. States should determine, according to their individual capabilities and manpower capacity, where and how these verification checks are to be performed

nationally. However, it must be understood that every step in the arms transfer control process is open to fraud, corruption and misuse, and that checks must therefore be put in place to ensure the effectiveness of control measures.⁵⁰

Verification checks can be carried out at border crossings, by means of company audits, through post-transfer verifications and end-use inspections.

One of the key agencies in the arms transfer control process will be each country's customs division. Priority must be given to this division as far as training in transfer control system procedures as well as in relevant legislation is concerned. Custom's divisions screen shipments, search through material and are legally permitted to seize suspect goods before it enters a country. This is effective bottleneck where control measures have the best chance of succeeding. If they are not in place yet, legal instruments must be developed to assist customs in their task.

In addition to involving multiple government departments, particular attention must be given to the proper development in the following institutions:

- Custom's agencies
- Border guards (police and military)
- The national police
- The prosecutorial authority

The role each department has to play in the system should be clearly defined and documented to ensure effective collaboration between them. This should include a process that can be activated to punish those who violate the international arms transfer control processes and agreements. Violators should be charged both in criminal and civil courts, nationally and internationally.

35.4.1 Typical violations

Typical violations encountered during verification of the arms transfer control process include:

- Licence violation:
 - Attempting to conduct an international transfer of controlled goods or technology without a licence
- Financial violation:
 - Providing funding for a prohibited international transfer

- Recordkeeping violation:
 - An inadequate recordkeeping process for transactions that relate to internationally controlled goods transfer activity
- Fraud:
 - Making a false statement about a material fact on a licence application
 - Altering a licence
 - Making a false statement on a document
- Possession with intent to trade illegally

35.4.2 Penalties and sanctions

Diverse penalties and sanctions can be considered for detected violations and violators found guilty of the violations. Strict penalties will assist to encourage participants in the transfer system to obey the law.⁵¹

Penalties can be both administrative and criminal, and may include:

- Warning letters
- Monetary fines
- Revocation of licences
- Downgrading of preferential treatment
- Denial of access to government contracts or offset programmes
- Denial of the privilege to trade
- Seizure or forfeiture of goods
- Imprisonment

35.4.3 Simple procedures for enforcement

The first line of defence against illicit arms transfers is the border-control officer at the border crossing. These officers need to be properly trained and made aware of their responsibility to protect their country.

Some of the basic procedures that can be implemented at borders are:

- Surveillance of vehicles and individuals passing through the control point. The focus should specifically on behaviour that indicates nervousness or is out of the ordinary.
- Careful scrutiny of documentation accompanying a shipment, ensuring authenticity, validity, etc.

- Physical inspection of cargo. Care must be taken with cargo declared as spare parts, motor vehicle components and scrap metal.

Even these basic and logical processes may not be easy to implement. There may be several practical and legal obstacles that need to be overcome before these interventions can be instituted.

Some of the issues that face control point officials that need to be addressed include:

- Training of officials to enable them to correctly identify the nature of cargo that is being inspected.
- Providing officials with the necessary technical identification guide to assist them to identify and determine the strategic value of a shipment.
- Ensuring that a legal framework is in place to enable officials to conduct inspections and to search, seize and detain suspect shipments that need to be evaluated.
- Providing officials with equipment required for the search of cargo, such as illumination, search mirrors and communications equipment.

35.4.4 Issues faced by prosecutorial departments include:

The prosecution of suspected transgressors of arms control regulations relies on the effective investigation of the process followed by the suspected transgressor. This includes establishing the following information:

- Details of the transfer
- Documentation relating to the transfer
- Company records
- Information about the individuals involved in the transaction

There should be a core of dedicated and knowledgeable arms control investigators in each country that can head-up the investigation or assist the prosecutor during the investigative process.

ATT – Article 14: Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

36. International cooperation

The effectiveness of an ATT relies heavily on the efficiency of international cooperation. States will have to ensure that requests for information are responded to rapidly in order for the reply to be taken into account during the consideration process required by the arms control system.

The enforcement required by the ATT is based on effective management, as well as the proper circulation of information, both publicly and privately. Where enforcement leads to prosecution, as much information as is prudent should be released into the public domain to make the transgressor's colleagues and competitors aware of the risks involved in contravening the arms control process.

36.1 Information sharing

Information can be shared in several ways. Countries should endeavour to share information on investigations, seizures and prosecutions in annual reports. Trust and collaborative actions can be developed through bilateral and regional training initiatives, which will in turn open information-sharing channels that could contribute to the more effective monitoring of shipments and a more intense investigation of possible transgressions.

Reports could possibly be based on the court records of cases that have been prosecuted successfully, with the transgressors fined or incarcerated. Documents such as end-user monitoring reports, or reports on persons and companies that have been prohibited from trading in or through a State's territory, can in some instances be made public as well.

It is important to keep in mind that only verified and proven information of a case that is closed should be made public. This rule will prevent attempts to tamper with an ongoing investigation, and will prevent innocent parties from being publicly implicated in cases that may actually prove to be legitimate transactions. This concern should, however, not prevent extensive information-sharing among government departments that may be able to contribute to the investigation. Information can also be shared with other agencies in other States, depending on the laws governing this type of information-sharing.

ATT – Article 15: International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.
2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.
6. States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices.
7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

37. International assistance

From the outset it was clear that different States would have different challenges in implementing effective arms control regimes. The challenges were anticipated to be in capacity as well as in resources. The success of the ATT will therefore rely heavily on a coherent international arms control framework that will assist States in identifying and formulating their need for assistance.

States that have the capacity and capability will have to assist less fortunate countries with their implementation processes, whether through funding or through actual involvement in capacity building efforts. Only through concerted international efforts will the ATT be able to become effective on international, regional and bilateral levels.

The assumption is that all States have some form of control mechanism in place to regulate the flow of material into and from their territories. Thus, it follows logically that it should be possible to enhance the current control mechanisms to assist the implementation of the ATT.

To achieve effective implementation it may be necessary to develop legislation and associated regulations to support the arms control process, and regulatory mechanisms may have to be established. In addition, arms transfer control policies may need to be developed, and administrative and end-enforcement capacities put in place.

Resource and capacity challenges will vary from State to State and may include a lack or shortage of:

- Trained staff
- Technical expertise in applying transfer control criteria
- Information technology and data management systems for logging license applications, storing information gathered during processing, recording outcomes, linking licensing and enforcement functions, performing risk assessment, etc.
- Technical infrastructure, e.g. scanning machines, required to enforce controls.

International assistance was one of the golden threads running throughout the ATT negotiation process. It was understood, if not directly implied, that States that lack capacity and need assistance will receive it. However, such States will have to identify their needs and ask for targeted assistance as there is insufficient funding for a catchall type of approach. States will have to start with the implementation process, at least from a planning perspective, to establish what they require and where they anticipate assistance could be helpful. Interventions would then be able to be tailored to the needs of such States.

Continuous support, follow-up monitoring and evaluation over the next decade would be a critical factor in the success of the ATT. The Arms Transfer Control Process must become institutionalised within government structures, and the

process must continuously be evaluated and adjusted to address the needs of the implementing countries.

ATT – Article 16: International Assistance

1. In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.
2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, sub-regional or national organizations, non-governmental organizations, or on a bilateral basis.
3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

38. Extract from SARPCCO SOPs – firearms control

The practical matters to be considering throughout the ATT implementation process are addressed in the SARPCCO Standard Operating Procedure (SOP), which focuses on practical implementation, as well as matters that may need attention during the development of the arms-transfer control process and the supporting legislation.

38.1 Terms and concepts

38.1.1 Confiscation

‘Confiscation’ means to take with legal authority.⁵²

Countries should ask themselves what the procedure would be should it become clear that a dealer or a broker have tried to circumvent their country’s arms control processes. What will happen once a container-full of arms and ammunition lands in the country’s territory without the correct procedures being followed and the correct authorisations being obtained? Will the country whose procedures have been

violated be in a position to lawfully confiscate the arms shipment? Under what law will the confiscation take place?

38.1.2 Legal manufacturing

‘Legal manufacturing’ means the manufacturing or assembly of firearms, ammunition and other related materials under license to or by permit from a competent authority of the State Party where the manufacture or assembly takes place.⁵³

38.1.3 Other related materials

‘Other related materials’ means any components, parts or replacement parts of a firearm that are essential to the operation of a firearm.⁵⁴

38.1.4 Possession

‘Possession’ means the act or state of owning, holding or having control over something.⁵⁵

38.2 Importation of firearms and ammunition

In terms of Article 5 (3) (c) of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, procedures for the importation of firearm shipments must be co-ordinated by State Parties. The movement of firearms, ammunition and other related material is to be strictly controlled and it is therefore imperative to standardise the import procedures in the SADC region.

The SOPs developed by the SARPCCO organisation provides some guidelines to the areas that must be studied when the importation of firearms and ammunition is considered. These areas include responsibilities of entities involved in the process and the requirements that the application must comply with.

Responsibilities

- The applicant
 - The applicant must complete the prescribed application form
 - The information on the application must include:
 - The details of the supplier/importer
 - Quantity of firearms to be imported
 - Details of the firearm/s that are to be imported, including:

- Type
- Calibre
- Serial number
- Make
- Details of ammunition to be imported:
 - Type
 - Calibre
 - Quantity
 - Make
- An individual/private importer who is not a dealer must:
 - Produce a relevant competency certificate from a registered authority
 - Provide his/her fingerprints to the police
- The firearms officer
 - The relevant firearms officer must verify the completeness of the form
 - The relevant firearms officer must, if applicable, verify the applicant's 'stock on hand', to establish if the applicant has reason to import the proposed firearms and/or ammunition.
 - The relevant firearms officer must:
 - Verify the correctness and validity of supporting documentation
 - Verify the validity of the registration/certificate/license
 - Physically check the firearm when received by the applicant to verify that the particulars of the firearm are correctly recorded
- Other role players
 - The following categories of people are involved during the importation of firearms and ammunition:
 - Customs officials
 - Officials of the Department of Foreign Affairs
 - Local firearms officers
 - Officials of the firearms registry

Requirements

- Permanent import license/permit/authorisation
 - For a permanent import license to be issued, the applicant must provide the relevant firearms officer with:
 - A copy of the applicant's identity document or passport
 - A relevant competency certificate issued by a competent authority

- A comprehensive motivation letter stating the reasons for importation
- A copy of a dealer's license (if appropriate)
- Proof of legal exportation from the country of origin
- A legal license from the country of origin
- A legal export permit from the country of origin
- A customs clearance certificate indicating that all duties have been paid
- The period of validity of the import license/permit/authorisation must not exceed six months and importation must take place before the expiry of the import authorisation.
- The base-line documentation to be completed and the basic process to be followed in each country is as follows:
 - The applicant must complete the prescribed application form for a permanent import license/permit/authorisation
 - The relevant firearms officer must verify if the application is complete and record the details of the application in the applicable register
 - The application must be provided with a unique reference number
 - The relevant firearms officer must acknowledge receipt of the application and provide the applicant with such a receipt
 - The designated authority at the Registrar must consider the application
- If the application is approved, the Registrar must:
 - Print an import license/permit/authorisation
 - Sign and date-stamp the license/permit/authorisation
 - Send the import license/permit/authorisation to the relevant firearms official
- Temporary import license/permit/authorisation
 - For a temporary import license to be issued the applicant must provide the relevant firearms officer with the following:
 - A letter of invitation confirming that the applicant was invited to participate in:
 - A sporting event that requires firearms and ammunition
 - An organised display of firearms and ammunition
 - An hunting activity
 - Foreign officials who require authorisation to possess firearms and ammunition for official purposes must provide an official letter confirming that the applicant is a member of a contingent on an official visit to the

country where the application is being made. (Security personnel at foreign embassies must follow this procedure.)

- A copy of the temporary export permit from the country of origin pertaining to the firearm in question
- Proof of legal exportation from the country of origin
- Legal license from the country of origin
- Legal export permit from the country of origin
- A copy of the customs clearance certificate
- The maximum period of validity of the temporary import permit must not exceed six months
- Possession and use of the firearm and ammunition must comply with the national law of the country from which the firearm is imported temporarily

38.3 Export of firearms and ammunition

In terms of Article 5 (3) (c) of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, procedures for the export of firearm shipments must be co-ordinated by State Parties. The movement of firearms, ammunition and other related material is to be strictly controlled and it is therefore imperative to standardise the export procedures in the SADC region.

The SOPs developed by the SARPCCO organisation provides some guidelines to the areas that must be studied when the export of firearms and ammunition is considered. These areas include responsibilities of entities involved in the process and the requirements that the application must comply with.

Responsibilities

- Applicant
When a lawfully licensed and registered firearm and/or ammunition is to be exported from a SADC country in which it is currently registered, the exporting entity must follow the following prescribed procedures:
 - The designated application form must be completed by the applicant
 - The application form must include the following information:
 - Particulars of the supplier/exporter
 - The following particulars of a firearm to be exported:

- Type
- Make
- Calibre
- Serial number
- Quantity of firearms
- Details of ammunition to be exported:
 - Type
 - Calibre
 - Make
 - Amount of ammunition
- An individual applying for an export license/permit/authorisation must produce proof of lawful possession for the firearm and/or ammunition in question
- Firearms officer
 - The application for a permanent/temporary export license/permit/authorisation must be verified by the relevant firearms officer for completeness and correctness
 - The relevant firearms officer must verify and check:
 - The firearm/s and ammunition to be exported
 - The supporting documentation
 - The police must verify the fingerprints of the applicant
 - The relevant firearms officer must:
 - Record the details of the verified application in the applicable register
 - Provide the application with a unique reference number
 - The designated authority must consider the application
 - If the application is approved, the Registrar must:
 - Print an export permit
 - Sign and date-stamp the export license/permit/authorisation
 - Send the export license/permit/authorisation to the relevant firearms official
- Other role players
 - The following categories of people are involved during the exportation of firearms and ammunition
 - Customs officials
 - Officials of the Department of Foreign Affairs

- Local firearms officers
- Officials of the firearms registry

Requirements

- Permanent export license/permit/authorisation
 - The following documentation must accompany the application for the export permit:
 - A copy of the applicant's identity document or passport
 - A valid firearm license/permit/authorisation for the firearm/s to be exported
 - A copy of a valid competency certificate
 - A valid import permit/authorisation from the country the firearm and/or ammunition is exported to
 - A copy of the supplier's/export applicant's fingerprints
 - A copy of the end-user certificate
 - The firearm must be cleared for export by means of ballistic testing
 - Base-line documentation to be supplied and process to be followed by the exporting country:
 - A comprehensive application for a permanent export permit must be completed and authority granted
 - The Registrar of the exporting country must inform the Registrar of the receiving (importing) country of the export
- Temporary export license/permit/authorisation
 - The following documentation must accompany the application for a temporary export permit:
 - A copy of the applicant's identity document or passport
 - Documentary proof of ownership of the firearm and/or ammunition
 - A valid firearm license/permit/authorisation for the firearm/s to be exported
 - Particulars of the firearm/s (type, make, calibre, serial number)
 - A letter of invitation confirming that the applicant was invited to participate in:
 - A sporting event that requires firearms and ammunition
 - An organised display of firearms and ammunition
 - An hunting activity
 - A temporary import permit or authorisation from the receiving country

- Foreign officials who require authorisation to possess firearms and ammunition for official purposes must provide an official letter to the importing country confirming that the applicant is a member of a contingent on an official visit. (Security personnel at foreign embassies must follow this procedure.)
- The maximum period of validity of the temporary export license/permit/authorisation must not exceed three months

38.4 Search, seizure, confiscation and forfeiture

In terms of Article 5 (3) (h) of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, State Parties must undertake to provide for the seizure, confiscation and forfeiture to the State of all firearms, ammunition and other related materials.

Responsibilities

Member States shall provide, in their national law, for the search, seizure, confiscation and forfeiture to the state of firearms, ammunition and other related materials.

38.5 Other arms control concerns

In terms of Articles 8 and 13 of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, State Parties must undertake to establish and maintain complete national inventories of firearms, ammunition and other related materials held by the security forces and other State bodies, and develop national and regional public education and awareness programmes to enhance public involvement and responsible ownership of firearms, ammunition and other related materials.

Responsibilities

- Control mechanism over State-owned firearms:
 - State agencies and departments that are required to utilise firearms, such as the military and police, must have individual or combined accounting

procedures to maintain proper control over small arms and light weapons in their possession.

- All State-owned firearms must be marked in a uniform manner for easy identification.
- The firearms Registrar of each country should have access to information relating to all State-owned firearms in the country, whether directly, by means of a centralised linked database, or indirectly, through designated intermediaries in the other firearm-using State departments.
- Public awareness
 - Each country may determine its own strategies to raise public awareness about responsible firearm ownership.
 - The following are some of the methods that have been used by countries:
 - Pamphlets have been distributed to the public by engaging departments such as the Education Department to make the material available to learners and parents.
 - Visual awareness campaigns have been conducted using posters and placing them on advertising boards along access roads and other places where crowds and groups of people gather.
 - Caps, T-shirts and other pieces of clothing with captivating slogans have been distributed to target communities and government officials to show their support for firearms control.
 - Playing cards with relevant information have been used to inform people.
 - Pens, stickers, rulers, pencils, erasers, pen stands, cups and business cards with captivating slogans have been used to great effect to raise public awareness.
 - Political speech writers have been contacted by the police with requests to include arms control issues in their speeches.
 - The media has also been involved to publicise and write stories about events designed to raise awareness.

38.6 Arms and ammunition in transit

In terms of Article 5 (3) (c) of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, procedures for the transit of firearm shipments must be co-ordinated by State Parties.

Responsibilities

The movement of firearms, ammunition and other related material must be strictly controlled. For this reason it is imperative that the transit procedures in the SADC region are standardised.

The following is a proposed procedure in this regard.

- Applicant
 - A copy of the applicant's identity document or passport
 - Clearance from the receiving country (the importing country) in the form of a copy of the import license/permit/authorisation
 - Proof of lawful ownership of the firearm/s and ammunition
 - Particulars of firearm intended for transit:
 - Type
 - Make
 - Calibre
 - Serial number
 - Details required for the transit of ammunition:
 - Type
 - Calibre
 - Quantity
 - Make
 - A description of the mode of transport (flight number, boat information, vehicle registration and engine number, driver's particulars, and the route to be taken)
 - Particulars of firearm/s and/or ammunition to be transferred
 - Quantities for firearm/s and/or ammunition to be transferred
 - Transit transfer dates
 - Verification of export permit from country of origin
 - Escort/safe storage facilities during the period of transit
- Firearms officer
 - The application must be verified by the relevant firearms officer for completeness and correctness
 - The relevant firearms officer must verify and check:
 - The firearms and ammunition intended for transfer
 - The supporting documentation
 - The fingerprints of the applicant as verified by the police

- The relevant firearms officer must:
 - Record the details of the verified application in the applicable register
 - Provide the application with a unique reference number
 - Submit the application to the designated authority for consideration
 - If the application is approved,
- The Registrar must
 - Print a transit permit
 - Sign and date-stamp the transit permit
 - Send the transit permit to the relevant firearms official
- Other Role Players
 - The following categories of people are involved during the transit of firearms and ammunition:
 - Firearms Registrars
 - Firearms officers
 - Customs officials
 - Relevant parties for escorting firearms and ammunition (such as the police, the ministries of the interior or defence)

Requirements

- Transit permit
 - Safe storage facilities must be in compliance with the minimum requirements of the transit country's national law
 - The firearm/s and ammunition must be under the direct supervision of the licensee transporter/authorised person
 - The firearm/s and/or ammunition in transit is prohibited from being used in the transit country
 - The firearm/s must be unloaded and the ammunition must be sealed during transit
 - A transit license/permit/ authorisation must be valid for thirty days only

39. Annex 1: Arms Trade Treaty

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty,

Determined to act in accordance with the following principles;

Principles

- The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;
- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;
- Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other

manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;

- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;
- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;
- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;
- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;
- Implementing this Treaty in a consistent, objective and non-discriminatory manner,

Have agreed as follows:

Article 1

Object and Purpose

The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Contributing to international and regional peace, security and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

Article 2

Scope

1. This Treaty shall apply to all conventional arms within the following categories:
 - (a) Battle tanks;
 - (b) Armoured combat vehicles;
 - (c) Large-calibre artillery systems;
 - (d) Combat aircraft;
 - (e) Attack helicopters;
 - (f) Warships;
 - (g) Missiles and missile launchers; and
 - (h) Small arms and light weapons.
2. For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.
3. This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3

Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4

Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5

General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non discriminatory manner, bearing in mind the principles referred to in this Treaty.
2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.
4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.
6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6

Prohibitions

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations

Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Article 7

Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:
 - (a) would contribute to or undermine peace and security;
 - (b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law;
 - (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or

- (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.
2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.
 3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.
 4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
 5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.
 6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.
 7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8

Import

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.

2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.
3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

Article 9

Transit or trans-shipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Article 10

Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11

Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export,

requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.

3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.
5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.
6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 12

Record keeping

1. Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).
2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.

3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.
4. Records shall be kept for a minimum of ten years.

Article 13

Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14

Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15

International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.
2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.
6. States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices.
7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16

International Assistance

1. In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.

2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.
3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17

Conference of States Parties

1. A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.
2. The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.
3. The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
4. The Conference of States Parties shall:
 - (a) Review the implementation of this Treaty, including developments in the field of conventional arms;
 - (b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;
 - (c) Consider amendments to this Treaty in accordance with Article 20;
 - (d) Consider issues arising from the interpretation of this Treaty;
 - (e) Consider and decide the tasks and budget of the Secretariat;
 - (f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and
 - (g) Perform any other function consistent with this Treaty.

5. Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

Article 18

Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.
2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.
3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:
 - (a) Receive, make available and distribute the reports as mandated by this Treaty;
 - (b) Maintain and make available to States Parties the list of national points of contact;
 - (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;
 - (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
 - (e) Perform other duties as decided by the Conferences of States Parties.

Article 19

Dispute Settlement

1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the

interpretation or application of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.

2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20

Amendments

1. Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.
2. Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.
3. The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depository shall communicate any adopted amendment to all States Parties.
4. An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depository of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

1. This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.
2. This Treaty is subject to ratification, acceptance or approval by each signatory State.
3. Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.
4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 22

Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23

Provisional Application

Any State may at the time of signature or the deposit of instrument of its of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24

Duration and Withdrawal

1. This Treaty shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right

to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.

3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Article 25

Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.
2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26

Relationship with other international agreements

1. The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.
2. This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28

Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

40. Annex 2: List of countries that have signed and/or ratified the Arms Trade Treaty

List as per UNODA website⁵⁶ (Dated 7 October 2014).

UN membership list	Date of signing	Date of ratification
Iceland	3 June 2013	2 July 2013
Guyana	3 June 2013	4 July 2013
Antigua and Barbuda	3 June 2013	12 August 2013
Nigeria	12 August 2013	12 August 2013
Costa Rica	3 June 2013	25 September 2013
Mexico	3 June 2013	25 September 2013
Trinidad and Tobago	3 June 2013	25 September 2013
Grenada	3 June 2013	22 October 2013
Mali	3 June 2013	3 December 2013
Panama	3 June 2013	11 February 2014
Norway	3 June 2013	12 February 2014
The former Yugoslav Republic of Macedonia	25 September 2013	6 March 2014
Albania	3 June 2013	19 March 2014
Croatia	3 June 2013	2 April 2014
Denmark	3 June 2013	2 April 2014
Estonia	3 June 2013	2 April 2014
Finland	3 June 2013	2 April 2014

UN membership list	Date of signing	Date of ratification
France	3 June 2013	2 April 2014
Germany	3 June 2013	2 April 2014
Hungary	3 June 2013	2 April 2014
Ireland	3 June 2013	2 April 2014
Italy	3 June 2013	2 April 2014
Latvia	3 June 2013	2 April 2014
Malta	3 June 2013	2 April 2014
Romania	3 June 2013	2 April 2014
Slovenia	3 June 2013	2 April 2014
Spain	3 June 2013	2 April 2014
United Kingdom of Great Britain and Northern Ireland	3 June 2013	2 April 2014
El Salvador	5 June 2013	2 April 2014
Slovakia	10 June 2013	2 April 2014
Bulgaria	2 July 2013	2 April 2014
Japan	3 June 2013	9 May 2014
Australia	3 June 2013	3 June 2014
Austria	3 June 2013	3 June 2014
Belgium	3 June 2013	3 June 2014
Burkina Faso	3 June 2013	3 June 2014
Jamaica	3 June 2013	3 June 2014
Luxembourg	3 June 2013	3 June 2014
Saint Vincent and the Grenadines	3 June 2013	3 June 2014
Samoa	25 September 2013	3 June 2014
Sweden	3 June 2013	16 June 2014
Dominican Republic	3 June 2013	7 August 2014
Sierra Leone	25 September 2013	12 August 2014

UN membership list	Date of signing	Date of ratification
Montenegro	3 June 2013	18 August 2014
New Zealand	3 June 2013	2 September 2014
Argentina	3 June 2013	25 September 2014
Bahamas	3 June 2013	25 September 2014
Czech Republic	3 June 2013	25 September 2014
Portugal	3 June 2013	25 September 2014
Saint Lucia	3 June 2013	25 September 2014
Senegal	3 June 2013	25 September 2014
Uruguay	3 June 2013	25 September 2014
Bosnia and Herzegovina	25 September 2013	25 September 2014
Belize	3 June 2013	–
Benin	3 June 2013	–
Brazil	3 June 2013	–
Burundi	3 June 2013	–
Chile	3 June 2013	–
Côte d'Ivoire	3 June 2013	–
Cyprus	3 June 2013	–
Djibouti	3 June 2013	–
Greece	3 June 2013	–
Liechtenstein	3 June 2013	–
Lithuania	3 June 2013	–
Mauritania	3 June 2013	–
Mozambique	3 June 2013	–
Netherlands	3 June 2013	–
Palau	3 June 2013	–
Republic of Korea	3 June 2013	–

UN membership list	Date of signing	Date of ratification
Seychelles	3 June 2013	–
Suriname	3 June 2013	–
Switzerland	3 June 2013	–
Togo	3 June 2013	–
Tuvalu	3 June 2013	–
United Republic of Tanzania	3 June 2013	–
Liberia	4 June 2013	–
Rwanda	5 June 2013	–
Saint Kitts and Nevis	5 June 2013	–
Paraguay	19 June 2013	–
Guatemala	24 June 2013	–
Poland	1 July 2013	–
Turkey	2 July 2013	–
Libya	9 July 2013	–
United Arab Emirates	9 July 2013	–
Vanuatu	26 July 2013	–
Guinea	29 July 2013	–
Serbia	12 August 2013	–
Swaziland	4 September 2013	–
Republic of Moldova	10 September 2013	–
Angola	24 September 2013	–
Colombia	24 September 2013	–
Ghana	24 September 2013	–
Mongolia	24 September 2013	–
Peru	24 September 2013	–
Barbados	25 September 2013	–

UN membership list	Date of signing	Date of ratification
Cabo Verde	25 September 2013	–
Chad	25 September 2013	–
Congo	25 September 2013	–
Gabon	25 September 2013	–
Honduras	25 September 2013	–
Kiribati	25 September 2013	–
Lesotho	25 September 2013	–
Madagascar	25 September 2013	–
Nauru	25 September 2013	–
Philippines	25 September 2013	–
South Africa	25 September 2013	–
United States of America	25 September 2013	–
Zambia	25 September 2013	–
Bangladesh	26 September 2013	–
Comoros	26 September 2013	–
Guinea–Bissau	26 September 2013	–
Malaysia	26 September 2013	–
Dominica	1 October 2013	–
Cambodia	18 October 2013	–
Bahrain	21 November 2013	–
Malawi	9 January 2014	–
Haiti	21 March 2014	–
Niger	24 March 2014	–
Ukraine	23 September 2014	–
Georgia	25 September 2014	–
Namibia	25 September 2014	–

41. Annex 3: Africa and the ATT

List as per UNODA website⁵⁷ (Dated 7 October 2014).

UN membership list	ATT plenary vote	Date of signing	Date of ratification
Nigeria	Voted: Yes	12 August 2013	12 August 2013
Mali	Voted: Yes	3 June 2013	3 December 2013
Burkina Faso	Voted: Yes	3 June 2013	3 June 2014
Sierra Leone	Not in attendance	25 September 2013	12 August 2014
Senegal	Voted: Yes	3 June 2013	25 September 2014
Benin	Voted: Yes	3 June 2013	–
Burundi	Voted: Yes	3 June 2013	–
Côte d'Ivoire	Voted: Yes	3 June 2013	–
Djibouti	Voted: Yes	3 June 2013	–
Mauritania	Voted: Yes	3 June 2013	–
Mozambique	Voted: Yes	3 June 2013	–
Seychelles	Voted: Yes	3 June 2013	–
Togo	Voted: Yes	3 June 2013	–
United Republic of Tanzania	Voted: Yes	3 June 2013	–
Liberia	Voted: Yes	4 June 2013	–
Rwanda	Voted: Yes	5 June 2013	–
Libya	Voted: Yes	9 July 2013	–
Guinea	Voted: Yes	29 July 2013	–
Swaziland	ABSTAIN	4 September 2013	–
Ghana	Voted: Yes	24 September 2013	–
Angola	ABSTAIN	24 September 2013	–
Chad	Voted: Yes	25 September 2013	–
Congo	Voted: Yes	25 September 2013	–

UN membership list	ATT plenary vote	Date of signing	Date of ratification
Gabon	Voted: Yes	25 September 2013	–
Lesotho	Voted: Yes	25 September 2013	–
Madagascar	Voted: Yes	25 September 2013	–
South Africa	Voted: Yes	25 September 2013	–
Zambia	Voted: Yes	25 September 2013	–
Cabo Verde	Not in attendance	25 September 2013	–
Comoros	Voted: Yes	26 September 2013	–
Guinea-Bissau	Voted: Yes	26 September 2013	–
Malawi	Voted: Yes	9 January 2014	–
Niger	Voted: Yes	24 March 2014	–
Namibia	Voted: Yes	25 September 2014	–
Algeria	Voted: Yes	–	–
Botswana	Voted: Yes	–	–
Cameroon	Voted: Yes	–	–
Central African Republic	Voted: Yes	–	–
Democratic Republic of the Congo	Voted: Yes	–	–
Eritrea	Voted: Yes	–	–
Ethiopia	Voted: Yes	–	–
Gambia	Voted: Yes	–	–
Kenya	Voted: Yes	–	–
Mauritius	Voted: Yes	–	–
Morocco	Voted: Yes	–	–
Somalia	Voted: Yes	–	–
South Sudan	Voted: Yes	–	–
Tunisia	Voted: Yes	–	–

UN membership list	ATT plenary vote	Date of signing	Date of ratification
Uganda	Voted: Yes	–	–
Equatorial Guinea	Not in attendance	–	–
Sao Tome and Principe	Not in attendance	–	–
Zimbabwe	Not in attendance	–	–
Egypt	ABSTAIN	–	–
Sudan	ABSTAIN	–	–

42. Annex 4: Outline of arms control legislation

Outline of the model law on the implementation of the arms transfer treaty.

Chapter One

1. INDEX/DEFINITIONS

- Ammunition or munition means
- Armoured combat vehicle means ...
- Attack helicopter means
- Battle tank means ...
- Combat aircraft means
- Conventional arms means ...
- Large-calibre artillery system means ...
- Light weapons means
- Minister means
- Missile and missile launcher means ...
- Parts and components means
- Secretariat means ...
- Small arm means
- Transfer means...

2. PURPOSE OF THE ACT

- Establish common international standards for regulating or improving international trade in conventional weapons

- Prevent and eradicate the illicit trade in conventional arms
- Prevent the diversion of conventional arms

3. SCOPE OF THE ACT

- Applies to all conventional arms
- Does not apply to the following conventional arms ...

Chapter Two

4. ESTABLISHMENT OF NATIONAL CONTROL SYSTEM

- Establish a data base containing following information on:
 - i. Ammunition or munitions discharged by conventional arms
 - ii. Parts and components of conventional arms
 - iii. Conventional arms
- Type of information maintained on ammunition or munition:
 - i. Calibre
 - ii. Quantity
 - iii. Head-stamp marking
 - iv. Batch numbers/serial numbers
 - v. Date of manufacture
 - vi. Name of manufacturer and contact details
 - vii. Details of export license:
 1. Date of issue
 2. License number
 3. Country of export
 4. Port of export
 5. Port of import
 6. Country of import
 7. End-user certificate
 8. Route of transfer
- Type of information maintained on parts and components:
 - i. Description of part or component
 - ii. Serial number of part or component, if available
 - iii. Date of manufacture
 - iv. Name of manufacturer and contact details
 - v. Details of export license:
 1. Date of issue
 2. License number

3. Country of export
 4. Port of export
 5. Port of import
 6. Country of import
 7. End-user certificate
 8. Route of transfer
- Type of information maintained on conventional arms –
 - i. Description of part or component
 - ii. Serial number of part or component, if available
 - iii. Date of manufacture
 - iv. Name of manufacturer and contact details
 - v. Details of export license:
 1. Date of issue
 2. License number
 3. Country of export
 4. Port of export
 5. Port of import
 6. Country of import
 7. End user certificate
 8. Route of transfer

Chapter Three

5. PROHIBITIONS ON THE EXPORT OF CONVENTIONAL WEAPONS

- Not to authorise transfer in contravention of UN measures or embargoes
- Not to authorise transfer in contravention of a country's obligations under international agreements
- Not to authorise transfer if it has knowledge the arms will be used to commit acts of genocide, crimes against humanity etc.

6. PRIOR EXPORT ASSESSMENT

- The undermining of peace and security
- Arms and/or ammunitions could be used to–
 - i. Commit or facilitate a serious violation of international humanitarian law
 - ii. Commit or facilitate a serious violation of international human rights law
 - iii. Commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism
 - iv. Commit or facilitate an act constituting an offence under international conventions or protocols relating to organised crime.

v. Commit or facilitate acts of violence against children or gender-based violence

- Mitigate risks in above items
- The balancing of risk
- Export authorisations are detailed and issued prior to export
- Revoking of authorisations already issued if new information becomes available.

7. **IMPORTS**

- Issue of end-user certificate
- Record of imported conventional arms
- Information request

8. **TRANSIT OR TRANS-SHIPMENT**

- Application for trans-shipment permit or license –
 - i. Details of exporter
 - ii. Details of importer
 - iii. Details of shipment
 - iv. Details of route
 - v. Copy of end-user certificate
 - vi. Copy of export license
 - vii. Copy of import license

9. **BROKERING**

- Registration of broker
- Permit for each transaction
- Extra-territorial jurisdiction
- Penalties

10. **PREVENTION OF DIVERSION**

- Develop programmes on managing conventional arms
- Exchange of information
- Address instances of diversion –
 - i. Notify affected parties
 - ii. Investigate diversion
 - iii. Apply penalties

Chapter Four

11. **RECORD KEEPING**

- Maintain records of information under sections 4, 5, 6 7, 8, 9 and 10
- Records maintained for at least 10 years

12. REGULATIONS

- [Develop as needed to supplement and clarify legislation]

13. REPORTING

- Report on:
 - i. National laws
 - ii. National control lists
 - iii. Other regulations
 - iv. Administrative measures
 - v. Measures to address diversion
 - vi. Annual report to Secretariat by 31 May

Chapter Five

14. MISCELLANEOUS PROVISIONS

15. OFFENCES AND PENALTIES

- Contraventions of the provisions of this Act
- Penalties

16. JURISDICTION OF THE COURT

- Jurisdiction of lower courts

17. ACT BINDS THE STATE

18. REPEAL OF LAWS

19. SHORT TITLE AND COMMENCEMENT

43. Annex 5: List of online ATT resources

Amnesty International	http://www.amnesty.org/en/campaigns/control-arms
ATT Legal Blog	http://armstradetreaty.blogspot.com
ATT Negotiation Mapping Database	http://armstreaty.org/index.php
Control Arms	http://www.controlarms.org/home
Hague Convention, The	www.hcch.net
ICRC	http://www.icrc.org/eng/war-and-law/weapons/index.jsp
International Action Network on Small Arms	http://www.iansa.org/campaign/arms-trade-treaty

Oxfam	http://www.oxfam.org/en/category/freetags/arms-trade-treaty
Reaching Critical Will	http://www.reachingcriticalwill.org/disarmament-fora/att
Saferworld	http://www.saferworld.org.uk/what/arms-trade-treaty
SIPRI	http://www.sipri.org
Transparency International	http://www.ti-defence.org/focus-areas/att
UNIDIR	http://unidir.org/bdd/fiche-activite.php?ref_activite=537
UNODA	http://www.un.org/disarmament/ATT

44. Annex 6: List of contacts

Legal matters	
UN Secretariat, Office of Legal Affairs, Treaty Section	Phone +1-212-963-5047 Fax +1-212-963-3693
Substantive matters	
UN Secretariat, Office for Disarmament Affairs	conventionalarms-unoda@un.org
Regional assistance	
UN Regional Centre for Peace and Disarmament in Africa	mail@unrec.org

Notes

- 1 <http://www.un.org/disarmament/ATT/> (As adopted by the GA)-E.pdf (accessed 25 July 2014).
- 2 <http://www.un.org/disarmament/ATT/> (As adopted by the GA)-E.pdf (accessed 25 July 2014).
- 3 <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> (accessed 25 July 2014).
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- 5 SARPCCO Sub-regional Bureau for Southern Africa, 2012. Standard Operating Procedures for the Implementation of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, ISS, Pretoria, South Africa.
- 6 Ibid.
- 7 Sergio Finardi & Peter Danssaert, Transparency and accountability: monitoring and reporting methods under an Arms Trade Treaty, International Peace Information Service and Trans Arms – R, February 2012, <http://www.ipisresearchbe/att/> TRANSPARENCY AND ACCOUNTABILITY IPIS 20120214pdf (accessed 13 June 2012).
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- 9 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, <http://www.wpoa-iss.org/> International Tracing/ITI Englishpdf (accessed 19 April 2012).
- 10 UN Office for Disarmament Affairs, International Ammunition Technical Guideline, IATG 0140: Glossary of terms, definitions and abbreviations, 2011: 2 [http://www.un.org/disarmament/convarms/Ammunition/IATG/docs/IATG0110-Guide to IATG\(V1\).pdf](http://www.un.org/disarmament/convarms/Ammunition/IATG/docs/IATG0110-Guide%20to%20IATG(V1).pdf) (accessed 16 June 2012).
- 11 SARPCCO Sub-regional Bureau for Southern Africa, 2012. Standard Operating Procedures for the Implementation of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, ISS, Pretoria, South Africa.
- 12 UN General Assembly, Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, UN document A/63/334, 26 August 2008: 13, <http://daccess-dds-nyun.org/doc/UNDOC/GEN/N08/491/10/PDF/N0849110.pdf?OpenElement> (accessed 16 June 2012).
- 13 Bruno Gruselle & Perrine Le Meur, Technology transfers and the Arms Trade Treaty: issues and perspectives, *Recherché & Documents 02* (2012), Paris: Foundation pour la Recherche Stratégies, March 2012: 5–8.
- 14 UN General Assembly, Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, New York, United Nations: 13.
- 15 Amnesty International, *Monitoring and investigating equipment used in human rights abuses*, London: Amnesty International, 2005.
- 16 Amnesty International, *Arms internal security: will an Arms Trade Treaty cover them? Saving lives requires comprehensive scope*, London: Amnesty International, 2011: 10.
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- 18 UN, 2013.
- 19 <http://www.issafrica.org/iss-today/african-states-push-for-a-bullet-proof-arms-trade-treaty-at-the-united-nations> (accessed 25 July 2014).
- 20 http://www.oxfam.org/sites/www.oxfam.org/files/arms_1.pdf (accessed 25 July 2014).
- 21 Oxfam, Africa's missing billions: international arms flows and the cost of conflict. 2007, http://www.oxfam.org/en/policy/bp107_africas_missing_billions (accessed 5 March 2014).
- 22 Oxfam, 2012, <http://www.oxfam.org/en/campaigns/conflict/controlarms/why-we-need-global-arms-trade-treaty> (accessed 5 March 2014).
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- 24 Oxfam, 2012, <http://www.oxfam.org/en/campaigns/conflict/controlarms/why-we-need-global-arms-trade-treaty> (accessed 5 March 2014).
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