ATT Academy in Southern Africa

First In-Person Training

Course Pack

Windhoek, Namibia

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Introduction

The Arms Trade Treaty (ATT) is the first legally binding instrument that regulates the international trade in conventional weapons with the express purpose of reducing human suffering. The Treaty addresses all aspects of the international arms trade (export, import, transit, transshipment and brokering) of the seven major conventional weapons defined under the UN Register of Conventional Arms - battle tanks, armoured combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers - as well as small arms and light weapons.

The ATT is designed with the understanding that its States Parties have both distinct and dynamic roles in the international arms trade, but share the same goal: to reduce human suffering. Taking into account that states will accede to the ATT at different stages in their engagement with the arms trade, the ATT sets out a general framework for a national control system for arms transfers. It is the responsibility of States Parties to design and develop specific methods for implementation at the national level. Furthermore, while many of the Treaty’s provisions contain clear and specific obligations, other provisions are in the form of recommendations, allowing States Parties a wide margin of discretion in their interpretation and implementation. It is precisely because States Parties join the ATT at different points in their engagement with the global arms trade, as well as at different baselines in their compliance with Treaty provisions, that a course such as the ATT Academy proves to be a critical tool for the Treaty’s implementation.

The ATT Academy in Southern Africa, and particularly this bespoke course-pack, seeks to assist states in understanding how to interpret and apply the provisions of the ATT in practice. First, the course pack provides an introduction to the ATT and in relation to other international instruments such as the UN Programme of Action on Small Arms and Light Weapons (PoA), the Sustainable Development Goals (SDGs) and relevant regional instruments. Next, in an article by article review of the Treaty’s text, the course pack explores the scope and requirements of the Treaty, the process of assembling a national control list, and the obligations of importing, transit and transshipment and exporting states, including the prohibitions and risk assessment processes. The course pack also provides suggested strategies to encourage transparency in implementation, including an in-depth explanation of ATT reporting templates and metrics as well as recommendations and good practices examples to ensure consistent and effective compliance with the Treaty’s provisions.
History and Overview of the Arms Trade Treaty (ATT)

Guiding Questions:

1. What motivated those who advocated for the treaty?
2. What is the history of the treaty’s negotiation?
3. What does the ATT seek to achieve?
4. How does the ATT work to achieve those aims?

Resources:

**About the Arms Trade Treaty**

The ground-breaking Arms Trade Treaty (ATT) adopted in April 2013, is the first global treaty to regulate the conventional arms trade. The Treaty creates a new global norm against which states’ practice will be measured, by other states and by international civil society.

**How does the ATT regulate the conventional weapons trade?**

At the heart of the ATT is the obligation on countries that have joined it to make an assessment of how the weapons they want to transfer will be used. They must determine if the arms would commit or facilitate genocide, crimes against humanity, war crimes and serious human rights violations. Each state must assess if there is an overriding risk that a proposed arms export to another country will be used for or contribute to serious human rights abuses. If so, those arms must not be sent. This is the key element of the Treaty, found in Articles 6 and 7.

Other parts of the Treaty set out guidelines for states that are importing weapons, and requires importers and exporters to cooperate in sharing information necessary to make the above assessment. It also includes obligations for countries that have weapons transiting through their borders and for brokering activities.

**Why is it ground-breaking?**

The ATT is the first time that human rights and humanitarian concerns have been so deeply integrated into a global arms control agreement. It introduces a notion of responsibility into the global arms trade that was absent before. While certain regional and national export laws did include these considerations others did not. These gaps are what enabled weapons to fall into the wrong hands or be diverted onto black markets. The ATT has helped to level the playing field and close the loopholes used by arms dealers and unscrupulous governments.

**What weapons does it include?**

The Treaty covers conventional weapons (meaning not nuclear, chemical or biological). The arms specifically mentioned in the Treaty are battle tanks, armoured combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons. Ammunition, as well as the parts and components that make up weapons systems, also fall under its regulation.
What about illicit trade in weapons?

Bringing the licit trade under control is the first necessary step toward addressing a reduction in the illicit trade. This has always been one of the motivating factors behind the ATT.

When was it adopted and how long did it take?

The ATT is the outcome of over a decade of advocacy and diplomacy. After years of preparation, a UN diplomatic conference was formally convened in July 2012, but fell short of reaching consensus on a final text and another two week-long diplomatic conference was convened in March 2013 to complete work on the treaty. However, Iran, North Korea, and Syria blocked consensus on the final treaty text, leading treaty supporters to move it to the UN General Assembly on for approval. On April 2, 2013, the UN General Assembly endorsed the ATT by a vote of 156-3, with 22 abstentions. The treaty opened for signature on June 3, 2013. The ATT requires 50 ratifications before it can enter into force.

Who has joined it?

More than 50% of the world has signed up so far.

105 States have now ratified the ATT, and 33 have signed it. But some regions of the world are underrepresented, and implementation is inconsistent.

We still have a lot of work to do.

What is the Conference of States Parties?

The Conference of States Parties (CSP) is the annual meeting for states that have joined the Treaty. It is an important place to report on progress made in implementing the Treaty as well as address challenges or concerns.

A History of the ATT

The idea of an arms trade treaty first came from Nobel Peace Laureates, supported by civil society organizations worldwide.

In 2003, the Control Arms campaign was launched and has since gathered support for the Arms Trade Treaty from over a million people worldwide.

In 2006, Control Arms handed over a global petition called “Million Faces” to the UN Secretary General Kofi Annan.

In December 2006, 153 governments finally voted at the United Nations to start work on developing a global Arms Trade Treaty. Momentum for the treaty has been building ever since.
In 2009 the UN General Assembly launched a time frame for the negotiation of the Arms Trade Treaty. This included one preparatory meeting in 2010, two in 2011, and a negotiating conference.

In January 2010, the UN General Assembly decided to convene a Diplomatic Conference on the Arms Trade Treaty in 2012. It also requested the assistance of the Secretary-General in compiling a report containing the views of Member States on the proposed treaty elements and other relevant issues relating to the United Nations Conference on the Arms Trade Treaty.

In July 2012 the Diplomatic Conference on the ATT was held acting as a month-long negotiation for all countries at the United Nations. The conference produced a draft treaty text, but failed to adopt a treaty by consensus after the United States, followed by Russia, and a few other states requested more time.

In November 2012, Member States voted and received a mandate to organize a final UN Conference on the ATT. The vote came on the last day of the UN’s First Committee and was passed with an unprecedented 157 votes in favour, 18 abstentions and 0 votes against.

On 18 – 28 March 2013, the Final Conference took place but it once again failed to produce a successful agreement on a Treaty. However, a large number of Member States moved to take the Treaty to the General Assembly in order to vote on it as quickly as possible.

On 2 April 2013, the Arms Trade Treaty was finally adopted by a vote of 154 in favour, 3 against, and 23 abstentions. It opened for signature on June 3rd, 2013!

On 3 June 2013, the ATT opened for signatures. Sixty-seven countries sign the treaty on the opening day.

On 24 September 2014, only a year and a half after it opened for signatures, the ATT reached the 50 required ratifications and triggered the treaty’s entry into force, thus becoming the fastest growing UN treaty.

On 24 – 27 August 2015 – The First Conference of States Parties (CSP1) was held in Cancun, Mexico and was presided over by Ambassador Jorge Lomónaco of Mexico.


On 22 – 26 August 2016 – The Second Conference of States Parties (CSP2) of the Arms Trade Treaty (ATT) was held in Geneva, Switzerland and was presided over by Ambassador Emmanuel E. Imohe of Nigeria.

On 11 – 15 September 2017 – The Third Conference of States Parties (CSP3) of the Arms Trade Treaty (ATT) was held in Geneva, Switzerland and was presided over by Ambassador Klaus Korhonenof Finland.

On 20 – 24 August 2018 – The Fourth Conference of States Parties (CSP4) of the Arms Trade Treaty (ATT) was held in Japan, Tokyo and was presided over by Ambassador Nobushige Takamizawa of Japan.

On 26 – 30 September 2019 – The Fifth Conference of States Parties (CSP5) of the Arms Trade Treaty (ATT) was held in Geneva, Switzerland and was presided over by Ambassador Jānis KĀRKLIŅŠ of Latvia.
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

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 Depositary 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 Depositary 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.
The Arms Trade Treaty At a Glance

Last Reviewed: August 2017

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Summary

The Arms Trade Treaty (ATT) establishes common standards for the international trade of conventional weapons and seeks to reduce the illicit arms trade. The treaty aims to reduce human suffering caused by illegal and irresponsible arms transfers, improve regional security and stability, as well as to promote accountability and transparency by state parties concerning transfers of conventional arms. The ATT does not place restrictions on the types or quantities of arms that may be bought, sold, or possessed by states. It also does not impact a state's domestic gun control laws or other firearm ownership policies.

After nearly two decades of advocacy and diplomacy, a UN conference was convened to negotiate the ATT in July 2012, but fell short of reaching consensus on a final text. Another two week-long conference was convened in March 2013 to complete work on the treaty. However, Iran, North Korea, and Syria blocked consensus on the final treaty text, leading treaty supporters to move it to the UN General Assembly on for approval. On April 2, 2013, the UN General Assembly endorsed the ATT by a vote of 156-3, with 23 abstentions. The treaty opened for signature on June 3, 2013, and entered into force on Dec. 23, 2014.

What the Arms Trade Treaty Does

The Arms Trade Treaty requires all states-parties to adopt basic regulations and approval processes for the flow of weapons across international borders, establishes common international standards that must be met before arms exports are authorized, and requires annual reporting of imports and exports to a treaty secretariat. In particular, the treaty:

- requires that states “establish and maintain a national control system, including a national control list” and “designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms”;

- prohibits arms transfer authorizations to states if the transfer would violate “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” or under other “relevant international obligations” or if the state “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”;

- requires states to assess the potential that the arms exported would “contribute to or undermine peace and security” or could be used to commit or facilitate serious violations of international humanitarian or human rights law, acts of terrorism, or transnational organized crime; to consider measures to mitigate the risk of these violations; and, if there still remains an “overriding risk” of “negative consequences,” to “not authorize the export”;


The Arms Trade Treaty At a Glance
Published on Arms Control Association (https://www.armscontrol.org)

- applies under Article 2(1) to all conventional arms within the seven categories of the UN Register of Conventional Arms (battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers) and small arms and light weapons;

- requires that states “establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by” the conventional arms listed in Article 2(1) and “parts and components...that provide the capability to assemble” the conventional arms listed in that article;

- requires each state to “take the appropriate measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction” of conventional arms covered under Article 2(1);

- requires each state to “take measures to prevent...diversion” of conventional arms covered under Article 2(1);

- requires each state to submit annually to the treaty secretariat a report of the preceding year’s “authorized or actual export and imports of conventional arms covered under Article 2(1)” and allows states to exclude “commercially sensitive or national security information”

**Basic Treaty Obligations**

To be in compliance with the ATT, states-parties must:

- establish and maintain an effective national control system for the export, import, transit, and transshipment of and brokering activities related to (all defined as “transfers” in the ATT) the eight categories of conventional arms covered by the ATT, as well as exports of related ammunition and of parts and components that are used for assembling conventional arms covered by the treaty (Articles 3, 4, and 5.2);

- establish and maintain a national control list (Article 5.3) and making it available to other states-parties (Article 5.4);

- designate competent national authorities responsible for maintaining this system (Article 5.5);

- designate at least one national contact point responsible for exchanging information related to the implementation of the ATT (Article 5.6);

- prohibit transfers of conventional arms, ammunition, or parts and components for the eight categories of conventional arms covered by the ATT that would violate obligations under Chapter VII of the UN Charter or international agreements relating to the transfer or illicit trafficking of conventional arms or where there is knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, or other war crimes (Article 6);

- review applications for exports of the eight categories of conventional arms covered by the treaty and conducting a national export assessment on the risk that the exported arms could have “negative consequences” for peace, security, and human rights, denying an arms export if the assessment determines that there is an overriding risk that the exported arms will be used to commit or facilitate a serious violation of international humanitarian or human rights law or offenses under international conventions or protocols relating to terrorism or international organized crime and taking into account the risk of the exported arms being used to commit or facilitate serious acts of gender-based violence or violence against women and children (Article 7);

- take measures to regulate conventional arms imports (Article 8);
• when importing conventional arms, provide information to assist the exporting state-party in conducting its national export assessment, including by providing documentation on the end use or end user (Article 8);

• take measures, where necessary and feasible, to regulate the transit and transshipment of conventional arms (Article 9);

• take measures to regulate brokering taking place under its jurisdiction (Article 10);

• take measures, including risk assessments, mitigation measures, cooperation, and information sharing, to prevent the diversion of conventional arms to the illicit market or for unauthorized end use and end users (Article 11);

• maintain national records for each export authorization or delivery of conventional arms for at least 10 years (Article 12);

• provide annual reports to the secretariat on export and import authorizations or deliveries of conventional arms to be distributed to states-parties (Article 13);

• take appropriate measures to enforce national laws and regulations to implement the treaty (Article 14); and

• cooperate with other states-parties in order to implement the ATT effectively (Article 15).
U.N. Treaty Is First Aimed at Regulating Global Arms Sales

By Neil MacFarquhar

April 2, 2013

UNITED NATIONS — The United Nations General Assembly voted overwhelmingly on Tuesday to approve a pioneering treaty aimed at regulating the enormous global trade in conventional weapons, for the first time linking sales to the human rights records of the buyers.

Although implementation is years away and there is no specific enforcement mechanism, proponents say the treaty would for the first time force sellers to consider how their customers will use the weapons and to make that information public. The goal is to curb the sale of weapons that kill tens of thousands of people every year — by, for example, making it harder for Russia to argue that its arms deals with Syria are legal under international law.

The treaty, which took seven years to negotiate, reflects growing international sentiment that the multibillion-dollar weapons trade needs to be held to a moral standard. The hope is that even nations reluctant to ratify the treaty will feel public pressure to abide by its provisions. The treaty calls for sales to be evaluated on whether the weapons will be used to break humanitarian law, foment genocide or war crimes, abet terrorism or organized crime or slaughter women and children.

“Finally we have seen the governments of the world come together and say ‘Enough!’” said Anna MacDonald, the head of arms control for Oxfam International, one of the many rights groups that pushed for the treaty. “It is time to stop the poorly regulated arms trade. It is time to bring the arms trade under control.”

She pointed to the Syrian civil war, where 70,000 people have been killed, as a hypothetical example, noting that Russia argues that sales are permitted because there is no arms embargo.

“This treaty won't solve the problems of Syria overnight, no treaty could do that, but it will help to prevent future Syrias,” Ms. MacDonald said. “It will help to reduce armed violence. It will help to reduce conflict.”

Members of the General Assembly voted 154 to 3 to approve the Arms Trade Treaty, with 23 abstentions — many from nations with dubious recent human rights records like Bahrain, Myanmar and Sri Lanka.

The vote came after more than two decades of organizing. Humanitarian groups started lobbying after the 1991 Persian Gulf war to curb the trade in conventional weapons, having realized that Iraq had more weapons than France, diplomats said.

The treaty establishes an international forum of states that will review published reports of arms sales and publicly name violators. Even if the treaty will take time to become international law, its standards will be used immediately as political and moral guidelines, proponents said.

“It will help reduce the risk that international transfers of conventional arms will be used to carry out the world’s worst crimes, including terrorism, genocide, crimes against humanity and war crimes,” Secretary of State John Kerry said in a statement after the United States, the biggest arms exporter, voted with the majority for approval.

But the abstaining countries included China and Russia, which also are leading sellers, raising concerns about how many countries will ultimately ratify the treaty. It is scheduled to go into effect after 50 nations have ratified it. Given the overwhelming vote, diplomats anticipated that it could go into effect in two to three years, relative quickly for an international treaty.

Proponents said that if enough countries ratify the treaty, it will effectively become the international norm. If major sellers like the United States and Russia choose to sit on the sidelines while the rest of the world negotiates what weapons can be traded globally, they will still be affected by the outcome, activists said.

The treaty’s ratification prospects in the Senate appear bleak, at least in the short term, in part because of opposition by the gun lobby. More than 50 senators signaled months ago that they would oppose the treaty — more than enough to defeat it, since 67 senators must ratify it.

Among the opponents is Senator John Cornyn of Texas, the second-ranking Republican. In a statement last month, he said that the treaty contained “unnecessarily harsh treatment of civilian-owned small arms” and violated the right to self-defense and United States sovereignty.

In a bow to American concerns, the preamble states that it is focused on international sales, not traditional domestic use, but the National Rifle Association has vowed to fight ratification anyway. The General Assembly vote came after efforts to achieve a consensus on the treaty among all 193 member states of the United Nations failed last week, with Iran, North Korea and Syria blocking it. The three, often ostracized, voted against the treaty again on Tuesday.

Vitaly I. Churkin, the Russian envoy to the United Nations, said Russian misgivings about what he called ambiguities in the treaty, including how terms like genocide would be defined, had pushed his government to abstain. But neither Russia nor China rejected it outright.
“Having the abstentions from two major arms exporters lessens the moral weight of the treaty,” said Nic Marsh, a proponent with the Peace Research Institute in Oslo. “By abstaining they have left their options open.”

Numerous states, including Bolivia, Cuba and Nicaragua, said they had abstained because the human rights criteria were ill defined and could be abused to create political pressure. Many who abstained said the treaty should have banned sales to all armed groups, but supporters said the guidelines did that effectively while leaving open sales to liberation movements facing abusive governments.

Supporters also said that over the long run the guidelines should work to make the criteria more standardized, rather than arbitrary, as countries agree on norms of sale in a trade estimated at $70 billion annually.

The treaty covers tanks, armored combat vehicles, large-caliber weapons, combat aircraft, attack helicopters, warships, missiles and launchers, small arms and light weapons. Ammunition exports are subject to the same criteria as the other war matériel. Imports are not covered.

India, a major importer, abstained because of its concerns that its existing contracts might be blocked, despite compromise language to address that.

Support was particularly strong among African countries — even if the compromise text was weaker than some had anticipated — with most governments asserting that in the long run, the treaty would curb the arms sales that have fueled many conflicts.

Even some supporters conceded that the highly complicated negotiations forced compromises that left significant loopholes. The treaty focuses on sales, for example, and not on all the ways in which conventional arms are transferred, including as gifts, loans, leases and aid.

“This is a very good framework to build on,” said Peter Woolcott, the Australian diplomat who presided over the negotiations. “But it is only a framework.”
Placing the Arms Trade Treaty in Context

Guiding Questions:

1. What harms can be caused by irresponsible and/or illicit arms transfers?
2. How do the ATT’s provisions speak to those consequences?
3. What particular arms-related harms may be most relevant in southern Africa?

Resources:


3. “Section 1” and “Section 2,” How to Use the Arms Trade Treaty to Address Wildlife Crime, Pace University, 2016.
UNODA Occasional Papers
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THE IMPACT OF POORLY REGULATED ARMS TRANSFERS ON THE WORK OF THE UNITED NATIONS

United Nations Coordinating Action on Small Arms (CASA)
2013

March 2013
Defining the problem

Many areas of world trade are covered by regulations that bind countries into agreed conduct. At present, there is no global set of rules governing the trade in conventional weapons. An eclectic set of national and regional control measures and a few global instruments on arms transfers exist, but the absence of a global framework regulating the international trade in all conventional arms has obscured transparency, comparability and accountability. This may be one of the reasons why too many weapons are misused or are diverted to unlawful owners, and too often an arms export request denied by one country will be approved by another.

Those suffering most from the adverse effects of the poorly regulated arms trade are the men, women, girls and boys trapped in situations of armed violence and conflict, often in conditions of poverty, deprivation and extreme inequality, where they are all too frequently on the receiving end of the misuse of arms by State armed and security forces, non-State armed groups and criminal gangs. The human cost of the consequences of the poorly regulated global trade in conventional arms are manifested in several ways: in the killing, wounding and rape of civilians—including children, the most vulnerable of all—and the perpetration of other serious violations of international humanitarian law and human rights law; in the displacement of people within and across borders; and in the endurance of extreme insecurity and economic hardships by those affected by armed violence and conflict.

a) Conflict and regional instability

Flows of illicit arms, often in violation of United Nations Security Council arms embargoes, constitute a key factor in prolonging conflict and fuelling regional instability. These flows can be sourced through diversion from State stockpiles and other legal circuits, recycling from previous conflicts in the concerned State or in neighbouring countries, State-sponsored supplies to proxies, strategic caches of arms stored in anticipation of conflict, illegal manufacturing and other means.
b) Misuse of weapons

States have an inherent right to individual or collective self-defence and may use armed force in conformity with the Charter of the United Nations. Apart from arming their national armed and security forces, most countries allow private security companies and citizens, under conditions defined in national laws, to own certain firearms and weapons and use them for lawful purposes. The Arms Trade Treaty (ATT) does not aim to impede or interfere with the lawful ownership and use of weapons. However, common standards for arms transfers will help States assess the risk that transferred arms would be used by national armed and security forces, private security companies or other armed State or non-State actors to foment regional instability, to commit grave violations of international humanitarian law and human rights law, or to engage in other forms of politically or criminally motivated armed violence. Those common standards should also help States assess the risk that transferred arms will end up in areas proscribed by United Nations Security Council embargoes.

c) Diversion of arms and ammunition

Without adequate regulation of international arms transfers based on high common standards to guide national decisions on arms transfers, it is easier for arms to be diverted to the illicit market for use in armed conflict, criminal activities and violence, including by organized crime groups. Diversion is a colossal problem in all parts of the world as it sustains the supply of arms, particularly small arms and light weapons, to rebels, gangs, criminal organizations, terrorist groups and other perpetrators. Diversion may occur as a result of a transfer without proper controls, unauthorized retransfer, thefts from poorly secured stockpiles, handouts to armed groups, or barter involving natural resources. Corruption is often an associated problem with diversion.

Therefore, the arms trade must be regulated in ways that would not only minimize the risk of misuse of legally owned weapons, but would also include global standards for assessing the risk of diversion, including through the exercise of due diligence regarding the verification of required documentation, the stockpile management conditions in recipient countries, the history of diversion by the importer and corruption patterns.
In most arms-related United Nations documents and processes, Member States have taken an inclusive approach to arms and ammunition. This includes discussions on Security Council arms embargoes; disarmament, demobilization and reintegration of former combatants (DDR); children associated with armed forces and groups; counter-terrorism; peacebuilding; women, peace and security; armed violence and development; human rights; mine action; air transport safety; maritime safety and border controls; and protection of civilians in armed conflict.¹ A similar approach was also adopted in 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 (Firearms Protocol) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Importantly, most countries do not distinguish arms export legislation from ammunition export legislation. All in all, the particular characteristics of the trade in ammunition merit it being a key component of any discussion on the regulation of the global arms trade.

Ammunition is a bulk good. It is sometimes argued that the trade in ammunition should be excluded from international regulation, because of the enormous volume of its production and trade, which would render it difficult for governments to warrant the detailed levels of record-keeping that would be needed for ammunition tracing and for the proper regulation of its trade. However, as consumer traceability has evolved in other fields, such as pharmaceuticals and food and agricultural products—goods with an even higher turnover—the question of including ammunition in arms regulation seems to be more a matter of political prioritization than one of technical or logistical impossibility.

¹ For example, regarding the Democratic Republic of the Congo (S/2010/596), the Democratic People’s Republic of Korea (S/2010/571), Somalia (S/2010/91) and Côte d’Ivoire (S/2010/179). See also the reports of the Secretary-General to the Security Council on Guinea-Bissau (S/2010/550), Lebanon (S/2010/538), the protection of civilians in armed conflict (S/2010/579) and children and armed conflict in Chad (S/2011/64).
Why does an Arms Trade Treaty matter?

Most present-day international challenges—from global warming and the financial crisis to terrorism and underdevelopment—have complex origins. Similarly, there is no monocausal relationship between the poorly regulated arms trade on the one hand, and conflict, crime and insecurity, armed violence and grave human rights abuses on the other. Often, however, connections can be established between the misuse of arms by national armed and security forces and the poor judgement or lack of responsibility on the part of the original providers of such arms. Similarly, one can establish a link between massive amounts of illicit arms and ammunition in circulation and lax national controls. Weapons are force multipliers and thus enable the user to enhance the ability to project power and to exercise coercive control within and across borders. With every transfer it authorizes, a government deciding on exporting weapons must realize the profound international responsibility of that decision. And, conversely, an importing government must ensure that it will use these weapons only to provide for the safety and security of its citizens and that it has the capacity to safeguard all weapons within its possession throughout their life cycle.

Working to improve lives and livelihoods around the world, the United Nations system is directly confronted with the consequences stemming from the often brutal repression of political dissent, armed conflict, rampant crime or armed violence and the widespread human suffering that they cause. Whether it is maintaining international peace and security, protecting human rights, providing humanitarian aid, promoting social and economic development, conducting peacekeeping, assisting in crime prevention and criminal justice, promoting women’s empowerment, protecting children, improving public health or building safer cities, all too often armed insecurity fuelled by poorly regulated arms transfers prevents us from reaching the goals laid out for us by Member States. In these contexts United Nations personnel themselves also face security risks on an unprecedented scale—from drivers of trucks transporting food aid, peacekeepers on patrol, United Nations personnel running refugee camps to international and local staff working at United Nations compounds.
While the majority of modern day intra-State conflicts have been fought mainly with small arms and light weapons, recent events in Libya and Syria underscore the continued misuse of heavier conventional weapons—including tanks, heavy artillery, helicopters and aircraft—against civilians. Although it is often difficult to anticipate that a government will eventually use its weaponry against civilian populations, it is expected that a robust arms trade treaty would compel exporters to exercise enhanced diligence in analysing early warning signs that may help them assess the risk that transferred weapons would be used to commit grave human rights violations.

How weapons misuse and diversion impact the work of the United Nations and the States and citizens it serves

a. Exacerbating conflict, hindering peacekeeping and peacebuilding

The human cost of armed conflicts is well documented. It is estimated that the number of non-State armed conflicts reached 35 in 2008 and that a similar number of conflicts involving States took place in the same year.² Between 2004 and 2009, about 55,000 people perished annually as a direct consequence of armed conflict.³

In addition to the social and economic costs that are borne by the States and communities directly affected by armed conflicts, the international community shoulders serious responsibilities in terms of efforts to arrest and prevent such conflicts, to promote national dialogue and reconciliation and to build the foundations for durable peace. Thus, since 1948, the United Nations has directed and supported a total of 68 peacekeeping operations. Of these, 16 are presently active, involving over 98,900 uniformed personnel, more than 20,600 civilian personnel and an estimated budget of over US$ 7 billion in the period between July 2011 and June 2012, which is an investment in peace and yet a small cost compared with the cost of war.⁴ Peacekeeping operations can be particularly daunting in situations where parties that are not seriously committed to ending

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³ Ibid.
⁴ Department of Public Information, background note, DPI/1634/Rev.129.
the confrontation continue to have access to supplies of arms and ammunition. Groups who seek to spoil peace efforts through violence have the greatest incentive to defect from peace accords when they are able to continue to pay soldiers and buy weapons.\(^5\)

Usually, a great deal of work needs to be done after the cessation of armed hostilities. Addressing the sources of conflict and creating mechanisms for national dialogue and peaceful conflict resolution in the aftermath of conflicts are important factors for sustainable peace and security. Peacebuilding is a concept that encompasses multidimensional activities aimed at building the foundations for peace. These include monitoring ceasefires; rebuilding State institutions; strengthening rule of law institutions; disarming, demobilizing and reintegrating former combatants (DDR); reforming the security sector; electoral assistance; establishing truth and reconciliation mechanisms; improving stockpile physical security, ammunition safety management and explosive mitigation; rebuilding education, health and economic infrastructure; assisting the return of refugees and internally displaced persons (IDPs); building capacities for non-violent conflict resolution; improving respect for human rights; setting up adequate arms control and regulations; and a large number of other activities aimed at promoting social and economic development and mitigating the structural factors of conflict.

As with peacekeeping, efforts at peacebuilding come at a high cost to the international community. Between 1990 and 2011, a total of 41 political and peacebuilding missions have been established by the United Nations Security Council. Of these, 13 are currently active, involving over 4,200 personnel and maintained by a biennial budget of US$ 5.1 billion, which is a small amount compared with the estimated $1.74 trillion total world military expenditures in 2011.\(^6\)

Most modern-day peacekeeping and peacebuilding operations contain DDR programmes which normally address the demand-driven aspects of arms transfers. To be effective, these programmes should lead to the rapid disassembling of warring parties and the reintegration of former combatants into society. However, these goals can be seriously frustrated if weapons and ammunition continue to be


\(^6\) Stockholm International Peace Research Institute (SIPRI).
easily available to warring parties. These parties, aware of their ability to quickly retool their fighting forces, may have an incentive to limit the movement of peacekeepers, to engage in systematic violations of peace or ceasefire accords or to threaten withdrawal from these accords, thus perpetuating climates of impunity, enhancing the risk of conflict recurrence and undermining the international community’s investment in building peace. The linkage between arms transfers and DDR has also been recognized by the Security Council, which, for instance, has made the lifting of sanctions on arms transfers to Côte d’Ivoire conditional upon progress made in DDR.⁷

Another important and costly peacebuilding goal, which often requires extensive international assistance, is the conduct of free, inclusive and credible elections. But this goal cannot be properly achieved in environments where electoral censuses cannot be conducted for lack of security, members of political parties cannot move freely to support organizations and campaign, electoral agents are intimidated by armed groups, and voters are reluctant to go to campaign meetings or to the polls for fear of armed reprisals. In such situations, trust in the peacebuilding process can be undermined, as election dates are repeatedly postponed and the easy availability of arms and ammunition increase the risk of renewed or post-election violence amid perceptions of widespread fraud, manipulation and, in particular, intimidation.

While much efforts and many lives are spent in efforts to stop conflict and rebuild post-conflict countries, international efforts to plug the sources of flows of arms and ammunition to conflict and post-conflict areas could still be strengthened.

**Tracing**

Identifying the sources of flows of arms to conflict areas is a challenging task. This is partly due to the lack of established cooperation mechanisms for tracing arms found in conflict situations. International peacekeeping forces and sanctions monitoring bodies, such as the United Nations sanctions panels, are often well positioned to initiate the tracing of conflict weapons, which frequently require the cooperation of entities outside the country in question. However,

international cooperation on tracing is still in its infancy, in particular when involving peacekeeping operations or United Nations sanctions monitoring teams. The Firearms Protocol only covers firearms and still has a limited number of signatories.\(^8\) The International Tracing Instrument, although it does not explicitly rule out tracing requests by non-State entities such as peacekeeping missions or United Nations sanctions panels, does not mention or elaborate on those either.\(^9\) Hence, less than a third of tracing requests made by United Nations sanctions panels received a response from States.\(^10\) Tracing of ammunition flows is even more challenging, as ammunition was excluded from the scope of the International Tracing Instrument.

Widespread adherence by States to high, legally binding high standards for arms and ammunition transfers, in addition to other measures such as tighter border and custom controls, monitoring of air cargo transfers and strengthened arms tracing and sanctions monitoring mechanisms, would make it more difficult for arms embargoes to be breached and for arms and ammunition to reach conflict areas.

b. Violating international humanitarian law and human rights law

Crisis situations can quickly create a climate of insecurity and impunity that can lead to large-scale human rights violations and abuses. International humanitarian law aims to protect persons who are not or are no longer taking part in hostilities—such as civilians, the sick and wounded and prisoners of war—and to define the rights and obligations of the parties to a conflict in the conduct of hostilities, both non-State armed actors and government forces.

In particular, international humanitarian law requires respect for the principles of distinction between combatants and civilians, proportionality and precaution in attacks. In conflict situations, the

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\(^8\) Adopted in 2001 by the United Nations General Assembly with resolution 55/255 and entered into force on 3 June 2005.

\(^9\) A/60/88 and Corr.2, annex; Report of the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons. See also General Assembly decision 60/519.

use of explosive weapons in populated areas, including man-portable or vehicle-mounted grenades, rocket-propelled grenade launchers (RPGs), missiles and mortars, can have indiscriminate and devastating impact on civilians, including children who are particularly vulnerable to being killed or maimed by such weapons.

In Yemen, 71 per cent of the child conflict casualties in 2009 were reportedly a direct result of shelling of civilian areas by all parties to the conflict.\(^{11}\)

International human rights law, on the other hand, protects the individual at all times (in peacetime and during armed conflict) against actions such as torture, cruel, inhumane or degrading treatment or punishment or other violations of the rights enshrined in the Universal Declaration of Human Rights and international human rights treaties, be such action perpetuated by the State or by non-State actors. Arguably, most serious human rights violations occur during periods of armed conflict.\(^{12}\) Apart from armed conflict, the prevalence of violent crime in many countries and regions in the world exposes populations to a wide range of human rights violations, including extrajudicial executions, torture, sexual and gender-based violence, arbitrary deprivation of liberty and lack of due process of law among other grave violations of human rights.

The absence of commonly agreed international standards for the transfer of conventional arms made it easier for arms to be acquired by governments or other entities that may misuse them. To include in the ATT, standards to help States assess the risk that arms would be used in the commission of violations of international humanitarian or human rights law, would be fully consistent with positions taken by States in other contexts. For instance, in 2003 governments adopted by consensus the Agenda for Humanitarian Action, in which it is stated that countries “should make respect for international humanitarian law one of the fundamental criteria on which arms transfer decisions

\(^{11}\) Devastating Impact: Explosive weapons and children. Save the Children, 2011, p. 5.

are assessed. They are encouraged to incorporate such criteria into national laws or policies and into regional and global norms on arms transfers”.

In addition to the direct deprivation of the right to life, other human rights violations are linked to the misuse of weapons by armed individuals: high incidence of rape, forced displacement due to armed violence, the recruitment of children into armed forces and groups, closures of schools, limitations on the right to freedom of association and to participate in the cultural life of the community because of fears about walking freely as a pedestrian, speaking freely, using public transport, or participating in group activities.

c. **Obstructing humanitarian action**

  **Arms used in violence against humanitarian staff and property**

  A dire consequence of inadequate controls on arms transfers and the corresponding widespread availability and misuse of weapons is the frequent suspension or delay of life-saving humanitarian and development operations because of threats to the safety of, or actual attacks against, United Nations staff and those of other organizations. Between 2000 and 2010, more than 780 humanitarian workers were killed in armed attacks and a further 689 were injured. Attacks appear to have intensified in recent years as over 100 humanitarian workers were killed both in 2008 and in 2009—more than three times the number killed a decade ago and twice the number killed in 2005.

  Although humanitarian personnel are often attacked in wider contexts of armed conflict, research shows that criminal violence committed with firearms—not attacks by armed combatants—remains one of the

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most significant threats facing humanitarian personnel.\textsuperscript{17} Many of the
groups that have attacked United Nations staff are subject to Security
Council sanctions or linked to such parties.\textsuperscript{18}

Threats and attacks on humanitarian personnel and armed
conflict can often force humanitarian organizations to evacuate their
staff from high-risk areas or suspend their programmes, thus depriving
affected people of badly needed assistance. Research suggests a
direct correlation between the high availability of small arms and the
presence of armed violence and the lack of access of humanitarian
personnel to beneficiaries.\textsuperscript{19}

In Pakistan, humanitarian actors cite ongoing hostilities as the most significant
impediment to access. For example, as a result of active hostilities, regular assistance is
not currently reaching the displaced or other conflict-affected populations in parts of the
Federally Administered Tribal Area, such as the North Waziristan or Kurram agencies.\textsuperscript{20}

\textbf{Displacement of people}

Armed conflict is the greatest cause of forcibly displaced people
and refugee flows. There were 42.5 million forcibly displaced people
worldwide at the end of 2011.\textsuperscript{21} Flows of arms into conflict areas can
have a serious adverse impact on the ability of the United Nations
to fulfil its task of providing sustainable solutions for refugees and
internally displaced persons (IDPs), as their legal, material and
physical protection cannot be provided in an environment of grave
and persistent armed insecurity.

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\textsuperscript{17} Cate Buchanan and Robert Muggah, “No Relief: Surveying the Effects of
Gun Violence on Humanitarian and Development Personnel”. Centre for
\textsuperscript{18} For example, attacks against United Nations facilities in Baghdad, Peshawar,
Mogadishu, Algiers, Kabul and Abuja, as well as the kidnapping of the Special
Envoy of the United Nations Secretary-General to Niger, Mr. Robert Fowler in
December 2008.
\textsuperscript{19} Buchanan and Muggah, 2005.
\textsuperscript{20} S/2010/579.
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The Lord’s Resistance Army has since 2009 carried out armed attacks, including against refugee settlements, in South Sudan, Central African Republic and in the Democratic Republic of the Congo. These have killed scores of civilians, forced thousands of civilians to flee, resulting in displacement of the local population and relocation of refugees as well as in serious disruption to the distribution of humanitarian assistance. The armed violence in these three countries by the Lord’s Resistance Army has resulted in 440,000 IDPs, including those living as refugees and of this total 335,000 are found in the Democratic Republic of the Congo.

During a conflict, there are three periods in which displaced people are highly vulnerable to armed activities: immediately prior and during flight; during the period of protracted or repeated displacement; and at the place of resettlement or return. The Office of the United Nations High Commissioner for Refugees (UNHCR) identifies five main areas in its field operations that could be challenged by the presence of armed groups or widespread arms availability: ensuring protection in camps and access to livelihoods for displaced persons; maintaining the civilian character of displacement camps; promoting repatriation and reintegration; ensuring the safety of humanitarian workers; and maintaining the neutral character of UNHCR operations.

By definition, refugees and IDPs are civilians and it is important to preserve the civilian character of their camps. This implies that those entering the camps in order to benefit from protection and assistance will have to lay down their arms. However, refugees and IDPs, especially youth and children, in camp settings are easy targets of military recruitment by armed groups, thus diminishing the ability of UNHCR and its implementing partners to carry out their humanitarian activities. Refugee and IDP settlements as well as transit centres still located in areas close to conflict zones, borders or in isolated tracks of land face the highest risk of interference by armed individuals. Some of the worst small arms–related violence against

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22 UNHCR News, 14 May 2010.
civilians has taken place against displaced populations during transit or in safe areas, including in refugee and IDP camps. Women and girls in refugee and IDP camps face particular vulnerabilities to the presence of arms, as this increases the probability of females being raped and abused.

In addition to directly impeding the implementation of protection and assistance activities, militarization of refugee camps can have a negative impact on the willingness of the host country to fulfil its obligations, as it may create the perception, both on the part of the government and local communities, that the camps represent a threat to national and local security. Even when conflicts have largely been resolved and refugees and IDPs return home, widespread intimidation and lawlessness may continue, stunting hopes for meaningful and peaceful community reconstruction. In post-conflict scenarios, repatriation and reintegration of refugees and IDPs are often restricted by threats by civilians wielding small arms. These situations frustrate the efforts to help the IDPs and refugees to return to normal life.

**Threats to United Nations personnel**

Flows of arms into conflict and post-conflict situations not only impede the ability of the United Nations to discharge its mandates and assist the governments and populations that it is called to assist, but they also pose a direct threat to United Nations personnel and assets. According to the United Nations Department of Safety and Security (DSS), 18 United Nations civilian personnel were abducted and held hostage by criminal elements and extremist groups in 2011, and during the first two months of 2012 alone, 10 United Nations personnel were abducted.

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24 “Militarization” in the context of refugees and IDPs is often described as a combination of military or armed attacks on people within camps, the storage and diffusion of weapons, military training and recruitment, infiltration and the presence of armed elements, political activism and criminal violence within camps. (Robert Muggah, “A Crisis Turning Inwards”, in Humanitarian Exchange, No. 29, March 2005.)
Under exceedingly challenging security conditions in 2011, United Nations personnel continued to carry out critical mandates and programmes in high-risk countries and areas. In those areas, from January 2010 to December 2011, armed conflicts, civil unrest and complex humanitarian emergencies posed increasing threats to United Nations personnel. In 2011, there were 12 armed attacks on United Nations premises, 8 cases of invasion of United Nations premises and 25 cases of hijacking of United Nations vehicles. Most of these incidents took place in high-risk areas in Afghanistan, Libya, Somalia, the Sudan and Yemen.25

d. Denying development

Conflicts and armed violence, which are often fuelled by poorly regulated arms transfers, diminish human and economic development prospects by impeding new investments and the implementation of projects and by reversing development gains as they lead to school closures, destruction of infrastructure, market disruption, capital flights, the burdening of health services, and the weakening of the rule of law, to name a few. Furthermore, marginalized households face additional pressure when armed violence affects their bread-winning capacity. Often a single female shoulders the responsibility of catering economic needs to a family surviving a slain male household head.

Between 1990 and 2006, 23 African countries lost an estimated US$ 284 billion as a result of armed conflicts, fuelled by transfers of ammunition and arms—95 per cent of which came from outside Africa. Between 1996 and 2005, the Democratic Republic of the Congo (DRC) alone lost US$ 18 billion26 as a result of the country’s internal conflict. The Economic Community of West African States (ECOWAS) stated in April 2012 that the continent of Africa loses US$ 18 billion annually as a result of armed conflicts.27

Countries suffering from sustained levels of armed conflict or violence are also those furthest from reaching their Millennium Development Goal (MDG) targets. In fact, 22 of the 34 States furthest from achieving these targets are in or emerging from armed conflicts. In these conflict-affected contexts altogether, efforts to eradicate extreme poverty and hunger (MDG1) are at only 10 per cent of their target, universal primary education (MDG2) at 45 per cent of the target, while maternal health (MDG5) reaches only 14 per cent of the target. But underdevelopment is not only a consequence of armed violence; it is in turn a structural factor of conflict and it further perpetuates armed violence, thus creating a vicious cycle.

The negative impact of armed violence on development is not limited to conflict situations. In a number of middle-income countries, the MDG-related gains made in early childhood are being lost in adolescence—in Brazil, more adolescents die from violence than do children under 5 from disease and ill health.\textsuperscript{28} Indeed, it is estimated that widespread armed violence in non-conflict settings costs US$ 163 billion annually in lost productivity alone.\textsuperscript{29} Armed violence has also an adverse effect on investment, which is essential for the accumulation of long-term capital. An important calculus in investment decisions is the risk-return analysis, i.e., how much risk one is willing to take for a given expected level of return on investment. It is thus natural that investors are typically wary of environments with a high incidence of armed violence, as these environments present high uncertainty levels, are drained of skilled labour and lack proper regulatory institutions.

Crime and armed violence also contribute to “unproductive” expenditures that divert public resources away from key services and capital investment. Research suggests that developing countries may spend between 10-15 per cent of their gross domestic product (GDP) on law enforcement, as compared to 5 per cent in more affluent states.\textsuperscript{30} Furthermore, armed violence deepens social and economic inequalities as it disproportionally affects poor and vulnerable groups.
in society. For instance, in Brazil two thirds of the population living in the highly violent “favelas” do not finish primary school.\textsuperscript{31}

The Inter-American Development Bank (IADB) estimated the economic costs of armed violence in Latin America to have been between $140 billion and $170 billion per year during the late 1990s—approximately 12 per cent of regional GDP.\textsuperscript{32}

The adverse economic effects of armed conflict and violence are not limited to the directly affected country, but have spillover effects on neighbouring countries, which often have to host refugees, suffer from armed incursions by fighting forces in the neighbouring territories, and have to divert resources to set up exceptional defence and security measures in order to protect their borders.

Civil wars in the poorest countries in the world result in high economic costs estimated to be roughly equal to losing two years worth of economic income or an average of $20 billion of the country’s total economy.\textsuperscript{33} The economic cost of lost production due to conflict ranges from 2 to 3 per cent of GDP according to World Bank estimates.\textsuperscript{34}

\textbf{e. Impact on health}

Armed violence is among the leading causes of death for persons between the ages of 15 and 44. The vast majority of these victims are in environments with weak import, export and transfer controls over small arms and light weapons and high levels of illicit proliferation of those arms. Armed conflict or structural violence is also responsible for the estimated 220,000 indirect conflict deaths that are brought about by a variety of conflict-related problems such as malnutrition, disease, lack of shelter, unavailability of health care and other services,

\textsuperscript{31} Ibid.
\textsuperscript{32} Armed Violence Prevention Programme (AVPP): Support to Community Based Violence Prevention Programmes. Project Number INT/03/MXX. United Nations Development Fund (UNDP)-World Health Organization.
\textsuperscript{34} Armed Robbery: How the poorly regulated arms trade is paralysing development. Oxfam International, 2012.
and lack of access to clean water.\textsuperscript{35} The World Health Organization (WHO), while cautioning about the accuracy of estimates of war-related deaths, indicates that rates of war-related deaths varied from less than 1 per 100,000 people in high-income countries to 6.2 per 100,000 in low-income and middle-income countries. The highest rates of war-related deaths were found in WHO African region (32.0 per 100,000), followed by low-income and middle-income countries in WHO Eastern Mediterranean Region (8.2 per 100,000) and WHO European Region (7.6 per 100,000), respectively.\textsuperscript{36}

In addition to the direct and indirect deaths, armed conflict or violence victimizes large numbers of people who have to live with injuries and disability, psychological distress and diseases that can be directly or indirectly related to the armed conflict or violence. Treatment of such individuals can impose tremendous costs on national health budgets and diverts resources from long-term projects in the health sector or other social and economic development priorities. In El Salvador, an estimated 2,580 victims of armed violence were treated in hospitals during 2003. Of these, 2,400 were treated in public hospitals at a cost to the State of 7.4 million USD, just over 7 per cent of the health budget.\textsuperscript{37}

\begin{center}
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Burundi, a country that lost over 300,000 human lives in the course of a 13-year-long civil war, exhibits some of the worst health statistics in the world. More than one in every 100 babies and one in every 200 mothers die in childbirth.\textsuperscript{38} In the DRC, 90 per cent of deaths (4.8 million) during and after the conflict, between 1998 and 2006, were due to preventable infectious diseases, malnutrition, and neonatal or pregnancy-related conditions.\textsuperscript{39}
\end{center}

Other consequences of armed conflict and violence include the destruction and abandonment of health infrastructure, the unavailability of supplies and a shortage of health professionals who leave the country or avoid risky areas. Under these circumstances it is often impossible to provide proper health-care services to local populations. Such a general state of degradation of a country’s health sector not only creates conditions for the uncontrolled spread of communicable diseases, but also has serious implications for a country’s productivity and ability to recover from armed conflict or violence. While there might be a reasonable expectation that health sector recovery may gradually take place following the cessation of conflict or the abating of armed violence, such a recovery may be frustratingly challenging in situations where weapons and ammunition continue to be transferred into the affected areas, leading to protracted armed violence or generating a high risk of relapse. The adoption of a robust ATT could contribute greatly to reducing transfers of arms into violence-laden areas, including those subject to Security Council embargoes.

f. Fuelling crime, organized crime and terrorism

Use of firearms in homicides—firearms as a tool of violence

The total global number of non-conflict-related intentional homicides in 2010 was estimated at 468,000. More than a third (36 per cent) occurred in Africa, 31 per cent in the Americas, 27 per cent in Asia, 5 per cent in Europe and 1 per cent in Oceania.

While the specific relationship between firearm availability and high levels of homicides is complex, a vicious circle connects the two. Forty-two per cent of overall global homicides are committed with firearms. This percentage is considerably higher in regions where homicides are often associated with the illicit activities of organized criminal groups.

Countries with high levels of homicide are often associated with low levels of human development, which in turn fosters crime. The largest share of homicides occurs in countries with a low Human

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Development Index (HDI). However, high levels of inequality, organized crime and economic crises can affect homicides rates also in countries with a high HDI.\textsuperscript{42}

In countries characterized by high levels of homicide related to organized crime, the risk of a 20-year-old man being murdered before the age of 31 can be as high as 2 per cent, meaning that 1 in 50 males in those countries is murdered by that age. The risk in countries with a low homicide rate is 400 times lower.\textsuperscript{43}

**Impact of firearms on organized crime and gang criminality**

In some regions, misuse and illicit trafficking of firearms and their ammunition is often associated with other crimes, in particular drug trafficking. In Central America and the Caribbean—two regions traditionally placed in the crossroads between the major supply and demand markets for drugs and the opposite flow of illicitly trafficked firearms—the drug trade is a prominent factor behind crime and violence. In these situations, the ability of security institutions, such as the police and the military, to enforce the law is greatly diminished in the face of the power of well-armed organized crime groups with ready access to arms in the black market, thus undermining the social fabric of entire communities.

Organized crime groups and gangs often idolize firearms as an integral part of the identity of gang members. In some contexts, especially in the Americas, this subculture seems to be a major drive of armed violence and gun criminality. Although it is difficult to determine the extent of killings carried out by gangs, some studies estimate that in El Salvador, gang murders account for 60 per cent of all homicides, most of which victimizing other gang members.\textsuperscript{44}

\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
In Haiti, gangs possess an estimated 17,000 illegal weapons, posing an increased risk for children, including adolescents, who are often targeted by adults for recruitment and use as gang members. In 2010, children as young as ten were used by armed elements to move drugs, carry weapons, act as lookouts, spies, messengers, collect kidnapping ransoms, and participate in armed confrontations, arson and attacks on private and public property. Seventeen boys and 4 girls were killed in confrontations between gangs in Port-au-Prince, and 9 were killed in Martissant as a result of elections-related political unrest. Twenty-seven children, including 13 girls, were abducted for ransom or assault, and abducted girls suffered rape and sexual violence during their captivity.\(^45\)

The factors that influence the participation of young people in different types of violence are similar across various contexts, whether in war or peace settings—“youth living in Latin America may be motivated to join a gang for the same reasons that youth in Africa join armed groups as child soldiers”.\(^46\) It is expected that the improved regulation of international arms transfers will trickle down, mitigating gang-related violence, including its overwhelming impacts on children and adolescents, by reducing access to low-cost firearms.

The rise of crime in the Caribbean has been characterized by the increased use of more powerful weapons, resulting in higher mortality levels. In 2004, Trinidad and Tobago experienced 160 firearm murders, 450 cases of people wounded by firearms and 1,500 firearm incidents that did not result in injury. This rise in armed criminality is cause of great concern to the countries of the region, as their economies can be easily disrupted by perceptions of lack of security and safety, due to their heavy reliance on tourism.

**Firearms as illegal trafficking commodity and its links to other crimes**

Organized criminal groups are becoming increasingly transnational and poly-crime oriented, as they diversify into a variety of criminal activities involving licit and illicit commodities traded


for profit. Trafficking in firearms is one of the most lucrative criminal businesses in the world today. Although it is difficult to ascertain the exact value of clandestine activities such as firearms trafficking, some estimates place the value of the illegal trade in firearms between $170 million and $320 million per year.\(^{47}\)

Africa, Latin America and the Caribbean are the three most affected regions in the world by both arms trafficking and small arms misuse, and share similar challenges with regard to the fight against the illicit arms circulation. These regions represent the highest levels of armed violence in the world, often associated not only with past and present armed conflicts, but also with established forms of transnational organized crime such as illicit drugs, trafficking in persons, kidnapping and extortion, terrorism and related criminal activities.

Three million small arms and lights weapons are believed to circulate throughout Mexico, Central America and the Caribbean, leaving a path of death, violence and crime. Although a large number of the military-style weapons and other firearms in circulation have been transferred to other countries in the region from previously conflict-affected countries, such as El Salvador, Guatemala and Nicaragua, flows of new arms also contribute to the widespread availability of arms in the region.

About 16 million guns are estimated to be circulating in Brazil, of which almost half is estimated to be illegal. From this total, 14 million (87 per cent) are possessed by civilians and 2 million by law enforcement agencies. Around 80 per cent of apprehended firearms are small arms (e.g. revolvers and pistols). Guns are often legally exported out of the country and subsequently smuggled back, resulting in what is called “boomerang effect”. The lack of adequate controls on the legal market and on the civilian use and possession of firearms makes it easier for guns to be used in criminal activities and organized crime.\(^{48}\)


Studies on seized arms reveal the use of a variety of arms in street and organized crime. Handguns are the preferred weapon used in the commission of most street crime, while military-style arms are used by organized criminals, such as by the drug cartels in Mexico and in the favelas in Brazil.

The arms traffickers and their support organizations can be described as transnational organized crime groups. The trafficking of firearms is often combined with a range of other commodities, including minerals, wildlife, livestock and even food, which are being exchanged for weapons in the DRC. Similarly, in other regions firearms are often exchanged for drugs or for food, for example, between Haiti and Jamaica or in several countries in Latin America.

In Central Africa intraregional flows prevail over those originating from outside the region, due to the high accumulation of firearms in the region. In the DRC for example, thousands of weapons were imported during the rebellions, the Hutu flight from Rwanda, and the two Congolese wars.\(^{49}\) In northern and north-eastern regions of the Central African Republic and parts of Chad, road bandits use arms to extort local populations and engage in other acts of banditry.

Beyond fuelling armed conflicts, the availability of firearms is a major factor sustaining crime and terrorism in all regions. The recent events in Libya, for example, presented an opportunity for various criminal and terrorist groups to procure firearms and ammunitions from looted government stockpiles. This underlines the importance of safe and secure storage conditions, for example, according to the International Ammunition Technical Guidelines.

**Piracy**

Piracy and armed robbery against ships are matters of global concern as those activities affect the freedom of shipping and the safety of vital shipping lanes, carrying around 90 per cent of the world trade. Pirate attacks also endanger the safety of seafarers, fishermen and passengers at sea, and the delivery of humanitarian aid by sea. Piracy has a detrimental impact on sustainable development

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of affected countries and regions, due to its heavy consequences on maritime industries like ports, fishery, tourism and other economic activities.

The overall cost of piracy to States and societies remains high. Somali pirates reportedly received about US$ 170 million in ransom in 2011 for hijacked vessels and crews, up from US$ 110 million in 2010. According to an assessment by the One Earth Future Foundation, a non-governmental organization, the economic cost of piracy originating in Somalia is between $6.6 billion and $6.9 billion in 2011. The shipping industry bore over 80 per cent of these costs, while governments bear the rest.

g. Impact on children

A 15-year old boy in Nyanga, South Africa, has a 1 in 20 chance of being shot dead before turning 35.\(^{50}\)

In terms of the direct impact on loss of life, adolescent children and young adults, especially boys and young men, are the primary victims of firearms-related violence in almost every region of the world. As such, individual and group experiences of armed violence are highly age-specific and gendered in both causes and consequences. Often, in both conflict and non-conflict situations, children are not only victims and witnesses of armed violence, but they may also be instrumentalized as perpetrators of small arms–related violence. They endure both the direct impact (death, injury, psychosocial distress) and the indirect consequences of injuries to themselves or family members, including displacement, poverty and reduced access to education and health care.\(^{51}\) It is estimated that for each young person killed, 20 to 40 more sustain injuries requiring hospital treatment.\(^{52}\)

The psychosocial distress that children suffer as victims or witnesses of gun violence can be severe and long-lasting.

\(^{51}\) Ibid.
\(^{52}\) Ibid.
Whether directed against men or women, young people are often much more vulnerable than adults. Worse, they “face this violence during a period in their lives that is closely connected with the processes of identity building and personal development; at a time when they are assuming roles and adopting values and attitudes that will do much to shape their later behavioral patterns”. Research shows that children who witness community violence are at higher risk of a variety of psychological, behavioural and academic problems. They often exhibit difficulty concentrating, impaired memory, and/or aggressive behaviour.

Impact on children living in armed conflict situations

The Machel Strategic Review, launched in June 2009, reiterated the obligation of States to protect children from the dangers posed by small arms, light weapons and landmines and unexploded ordnances. The 2012 Report of the Secretary-General on Children and Armed Conflict provides a stark example of the kinds of grave violations against children in situations of armed conflict that continue to be perpetrated by both State and non-State armed groups, influenced or directly caused by the availability of weapons in conflict settings. The report lists 52 groups in 14 countries that from 2011 to 2012 continued to recruit or use children, kill or maim children and/or commit rape and other forms of sexual violence against children in situations of armed conflict.

Grave violations against children by the Lord’s Resistance Army (LRA) continued to have devastating impacts in the Central African Region in 2012—there were 243 documented attacks against civilians by the LRA in the Central African Republic (CAR), South Sudan and the Democratic Republic of the Congo, with the killing and maiming, abduction, recruitment and sexual violence against children carried out in all three countries. In CAR, attacks on villages by the LRA resulted in the displacement of some 22,500 civilians.

The proliferation of armed groups and the ubiquitous availability of easy-to-carry and easy-to-operate small arms over the past four

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decades have contributed to worsen the problem of children affected by armed conflict and violence, and the association of children with armed forces and groups. Children are being recruited into fighting forces, where they serve as combatants, cooks, porters, fighters, mine sweepers, spies or suicide bombers. The 2012 Report of the Secretary-General on Children and Armed Conflict listed 19 countries where parties to conflict continue to recruit and/or use children. Many children participate in killings and most suffer serious long-term psychological, social and physical consequences. Both girls and boys are often sexually violated. When fighting is over, reintegration into normal social life is a daunting challenge for those boys and girls.

The use of explosive weapons in densely populated areas, including light weapons, also has a devastating impact on children. The 2012 Report of the Secretary-General on Children and Armed Conflict listed 13 countries where children were killed and maimed as a result of the use of explosive weapons in areas where civilian populations were present. Children are more prone than adults to severe injury and disability as a result of the use of explosive weapons, which often result in complex injuries that are more difficult to treat than those of adults.

The risks of armed violence that children face in conflict situations also has ruinous impacts on the availability and safe access to education and health services for children in these settings. The 2012 Report of the Secretary-General on Children and Armed Conflict listed 17 countries where attacks on schools and hospitals were carried out in 2011.

**Impact on children outside armed conflict contexts**

Over the past decade, the plight of children in armed conflict situations has been gaining increasing attention and much evidence of

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55 A/66/782-S/2012/261: Afghanistan, CAR, Chad, Colombia, Cote d'Ivoire, DRC, India, Iraq, Libya, Myanmar, Nepal, the Occupied Palestinian Territory, Pakistan, Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Yemen.


57 Afghanistan, CAR, Chad, Colombia, DRC, India, Iraq, Libya, Myanmar, the Occupied Palestinian Territory, Pakistan, Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Yemen.
The impacts of weapons on children trapped in such situations has been unearthed. Less known, however, are the impacts of the widespread availability and misuse of weapons on children outside of situations of armed conflict.

What is known is that adolescents and youth are at a particular risk of being exposed to and engaging in armed violence and crime particularly when they are recruited into criminal organized armed groups or gangs. While in some regions, particularly in Latin America and the Caribbean, there is a perception that adolescents are the primary perpetrators of social violence, this is not supported by evidence. A 2007 Study on the Impacts of Small Arms on Children and Adolescents in Central America and the Caribbean found that children are far more frequently the victims, rather than the aggressors, in armed violence in the region and that child involvement in violent crimes represents only a small percentage of all violent armed acts. Testimonies from the countries covered in the report also reveal that these groups are dominated, managed and lead by adults.\(^{58}\)

Homicide and violence against, or involving, children outside conflict contexts occur most frequently in poverty-stricken urban areas characterized by high levels of social inequality and exclusion, lack of employment, poor standards of housing, overcrowding and low standards of education and social amenities.\(^{59}\) In this context, children often become involved in armed violence as a result of adult manipulation, which creates a reinforcing cycle with a number of other risk factors including weakened family and social structures due to violence, previous exposure to violence, and a lack of public safety and security. The availability of arms escalates the levels and lethal impacts of social violence at the community level, and exacerbates the inter-play of various risk factors, often with devastating consequences for children and adolescents. In the context of social inequality and exclusion, armed violence exacerbates the impact of those problems on children. Not only are children those most affected by violence, but it is children from impoverished communities who bear the overwhelming

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\(^{58}\) The Impact of Small Arms on Children and Adolescents in Central America and the Caribbean: A Case Study of El Salvador, Guatemala, Jamaica and Trinidad and Tobago. UNICEF, 2007.

\(^{59}\) A/65/820-S/2011/250.
burden of this violence. The Inter-American Commission on Human Rights found the homicide rate among children and young people between the ages of 15 and 29 in Latin America to be 68.9/100,000, as compared to the overall homicide rate of 25.6/100,000. When the toll of this violence on children and young people is disaggregated to differentiate between the higher and the middle- to lower-income groups, the differences in rates are alarming—the rate falls to 21.4/100,000 for the higher income groups, while it skyrockets to 89.7/100,000 for the middle- to lower-income group.⁶⁰

The United Nations Study on Violence against Children called on States to develop a comprehensive prevention policy to reduce demand for and access to weapons, recognizing this as a key action to reduce environmental factors that impact on violence against children in the community. The presence of weapons not only exacerbates violence against children at the community level, it undermines United Nations efforts to protect children, to strengthen the rule of law and ensure justice for children, and to safeguard access to essential services for children, including health and education.

h. Impacts on women and girls

Armed conflict and its consequences for women

The impacts of unregulated arms transfer are different for women and men, girls and boys. While men and boys make up the majority of the users and of the direct victims of small arms, women are also impacted by arms proliferation and armed violence in gender-specific ways.

With the adult male population often greatly diminished as a result of violence, women can become the main providers for their devastated families during and after a conflict, placing undue burdens on family livelihoods and negative coping mechanisms such as withdrawing girls from school. The presence of small arms makes this task increasingly difficult. Women and girls also bear a disproportionate burden of caring for those disabled by small arms.

In Croatia women represent 46 per cent of the victims of armed violence, yet they constitute less than 1 per cent of the perpetrators.\(^{61}\)

Whether during peace or conflict, the widespread availability of illicit small arms exposes women and girls to many risks, including exploitation, trafficking and abuse. During times of armed conflict, proliferation of small arms and light weapons heightens the risk for women and girls to be abducted and enslaved by government or rebel forces.

**Sexual and gender-based violence**

Women and girls are often victims of threats, intimidation and abuse by armed men. Among the many forms of gun violence affecting women and girls, two have recently been the focus of particular attention: one is gun violence in the home and the other is rape at gunpoint, which is a major issue in conflict zones where rape can be used as a tactic of war.

In Burundi, the majority of women claimed that armed robbery is often accompanied by sexual assault.\(^{62}\) Similar cases of women and girls being raped by groups of armed men are reported in Haiti.\(^{63}\)

The interlinkages between armed and domestic violence also suggest a reinforcing cycle. Thus, a World Bank study indicates that “respondents made particularly strong connections between violence experienced in the home and violence occurring in the street or in political conflict”.\(^{64}\)

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\(^{61}\) Arms control, Violence Prevention and Community Security. UNDP Bureau for Crisis Prevention and Recovery Project Brief Croatia.


\(^{64}\) Violence in the City: Understanding and Supporting Community Responses to Urban Violence, World Bank, 2010.
A 2007 survey found that in Montenegro of the 1,500 women who sought assistance from a women’s shelter, 90 per cent had been threatened with small arms by their partners.\textsuperscript{65}

The study also shows that gender-based violence also interacts with political and criminal violence, when it is used as a tool to escalate conflict, and that sexual and other physical violence against women and children often adds fuel to the fire of existing rivalries, either between urban gangs or in the context of war.\textsuperscript{66}

**Armed violence and masculinity**

Despite the absence of global figures, existing statistics show that the large majority of gun users are male and that about 80-90 per cent of the people who die by gunshots are male as well. Community attitudes, including women’s, can also contribute to the powerful cultural conditioning that equates masculinity with owning and using a gun, and regards gun misuse by men as acceptable.

In Rio de Janeiro young men are 24 times more likely than women to be killed by armed violence, while boys and men between the ages of 15 and 29 are twice as likely to die from armed violence as the rest of the male population.\textsuperscript{67}

The lack of sustainable reintegration and livelihoods opportunities may encourage ex-combatants and associated groups to turn to banditry as a way of making a living, especially when they have easy access to illicit small arms and ammunition.\textsuperscript{68}

\textsuperscript{65} Liljana Krkeljic, Small Arms and Gender-Based Violence in Montenegro, UNDP Montenegro, 2007.
\textsuperscript{66} Ibid.
i. Impact on indigenous and tribal peoples

Many armed conflicts take place in isolated rural areas or in territories belonging to indigenous and tribal peoples, who often become collateral victims of major abuses including murder, massacres, forced displacement and other negative consequences that in some cases can put them at risk of extinction. Indigenous and tribal women are particularly vulnerable to sexual assault and gender-based violence by members of armed groups. Indigenous and tribal children and youth are in many occasions forcibly recruited to take part in armed conflicts.

A recent international expert group meeting on violence against indigenous women and girls, organized by the United Nations Permanent Forum on Indigenous Issues, highlighted the impact of conflict on indigenous people, in particular on indigenous women and girls, who are often targeted because of their ethnicity and gender.69

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69 International Expert Group Meeting on Combating violence against indigenous women and girls, 18-20 January 2012.
PREVENTING GENDER-BASED VIOLENCE THROUGH ARMS CONTROL

Tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action
This report is about the effective implementation of the 2013 Arms Trade Treaty (ATT) and the 2001 UN Programme of Action on the illicit trade in small arms and light weapons (UNPoA) in regards to preventing gender-based violence (GBV) and gender discrimination in disarmament and arms control processes. The objective of this report is to provide tools and guidelines for effective implementation of the ATT and the UNPoA, including how to conduct an export risk assessment on GBV and how to enhance gender mainstreaming in disarmament and arms control.

The report provides an introduction to the concepts of gender and GBV, placing them in the context of conventional weapons, the ATT, and the UNPoA. It then provides an overview of current practices in export licensing, including applications and documentations, risk assessments, information sharing, monitoring, and transparency. Based on the analysis of current practice, the report then offers guidelines for assessing the risk of GBV. It covers items, intended end users, destination countries, criteria, and indicators relevant for assessing whether or not an arms transfer could result in GBV. It also provides informative guidelines for preventing GBV through arms control measures, such as legislation, national commissions, disarmament, demobilization and reintegration processes, data collection, and international aid. Finally, the report offers recommendation and resources to guide export officials in their responsibilities.

The executive summary provides a brief snapshot of each chapter; details, explanations, and resources can be found in the full report.

About gender

The ATT is the first international agreement to recognise the link between the arms trade and GBV. The UNPoA does not explicitly make the connection at all. But the connection is real, and it is not new. All conventional weapons can—and have been—used to inflict violence on people based on discriminating norms and practices relating to their specific sex or gender role in society. GBV is a human rights violation and, when carried out during armed conflict, is a violation of international humanitarian law.

Yet because it is severely underreported and underdocumented, GBV is often overlooked in arms transfer risk assessments. Including a GBV-prevention provision in the ATT makes its exclusion from risk assessments more difficult. It also highlights that arms trade, possession, and use have specific gender and power dimensions that need to be addressed. The inclusion of the GBV criterion also serves as a reminder that in accordance with UN gender mainstreaming practice, the impact on all people of all policies and programmes needs to be taken into account and power structures that might be amplified by the presence of arms need to be further examined.

The report highlights some key facts that are critical to understanding the relationship between GBV and the international arms trade and illicit trafficking in weapons:
- GBV can occur both in times of conflict and outside of conflict. There can be a pattern of GBV in the absence of other indicators of human rights violations. The absence of
generalised violence does not mean that there is no risk of GBV.

- GBV is often invisible. Patterns are difficult to establish. Even a few reports of GBV can suggest that there are patterns and can be a cause of concern, especially if combined with government acquiescence.
- All weapons covered under the ATT and UNPoA can be used to facilitate or commit GBV.
- All end users, including the army, the police, and state security services, can commit GBV. The risk of this occurring must always be assessed, as must the risk of diversion.
- GBV is a cross-cutting issue: it is always a violation of international human rights, and, depending on the circumstances, can be a violation of international humanitarian law or constitute an act of terrorism, transnational organised crime, a war crime, a crime against humanity, or genocide. It is therefore covered under both Article 6 and Article 7 of the ATT.
- GBV goes hand in hand with a lack of gender equality. Indicators on gender equality, even if not explicitly linked to arms transfers, are therefore useful in assessing the risk of GBV, especially when information on GBV is not available.
- ATT and UNPoA implementation go hand in hand. Both instruments apply to exporting and importing states. Exporting states must ensure that importing states are implementing the UNPoA and mainstreaming gender in arms control and disarmament and must also make the same efforts themselves.

**Current practice**

Different countries have different requirements for applications and end-use/r documentation, but most require some form of application to the government by a company in order for an arms deal to take place. It is at this stage that export officials must conduct a risk assessment process to determine the risk that the transfer would violate the ATT or UNPoA.

Currently, no countries explicitly include GBV in their required end-use/r documentation. Some countries or regional groups include language on human rights more broadly, particularly when it comes to the export of small arms and light weapons.

The responsibility for processing an application and deciding whether to grant or deny a transfer can lie with different governments agencies. Sometimes the process is dealt with differently if it is a commercial license or a government-to-government transfer. In some countries, there is an independent specialised export authorization agency. In other countries, decisions are made in inter-ministerial and interagency groups, with members of different ministries, such as defence, economy, and foreign affairs. Most export control officers do not have specialised expertise in gender, but can consult with gender experts. Often, they have general knowledge of international law.

Once the application is shared among relevant authorities, the advisors look at the license application against national, regional, and international criteria. Most arms export
authorities look at how the equipment will be used, rather than just the equipment itself. Arms export authorities also examine who the end user is intended to be, and whether that end user is of concern. Generally the risk assessment includes whether the end user and the end-user destination is considered “legitimate” and “credible” and whether there is no likelihood of diversion. Some countries have time limits on the risk assessment process, which can impede the process’ robustness.

81% of respondents to the Arms Trade Treaty baseline assessment survey, which includes 63 countries, stated that they already conduct risk assessments on GBV. 12% do not assess the risk of GBV, and 7% did not know whether they do. For those considering that they already account for GBV in their risk assessment processes, it seems to be accounted for in terms of violations of IHL or human rights. To assess the risk of GBV, most export officials use their Ministry of Foreign Affairs’ human rights reports. Many export officials also examine information from UN reports, NGO reports, and media reports.

None of the export officials interviewed for this study were aware of any denial based on GBV specifically. Export licensing officials interviewed here emphasised that the risk of GBV must be specifically linked to the weapons under consideration and to the end user. On paper, Sweden appears to be an exception. Its legislation requires a general assessment of the situation in the recipient country and does not require a specific link between the weapons under consideration and the risk of GBV or other violations of IHL or human rights. However, this does not always seem to be true in practice.

Most countries do not conduct any post-export monitoring of equipment. Some monitor various

end users through their embassies abroad or commercial entities involved in the transfer. Many exporting states publish an annual report on their arms exports. However, there is resistance to publishing “too much” information.

Guidelines for assessing the risk of GBV

All conventional arms and ammunition covered under the ATT and UNPoA can be used to commit or facilitate acts of GBV. Export officials must conduct a risk assessment on GBV for every single arms export license application. They must assess the risk of sexual violence, domestic violence, impact on girls’ education, impact on women’s reproductive health, or the use of sex as a signifier in targeting attacks or conducting post-strike analyses. Different weapon systems can be used in different ways to inflict GBV related to the above, including small arms and light weapons, battle tanks, explosive weapons, or armed drones.

All intended end users can and have inflicted GBV, including national militaries, police, peacekeepers, private military and security companies, and armed groups. The risk of GBV must be assessed for all destination countries, whether or not they are in situations of conflict, and whether or not they are partners or developed countries. There is a misconception that most GBV happens in conflict situations. Of the 25 countries with the highest rates of women killed by armed violence, only Colombia, the Philippines, and the Russian Federation are currently affected by conflict.

Importing and exporting states must work together to ensure that items transferred under the ATT are not used to commit or facilitate GBV or diverted to uses that would violate Articles 6 or 7. Acts of GBV are covered both under
Article 6 (prohibitions) and Article 7 (risk assessment). Article 7(4) should therefore be interpreted as a recognition that GBV is a cross-cutting issue that must be analysed under each sub-section of both Article 6 and Article 7. GBV can constitute genocide, a crime against humanity, a war crime, a violation of IHL, or a violation of international human rights law. It can undermine peace and security and contribute to terrorism or organised crime.

There are a number of indicators to mark the risk of GBV for which those conducting risk assessment processes should look. These are listed in full in the report. Some of these include:

• Is there evidence of acts or patterns of GBV, including but not limited to sexual violence or domestic violence, in the recipient country?
• Have there been reports of women being compelled to marry the perpetrator of sexual violence as a form of traditional settlement?
• Have there been reports of crimes in the name of honour?
• Have there been reports of early marriage?
• Is there resistance to women’s participation in peace processes?
• Is there a lack of presence of women in civil society organisations?
• Are there reports of high levels of sexually transmitted diseases?
• Are there reports of sexual abuse by security officers?
• Are there reports of threats to politically active women?
• Is there avoidance of markets or cross-border trade by women due to fear?
• Are there increased reports of prostitution and sex work?
• Have there been changes in school enrolment by women or girls?

For information, officials need to examine reports from the UN, governments, NGOs, and the World Bank or other financial institutions. They also need to look at the recipient country’s legislation, initiatives, police and military practices and training, and statistics on GBV as well as equality of women and LGBT people.

**Implementing the UNPoA to prevent GBV**

The legal arms trade fuels the illicit trade in small arms and light weapons. ATT and UNPoA implementation must form part of an integrated approach to prevent GBV. Importing states must strengthen both import controls and national small arms control efforts, while exporting states must assess importing states’ implementation of the UNPoA in their risk assessment under the ATT. Effective implementation of the UNPoA will reduce the availability of guns and therefore help prevent GBV.

While the UNPoA itself makes no mention of gender, and references women only once in the preamble, it does commit states to make “greater efforts to address problems related to human and sustainable development” and to promote conflict prevention and address its root causes, which should include promoting gender equality and preventing GBV. Gender mainstreaming is crucial to these efforts.

Gender mainstreaming refers to the process of:

• Assessing the implications for women and men of any planned action, including legislations, policies or programs in all areas and at all levels; and
• Making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.
The UN Security Council and the UN Secretary-General have emphasised the need for gender mainstreaming in small arms control for several years. The Global Study on the implementation of UN Security Council resolution (UNSCR) 1325, commissioned by the UN Secretary-General and published in 2015, emphasises the importance of measures dealing with the proliferation of small arms and violent masculinities. A gender-sensitive approach requires the recognition that small arms possession is linked to violent masculinities and that women are not just victims, but also perpetrators of armed violence as well as members of gangs, terrorist groups, and armed forces.

Experts on GBV prevention emphasise that interventions must deal with GBV’s roots in gender discrimination and promote long-term social and cultural change towards gender equality, including through ensuring leadership and active engagement of women and girls and conducting advocacy to promote the rights of all affected populations. Data on conflict and violence prevention also show that a gender-sensitive approach makes conflict prevention interventions more effective.

To ensure effective gender mainstreaming in the implication of the UNPoA, legislators and governments must:

- Consult with women’s groups and LGBT rights groups when drafting laws on gun control, the security forces, and GBV;
- Ensure that the government, judiciary, and law enforcement are given adequate training and resources;
- Consult with women’s and LGBT rights groups and women ex-combatants in designing disarmament, demobilisation, and reintegration (DDR) programmes;
- Include women’s and LGBT rights groups in national commissions on SALW;
- Promote and support data collection on gender and the use and trade in SALW; and
- Increase funding for gender-sensitive SALW control.

**Conclusion**

The ATT has been called “ground breaking” for its recognition of the link between the international arms trade and GBV. However, there remain many gaps in the Treaty’s implementation, partly due to time limits, export officials’ dual role as regulators and promoters of the arms industry, and lack of data and information linking GBV to specific weapons and/or end users. Embassies, country human rights teams, human rights organisations, NGOs, and UN entities must pay attention to the links between weapons, armed actors, and GBV.

In the end, it is up to licensing and export officials, as well as relevant government ministries, to make the call as to whether or not weapons will be transferred. These entities must include the prevention of GBV in their assessments in order to be in compliance with the ATT. This report aims to provide such officials with the relevant questions, resources, and tools necessary to fulfil their obligations.
How to Use the Arms Trade Treaty to Address Wildlife Crime
The United Nations Arms Trade Treaty (ATT) offers opportunities to address the violent nexus of wildlife poaching and illicit arms trafficking. This report offers specific advice to policymakers and advocates seeking to use the framework of the ATT to assess and mitigate the risk that arms transfers will be diverted to poaching networks or exacerbate the negative impacts of militarizing wildlife protection. Advocating international and regional cooperation, the report also encourages the universalization and rigorous implementation of the ATT, as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other relevant instruments, particularly in States at risk of poaching and other wildlife crime.

1. Introduction
The world is facing an “Environmental Crime Crisis” with an unprecedented slaughter of large mammals, particularly in the African continent. More than 100,000 elephants have been killed by poachers in the last five years and the number of rhinoceroses poached has increased every year for the last six years. The illicit wildlife trade is now increasingly sophisticated, dangerous and globalized, integrated with armed groups and organized crime. Caught unaware, States and civil society have struggled to respond adequately, many opting for a militarization of wildlife protection that has, in many places, had disturbing effects on human rights and fueled an arms race between wildlife services and poachers. The flow of weapons into contexts that are often already politically insecure has had destabilizing effects in many communities.

At a recent meeting in Nairobi of East African civil society organizations working on arms control and disarmament issues, one participant admitted that they had failed to reach out to and work with their colleagues in the conservation community. “Elephants don’t just fall down and die,” she noted, “they are killed by small arms.” Indeed, according to Kenya Wildlife Service, areas of the country that have the highest rates of illegal small arms and light weapons (SALW) proliferation are also poaching hotspots.

This report attempts to encourage the nascent conversation between the arms control and conservation communities. There are many opportunities for collaboration and mutual learning on mitigating two overlapping illicit markets. The previous African elephant poaching crisis in the 1980s – which was fueled by the influx of guns in Africa’s Cold War proxy conflicts – was stopped not so much by militarized interventions but rather through international legal and normative change. The ivory trade ban, was instituted through the framework of an international treaty – the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It was supported by a global awareness-raising campaign – by both States and NGOs – that in many societies transformed ivory from a symbol of luxury to one of disgust.

Similarly, over the last decade States and civil society have constructed transformative legal and normative frameworks to address the human suffering caused by an unregulated arms trade and unchecked proliferation of small arms and light weapons (SALW). These include the United Nations Programme of Action on SALW (PoA), various regional SALW instruments (including the ECOWAS Convention, Kinshasa Convention, Nairobi Protocol and SADC Protocol). Most recently, the 2013 Arms Trade Treaty (ATT) has established for the first time global regulations on the transfer of conventional weapons, to prevent arms getting into the hands of human rights abusers, terrorists, war criminals and organized crime. Championed by
African States and civil society – who called attention to the devastation of armed violence on the continent – the Treaty also offers new opportunities to limit poachers’ access to the guns they use to kill rhinos, elephants and other animals.  

This report was written for the “Arms Trade Treaty Academy” project of Pace University and Control Arms, funded by the United Nations Trust Facility for Supporting Cooperation on Arms Cooperation (UNSCAR), which is training East African government and civil society personnel on the ATT. It builds on an earlier, detailed exploration of possible uses of the ATT for addressing wildlife crime published by Control Arms in 2015.

The goal of this report is to aid wildlife conservation and SALW control efforts rooted in respect for human rights, rule of law, peacebuilding and sustainable development, rather than militarization. It also seeks to catalyze links between arms control and environmental conservation networks, to strengthen civil society monitoring and advocacy, as well as mobilization of public attention. While it is focused mostly on the East African context, we hope that the information and recommendations can also apply to other regions facing the impact of the environmental crime crisis.

The following section highlights key risks that States, international organizations, media and civil society should assess, using the ATT framework, as they monitor arms transfers, to ensure that weapons, ammunition, parts and components do not exacerbate wildlife crime or the

*Note that the opinions expressed in this report are the author’s alone and do not necessarily represent the policy positions of the United Nations, Pace University or Control Arms.
negative impacts of militarization conservation. It is followed by a section outlining specific ways the ATT can be used to mitigate and prevent these risks. The report ends with a checklist for policymakers and practitioners working on arms control and poaching issues.

2. Risks Posed by Arms Proliferation, Wildlife Poaching and the Militarization of Counter-Poaching

Poorly regulated transfers of weapons to regions severely affecting by wildlife poaching pose risks to peace and security, the rule of law, human rights and humanitarian protections. The ATT places obligations on exporting, importing, transit and trans-shipment states to ensure arms transfers do not exacerbate such problems. The following examines these risks in more depth, as well as their relevance to the ATT.

a. Risks to Peace and Security and of Terrorism

The ATT requires exporting States Parties to “assess the potential” that a transfer of conventional weapons, ammunition or parts and components “would...undermine peace and security” (Article 7.1(a)) or be used to “commit or facilitate ... terrorism” (Article 7.1 (b, iii)). If so, exporters are required to engage in risk mitigation measures in collaboration with the importing State (Article 7.2). If an “overriding risk” remains, then the exporter “shall not” authorize the transfer. States Parties are also required to “take measures to prevent” diversion of arms to unauthorized users or uses (Article 11).

Wildlife poaching can pose a risk to peace and security by undermining the rule of law, fueling the depth and reach of organized crime, contributing to SALW proliferation and providing funds to Non-State Armed Groups. Media and think tank reports of varying reliability have alleged that wildlife poaching has helped fund armed groups, including the Janjaweed in Sudan, Mai Mai in the Democratic Republic of the Congo and the Lord’s Resistance Army (LRA) in the central African region. In 2013, US President Barack Obama signed Executive Order 13648, which described wildlife trafficking as “contributing to the illegal economy, fueling instability, and undermining security.” In his 2014 remarks to the UN General Assembly, Tanzanian President Jakaya Mrisho Kikwete stated that “poaching” and “illicit exploitation of natural resources” are “making the world less secure.” Similarly, UN Secretary General Ban Ki-moon has stated that “Illegal wildlife trade undermines the rule of law and threatens national security.” The UN Security Council has also identified wildlife poaching in central Africa as a security threat, establishing travel and financial sanctions on persons and organizations involved “illicit exploitation of natural resources, including diamonds and wildlife and wildlife products” (S/RES/2134, S/RES/2136 and S/RES/2198).

However, the increasing tendency to see wildlife poaching through a security lens has encouraged calls to militarize wildlife protection, described as a “war against poaching.” In conversations with wildlife rangers in Kenya, the author often heard them use this militarized language of a “war” or “fighting the enemy.” Exaggerated claims that poaching funds terrorism have strengthened those interests benefiting from an aggressive posture and escalating clashes between poachers and anti-poaching units spurred an arms race, with increasingly sophisticated weaponry used on both sides. Meanwhile, the depiction of poachers as non-state actors and criminals elides what are often extensive links between security forces and wildlife poaching, ranging from direct involvement to accepting kickbacks or supplying the military-grade weapons (including M-16 and G3 rifles) increasingly used by poachers.
Militarization strengthens the hands of actors that can contribute to insecurity and increases flows of weapons into already unstable contexts.

b. Violations of Human Rights and Humanitarian Law

Similar to its provisions on peace and security, the ATT requires assessment and mitigation of risks that transfers of conventional weapons, ammunition or parts and components “could be used to commit or facilitate a serious violation” of international human rights and humanitarian law (Article 7.1(b i, ii)). However, it also contains more stringent prohibitions of any transfers of arms if a State Party “has knowledge” that they “would be used in the commission” of genocide, crimes against humanity or war crimes (Article 6.3).

Several of the armed groups that have allegedly funded their activities in part by wildlife poaching – including in DRC, Sudan and Central African Republic – have engaged in serious human rights and humanitarian law violations. Meanwhile, militarized counter-poaching efforts have had a disturbing tendency to exacerbate extrajudicial violence, sometimes used to cover up official complicity in wildlife trafficking. Shoot-to-kill operations by anti-poaching units have resulted in major abuses of human rights. Indeed, they may undermine important efforts to engage and build local capacities for sustainability, peace and alternative livelihoods.

c. Poaching and Organized Crime

The ATT requires States Parties to assess and mitigate the risk that a transfer of arms, ammunition or parts and components will be used to “commit or facilitate transnational organized crime” (Article 7.1 (b.iv)). States Parties are also required to “take measures to prevent” diversion of arms to unauthorized users or uses (Article 11).

Trade in wildlife is regulated by CITES, which governs the import, export and trans-shipment of specimens of controlled species. Despite the many successes of CITES in limiting illegal trafficking, in its 2014 report, The Environmental Crime Crisis, the UN Environment Programme (UNEP) raised alarm at the “pace, level of sophistication, and globalized nature” of the illegal trade in wildlife, now the world’s fifth largest black market. In 2013, the UN Commission on Crime Prevention and Criminal Justice designated wildlife trafficking as a “serious crime.” Since then, the UN Environment Assembly (UNEP/EA.1/L.16) and the UN General Assembly (A/RES/69/314) have both passed resolutions calling on states to take measures against organized crime networks involved in poaching and illicit wildlife trafficking. Media, academic and think tank reports have alleged official complicity and corruption linking elements of several states to such transnational networks.

d. Poaching Networks and Gender-Based Violence

The ATT requires exporting States Parties, before authorizing an export, to “take into account the risk” of a transfer of conventional weapons, ammunition or parts and components “being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children” (Article 7.4) This decision should be made in consultation with importing, transit and trans-shipment States (Article 7.6 and 7.7). This groundbreaking provision is the first ever mention of “gender-based violence” in an international treaty.
There has been limited attention to the gender dimensions of wildlife crime or efforts to counter it. Nevertheless, many of the armed groups that have reportedly used wildlife crime to fund their activities (e.g. the Janjaweed, Mai Mai and LRA) have been involved in serious acts of gender-based violence including the use of rape as a weapon of war (see, for example, UN Security Council Resolution 2198). Several groups have also forcibly recruited children to serve as soldiers. Many of the organized crime networks involved in poaching and illicit wildlife trafficking have also been implicated in human trafficking and one poaching ring in South Africa hired Thai prostitutes to acquire hunting permits.

There are also risks of a gendered impact of militarizing government anti-poaching efforts. By empowering paramilitary structures within the state, governments may entrench patriarchal norms and approaches to security. For example, a 2003 book reported women living around Tarangire National Park "expressed fear over collecting firewood in the vicinity of the park because of the danger of sexual harassment by park rangers." More recently, there were allegations that security personnel involved in Tanzania’s Operation Tokomeza had raped people in the local community and engaged in other human rights abuses.
The ATT and International Law

Guiding Questions:

1. What is “humanitarian disarmament”? How does it relate to the ATT?
2. How does the ATT address other relevant international legal frameworks, especially ones about arms control/disarmament?
3. How does humanitarian disarmament relate to international humanitarian law?
4. How does humanitarian disarmament relate to international human rights law?
5. How do the ATT and its risk assessment, in particular, fit within the humanitarian disarmament movement as a whole?
6. How does the ATT interact with IHL and IHRL?
7. How does the ATT interact with international obligations regarding terrorism and transnational organized crime?
8. How does the ATT relate to regional-level obligations, such as the SADC Protocol?
9. Within each of these questions, how does that seem likely to apply in the context of Southern Africa?

Resources:

2.1 Responsible arms transfers as a humanitarian imperative

States party to the Geneva Conventions first expressed alarm at the uncontrolled proliferation of weapons in 1995, during the 26th International Conference of the Red Cross and Red Crescent. The Conference mandated the ICRC “to examine, on the basis of first-hand information available to it, the extent to which the availability of weapons is contributing to the proliferation and aggravation of violations of IHL in armed conflicts and the deterioration of the situation of civilians.” The ICRC published the results of its study four years later, finding that the widespread and uncontrolled availability of arms and ammunition facilitates IHL violations, hampers the delivery of humanitarian assistance, and contributes to prolonging the duration of armed conflicts and to maintaining high levels of insecurity and violence even after armed conflicts have ended.

Based on the ICRC’s recommendations, the 27th International Conference in 1999 called on States to enhance the protection of civilians in armed conflict and post-conflict situations by strengthening controls on the availability of arms and ammunition at national, regional and international levels. Crucially, the Conference called on States “to integrate consideration of respect for international humanitarian law into national decision-making on transfers of arms and ammunition”. This appeal was echoed by the three subsequent International Conferences in 2003, 2007 and 2011 respectively, which committed States to strengthen controls on the transfer of weapons, including at the global level.

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3 The International Conference of the Red Cross and Red Crescent brings together every four years the States party to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement, i.e. the ICRC, the International Federation of Red Cross and Red Crescent Societies, and the 190 national Red Cross and Red Crescent Societies.


5 ICRC, op. cit.

level, so that weapons do not end up in the hands of those who may be expected to use them in violation of IHL.\(^7\)

The efforts of the ICRC and the broader International Red Cross and Red Crescent Movement to promote responsible arms transfers proceeded in parallel to those of a group of Nobel Peace Prize laureates and civil society organizations. In the 1990s, the group had voiced concerns about the unregulated global arms trade and its impact on human security. In 2001, the group called for a universal, legally binding agreement governing arms transfers on the basis of States’ commitments under IHL and international human rights law. In pursuit of this goal, an international coalition of non-governmental organizations (NGOs) in 2003 launched the Control Arms campaign, advocating the adoption of an “arms trade treaty” with the strongest possible common international standards for conventional arms transfers based on human rights, development and IHL concerns.\(^8\)

Soon after, the ICRC began expressing its support for the goal of an arms trade treaty as an important means to reduce human suffering. Many National Red Cross and Red Crescent Societies, which had also been active in raising their governments’ and public awareness of the severe human cost of the widespread availability of arms and ammunition, joined this call.

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What is International Humanitarian Law?

What is international humanitarian law?

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.

International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practice considered by them as legally binding, and in general principles.

International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter.

Where did international humanitarian law originate?

International humanitarian law is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs.

Universal codification of international humanitarian law began in the nineteenth century. Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. These rules strike a careful balance between humanitarian concerns and the military requirements of States.

As the international community has grown, an increasing number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law.

Where is international humanitarian law to be found?

A major part of international humanitarian law is contained in the four Geneva Conventions of 1949. Nearly every State in the world has agreed to be bound by them. The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts.

Other agreements prohibit the use of certain weapons and military tactics and protect certain categories of people and goods. These agreements include:

- the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols;
- the 1972 Biological Weapons Convention;
- the 1980 Conventional Weapons Convention and its five protocols;
- the 1993 Chemical Weapons Convention;
- the 1997 Ottawa Convention on anti-personnel mines;

Many provisions of international humanitarian law are now accepted as customary law – that is, as general rules by which all States are bound.

When does international humanitarian law apply?

International humanitarian law applies only to armed conflict; it does not cover internal tensions or disturbances such as isolated acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting.

International humanitarian law distinguishes between international and non-international armed conflict. International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocol I.

Non-international armed conflicts are those restricted to the territory of a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other. A more limited range of rules apply to internal armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II.

It is important to differentiate between international humanitarian law and human rights law. While
some of their rules are similar, these two bodies of law have developed separately and are contained in different treaties. In particular, human rights law – unlike international humanitarian law – applies in peacetime, and many of its provisions may be suspended during an armed conflict.

What does international humanitarian law cover?

International humanitarian law covers two areas:

- the protection of those who are not, or no longer, taking part in fighting;
- restrictions on the means of warfare – in particular weapons – and the methods of warfare, such as military tactics.

What is “protection”?

International humanitarian law protects those who do not take part in the fighting, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part, such as wounded, shipwrecked and sick combatants, and prisoners of war.

These categories of person are entitled to respect for their lives and for their physical and mental integrity. They also enjoy legal guarantees. They must be protected and treated humanely in all circumstances, with no adverse distinction.

More specifically: it is forbidden to kill or wound an enemy who surrenders or is unable to fight; the sick and wounded must be collected and cared for by the party in whose power they find themselves. Medical personnel, supplies, hospitals and ambulances must all be protected.

There are also detailed rules governing the conditions of detention for prisoners of war and the way in which civilians are to be treated when under the authority of an enemy power. This includes the provision of food, shelter and medical care, and the right to exchange messages with their families.

The law sets out a number of clearly recognizable symbols which can be used to identify protected people, places and objects. The main emblems are the red cross, the red crescent and the symbols identifying cultural property and civil defence facilities.

What restrictions are there on weapons and tactics?

International humanitarian law prohibits all means and methods of warfare which:

- fail to discriminate between those taking part in the fighting and those, such as civilians, who are not, the purpose being to protect the civilian population, individual civilians and civilian property;
- cause superfluous injury or unnecessary suffering;
- cause severe or long-term damage to the environment.

Humanitarian law has therefore banned the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines.

Is international humanitarian law actually complied with?

Sadly, there are countless examples of violation of international humanitarian law. Increasingly, the victims of war are civilians. However, there are important cases where international humanitarian law has made a difference in protecting civilians, prisoners, the sick and the wounded, and in restricting the use of barbaric weapons.

Given that this body of law applies during times of extreme violence, implementing the law will always be a matter of great difficulty. That said, striving for effective compliance remains as urgent as ever.

What should be done to implement the law?

Measures must be taken to ensure respect for international humanitarian law. States have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or punish them if these nevertheless occur.

In particular, they must enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes. The States must also pass laws protecting the red cross and red crescent emblems.

Measures have also been taken at an international level: tribunals have been created to punish acts committed in two recent conflicts (the former Yugoslavia and Rwanda). An international criminal court, with the responsibility of repressing inter alia war crimes, was created by the 1998 Rome Statute.

Whether as individuals or through governments and various organizations, we can all make an important contribution to compliance with international humanitarian law.

07/2004
Human Rights

What Are Human Rights?

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

International Human Rights Law

International human rights law ([link](../../universal-declaration/foundation-international-human-rights-law/index.html)) lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

One of the great achievements of the United Nations is the creation of a comprehensive body of human rights law—a universal and internationally protected code to which all nations can subscribe and all people aspire. The United Nations has defined a broad range of internationally accepted rights, including civil, cultural, economic, political and social rights. It has also established mechanisms to promote and protect these rights and to assist states in carrying out their responsibilities.
The foundations of this body of law are the Charter (../../../charter-united-nations/index.html) of the United Nations and the Universal Declaration of Human Rights (../../../universal-declaration-human-rights/index.html), adopted by the General Assembly in 1945 and 1948, respectively. Since then, the United Nations has gradually expanded human rights law to encompass specific standards for women, children, persons with disabilities, minorities and other vulnerable groups, who now possess rights that protect them from discrimination that had long been common in many societies.

**Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) (../../../universal-declaration-human-rights/index.html) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 by General Assembly resolution 217 A (III) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. Since its adoption in 1948, the UDHR has been translated into more than 500 languages (http://www.ohchr.org/EN/UDHR/Pages/SearchByLang.aspx) - the most translated document in the world - and has inspired the constitutions of many newly independent States and many new democracies. The UDHR, together with the International Covenant on Civil and Political Rights (http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx) and its two Optional Protocols (http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx) (on the complaints procedure and on the death penalty) and the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, form the so-called International Bill of Human Rights (http://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf).

**Economic, social and cultural rights**

The International Covenant on Economic, Social and Cultural Rights (http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx) entered into force in 1976. The human rights that the Covenant seeks to promote and protect include:

- the right to work in just and favourable conditions;
- the right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental well-being;
- the right to education and the enjoyment of benefits of cultural freedom and scientific progress.

**Civil and political rights**

The Covenant deals with such rights as freedom of movement; equality before the law; the right to a fair trial and presumption of innocence; freedom of thought, conscience and religion; freedom of opinion and expression; peaceful assembly; freedom of association; participation in public affairs and elections; and protection of minority rights. It prohibits arbitrary deprivation of life; torture, cruel or degrading treatment or punishment; slavery and forced labour; arbitrary arrest or detention; arbitrary interference with privacy; war propaganda; discrimination; and advocacy of racial or religious hatred.

**Human Rights Conventions**


**Human Rights Council**

The Human Rights Council ([https://www.ohchr.org/EN/HRbodies/HRC/Pages/Home.aspx](https://www.ohchr.org/EN/HRbodies/HRC/Pages/Home.aspx)), established on 15 March 2006 by the General Assembly and reporting directly to it, replaced the 60-year-old UN Commission on Human Rights ([https://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx](https://www.ohchr.org/EN/HRBodies/CHR/Pages/CommissionOnHumanRights.aspx)) as the key UN intergovernmental body responsible for human rights. The Council is made up of 47 State representatives and is tasked with strengthening the promotion and protection of human rights around the globe by addressing situations of human rights violations and making recommendations on them, including responding to human rights emergencies.

The most innovative feature of the Human Rights Council is the Universal Periodic Review ([https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx](https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx)). This unique mechanism involves a review of the human rights records of all 192 UN member states once every four years. The Review is a cooperative, state-driven process, under the auspices of the Council, which provides the opportunity for each state to present measures taken and challenges to be met to improve the human rights situation in their country and to meet their international obligations. The Review is designed to ensure universality and equality of treatment for every country.

**UN High Commissioner for Human Rights**

The United Nations High Commissioner for Human Rights ([https://www.ohchr.org/EN/AboutUs/Pages/HighCommissioner.aspx](https://www.ohchr.org/EN/AboutUs/Pages/HighCommissioner.aspx)) exercises principal responsibility for UN human rights activities. The High Commissioner is mandated to respond to serious violations of human rights and to undertake preventive action.

The Office of the High Commissioner for Human Rights (OHCHR) ([https://www.ohchr.org/EN/Pages/Home.aspx](https://www.ohchr.org/EN/Pages/Home.aspx)) is the focal point for United Nations human rights activities. It serves as the secretariat for the Human Rights Council, the treaty bodies (expert committees that monitor treaty compliance) and other UN human rights organs. It also undertakes human rights field activities.

Most of the core human rights treaties have an oversight body which is responsible for reviewing the implementation of that treaty by the countries that have ratified it. Individuals, whose rights have been violated can file complaints directly to Committees overseeing human rights treaties.
Human Rights and the UN System

Human rights is a cross-cutting theme in all UN policies and programmes in the key areas of peace and security, development, humanitarian assistance, and economic and social affairs. As a result, virtually every UN body and specialized agency is involved to some degree in the protection of human rights. Some examples are the right to development (https://www.ohchr.org/EN/Issues/Development/Pages/Introduction.aspx), which is at the core of the Sustainable Development Goals (http://www.un.org/sustainabledevelopment/sustainable-development-goals/); the right to food, championed by the UN Food and Agriculture Organization, labour rights, defined and protected by the International Labour Organization, gender equality, which is promulgated by UN Women, the rights of children, indigenous peoples, and disabled persons.

Human rights day (http://www.un.org/en/events/humanrightsday/) is observed every year on 10 December.

Resources:

- Status of Ratification of 18 International Human Rights Treaties (http://indicators.ohchr.org/)
- Human Rights Indicators (http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx)
- Universal Human Rights Index (http://uhri.ohchr.org/en/)
The Arms Trade Treaty’s Obligations on Counterterrorism and Transnational Organized Crime

This summary provides an overview of States Parties’ counterterrorism and transnational organized crime obligations under the Arms Trade Treaty (ATT), with a particular focus on Article 7(1)(b)(iii–iv).

Counterterrorism, Transnational Organized, Crime, and the ATT

With respect to counterterrorism and transnational organized crime, Article 7 of the ATT reads as follows:

1. If the export is not prohibited under Article 6, each exporting State Party ... shall ... assess the potential that the conventional arms or items:
   d. would contribute to or undermine peace and security;
   e. could be used to:

   ...

   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.¹

The text of the Treaty, in other words, requires that a State Party evaluate its own obligations based on the international conventions or protocols relating to terrorism, as well as those international conventions or protocols relating to transnational organized crime, to which it is a party.

Notably, the ATT does not make a broader statement regarding states’ counterterrorism or transnational organized crime obligations writ large. Rather, the ATT specifically calls for consideration of “international treaties and protocols.”² Arguably, the ATT does not require States Parties to consider UN Security Council resolutions relating to these issues: these resolutions do not, themselves, constitute international conventions or protocols.

¹ 2013 Arms Trade Treaty, Article 7(1).
² 2013 Arms Trade Treaty, Article 7(1)(b)(iii).
Some might argue that because these resolutions arise out of the UN Charter and states’ obligations under the Charter, they rise to the same level. Still, this is probably the more tenuous interpretation. And, given the enormous proliferation and complexity of UN Security Council resolutions on these issues, it is probably most practical to read the treaty as excluding those resolutions.

Further, the ATT specifically refers to international conventions and protocols. This shows that the Treaty’s focus is on bilateral, multilateral, regional, and/or global agreements. Though states must, of course, comply with their own domestic law as well, the Treaty does not purport to govern that, instead requiring states to account for the international agreements into which they have entered with respect to (counter)terrorism and transnational organized crime.

For a full list of international conventions and protocols relevant to terrorism, see here.

**Transnational Organized Crime Conventions and Protocols**

The primary international instrument regarding transnational organized crime is the United Nations Convention against Transnational Organized Crime.³ “States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.”⁴ In addition, that convention is supplemented by three protocols.

For a full list of international conventions and protocols relevant to transnational organized crime, see here.

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PROTOCOL ON THE CONTROL OF FIREARMS, AMMUNITION AND OTHER RELATED MATERIALS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) REGION

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PREAMBLE

We, the Heads of State or Government of the:

Republic of Angola
Republic of Botswana
Democratic Republic of Congo
Kingdom of Lesotho
Republic of Malawi
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Seychelles
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Zambia
Republic of Zimbabwe

CONSIDERING Article 21 of the Treaty which provides for areas of cooperation, Article 22 of the Treaty which provides for the conclusion of Protocols which may be necessary in agreed areas of cooperation and Article 5 of the Treaty which provides for promotion and defence of peace and security as one of the objectives of SADC;

CONSCIOUS that illegal firearms, most commonly used in the perpetration of crime, contribute to the high levels of instability, extended conflict, violence and social dislocation evident in Southern Africa and the African continent as a whole;

AWARE of the urgent need to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use, and owing to the harmful effects of those activities on the security of each State and the Region and the danger they pose to the well-being of people in the Region, their social and economic development and their rights to live in peace;

REAFFIRMING that priority should be given to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use of firearms, because of their links with, inter alia, drug trafficking, terrorism, transnational organised crime, mercenary and other violent criminal activities;

CONVINCED that the prevention, combating and eradication of the illicit manufacturing of firearms, ammunition and the other related materials and their excessive and stabilising accumulation, trafficking, possession and use requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels;

STRESSING the need, especially during peace processes and post-conflict situations, to maintain effective control over firearms, ammunition and other related materials;
RECOGNISING the importance of regional and international co-operation and regional and international initiatives undertaken to prevent, combat and eradicate the illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms and related materials;

HEREBY AGREE as follows:

**ARTICLE 1**

**DEFINITIONS**

1. In this Protocol, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.

2. In this Protocol, unless the context otherwise indicates:

"ammunition" means the complete cartridge including the cartridge case, unfired primer, propellant, bullets and projectiles that are used in a firearm, provided those components are themselves subject to authorisation in the respective State Parties;

"brokering means:

a) acting for a commission, advantage or cause, whether pecuniary or otherwise; or

b) 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;

and thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof;

"firearm" means:

a) 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 in the respective State Parties;

b) any device which may be readily converted into a weapon referred to in paragraph a);

c) any small arm as defined in this Article; or
d) any light weapon as defined in this Article;

"illicit manufacturing" means the manufacturing or assembly of fire arms, ammunition and other related materials, without a licence or permit from a competent authority of the State Party where the manufacture or assembly takes place;

"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 State Parties concerned;

"light weapons" include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder fired rockets, anti-aircraft weapons and launchers and air defence weapons.

"other related materials" means any components, parts or replacement parts of a firearm that are essential to the operation of the firearm;

"small arms" include light machine guns, sub-machines guns, including machine pistols, fully automatic rifles and assault rifles and semi-automatic rifles;

"State Party" means a member of SADC that is party to this Protocol.

ARTICLE 2

SOVEREIGNTY

State Parties shall fulfil their obligations and exercise their rights under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of State Parties.

ARTICLE 3

OBJECTIVES

The objectives of this Protocol are to:
a) prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use in the Region;

b) promote and facilitate cooperation and exchange of information and experience in the Region to prevent, combat, and eradicate the illicit manufacturing of, excessive and destabilising use and accumulation of, trafficking in, possession and use of, firearms, ammunition and other related materials; and

c) co-operate closely at the regional level as well as at international fora to effectively prevent, combat, and eradicate the illicit manufacturing of, excessive and destabilising use and accumulation of, trafficking in, possession and use of, firearms, ammunition and other related materials in collaboration with international partners

ARTICLE 4

INTERNATIONAL INITIATIVES

State Parties undertake to consider becoming parties to international instruments relating to the prevention, combating and eradication of illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms, ammunition and other related materials and to implement such instruments within their jurisdictions.

ARTICLE 5

LEGISLATIVE MEASURES

1. State Parties shall enact the necessary legislation and take other measures to establish as criminal offences under their national law to prevent, combat and eradicate, the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use.

2. State Parties shall enact the necessary legislation and take other measures to sanction criminally, civilly or administratively under their national law the violation of arms embargoes mandated by the Security Council of the United Nations;

3. State Parties further undertake to incorporate the following elements in their national laws as a matter of priority:

a) the prohibition of unrestricted possession of small arms by civilians;
b) the total prohibition of the possession and use of light weapons by civilians;

c) the co-ordination of procedures for the import, export and transit of firearm shipments;

d) the regulation and centralised registration of all civilian owned firearm in their territories;

e) measures ensuring that proper controls are exercised over the manufacturing of, possession and use of firearms, ammunition and other related materials;

f) provisions promoting legal uniformity and minimum standards in respect of the manufacture, control, possession, import, export and transfer of firearms, ammunition and other related materials;

g) provisions ensuring the standardised marking and identification of firearms at the time of manufacture, import or export;

h) provisions that adequately provide for the seizure, confiscation, and forfeiture to the State of all firearms, ammunition and other related materials manufactured or conveyed in transit without or in contravention of licences, permits, or written authority;

i) provisions that ensure the effective control of firearms including the storage and usage thereof, competency testing of prospective firearm owners and restriction on owner's rights to relinquish control, use, and possession of firearms, ammunition and other related materials;

j) the monitoring and auditing of licences held in a person's possession, and the restriction on the number of firearms that may be owned by any person;

k) provisions that prohibit the pawning and pledging of firearms, ammunition and other related materials;

l) provisions that prohibit the misrepresentation or withholding of any information given with a view to obtain any licence or permit;

m) provisions that regulate firearm brokering in the territories of State Parties; and

n) provisions that promote legal uniformity in the sphere of sentencing.
ARTICLE 6

OPERATIONAL CAPACITY

State Parties, undertake to improve the capacity of police, customs, border guards, the military, the judiciary and other relevant agencies to fulfil their roles in the implementation of this Protocol and to:

a) co-ordinate national training programmes for police, customs and border guards, the judiciary and other agencies involved in preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;

b) establish and improve national data-bases, communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders;

c) establish inter-agency working groups, involving police, military, customs, home affairs, foreign affairs and other relevant agencies, to improve policy co-ordination, information sharing and analysis at national level regarding firearms, ammunition and other related material; and

d) undertake joint training exercises for officials, from countries within the Region drawn from the police, customs and other relevant agencies, including the military where it is involved with border control, and explore the possibility for exchange programmes for such officials within the Region, and with their counterparts in other regions.

ARTICLE 7

CONTROL OVER CIVILIAN POSSESSION OF FIREARMS

State Parties undertake to consider a co-ordinated review of national procedures and criteria for issuing and withdrawing of firearm licences and establishing and maintaining national electronic databases of licensed firearms, firearm owners, and commercial firearms traders within their territories.

ARTICLE 8

STATE-OWNED FIREARMS

State Parties undertake to:
a) establish and maintain complete national inventories of firearms, ammunition and other related materials held by security forces and other state bodies;

b) enhance their capacity to manage and maintain secure storage of state owned firearms;

c) harmonise relevant import, export and transfer documents and end-user control certificates regarding firearms, ammunition and related material; and

d) establish systems to verify the validity and authenticity of documents issued by licensing authorities in the Region.

ARTICLE 9

MARKING OF FIREARMS AND RECORD-KEEPING

1. State Parties undertake to establish agreed systems to ensure that all firearms are marked with a unique number, at the time of manufacture or import, on the barrel, frame and, where applicable, the slide and undertake to keep proper records of the markings.

2. The marking referred to in paragraph 1 of this Article shall identify the country of manufacture, the serial number, and the manufacturer of the firearm.

ARTICLE 10

DISPOSAL OF STATE-OWNED FIREARMS

1. State Parties undertake to identify and adopt effective programmes for the collection, safe-storage, destruction and responsible disposal of firearms rendered surplus, redundant or obsolete through, inter alia,:

   a) peace agreements;

   b) demobilisation or reintegration of ex-combatants; and

   c) re-equipment, or restructuring of armed forces or other armed state bodies.

2. State Parties shall pursuant to paragraph 1 of this Article consider:
a) encouraging full preparation for, and implementation of the collection, safe-storage, destruction or responsible disposal of firearms as part of the implementation of peace agreements;

b) establishing and implementing guidelines and procedures for ensuring that firearms, ammunition and other related materials rendered surplus, redundant or obsolete through the re-equipment or re-organisation of armed forces or other state bodies are securely stored, destroyed or disposed off in a way that prevents them from entering the illicit firearm market or flowing into regions in conflict or any other destination that is not fully consistent with agreed criteria for restraint; and

c) destroying surplus, redundant or obsolete state-owned firearms, ammunition or other related materials.

ARTICLE 11

DISPOSAL OF CONFISCATED OR UNLICENSED FIREARMS

1. State Parties undertake to adopt co-ordinated national policies for the disposal of confiscated or unlicensed firearms that come into the possession of state authorities.

2. State Parties undertake to develop joint and combined operations across the borders of State Parties to locate, seize and destroy caches of firearms, ammunition and other related materials left over after conflict and civil wars.

ARTICLE 12

VOLUNTARY SURRENDER OF FIREARMS

State Parties shall introduce programmes to encourage:

a) lawful firearm holders to voluntarily surrender their firearms for destruction by the State, and in such cases, the State may consider paying compensation in cash or in kind; and

b) illegal firearm holders to surrender their firearms for destruction, and, in such cases, the State may consider granting immunity from prosecution.
ARTICLE 13

PUBLIC EDUCATION AND AWARENESS PROGRAMMES

State Parties undertake to develop national and regional public education and awareness programmes to enhance public involvement and support for efforts to tackle firearms proliferation and illicit trafficking and to encourage responsible ownership and management of firearms, ammunition and other related materials.

ARTICLE 14

MUTUAL LEGAL ASSISTANCE

1. State Parties shall co-operate with each other to provide mutual legal assistance in a concerted effort to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use.

2. Mutual legal assistance shall, inter alia, include the following:
   a) communication of information and transfer of exhibits;
   b) investigation and detection of offences;
   c) obtaining evidence or statements;
   d) execution of searches and seizures;
   e) inspection of sites or examination of objects or documents;
   f) request for judicial documents;
   g) service of judicial documents;
   h) communication of relevant documents and records;
   i) identification or tracing of suspects or proceeds of crime; and
   j) application of special investigative techniques, such as forensics and ballistic and fingerprinting.

3. State Parties may further agree upon any other form of mutual legal assistance consistent with their national laws.
4. State Parties shall designate a competent authority, the name of which shall be communicated to the Executive Secretary, which shall have the responsibility and power to execute and monitor requests for mutual legal assistance.

5. Requests for mutual legal assistance shall be made in writing to the competent authority and shall contain details of the following:

a) the identity of the authority making the request;

b) the subject matter and nature of the investigation or prosecution to which the request relates;

c) the description of the assistance sought;

d) the purpose for which the evidence, information or action is sought; and

e) all relevant information available to the requesting State Party and which may be of use to the requested State Party.

6. A State Party may seek any such additional information which it considers necessary for the execution of the request in accordance with its national laws.

**ARTICLE 15**

**LAW ENFORCEMENT**

State Parties shall establish appropriate mechanisms for co-operation among law enforcement agencies of the State Parties to promote effective implementation of this Protocol including the:

a) establishment of direct communication systems to facilitate a free and fast flow of information among the law enforcement agencies in the Region;

b) establishment of an infrastructure to enhance effective law enforcement, including suitable search and inspection facilities at all designated ports of exit and entry;

c) establishment of multi-disciplinary law enforcement units for preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;

d) promotion of co-operation with international organisations such as the International Criminal Police Organisation and World Customs Organisation
and to utilise existing data bases such as the Interpol Weapons and Explosives Tracing System;

e) establishment of national focal contact points within the respective law enforcement agencies for the rapid information exchange to combat cross-border firearm trafficking; and

f) introduction of effective extradition arrangements.

ARTICLE 16
TRANSPARENCY AND INFORMATION EXCHANGE

State Parties undertake to:

a) develop and improve transparency in firearms accumulation, flow and policies relating to civilian owned firearms; and

b) establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers.

ARTICLE 17
INSTITUTIONAL ARRANGEMENT

State Parties shall establish a Committee to oversee the implementation of this Protocol.

ARTICLE 18
SETTLEMENT OF DISPUTES

Disputes arising from the interpretation or application of this Protocol, which cannot be settled amicably, shall be referred to the Tribunal.

ARTICLE 19
AMENDMENTS

1. An amendment to this Protocol shall be adopted by a decision of three quarters of the State Parties.
2. Subject to sub-article (3) of this Article, a proposal for the amendment of this Protocol shall be submitted to the Executive Secretary by any State Party for preliminary consideration by the Council.

3. The Executive Secretary shall submit a proposal for amendment to the Council under paragraph 2 of this Article after:

a) all Member States have been duly notified of the proposal; and

b) three months have elapsed since the notification.

ARTICLE 20

SIGNATURE

This Protocol shall be signed by duly authorised representatives of Member States.

ARTICLE 21

RATIFICATION

This Protocol shall be ratified by the Signatory States in accordance with their constitutional procedures.

ARTICLE 22

ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.

ARTICLE 23

ACCESSION

This Protocol shall remain open for accession by any Member State.
ARTICLE 24

WITHDRAWAL

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving to the Executive Secretary a written notice to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 of this Protocol shall continue to enjoy all rights and benefits under this Protocol and shall remain bound by the obligations herein until the expiration of the period of twelve (12) months from the date of giving notice of intention to withdraw.

ARTICLE 25

DEPOSITARY

1. The original text of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States.

2. The Executive Secretary shall register this Protocol with the Secretariats of the United Nations Organisation and the Organization of African Unity.

IN WITNESSES WHEREOF, WE, the Heads of State or Government or our duly authorised representatives, have signed this Protocol.

Done at ................................ this .......... day of ............................. in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

Republic of Angola

Republic of Botswana

Democratic Republic of Congo

Kingdom of Lesotho

Republic of Malawi
Republic of Mauritius

Republic of Mozambique

Republic of Namibia

Republic of Seychelles

Republic of South Africa

Kingdom of Swaziland

United Republic of Tanzania

Republic of Zambia

Republic of Zimbabwe
Comparative Analysis of Global Instruments on Firearms and other Conventional Arms:
Synergies for Implementation
2. Overview of key elements

Organized Crime Convention

The Organized Crime Convention is, as noted by the United Nations Secretary-General at the time of its adoption, a tool to “address the scourge of crime as a global problem”, namely transnational organized crime. Although the Convention does not explicitly formulate a general criminal policy to address organized crime, its provisions are geared towards a basic underlying principle aimed at targeting criminal organizations and networks, and their individual members, regardless of the concrete criminal offences committed by those groups or individuals, and to dismantle these organizations completely, as well as to prevent them from reorganizing elsewhere by depriving them of their assets. This fundamental theory is strategically reflected in all substantive and procedural criminal law and administrative law provisions contained in the Convention. In other words, the criminological pivot of the Convention is essentially the concept of the organized crime group per se, rather than particular criminal behaviours or discrete interests to be protected.

To do this, the Organized Crime Convention adopts a broad definition of an “organized criminal group”, which includes a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes” and in order to gain some financial benefit. The definition of “serious crime” is then simply defined as an offence that is “punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (article 2).

As also noted by the United Nations Secretary-General, “if crime crosses borders, so must law enforcement”. In this regard, the Organized Crime Convention provides a strategic framework to prevent and combat organized crime effectively through a set of interrelated provisions that enable prosecution and compel international judicial and law enforcement cooperation to support cross-border investigations that are within the scope of the Convention.

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10 Foreword, Organized Crime Convention, 15 November 2000.
12 Foreword, Organized Crime Convention, 15 November 2000.
### Organized Crime Convention — Main mandatory and optional requirements

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<thead>
<tr>
<th>Use of terms</th>
<th>Definitions of:</th>
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<td>• Organized crime group</td>
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<th>Substantive criminal law: Obligation to create criminal offences</th>
<th>A State party shall establish as criminal offences, when committed intentionally:</th>
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<td>• Participation in an organized criminal group (art. 5)</td>
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<td>• Laundering the proceeds of crime (art. 6)</td>
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<td>• Corruption (art. 8)</td>
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<td>• Obstruction of justice (art. 23)</td>
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<td>and establish sanctions that take into account the grave nature of these offences (art. 11).</td>
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Criminal offences established under domestic law in accordance with the UNTOC shall be regardless of the transnational nature of the organized crime group.

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<th>Procedural and administrative measures to combat criminal offences</th>
<th>A State party shall, inter alia:</th>
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<td>• Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (art. 7 (1) (a)) (measures against money-laundering).</td>
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<td>• Ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at the national and international levels (art. 7 (1) (b)).</td>
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<td>• Adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials (art. 9) (measures against corruption).</td>
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<td>• Establish the civil, administrative or criminal liability of legal persons for participation in serious crimes (art. 10).</td>
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<td></td>
<td>• Take adequate measures to facilitate the prosecution, adjudication and sanctions of offences that involve an organized crime group (art. 11).</td>
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<tr>
<td></td>
<td>• Take broad measures that allow establishment of jurisdiction over the offences established in the Convention and its Protocols, and not create safe havens for criminals (art. 15).</td>
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</table>

| Enable confiscation and seizure | States parties shall adopt measures to enable confiscation of proceeds of crimes derived from Convention offences and confiscation of property, equipment and other instrumentalities used in or destined to be used in Convention offences (art. 12). |

| Measures to strengthen criminal investigations | • Maintain criminal records (art. 22). |
|-------------------------------------------------|• Create incentives for cooperation with law enforcement authorities (art. 26). |
|                                                 |• Ensure the protection of victims and witnesses including through international cooperation arrangements (art. 24). |
|                                                 |• Exchange information. |
Cooperate at the international level

- Cooperate in requests from and to other States parties to enable international confiscation (art. 13).
- Extradition: Consider the offences established in the Convention and its Protocols as extraditable offences under the UNTOC; and consider using it as the basis for extradition in the absence of a specific extradition treaty (art. 16).
- Mutual Legal Assistance (MLA): States parties are to afford one another the widest measure of assistance in investigations, and consider using the UNTOC as the legal basis for such cooperation even in the absence of a specific agreement (art. 18).
- Designate a competent national authority for MLA and extradition (arts. 16 and 18).
- States parties to consider concluding agreements to establish joint investigative bodies (art. 19).
- Take measures to enable the use of special investigative techniques domestically and internationally (e.g. controlled delivery) (art. 20).
- Consider the possibility of transferring criminal proceedings to other States parties to facilitate international cooperation (art. 21).
- Law enforcement cooperation with other States parties, including measures to enhance communication and collaboration (art. 27).

Take effective measures to prevent and combat transnational organized crime

- States parties shall, inter alia, take measures and develop standard procedures and codes of conduct to protect the integrity of public and private entities and professional categories, to reduce the risk of criminal organizations participating in lawful markets with proceeds of crime and misusing public tender processes (art. 31).
- States parties may adopt more strict or severe measures than those [provided for by the UNTOC] for preventing and combating transnational organized crime (art. 34.3, UNTOC).

Firearms Protocol

As it is a supplementary protocol to the Organized Crime Convention, the Firearms Protocol focuses on crime prevention and, in particular, prevention of the illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition. The Protocol establishes a comprehensive regulatory framework to ensure effective control over certain activities relating to firearms, their parts and components, and ammunition, and allow their tracing throughout their lifetime—from the time of manufacturing, to their import and export, and until their final disposal. As such, the Protocol includes specific provisions related to security measures, marking, deactivation and disposal, confiscation and controls on the international transfer of these weapons. Moreover, similar to the Organized Crime Convention, the Firearms Protocol requires States parties to also establish certain criminal offences in their national laws, and international cooperation is given similar substantive weight.

Since the specific focus is on transnational transactions, the Protocol sets out procedures for the import, export and transit of firearms, their parts and components, and ammunition. It is a system based on reciprocity between States, requiring them to provide authorizations to one another before permitting shipments of firearms to leave, arrive or transit their territory.
To prevent and reduce illicit trafficking in firearms, law enforcement must be able to track and trace individual firearms. The Protocol requires that firearms be uniquely identified to enable this.

There are additional, enforced criminalization provisions that require States parties to establish criminal offences for illicit manufacturing, illicit trafficking, and the illicit alteration or obliteration of markings. Criminal offences cannot be detected or prosecuted effectively without the appropriate evidence; therefore the Protocol requires comprehensive record-keeping on the transnational movement of firearms. The Protocol also provides for additional associated “optional” offences, inter alia: with regard to records; illicit reactivation; illicit brokering; import, export and transit control. Moreover, the provisions in the UNTOC are also critical in that regard. In particular, the articles dealing with mutual legal assistance and extradition for commission of offences covered by the Protocol are essential tools for law enforcement.
### Mark firearms

States parties to ensure appropriate markings at:

(a) Manufacture
   - (i) Uniquely identify each weapon (in conjunction with other characteristics, such as make, model, type, and calibre).
   - (ii) Enable anyone to determine country of origin.
   - (iii) Permit country of origin experts to identify the individual firearm.

(b) Import
   - (i) Enable identification of the country of import and, where possible, the year of import.

(c) Transfer from government stocks to permanent civilian use
   - (i) Must meet the same basic marking requirements of unique identification (art. 8).

### Address de-activated firearms

States parties are to prohibit or regulate deactivated firearms, including through specific criminalization provisions (art. 9).

### Establish national import and export control system and transit measures

States parties to establish or maintain an effective system of export and import licensing or authorization, as well as measures on international transit, for the transfer of firearms, their parts and components, and ammunition:

- No authorizations without verifying that import authorization has been given and that transit States have no objections (art. 10).
- Specific information required on authorizations.
- Consider introducing simplified procedures possible for temporary import or export for "verifiable lawful purposes" (art. 10).

States parties shall consider regulating brokers and brokering activities (art. 15).

### Take adequate border control and security measures

States parties shall take security measures to prevent "theft, loss or diversion" of firearms (art. 11).

### Exchange information and cooperate internationally

- States parties to share information on:
  - Relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition (art. 12).
  - Matters such as organized criminal groups known to take part in illicit trafficking (art. 12).
- States parties to cooperate in tracing (art. 12).
- Identify a national point of contact (art. 13).
- Provide technical assistance to other States parties (art. 14).

### Programme of Action

The Programme of Action (PoA) is a non-binding political framework that sets out measures States undertake to perform at the national, regional and global levels. This tiered approach, similar to the approach taken in the Organized Crime Convention, the Firearms Protocol and the Arms Trade Treaty, recognizes that States need to work at all levels and cooperate internationally to prevent, combat and eradicate the illicit trade in small arms and light weapons. The PoA framework is grounded in the awareness that the illicit manufacture,
transfer and circulation of small arms and light weapons, and their excessive accumulation and uncontrolled spread in many parts of the world, undermines human security and development. The PoA sets out 23 actions at the national level, 8 at the regional level and 10 at the global level, and an additional 17 actions regarding “implementation, international cooperation and assistance”. The table below highlights a few of those actions that are particularly relevant to the Firearms Protocol and the ATT.

<table>
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<tr>
<th>Programme of Action — Brief summary of framework</th>
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<tr>
<td><strong>National level</strong></td>
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<tr>
<td>States undertake to:</td>
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<tr>
<td>• Exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons.</td>
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<tr>
<td>• Establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction.</td>
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<tr>
<td>• Establish or designate a national point of contact to act as liaison between States on matters relating to the implementation of the PoA.</td>
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<tr>
<td>• Identify groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition, of illicit small arms and light weapons, and take action under appropriate national laws.</td>
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<td>• Ensure that licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon. This marking should be unique and should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number so that the authorities concerned can identify and trace each weapon.</td>
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<td><strong>Regional level</strong></td>
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<td>States undertake to:</td>
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<td>• Encourage negotiations, where appropriate, with the aim of concluding relevant legally binding instruments aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, and where they do exist, to ratify and fully implement them.</td>
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<td>• Establish, where appropriate, subregional or regional mechanisms, in particular transborder customs cooperation and networks for information-sharing among law enforcement, border and customs control agencies, with a view to preventing, combating and eradicating the illicit trade in small arms and light weapons across borders.</td>
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<td>• Encourage regions to develop, where appropriate and on a voluntary basis, measures to enhance transparency with a view to combating the illicit trade in small arms and light weapons in all its aspects.</td>
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<td><strong>Global level</strong></td>
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<td>States undertake to:</td>
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<td>• Cooperate with the United Nations system to ensure the effective implementation of arms embargoes decided by the United Nations Security Council, in accordance with the Charter of the United Nations.</td>
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<tr>
<td>• Strengthen the ability of States to cooperate in identifying and tracing, in a timely and reliable manner, illicit small arms and light weapons.</td>
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<tr>
<td>• Encourage States to consider ratifying or acceding to international legal instruments against terrorism and transnational organized crime.</td>
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International Tracing Instrument

The International Tracing Instrument (ITI) is the other political instrument developed under the auspices of the Programme of Action. The ITI was developed in light of the fact that, as its preamble notes, “the tracing of illicit small arms and light weapons, including but not limited to those manufactured to military specifications, may be required in the context of all forms of crime and conflict situations”. Its main purpose is to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

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<th>International Tracing Instrument — Brief summary of framework</th>
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<td><strong>Use of terms</strong></td>
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<td><strong>Marking</strong></td>
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<td><strong>Record-keeping</strong></td>
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<td><strong>Cooperation in tracing</strong></td>
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<td><strong>Tracing requests</strong></td>
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Arms Trade Treaty

The Arms Trade Treaty (ATT) focuses on measures to regulate the international legal trade in conventional arms, with a view to preventing and eradicating their illicit trade and diversion into the illicit market or for unauthorized end use. It establishes a framework for national control systems, to take measures to control arms exports and to prevent and detect their diversion into the hands of organized crime or terrorist groups, on the basis of commonly identified criteria set out in its article 7. It also sets out the specific circumstances when a transfer of the items included within the scope of the Treaty (the categories of conventional arms, and related ammunition/munitions and parts and components) must be prohibited by article 6. “Transfer” is broadly defined to include import, export, transit, trans-shipment and brokering. The prohibitions in the Treaty apply to all these forms of transfer, whereas the criteria and risk assessment procedures apply to exports only. Importing States are to take measures to ensure that appropriate and relevant information is provided, when requested, to the exporting State party to assist the exporting State party in conducting its export risk assessment process (article 8). While parts and components and ammunition/munitions are included within the scope of the Treaty, they only apply to the obligations relating to prohibited transfers and exports and export risk assessment in articles 6 and 7.

Whereas the Firearms Protocol encourages States parties to regulate brokering in firearms, the ATT is the first international treaty that introduces the mandatory requirement for its States parties to take measures, pursuant to its national law, to regulate brokering taking place within their jurisdiction. 13 In this sense, the ATT is an important advancement on progress made in the Firearms Protocol. States parties are also required to take measures to prevent diversion. Additionally, States parties must report annually on the preceding year’s authorized or actual imports and exports. 14

Some provisions in the ATT leave States parties with discretion as to the most appropriate way to implement certain obligations. For example, article 14, on “Enforcement”, requires a State party to take “appropriate measures” to enforce national laws and regulations so as to implement the Treaty’s provisions. In determining what would be appropriate measures, the other instruments, particularly the Firearms Protocol, with its crime prevention and criminal justice perspective, can provide useful guidance.

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13 Article 10, Arms Trade Treaty.
14 Article 13, Arms Trade Treaty.
## Arms Trade Treaty — Main requirements

### Use of terms
- 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 the Treaty.
- For small arms and light weapons, national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of the ATT.

### Basic requirements for general implementation
A State party shall:
- Establish and maintain a national control system for the export, import, transit, and trans-shipment of and brokering activities related to the eight categories of conventional arms covered by the ATT, as well as exports of related ammunition/munitions and of parts and components as defined in the Treaty (arts. 3, 4, and 5 (2)).
- Establish and maintain a national control list (art. 5 (3)).
- Designate competent national authorities responsible for maintaining this system (art. 5 (5)).
- Designate at least one national contact point responsible for exchanging information related to the implementation of the ATT (art. 5 (6)).

### Prohibit certain transfers
A State party shall prohibit transfers (export, import, transit, trans-shipment, brokering) of conventional arms and related items covered by ATT:
- That would violate obligations under Chapter VII of the United Nations Charter or international agreements relating to the transfer or illicit trafficking of conventional arms; or
- Where there is knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, or other war crimes (art. 6).

### Assess export risks
- Assess applications for exports of the conventional arms and related items covered by the Treaty on the risk that the export could contribute to or undermine peace and security.
- Deny arms export if the assessment finds an overriding risk that the exported arms would undermine peace and security or will be used to commit or facilitate a serious violation of international humanitarian or human rights law (taking into account the risk of the exported arms being used to commit or facilitate serious acts of gender-based violence or violence against women and children) or offences under international conventions or protocols relating to terrorism or international organized crime (art. 7).

### Import, transit, trans-shipment and brokering
A 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 (art. 8 (1)).
- Take measures, where necessary, to regulate imports (art. 8).
- Take measures, where necessary and feasible, to regulate transit and trans-shipment under its jurisdiction (art. 9).
- Take measures to regulate brokering taking place under its jurisdiction (art. 10).
### Arms Trade Treaty — Main requirements (cont.)

| Prevent diversion          | • Each State involved in a transfer of conventional arms covered under article 2 (1) shall take measures to prevent diversion (art. 11 (1)).
|                           | • The exporting State party shall assess 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 (art. 11 (2)).
|                           | • Importing, transit, trans-shipment and exporting States parties are to cooperate and exchange information in order to mitigate the risk of diversion of the transfer of conventional arms covered under article 2 (1).
|                           | • If a State party detects a diversion of transferred conventional arms covered under article 2 (1), the State party shall take appropriate measures to address such diversion. (Such measures may include, for example, alerting potentially affected States parties.)

| Maintain records           | • A State party shall maintain national records of its issuance of export authorizations or its actual exports of the conventional arms covered by the Treaty (art. 12).
|                           | • Records to be kept for at least 10 years.

| Report annually            | • Provide annual reports to the secretariat on authorized or actual exports and imports of conventional arms to be made available to States parties (art. 13).

| Enforce national laws implementing the Treaty | • States parties to take appropriate measures to enforce national laws and regulations to implement the Treaty (art. 14).

| Cooperate internationally  | • Cooperate with other States parties in order to implement the ATT effectively (art. 15 (1)).
|                           | • Facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of the ATT (art. 15 (2)).
|                           | • Afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the ATT.
|                           | • States parties 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.
3. Analysis

As noted above, there are inevitable similarities between these instruments, given their subject matter. There are also differences that States parties need to be aware of to ensure that the specific requirements under each instrument are met in their national implementation efforts.

These instruments set the minimum standards that must be complied with in domestic law. With each instrument, States parties can legislate with respect to a broader range of weapons and impose increased or stricter measures in domestic law, if they wish. This principle is explicitly evoked for example, in article 34(3) of the Organized Crime Convention, which provides that a State party can adopt more strict or severe measures than those provided by the UNTOC for preventing and combating transnational organized crime. States parties might choose to take this route given overlapping obligations between the instruments or if a State party wants to strengthen its national legislation and regulatory procedures beyond what is required. However, States parties should bear in mind that certain provisions—such as international cooperation between States parties—may not extend to provisions that go beyond the standards set in the instruments.

3.1 Commonalities

A useful starting point in the analysis of these instruments is to note their similar objectives. With the exception of the Firearms Protocol and its parent, the Organized Crime Convention, these instruments have not been purposefully negotiated or constructed as interconnecting instruments. However, they all have broadly similar or compatible objectives: to control different categories of conventional international arms trade and prevent illegal activities.

The broader aims of these instruments are equally similar—mitigating the negative impacts of illicit trafficking in conventional arms on national, regional and international security. For example, the Firearms Protocol notes “the harmful effects of those activities [illicit manufacturing and trafficking of firearms] on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace”. Similarly, the Programme of Action refers to the “wide range of humanitarian and socioeconomic consequences and pose a serious threat to peace, reconciliation, safety, security, stability and sustainable development at the individual, local, national, regional and international levels”. The preamble of the ATT notes that “civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence”.

15 Preamble, Firearms Protocol.
16 Section I, paragraph 2, Programme of Action.
17 Preamble, Arms Trade Treaty.
3.2 Complementarity

The instruments clearly reinforce each other. This is evident in the way in which the instruments refer to the other treaties, affirming obligations or noting their complementarity.

For example, the preamble of the Programme of Action (PoA) recognizes that the Firearms Protocol “establishes standards and procedures that complement and reinforce efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects”. The PoA foreshadows the Arms Trade Treaty (ATT) in its commitment by States to “encourage negotiations, where appropriate, with the aim of concluding relevant legally binding instruments aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, and where they do exist to ratify and fully implement them”.

The ATT specifically contains a provision on the relationship between the ATT and other international agreements in article 26:

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.

Given that the ATT specifically mentions other international agreements in its preamble, including the Firearms Protocol, suggests that States view the Firearms Protocol as an international agreement with obligations that are consistent with the ATT.

Additionally, the ATT draws upon States parties’ existing obligations, affirming those obligations and restating them within a different legal framework. Article 6(2) prohibits transfers that violate a State party’s “relevant international obligations under international agreements to which it is a Party”. Article 6(2) also makes specific reference to international treaties concerning the authorization and “transfer of, or illicit trafficking in, conventional arms” and related items. This includes the Firearms Protocol. It is noteworthy that article 6(2) does not create new substantive obligations, as it refers to obligations that a State party already has. But the significance of referencing these other obligations is that the ATT subjects those obligations to its regulatory mechanisms required for “transfers”. For example, a State party will be required under article 13(1) of the ATT to report on how it implements article 6(2) in its national laws.

Under the PoA, at the national level, States undertake “To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients.” As noted above, the PoA is a policy framework and largely does not provide the details on what are “adequate laws, regulations and administrative procedures”. However, the preamble of the PoA specifically mentions the Firearms Protocol; in fact it is the only treaty specific to small arms that is noted. It would appear that when the PoA speaks of having “adequate laws” in place, it is referring at least in part to the framework provided by the Firearms Protocol.

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18 Section II, paragraph 25, Programme of Action.
19 Section II, paragraph 2, Programme of Action.
Principles and Purpose of the ATT

Guiding Questions:

1. What principles underwrite the ATT?
2. What is the object of the ATT?
3. What is the purpose of the ATT?
4. Why do treaties contain statements of principles, object, and purpose? How do these components serve States Parties in implementing the treaty?
5. How can these components help States Parties resolve disputes that arise under the treaty?

Resources:

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.
(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.
Treaties, Object and Purpose

Jan Klabbers

Subject(s):
Sources, foundations and principles of international law — Object & purpose (treaty interpretation and) — Vienna Convention on the Law of Treaties — Treaties, amendments and modification — Treaties, invalidity, termination, suspension, withdrawal — State succession, international agreements — Treaties, interpretation — Treaties, reservations and declarations

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A. Introduction

1 While it has never been uncommon to speak of the spirit of a treaty (→ Treaties), or its reason or goals, the notion of a treaty’s object and purpose first made a sustained appearance in 1951, in the International Court of Justice (ICJ)’s advisory opinion on Reservations to the Genocide Convention (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide [Advisory Opinion] [‘Genocide Case’]; → Genocide Convention, Reservations [Advisory Opinion]); see also → Advisory Opinions; → Genocide; → International Court of Justice [ICJ]). The ICJ famously held, that when a treaty itself is silent on reservations, reservations are allowed provided they are compatible with the treaty’s object and purpose (Genocide Case para. 22; see also → Treaties, Multilateral, Reservations to).

2 The → Vienna Convention on the Law of Treaties (1969) (‘VCLT’) refers to the notion of object and purpose a number of times. Art. 18 VCLT suggests that between signature and ratification of a treaty, and between ratification of a treaty and its entry into force, → States are obliged ‘to refrain from acts which would defeat the object and purpose’ of the treaty concerned (→ Treaties, Conclusion and Entry into Force). Art. 19 VCLT holds that States may make reservations to treaties unless such reservations are incompatible with the treaty’s object and purpose. Art. 41 VCLT allows parties to a treaty to modify its terms inter se, unless such a modification is incompatible with ‘the effective execution of the object and purpose of the treaty as a whole’ (→ Treaties, Amendment and Revision). Art. 58 VCLT allows parties to a multilateral treaty to suspend its operation, if such suspension ‘is not incompatible with the object and purpose of the treaty’ (→ Treaties, Suspension).

3 In all the above cases, the notion of object and purpose is used as a direct measure of the legality of State behaviour: behaviour is tested directly against the object and purpose of a treaty, in addition to (or instead of) its substantive provisions. Thus, the notion of object and purpose is thought to add an independent substantive element to the treaty. There are exceptions, though. The first concerns the rules on treaty interpretation (→ Interpretation in International Law). Art. 31 VCLT suggests that interpretation of a treaty should be conducted, among other things, ‘in light of its object and purpose’, to which Art. 33 VCLT adds that diverging interpretations in different authentic languages shall be reconciled with the object and purpose of the respective treaty in mind. This follows, no doubt, from the special character of these articles as methodological devices rather than substantive provisions.

4 More surprising then is Art. 60 VCLT. Here, mention is made of a treaty’s ‘object or purpose’—note that ‘or’ is substituted for ‘and’—and the connection made between the treaty and State behaviour is indirect: a material breach entitles States to suspend, perhaps terminate a treaty (→ Treaties, Termination), and such a breach is defined, in part, as a ‘violation of a provision essential to the accomplishment of the object or purpose of the treaty’.

5 Use of the notion of object and purpose is not limited to the VCLT alone. It also makes an—expected—appearance in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (→ International Organizations or Institutions, External Relations and Co-operation; see also → International Law Development through International Organizations, Policies and Practice). This repeats, almost verbatim, the provisions of the VCLT. Marginally more surprising perhaps, is that the notion of object and purpose also appears in the → preamble and in quite a few provisions of the 1978 Vienna Convention on Succession of States in Respect of Treaties (‘VCSS-T’; → State Succession in Treaties). Here, various provisions limit the possibility of succession to treaties with the help of the notion of object and
purpose: succession may occur unless incompatible with the object and purpose of the treaty concerned (see Arts 15, 17–19, 27, 30, 31–37 VCSS-T). Again, then, object and purpose function as a substantive device, adding a general, overarching normative element to the rules laid down in individual treaties.

B. Defining Object and Purpose

6 The notion of object and purpose is a general one, which cannot be defined in the abstract. Instead, its use is bound to be contextual and, for that reason, gives rise to different interpretations and constructions. Still, some general guidelines may be established. One is that it is probably no accident that the various Vienna Conventions consistently speak of ‘object and purpose’ in the singular: this signals the intention on the part of their drafters to use object and purpose as a single overarching notion. Indeed, much of the point of the notion would be lost if various different objects and purposes could be identified, as this would result in different yardsticks under the same treaty. For, if various objects and purposes could be distinguished, it could follow that a proposed reservation could be compatible with some of those objects and purposes, but incompatible with others. It could follow that a modification would be acceptable on one reading, but unacceptable on another; and it could follow that a State might be entitled to succeed to a treaty in accordance with one purpose of that treaty, but not in light of some of that treaty’s other objects and purposes.

7 What also seems clear is that the notion of object and purpose of a treaty is meant to refer to that treaty as a whole. While there is only one provision which actually expresses this explicitly (Art. 41 (1) (b) (ii) VCLT), there are nevertheless sound arguments in favour of such a construction. For one thing, individual treaty provisions may serve different goals; hence, to individualize the notion of object and purpose would serve to reintroduce a plural idea: the idea that a treaty can simultaneously have various objects and purposes, and therewith undermine the very notion. Moreover, should object and purpose be construed to relate to individual provisions, it would become very difficult, perhaps impossible, to act in accordance with object and purpose, and therewith, in the end, equate the treaty with the objects and purposes of its individual provisions. This would render the very notion of a treaty’s object and purpose redundant. Finally, the specific reference to the treaty as a whole in Art. 41 VCLT makes instrumental sense, as this provision regulates the possibility of modifying a treaty and thus breaking up a treaty’s regime into various parts. In such a context, it is well worth reminding the parties that the object and purpose ought to be construed as that of the treaty as a whole, not of its various parts.

8 Most would also agree, and for much the same reasons, that the notion of object and purpose is best seen as a single notion. In other words: no distinction should be made between a treaty’s object on the one hand, and its purpose on the other. Doing so would, once again, break up a concept which was intended to signal the point of a treaty, into various different points. The one possible exception might relate to the construction of Art. 60 VCLT which, after all, speaks of object or purpose, suggesting these might be different things. Nonetheless, it would appear from the travaux préparatoires of the VCLT—in particular the discussion during the Vienna Conference in 1969—that the exception of Art. 60 VCLT is the result of a slip of the pen rather than of any secure legislative intention: no one seems to have noticed the incongruity between the use of object or purpose in Art. 60 VCLT, and object and purpose elsewhere. And the repeated use of object and purpose in the VCSS-T would suggest a definite choice for a single overarching concept.
A different issue arises with complex treaty instruments: how to construe the notion of object and purpose if two or more treaties are clearly related? Much will depend on the nature of the relationship. If treaties are related in the manner of framework agreement plus implementing protocols (→ Framework Agreements; see also → Implementation Agreements), for instance, it would seem desirable to regard these instruments as a single whole. If, however, the relationship between the various treaties is less organic and more functional, an argument might be made in favour of identifying distinct notions of object and purpose. Thus, it might be plausible to find that the object and purpose of the → General Agreement on Trade in Services (1994) differs from that of the Agreement establishing the → World Trade Organization (WTO), whereas finding that the object and purpose of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer differs from that of the 1985 Vienna Convention for the Protection of the Ozone Layer might be less plausible (→ Ozone Layer, International Protection).

Since object and purpose recurs in a variety of settings, a natural question to ask is whether the contents of a given treaty’s object and purpose will be the same, or whether it will vary with the legal issue. In other words, if a treaty’s object and purpose has been established in the context of assessing the permissibility of reservations, will that conclusion also apply when some parties wish to modify its terms, or when a newly independent State wishes to succeed? As the very notion of a treaty’s object and purpose taps into context, it is not unlikely that a contextual approach might be wisest here too. It may be unlikely for a treaty’s object and purpose to change dramatically over time, but one could conceive that with various issues, various different factors would have to be taken into account: a construction, which is valid when it comes to assessing reservations, may be of limited value for purposes of interpretation, or State succession.

On this point, a slightly different opinion is put forward by the International Law Commission’s Special Rapporteur on Reservations to Treaties, A Pellet, in his tenth report, issued in 2005 (→ International Law Commission [ILC]). For Pellet, it would make sense to treat the meaning of object and purpose with a given treaty as constant, but he does acknowledge that this leads to the curious circumstance of having a criterion without a definition. In order to determine the contents of a given treaty’s object and purpose—defined as ‘the essential provisions of the treaty, which constitute its raison d’être’—Pellet suggests that the treaty as a whole be interpreted, and that for this purpose, the context of the treaty includes its preamble and annexes (A Pellet Special Rapporteur of the UN ILC ‘Tenth Report on Reservations to Treaties, Addendum I’, 14–15). In addition, recourse may be had to the preparatory works, the circumstances of the treaty’s conclusion, its title, and ‘the articles that determine its basic structure’. Perhaps in order to overcome the somewhat awkward resulting tautology, that one would have to establish a treaty’s object and purpose with the help of its object and purpose, Pellet subsequently develops a set of guidelines specifically for purposes of testing the permissibility of reservations in light of the treaty’s object and purpose.

C. Object and Purpose as a Limit to Reservations

As noted, the idea of the object and purpose of a treaty was first launched by the ICJ in an advisory opinion on the admissibility of reservations to a multilateral convention. While some within the ILC, most notably perhaps Sir H Lauterpacht, felt the Court was creating new law rather than applying existing law when introducing this notion, it has nonetheless found a place in the VCLT’s regime on reservations, serving as a potential limit to the freedom of making reservations.
13 However, the limit is more potential than real. As there is no centralized decision-making on the admissibility of reservations to treaties—other than under specific treaty regimes, such as the → European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)—it follows that whatever States themselves hold to be the object and purpose of a treaty will prove decisive. As a result, there is fairly little case-law on the matter, and the case-law which does exist tends to focus on more or less methodological questions.

14 In its advisory opinion on Reservations to the Genocide Convention, the ICJ seemed to derive the object and purpose of the Genocide Convention from two sources: it looked to the preamble for further guidance, and to previous resolutions adopted by the United Nations General Assembly (Genocide Case para. 23; see also → International Organizations or Institutions, Secondary Law; → United Nations, General Assembly). Perhaps more important though is that, with the possible exception of these preceding resolutions, the Court did not have a closer look at the preparatory works of the Genocide Convention: either it felt that there was no need to dig any deeper—on the theory that the preceding resolutions formed a sufficient reflection of the General Assembly’s intentions—or it felt that the notion of preparatory works is so wide that there would be no end to such an investigation.

15 By and large, → international courts and tribunals—in addition to, as noted, Special Rapporteur Pellet—tend to follow this approach, at least its first prong: they typically look at such things as a treaty’s title and, in particular, its preamble, for illumination of the treaty’s object and purpose. In addition, and quite obviously, the text of a treaty may itself suggest how the treaty’s object and purpose could be construed. As an example, the → Inter-American Court of Human Rights (IACtHR), in its 1983 Restriction on the Death Penalty opinion (→ Death Penalty), reached the conclusion that a reservation with regard to a human right (→ Human Rights) designated by a treaty as non-derogable would be impermissible, unless the reservation would merely affect certain aspects of the non-derogable right but not the right as such (Restrictions to the Death Penalty [Advisory Opinion] para. 61).

16 Although less obvious, a treaty’s object and purpose may occasionally be derived from the text of another treaty. Thus, in the Golder case, the → European Court of Human Rights (ECtHR) looked at the Statute of the → Council of Europe (COE) when construing the object and purpose of the ECHR (Golder v The United Kingdom para. 34). The Economic Court of the → Commonwealth of Independent States, in an advisory opinion on certain Commonwealth of Independent States Agreements in 1996, seems to have turned method into substance when it construed reservations according to which national law would continue to apply as being by definition incompatible with the object and purpose requirement (Advisory Opinion on Reservations to Certain Commonwealth of Independent States Agreements para. 2).

D. Object and Purpose and Teleological Interpretation

17 While there is fairly little case-law on the notion of object and purpose in the law on reservations, tribunals tend to rely quite a bit on object and purpose when justifying their interpretations. The VCLT admonishes interpreters to look at the ordinary meaning of terms in their context, and in light of a treaty’s object and purpose (Art. 31 (1) VCLT). This raises the question as to whether these two methods should be seen as complementary, or as distinct, possibly even leading to different results. After all, a textually plausible interpretation may, on occasion, collide with a construction based on the object and purpose of a treaty. Indeed, often a teleological interpretation is proposed precisely to overcome the
perceived drawbacks of a more textual interpretation. This, in turn, would provoke the question whether there is a hierarchical relationship between the two.

18 All this again places great store in methodology, yet judicial practice tends to be less than fully uniform. Sometimes the object and the purpose of a treaty are treated as two distinct things, eg in the 1980 German External Debts → Arbitration (German External Debts arbitration (para. 30; see also → London Agreement on German External Debts (1953)). A different distinction is that between the object and purpose of multilateral treaties, and the object and purpose of bilateral treaties, as made by the arbitral tribunal addressing filleting in the Gulf of Saint Lawrence, in 1986 (→ St Lawrence Seaway). According to the tribunal, with regard to multilateral treaties, the object and purpose could acquire an autonomous, objective existence; whereas with bilateral treaties, it would be more useful to think of the object and purpose—the tribunal, writing in French, used the term but—as the balance of concessions between the parties (Dispute Concerning Filleting within the Gulf of St Lawrence para. 30).

19 In its decision in the 1986 Nicaragua case, the ICJ went so far as to hold that the US had violated the object and purpose of the 1956 Friendship, Commerce and Navigation treaty between the US and Nicaragua (‘FCN Treaty’; → Treaties of Friendship, Commerce and Navigation), without pinpointing any violations of specific provisions (Military and Paramilitary Activities in and against Nicaragua Case [Nicaragua v United States of America] [Merits] [‘Nicaragua Case’]; → Military and Paramilitary Activities in and against Nicaragua Case [Nicaragua v United States of America]). Attacks on ports and oil installations, and the mining of Nicaragua’s → ports, while not strictly speaking prohibited by the FCN Treaty, were seen by the Court as undermining the bonds of peace and friendship, which the FCN Treaty had been concluded to serve (ibid para. 275). The main inspiration for this construction was drawn from the preamble to the FCN Treaty.

20 Perhaps the most overt invocation of the notion of object and purpose in the context of treaty interpretation stems from the dispute settlement mechanism of the WTO (→ World Trade Organization, Dispute Settlement). Its panels and Appellate Body have developed a habit of referring to the rules of treaty interpretation whenever deciding cases, and in the process place great emphasis on the object and purpose of the WTO. Ironically though—in light of the emphasis on rule—following entailed by constant references to the Vienna Convention’s rules on interpretation—the references to the notion of object and purpose tend to be fairly haphazard, with panels and the Appellate Body referring to the notion interchangeably in the singular and in the plural, and applying it both to entire treaties but also to individual treaty provisions.

E. Assessment

21 The notion of a treaty’s object and purpose is one of those open-ended notions which infuse some common sense and flexibility in the law of treaties. As the example of the Nicaragua Case makes clear, sometimes things take place that treaty drafters simply cannot envisage. It would be considered bad form, when negotiating a FCN Treaty between long-standing allies, to insist on a clause prohibiting attacks on oil installations, or explicitly prohibit the mining of each other’s ports. Yet, to draw the conclusion that these acts must be deemed acceptable since they are not explicitly prohibited, would be unpalatable. In such a scenario, the notion of object and purpose may provide useful services, and it is no coincidence that something similar—be it the reason of a treaty or its spirit—is already invoked by the classical authors in international law.
22 In particular when it comes to treaty interpretation though, the notion of object and purpose tends to be infinitely manipulable—or malleable, to put it charitably—and it should come as no surprise that diametrically opposed positions can be defended by reference to the object and purpose of a treaty. This is not necessarily a bad thing, though, as it opens up a space for political debate and discussion on the most desirable interpretation of a treaty. It does suggest, however, that there are limits to what one might legitimately expect from rules on treaty interpretation, including the object and purpose rule. Either way, if the greatest utility of the notion of object and purpose resides in its flexibility, then it would seem unwise to try and pin it down and aspire to find a single one-size-fits-all definition or application.

23 That said, though, too much flexibility is not very commendable either. As outlined above (see paras 6–7), when the notion of object and purpose of a treaty is used to refer to single provisions of a treaty, or when object and purpose becomes numerous objects and purposes, something valuable is lost. Properly used the notion of object and purpose creates an overarching normative element, which adds something to a treaty. Too wide a construction, however, would tend to make it useless. If everything is incompatible with object and purpose, then nothing really is. The notion loses its analytical sharpness.
Scope of the ATT

Guiding Questions:

1. What conventional weapons does the Arms Trade Treaty cover?
2. What ammunition and munition does the Arms Trade Treaty cover?
3. How does the ATT address the parts and components of conventional weapons?
4. What kinds of transfers do the obligations around conventional weapons, ammunition/munitions, and parts and components apply to?
5. How do the weapons, ammunition, and parts and components under the treaty contribute to the various harms the treaty aims to prevent?
6. How do the weapons, ammunition, and parts and components under the treaty contribute to harms specifically concerning in Southern Africa, such as gender-based violence and wildlife poaching?

Resources:

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.
Executive Summary

In the years since the Global Burden of Armed Violence 2011 was published, different forms of violence, instability, and conflict have erupted in places such as the Central African Republic, Egypt, Libya, Syria, and Ukraine. Waves of criminal violence have continued to sweep across Honduras, Venezuela, and other parts of Latin America. Armed violence continues to claim lives, undermine the stability of states and communities, and threaten the achievement of sustainable human development.

This edition of the Global Burden of Armed Violence charts and analyses some of these developments while maintaining the ‘unified approach’ to armed violence introduced in the previous edition. By relying on data from a large variety of sources—including public health, law enforcement, and criminal justice authorities as well as independent observatories, human rights organizations, and international agencies—this approach allows for the monitoring of changes and trends in the levels of armed violence at the local, national, regional, and global levels. Its focus is broad enough to capture interpersonal, political, criminal, economic, and conflict violence—some of which regularly overlap and fuel each other.

This volume presents analysis of comprehensive data for the period 2007–12 as well as assessments of more recent trends and dynamics in lethal violence in both conflict and non-conflict settings. Thanks to marked improvements in the collection and reporting of disaggregated lethal violence data in many countries, its chapters are able to offer more robust and simultaneously more nuanced assessments of changes in various aspects of lethal violence over time, including the use of firearms and gender-based victimization. In proposing a new calculation method for estimating the global economic cost of homicide, this edition also takes a significant step towards quantifying the costs of armed violence.

In view of the post-2015 development framework negotiations, the report keeps in focus the negative impact of violence and insecurity on development and weighs the potential benefits of integrating a peace and security goal in the new development agenda. In this context, it emphasizes that violence and insecurity affect societies in ways that extend well beyond the immediate costs of deaths and injuries: people migrate or are displaced, businesses close, investments dwindle, tourism rates plummet, and institutions lose their legitimacy. ‘Lethal violence’—in all its forms—could serve as a viable indicator with which to measure and monitor progress towards a goal on peaceful societies and related targets, should they be adopted as part of the post-2015 development agenda. To capture the manifold manifestations of violence that are recorded and observed around the world, however, such measuring and monitoring efforts would need to draw on as many sources as possible, while also engaging with researchers, specialists, and practitioners in a variety of disciplines and sectors, including
economics, criminology, development, conflict studies, and public health. Put another way, the process of tracking progress against development goals must be able to offer policy-makers, donors, and activists a comprehensive picture of how patterns of violence are evolving—and of how and why that matters for the achievement of sustainable development—if it is to inform effective policies to reduce levels of lethal violence.

Key findings of this volume include the following:

- Estimates reported in successive editions of the Global Burden of Armed Violence show a continuous drop in the average annual number of violent deaths worldwide: from 540,000 violent deaths for the period 2004–07 and 526,000 for 2004–09, to 508,000 for 2007–12.

- Although the total number of violent deaths per year decreased over the above-mentioned periods, the annual number of direct conflict deaths increased significantly: from an average of 52,000 deaths, to 55,000, to 70,000—with a large proportion of the latter deaths due to armed conflict in Libya and Syria.

- In addition to the 70,000 direct conflict deaths per year, the period 2007–12 also saw an annual average of 377,000 intentional homicides, 42,000 unintentional homicides, and 19,000 deaths due to legal interventions.

- For the period 2007–12, the average global rate of violent deaths stood at 7.4 persons killed per 100,000 population.

- The 18 countries with the highest violent death rates are home to only 4 per cent of the world’s population but account for nearly one-quarter (24 per cent) of all violent deaths in the world.

- Globally, firearms are used in 46.3 per cent of all homicides and in an estimated 32.3 per cent of direct conflict deaths. That means that firearms are used in 44.1 per cent of all violent deaths, or an annual average of nearly 197,000 deaths for the period 2007–12.

- On average, an estimated 60,000 women worldwide became victims of homicide every year from 2007 to 2012, accounting for 16 per cent of intentional homicides.

- If the homicide rate between 2000 and 2010 had been reduced to the lowest practically attainable levels—between 2 and 3 deaths per 100,000 population—nearly USD 2 trillion of global homicide-related economic losses could have been saved. That amount is equivalent to 2.64 per cent of the global GDP in 2010.

The data for 2007–12 reveals that the majority of countries and territories—137 of the 189 under review—exhibit very low or low rates of lethal violence (below 10 deaths per 100,000 population) (see Map 2.1). Among these countries, the average rate of lethal violence is decreasing, confirming that when levels of violence are already very low, they tend to remain low or continue to decline. A comparison of data available for the periods 2004–09 and 2007–12 indicates that, globally, deaths due to intentional homicide declined by almost 5 per cent, with the Americas being the only region to witness a significant increase in homicide (nearly 10 per cent).

The comparison also shows that direct conflict deaths surged by 34 per cent between the two periods—while violent deaths in all other categories declined. A large portion of these direct conflict deaths resulted from armed conflict in Libya and Syria. Meanwhile, lethal violence rates in some countries that are not experiencing armed conflict—such as Honduras and Venezuela—have been rising, reaching levels characteristic of countries at war.
The post-2015 debate

Although the Millennium Declaration of 2000 refers to ‘peace’ and ‘security’, such language was not included in any of the Millennium Development goals, targets, or indicators (UNGA, 2000; Millennium Project, n.d.). The inclusion of a goal on ‘peaceful and inclusive societies’ in the post-2015 development framework—as proposed by the UN’s Open Working Group in its August 2014 report on the Sustainable Development Goals (UNGA, 2014)—would thus represent a leap forward. It would explicitly encourage states—all of which deal with some form of insecurity—to aim for and to track their progress towards that goal and its associated targets.

In fact, a great deal of progress has already been made since the adoption of the Geneva Declaration on Armed Violence and Development in 2006 and the subsequent report to the UN Secretary-General, Promoting Development through the Reduction and Prevention of Armed Violence (Geneva Declaration, 2006; UNGA, 2009). Language around ‘armed violence’ and ‘violent deaths’ has been integrated in many international forums, policy papers, and in the above-mentioned proposal for the Sustainable Development Goals. One of the most important shifts since the Millennium Declaration and the 2004 report of the UN High-Level Panel on Threats, Challenges and Change (UNGA, 2004) has been the move away...
from a narrow focus on conflict-related violence and insecurity, towards a more holistic understanding of armed violence in all its forms.

In line with this shift, several analyses have drawn attention to the advantages of a unified approach to armed violence and endorsed a ‘violent deaths’ indicator as a plausible way to track progress in the reduction of violence. The violent deaths approach can capture a range of acts that may otherwise be missed in more narrowly focused data, maximize comparability across countries, avoid undercounting, and remain feasible. Indeed, the approach stands to become more reliable and comprehensive if countries continue to enhance their capacities to collect, disaggregate, and report data on lethal violence—especially in regions where such practices are still absent or nascent.

In a field cluttered by a range of concepts and definitions (such as fragility, state collapse, conflict-affected and fragile settings, and criminal violence), a holistic focus on the violent act is a comparative strength. Such an approach has also been deemed ‘collectable’ by a variety of authoritative actors. As the Task Team on the post-2015 Development Agenda concluded:

much progress has been made in measuring violence and insecurity, particularly regarding the indicator [on] the number of violent deaths, comprising the number of conflict-related deaths and the number of homicides (UNTT, 2013, p. 35).

Yet while the growing agreement and support of states and organizations for the inclusion of a goal on peaceful and stable societies within the post-2015 development framework is promising, it should be noted that the reduction of violence and insecurity is not only a means of achieving development goals, but also an invaluable development objective in itself.

**Chapter highlights**

**Chapter One** (Violence, Security, and the New Global Development Agenda) provides an overview of the evolution of the debates around the inclusion of a goal for achieving ‘peaceful and inclusive societies’ in the post-2015 global development framework. The chapter summarizes the state of play (up to late 2014) regarding the integration of such a goal into the post-2015 development agenda and provides an overview of the various efforts to develop specific goals, targets, and indicators dealing with security, safety, and armed violence. Particular attention is devoted to the measuring and monitoring of lethal violence, which would serve as a more comprehensive indicator than ‘homicide only’ or ‘conflict deaths only’ for tracking progress towards any peace and security goals and targets.

**Chapter Two** (Lethal Violence Update) analyses changes in the distribution and intensity of lethal violence by comparing newly gathered data for the period 2007–12 with data for 2004–09, which formed the basis of research presented in the 2011

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**Figure 1** The distribution of the global burden of lethal violence

**Legend:**
- Direct conflict deaths (70,000; 14%)
- Intentional homicide (377,000; 74%)
- Unintentional homicide (42,000; 8%)
- Legal intervention killings (19,000; 4%)

**Source:** Geneva Declaration Secretariat (2014)
edition of the *Global Burden of Armed Violence*. Globally, an estimated 508,000 people died violently each year in 2007–12—that translates into more than 3 million violent deaths during the six-year period. As shown in Figure 1, almost three-quarters (74 per cent) of these deaths were recorded as intentional homicides, while only 14 per cent of the total occurred in conflict settings. This chapter takes advantage of the enhanced availability of refined data—especially with respect to national-level details on firearm homicides—to provide more accurate estimates and analysis.

The vast majority of countries exhibit low and decreasing levels of lethal violence. While most of the sub-regions in the world have witnessed corresponding drops in the number of violent deaths, Northern Africa, Central America, and Southern Africa experienced significant increases in violent death rates per 100,000 population from 2004–09 to 2007–12. Indeed, this volume finds that despite promising reductions of violence around the world, a few countries that are not at war suffer from extremely high levels of violence.

Analysis of the most recent data also provides a refined global estimate: nearly half of all homicides—46.3 per cent—are caused by firearms. While coverage remains patchy, disaggregated data on the use of firearms in homicide provides useful insight. It reveals, for example, that the sub-

*Photo ▲* A girl kneels near the graves of victims of a suicide bomb attack by Boko Haram at a church on the outskirts of Abuja, Nigeria, December 2012. © Afolabi Sotunde/Reuters
regions with the highest prevalence of firearms use in homicides—in descending order, Central America, the Caribbean, and South America—are also the ones with the highest homicide rates (see Figure 2.17).

Chapter Three (Lethal Violence against Women and Girls) provides an update on figures and patterns of lethal violence against women. In line with the overall decline in the global number of homicides, the average annual number of female homicide victims also decreased slightly, from 66,000 women in 2004–07 to 60,000 women in 2007–12, which corresponds to a small drop from 17 per cent of all intentional homicides to 16 per cent. Of the 360,000 women killed between 2007 and 2012, more than half lost their lives in one of the 25 countries with the highest rates of female homicide, with El Salvador, Honduras, and South Africa topping the list (see Figure 3.4). Countries that witness the highest rates of female homicide tend to have the lowest share of intimate partner violence-related homicide. In these countries, the proportion of women who are killed outside of the private sphere—as opposed to the ‘intimate circle’—is greater than elsewhere. Analysis of the data also shows that the proportion of women who are killed by a firearm—as opposed to other mechanisms—is greater in areas that exhibit high rates of firearm homicide.

In addition, the chapter highlights the constancy of intimate partner femicide rates over time and across regions, suggesting that more precisely targeted policies are needed to reduce this type of violence. The global picture of lethal violence against women remains incomplete, however. While some countries have made progress in data collection methods and increased the availability of sex-disaggregated information on homicides, others—particularly in Asia and Africa—still lack the capacity and funding they require to take similar steps.

Chapter Four (Unpacking Lethal Violence) underscores that timely, reliable, and disaggregated data is crucial to informed decision-making processes for developing and implementing practical measures and programmes aimed at preventing and reducing lethal violence. Disaggregated data that provides details on locations, socio-demographic characteristics of victims and perpetrators, instruments used to inflict harm, and circumstances surrounding lethal events can guide effective policy-making and programming, as it can provide insight into the drivers and enablers of lethal violence.
Disaggregated data can also help to reveal sub-national developments that may remain hidden in national-level data. In Brazil, for example, high rates of lethal violence travelled from state capitals such as Rio de Janeiro and São Paulo to the north of the country and smaller municipalities, yet the national rate remained the same. Data on such sub-national shifts can help to define priorities for interventions and to identify targets for programmes and assistance where they are likely to be most effective.

Chapter Five (The Economic Cost of Homicide) proposes a method for assessing the global economic burden of homicidal violence. Despite the
reduction in levels of homicide in many countries reviewed in this report, the related economic toll is increasing. The longer, safer, and more productive people's lives become, the higher the aggregate economic cost of homicide. In 2010 alone, the global cost of homicide reached USD 171 billion, roughly the equivalent of Finland's GDP that year. The chapter also highlights that life expectancy in countries such as Colombia, El Salvador, and Venezuela would increase by about 10, 14, and 16 months, respectively, in the absence of firearm-related homicide.

**Conclusion**

The provision of detailed information on the patterns and dynamics of lethal violence is crucial to a more comprehensive understanding of its causes and consequences, and to the design of effective violence prevention and reduction strategies. The *Global Burden of Armed Violence 2015* benefits from a noticeably enhanced availability of disaggregated data on lethal violence. The multi-source database that provides the backdrop for all analysis and research in this volume includes sex-disaggregated data on victims and information on the use and prevalence of firearms in lethal violence in a large sample of countries. Such details will prove to be of key significance in tracking progress towards peaceful societies—be it within the framework of the post-2015 development agenda, or simply in order to achieve reductions in the human cost of lethal violence per se. 

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1 For a full presentation of the ‘unified approach’, see Geneva Declaration Secretariat (2011, pp. 44–51).
CHAPTER 3.2: ARMS WITHIN THE SCOPE OF THE ATT

The scope of the Arms Trade Treaty (ATT) is central to its effectiveness in reducing human suffering. This chapter seeks to clarify the extent to which certain arms and ammunition/munitions are regulated under a strict interpretation of the Treaty. It takes in turn each of the categories of conventional arms as laid out in Article 2.1 of the ATT, and analyses the descriptions for each one provided by the UN Register of Conventional Arms (UNROCA). Although certain weapons may not formally come within its purview, a provision on general implementation of the Treaty explicitly calls on States Parties to apply its provisions 'to the broadest range of conventional arms'. The evidence so far is that many of them have heeded this call and are using pre-existing international lists whose scope is wider than the Treaty in their export-control decisions, notably the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

The ATT is intended to regulate specifically conventional arms, as set out in Article 1 (object and purpose), Article 2 (scope) and Article 5 (implementation). Conventional arms are understood to include all arms other than weapons of mass destruction. In turn, weapons of mass destruction have been defined by the US Department of Defense as 'chemical, biological, radiological, or nuclear weapons capable of a high order of destruction or causing mass casualties'. The definition implies, for instance, that chemical agents that do not generally inflict mass casualties (such as riot-control agents) are not weapons ‘of mass destruction’ and should therefore be considered as conventional arms. In contrast, the formal use of the term ‘arms’ is narrower than ‘weapons’, referring to factory-manufactured items and not those of artisanal production or adaptation. Cyber-attacks, such as computer network attacks, are thus outside the purview of the Treaty.

The arms and ammunition/munitions that States Parties to the ATT are bound to regulate are described in Articles 2.1, 3, and 5.3 These provisions must be considered as a whole in order to reflect the scope of the Treaty. As is well understood, the arms covered in sub-paragraphs (a) to (g) of Article 2.1 (i.e., battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers) were derived from the seven categories used in the UNROCA and are regulated, at a minimum, consistent with the descriptions set out in the Register at the time of the ATT’s entry into force (i.e., 24 December 2014). It should be borne in mind, however, that the UNROCA’s scope is largely ‘limited to particular items deemed of importance in interstate conflicts’, and the Register has struggled to keep pace with technological developments in armaments.

Further, all small arms and light weapons (Article 2.1(h)) defined in ‘relevant’ UN instruments at that time [Article 5.3] similarly fall within the ATT’s scope, while any ammunition/munitions that are ‘fired, launched or delivered’ by any of the conventional arms covered under Article 2.1 also fall within the Treaty’s purview [Article 3].

3 Formal agreement to establish the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, a successor to the Cold War-era Coordinating Committee for Multilateral Export Controls, was reached among a self-selected group of states at a meeting on 19 December 1995 in the Dutch town of the same name. The first Munitions List was promulgated the following year; the list was last amended in December 2015. Other regional lists, such as the EU’s Common Military List are largely based on the Wassenaar Arrangement’s Munitions List.
5 But not ‘the means of transporting or propelling the weapon where such means is a separable and divisible part from the weapon’. US Department of Defense (2016). "DOD Dictionary of Military and Associated Terms, 8 November 2010 (as amended through 15 February 2016)." p. 258. http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf. This and the previous edition of the dictionary no longer include a definition of the term ‘conventional arms’.
7 The Treaty also provides a description of parts and components in Article 4, but this chapter does not explicitly address this Article.
8 See United Nations Register of Conventional Arms (UNROCA) https://www.unroca.org/about
BATTLE TANKS

The description of battle tanks used in the UNROCA at the time of entry into force of the ATT was:

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 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre.\(^{10}\)

Very few tanks are not covered by this description. One example of a tank that falls outside this category is the French GIAT AMX-13 light tank, which has a 90 millimetres gun and is tracked, but has an unladen weight of 13 metric tonnes that would cause it to fall outside this definition of a battle tank.\(^{11}\) This does not mean that it falls outside the scope of the Treaty altogether, however, since it comes within the parameters of the description provided for armoured combat vehicles.\(^{12}\)

ARMOURED COMBAT VEHICLES

The description of armoured combat vehicles (ACVs) used in the UNROCA at the time of entry into force of the ATT was:

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 12.5 millimetres calibre or a missile launcher.\(^{13}\)

This is a broad description that encompasses many but not all of ACVs used today. The Wassenaar Arrangement’s definition\(^{14}\) is broader than the UNROCA description as it would also cover:

- Recovery vehicles, tank transporters, amphibious and deep-water fording vehicles; armoured bridge-launching vehicles;

- Tracked, semi-tracked or wheeled self-propelled vehicles, with or without armoured protection and cross-country capability, specially designed, or modified and equipped:
  - With organic technical means for observation, reconnaissances, target indication, and designed to perform reconnaissance missions,
  - or with integral organic technical means for command and control,
  - or with integral organic electronic and technical means designed for electronic warfare,
  - or for the transport of personnel.\(^{15}\)

In accordance with Article 5.3 of the ATT, States Parties should be encouraged to use the broader Wassenaar Arrangement definition of ACVs. Thus, for example, France’s VBL armoured scout car would fall outside the parameters of the UNROCA description, though in 2011 for example, France reported to the Register under category II (armoured combat vehicles) its export of one VBL Mk2 to Mexico, one VBL Gavial to Germany, two VBR/VBL Mk2s to the United Arab Emirates and one VBL Mk2 to Russia.\(^{16}\)

LARGE-CALIBRE ARTILLERY SYSTEMS

The description of large-calibre artillery systems used in the UNROCA at the time of entry into force of the ATT was:

Guns, howitzers, artillery pieces, combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above.\(^{17}\)

While the Register does not include artillery systems with a calibre lower than 75 millimetres, many such weapons would be covered by the category of light weapons [Article 2.1(h)].

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While some anti-tank and anti-aircraft guns could be captured by the category of small arms and light weapons, States Parties could argue that a very narrow interpretation of the UNROCA category description would mean they would not need to include direct-fire artillery. For example, the arms-transfers database of the Stockholm International Peace Research Institute (SIPRI) records France delivering CAESAR 155 millimetres self-propelled howitzers to Saudi Arabia in 2010 and 2011, but its submissions to the UNROCA for those years do not contain information on the transfer. However, the reference to ‘primarily’ indirect fire should encompass all howitzers even though they can also be used for low-angle fire, a trajectory that is typically associated with direct fire at a target.

**COMBAT AIRCRAFT**

The description of combat aircraft used in the UNROCA upon entry into force of the ATT was:

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 these aircraft which perform specialized 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.

This does not encompass military aircraft that are ‘designed, equipped or modified to perform command and control, air-to-air refuelling, transport of personnel or airdrop missions’, even though these ‘could add considerable offensive capabilities to armed forces’. This excludes many military aircraft recorded in SIPRI’s Arms Transfers database, which defines military aircraft as ‘all fixed-wing aircraft and helicopters, including unmanned aircraft (UAV/UCAV) with a minimum loaded weight of 20kg. Exceptions are microlight aircraft, powered and unpowered gliders and target drones.

The specific exclusion of primary trainer aircraft in the UNROCA is also regrettable given that aircraft used in some counterinsurgency or military operations include trainer aircraft that are subsequently equipped as combat aircraft. Indeed, many trainer aircraft are also available in combat variants. The Hongdu L-15, for instance, is a twin-engine supersonic jet trainer/light attack aircraft produced by China’s Hongdu Aviation Industry Group.

**ARE DRONES COVERED BY THE ATT?**

An unmanned aerial vehicle, commonly known as a drone, is, according to the Wassenaar Arrangement ‘Any ‘aircraft’ capable of initiating flight and sustaining controlled flight and navigation without any human presence on board’. They are further ‘typically airbreathing vehicles which use aerodynamic lift to fly (and thereby perform their entire mission within the earth’s atmosphere)’. It had been suggested, prior to the adoption of the ATT, that armed drones would not be covered by it. Although this was already in all likelihood inaccurate at the time, given discussions in the UNROCA Group of Governmental Experts (GGE), it is clearly so now. The UNROCA definition does not require that aircraft be ‘manned’ and so armed drones are clearly covered by the ATT.

20 UN Disarmament Commission. Department for Disarmament Affairs. “Categories of equipment and their definitions”.
27 The 2006 Group of Governmental Experts (GGE) observed that ‘category IV already covered those unmanned platforms that were versions of combat aircraft or that otherwise fell within the existing definition but not specially designed UAVs’. UN Secretary General (2006). “Report on the continuing operation of the UNROCA and its Further Development”. A/61/261/, 15 August 2006, §96. The 2013 GGE recommended that UN member states that had transferred unmanned aerial vehicles report items that met the requisite description (‘Unmanned 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’). Though the category description was not changed by the 2013 GGE, it did recommend member states report armed unmanned aerial vehicles in a manner consistent with this description. UN Secretary General (2013). “Continuing operation of the United Nations Register of Conventional Arms and its further development”. A/68/140, 15 July 2013, §45.
THE UNROCA DEFINITION DOES NOT REQUIRE THAT AIRCRAFT BE ‘MANNED’ AND SO ARMED DRONES ARE CLEARLY COVERED BY THE ATT.

It is contested, though, whether it is only armed drones and not also reconnaissance ones that fall within the ATT’s scope. The UN Office for Disarmament Affairs, based on discussions in the 2013 GGE, suggests that unarmed drones do not fall within the UNROCA.28 The text of the description for this category shows otherwise. In any event, where a reconnaissance version of a drone is transferred in a separate transaction to munitions that it could fire (e.g. Hellfire missiles or Paveway bombs), the ability to fix those munitions to the wings of the drone means that this would fall within Article 4 (Parts and Components) of the Treaty.

ATTACK HELICOPTERS

The description of attack helicopters used in the UNROCA at the time of entry into force of the ATT was:

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 and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions.29

Already in 1994 it was questioned why armoured personnel carriers were covered by the UNROCA but their aerial equivalents were not.30 In addition, the same arguments for expanding the description for combat aircraft can be made with regard to attack helicopters owing to their contribution to combat and offensive operations by engaging in communications command and control or by transporting personnel. States Parties to the ATT should not interpret the category in overly narrow terms and omit helicopters that perform such military and combat support roles.

MISSILES AND MISSILE LAUNCHERS

The description of missiles and missile launchers used in the UNROCA at the time of entry into force of the ATT was:

(i) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. Including: remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.

(ii) Man-portable air-defence systems (MANPADS).31

Three broad categories of missiles are not covered by this description: air-to-air and air-to-surface/ground missiles with a range below 25 kilometres, guided anti-tank missiles and rockets with a range below 25 kilometres, and ground-to-air missiles.32 The 25 kilometres range threshold excludes from the category modern and new generations of short-range air-to-air missiles and air-to-surface guided and unguided rockets.33 Some missiles have different ranges depending on which version is acquired or how they are used.34 Of course,
many short-range missiles and projectiles, such as short-range guided anti-tank missiles and rockets and rocket-propelled grenades, are covered by the category of small arms and light weapons. In contrast, point (ii) of the definition of missiles and missile launchers explicitly includes MANPADS in the scope of this UNROCA category.

**SMALL ARMS AND LIGHT WEAPONS**

At the time of entry into force of the ATT only one UN instrument explicitly defined small arms and light weapons: the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI), a soft-law instrument adopted by UN member states in 2005. Section II of the ITI provides that:

For the purposes of this instrument, ‘small arms and light weapons’ will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

(a) ‘Small arms’ are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) ‘Light weapons’ are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoiless 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 millimetres.

The broad nature of this definition would capture, for example, the short-range missiles and rockets that would not meet the UNROCA definition of missiles and missile launchers.

**ARE SHOTGUNS COVERED BY THE ATT?**

As the lists of types of small arms and light weapons included in the ITI definition are illustrative, not exhaustive, certain small arms and light weapons are not included in the lists but are nonetheless covered by the general provision in the chapeau of the description, which comprehends any ‘man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive’. Foremost among these are shotguns, which are omitted from the categories or examples of small arms and light weapons specifically listed in the ITI definition but which are encompassed by the chapeau. As noted, this is significant, since shotguns constitute a type of small arm that is frequently encountered in conflict zones. Recent conflicts in the Middle East have witnessed even major armies acquiring modern shotguns for their short-range effectiveness. For example, in 2009 the British Army procured and issued the Benelli M4 Super 90 semi-automatic 12 gauge shotgun under the designation L128A1. Beyond commercially produced weapons, many improvised (‘craft produced’) firearm designs, which are also in use worldwide, are smooth-bore weapons.

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35 The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (the Firearms Protocol) defines a ‘firearm’ but not small arms and light weapons. Thus, Article 3(a) of the Firearms Protocol defines a firearm as ‘any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime. (adopted 31 May 2001, entered into force 3 July 2005) 2326 UNTS 208, Article 3(a).


39 Ibid.
ADDITIONAL CATEGORIES

There are additional categories of weapons that do not fall under the definition of the ITI such as: flamethrowers, directed-energy weapons including lasers, and electromagnetic projectile accelerators such as railguns and coilguns. Compressed air/gas-operated weapons of all types, including Tasers and other conducted electrical weapons, as well as crossbows, knives and similar weapons also do not meet the ITI definition. In accordance with Article 5.3, States Parties are encouraged to apply the ATT provisions to all additional categories of weapons.

AMMUNITION/MUNITIONS

The obligation on States Parties under Article 3 of the ATT is to regulate the export of ammunition or munitions that are, or can be, fired, launched or delivered by battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile launchers, and small arms or light weapons. The term ‘fired, launched or delivered’ excludes explosive devices either laid by hand or that are thrown, such as manually emplaced landmines or hand grenades. But it does not exclude remotely delivered mines or rocket-propelled grenades, both of which fall within the scope of the Treaty. All cluster munitions are covered, whether delivered aerially or from artillery.

IS TEAR GAS COVERED BY THE ATT?

It has been suggested that chemical riot-control agents or plastic or rubber bullets do not fall within the scope of the ATT. This is not persuasive. Plastic and rubber bullets are not ‘non-lethal’ but ‘less lethal’, and are therefore covered by the Treaty. Tear gas dispersed by canister and the metal canister itself have potentially lethal consequences, so they fall within the scope of the chapeau definition of small arms and light weapons in the ITI in accordance with Article 5.3. In turn, they are ‘fired, launched or delivered’ by small arms, so are within the purview of Article 3.

42 States Parties to the 2008 Convention on Cluster Munitions (CCM) would be prohibited under that treaty and also under Article 6(2) of the ATT from transferring these weapons. The scope of the ATT would be slightly wider than the CCM, however, since Article 1(3) of the CCM explicitly excludes all landmines (anti-personnel and anti-vehicle) delivered from a munitions dispenser from its purview.
THE APPROACH OF STATES PARTIES TO THE ATT IN NATIONAL CONTROL LISTS

States Parties have, by and large, not adopted specific control lists that are narrowly tailored to the scope of the ATT. Instead, they have tended to use pre-existing regional or international control lists, such as those propagated by the European Union (EU) or the Wassenaar Arrangement. Participating states in the Wassenaar Arrangement, for example, have largely either adopted wholesale, or have adapted and then adopted as their national control list, its Munitions List. This concerns, among others, Australia,44 Germany,45 New Zealand,46 Norway,47 and the United Kingdom.48

The Munitions Lists includes shotguns (as smooth-bore weapons),49 riot-control agents such as tear gas (other than for personal self-defence use),50 submunitions and mines delivered by cluster munition dispenser,51 grenades and mines (even manually thrown or hand emplaced),52 and directed-energy weapons, including blinding laser weapons.53 Plastic baton rounds and rubber bullets are also not excluded from the Munitions Lists.

EU member states and associated European states have, as one might expect, tended to use and apply the EU rules on arms exports. This applies to, among others, Austria, Belgium, Bulgaria, the Czech Republic, Finland, France and Serbia,54 as set out in their respective Initial Reports to the ATT Secretariat. The arms to which these rules are applied are set out in the EU Common Military List. But this list, the most recent version of which was adopted by the Council of the EU on 9 February 2015, simply mirrors the Wassenaar Arrangement’s Munitions List (even using the same terminology and formatting), making the latter a de facto standard for ATT States Parties.55 Thus, as France observes in its Initial Report, the list extends beyond the scope of arms and items dictated by Articles 2 to 4 of the Treaty.56 This is a positive development, reflecting the encouragement in Article 5.3 to apply the provisions of the Treaty ‘to the broadest range of conventional arms’.

Every State Party should be strongly encouraged to apply the ATT criteria to transfers of all conventional arms, including hand grenades and manually emplaced landmines. Using the Wassenaar Arrangement’s Munitions List is a good way to proceed irrespective of whether a State Party participates in the arrangement.

49 Wassenaar Arrangement’s Munitions List, ML2(b).
50 Ibid., ML7.
51 Ibid, ML3. Mines are explicitly excluded from the definition of a cluster munition in the 2008 Convention on Cluster Munitions (Article 1(3)).
52 Ibid., ML4.
53 Ibid., ML19.
54 See for example Serbia, “Arms Trade Treaty: Baseline Assessment Questionnaire”, §5E. http://www.armstrade.info/countryprofile/serbia/
55 In its Initial Report, FYR Macedonia notes that its national control list is “For conventional arms Wassenaar Arrangement list, for small arms and light weapons United Nations Firearms Protocol (sic): FYR Macedonia, “Arms Trade Treaty: Baseline Assessment Questionnaire” http://thearmstradetreaty.org/images/Macedonia_ATT-BAP_Survey.pdf. More positive is the approach taken by Trinidad and Tobago, which announced in its initial report its intention ‘to enact legislation to fully implement the ATT and to develop a consolidated national control list for the purposes of the Treaty. Upon completion of this process, the revised national control list will be forwarded to the Secretariat. At present, the national control list is derived from various pieces of legislation: Initial Report of the Government of The Republic of Trinidad and Tobago, http://thearmstradetreaty.org/images/ATT_Initial_Report_-_Trinidad_and_Tobago.pdf
CHAPTER 1

Small Arms Identification: An Introduction
Level 5: Additional information

Some types of investigations demand additional information. For example, tracing operations frequently require the unique identifying mark on a particular item. This mark may be unique to a particular item (such as a serial number), or to a group of items (for example, a ‘lot’ or ‘batch’ number). Unique identification (UID) has been achieved once a researcher has correctly identified and recorded such markings. Other data, such as explosive fill, fuse type, year or date of production, is also often useful. Researchers sometimes gather even more detailed data, including forensic evidence, in the course of investigations.

Identifying weapons and analysing arms flows: an overview

This section provides a step-by-step overview of the processes by which weapons are identified and arms flows are tracked. The process consists of two distinct but interconnected tasks: identifying individual weapons and tracking their movement through the transfer chain.

Identifying the make, model, and variant of weapons and ammunition

The first step in the classification and identification process, which is summarized in Figure 1.1, is to determine whether the item in question is a small arm, light weapon, or related item (component, accessory, or ammunition). This Handbook contains detailed descriptions of small arms (Chapter 3), light weapons (Chapter 5), and their ammunition (Chapters 4 and 5), and includes numerous photographs of each class of items. These chapters also identify and describe some of the components of—and major accessories for—small arms and light weapons. Chapter 6 discusses improvised weapons, which are often very different—in form and function—from their factory-produced counterparts.

The next step is to identify the group of small arms, light weapons, or ammunition to which the item belongs. Grouping light weapons is sometimes easier than small arms because light weapons are more distinctive in appearance. Chapter 5 provides detailed descriptions of the main subcategories of light weapons and includes several photographs of weapons from each category. Chapters 4 and 5 provide similar descriptions of ammunition for small arms and light weapons respectively.

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12 This may be unique to a particular item, or to a group (most commonly a ‘lot’ or ‘batch’) of items.
The final step is to identify the make, model, and variant of the item. This is often the most difficult part of the identification process and usually requires a careful analysis of the physical features of the item and the markings on key components. Available imagery is often too blurry or off-centre to read the markings on weapons and ammunition, precluding the use of markings as a tool for identifying the items. Even in these cases, however, it is often possible to identify the weapon by carefully inspecting key physical characteristics, reviewing data on arms transfers to and within the region where the item was encountered, and interviewing individuals with first-hand knowledge of regional arms flows. Use of these analytical techniques is illustrated and explained in the case study in Chapter 7.

This Handbook provides a thorough overview of how to analyse the physical characteristics of, and markings on, weapons and ammunition, but it does not—and cannot—provide all of the information required to definitively identify each of the many thousands of different makes and models of small arms, light weapons, and ammunition in circulation today. No such compilation of information exists and, even if it did, it would be too voluminous to include in a Handbook.
of this type. There are numerous reference guides from a variety of sources, some of which are freely available. It should be noted that even the best reference materials contain errors and thus information from these and other guides should be corroborated with other sources whenever possible. As a rule, researchers should first seek out information from manufacturers and original users (such as armed forces) of the items in question, followed by authoritative publications that cite these primary sources.

**Mapping the chain of custody**

Identifying the sources and trafficking patterns of illicit weapons often requires more than just an analysis of the physical characteristics of the weapons and their markings. Mapping arms flows requires careful analysis of other data sources, including reports on international arms transfers, baseline assessments of arms within a given country (see Box 1.1), shipping documents, and the packaging in which weapons are stored and shipped. These sources often contain important clues regarding the chain of custody of small arms and light weapons, and the point at which weapons are diverted to terrorists, criminals, and insurgents.

As defined in Chapter 2, the chain of custody (or ‘transfer chain’) is the series of transfers and retransfers that starts with the manufacturer and concludes with the delivery of the transferred item to its current owner or operator, or ‘end user’. The chain of custody can be relatively short—the current end user receives the item directly from the manufacturer—or it can be long and circuitous, and may involve theft, loss, or diversion. Chapter 2 provides a more in-depth explanation of chains of custody and the many different types of transfers they comprise.

Mapping chains of custody is usually less straightforward than identifying the make, model and variant of a weapon. Often, the point in the transfer chain at

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**Box 1.2 Arms tracing**

With enough information, government authorities and some specialized organizations can trace arms and ammunition to the last known authorized end user. Tracing operations often provide insights into an item’s ownership history, including, at times, the point at which it was diverted into the illicit sphere. Tracing operations usually involve ‘tracing requests’, which are issued to authorities, organizations, or individuals who may hold relevant data regarding the item in question. Ammunition is also traced but generally not with the same precision as a weapon, since individual cartridges are typically marked with a batch or lot number rather than a unique serial number. Arms tracing is enabled by the accurate identification of arms or ammunition. It is, conversely, hindered or rendered impossible by the inaccurate identification of these items.
Figure 1.3 Selected markings on a Heckler & Koch HK417 self-loading rifle

<table>
<thead>
<tr>
<th></th>
<th>Make/manufacturer</th>
<th>Heckler &amp; Koch (HK) logo</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Model name</td>
<td>HK417</td>
</tr>
<tr>
<td>3</td>
<td>Calibre</td>
<td>Cal. 7.62 mm x 51</td>
</tr>
<tr>
<td>4</td>
<td>Serial number (lower receiver)</td>
<td>89-001914</td>
</tr>
<tr>
<td>5</td>
<td>Serial number (upper receiver)</td>
<td>89-001914</td>
</tr>
<tr>
<td>6</td>
<td>Quality control and proof marks</td>
<td>HK quality control mark, German national proof mark (letter ‘N’), German year of proof code, Ulm proof house proof mark</td>
</tr>
<tr>
<td>7</td>
<td>Fire selector markings</td>
<td>Pictographic markings</td>
</tr>
<tr>
<td></td>
<td>Positive identification</td>
<td>Heckler &amp; Koch HK417 self-loading rifle</td>
</tr>
</tbody>
</table>

Image source: N.R. Jenzen-Jones/ARES
which one starts the mapping process depends on the information at hand. For example, if the only available data source is the markings on the weapon in question and the most recent end user is unknown, the most logical place to start mapping the weapon’s chain of custody would be the country of origin (unless the markings identify the importer). In other cases, the end user may be known but not the country of origin (because the markings on the weapon in question are not visible). In that case, the researcher would start their investigation at the other end of the transfer chain, that is, with the most recent end user.

Many of the sources of data on the transfer chain are the same sources used in the weapons identification process. Markings on weapons and ammunition often identify the country of origin or manufacturer, the date of manufacture, and, in some cases, importers or importing countries. Similarly, distinctive physical characteristics of weapons and ammunition sometimes provide clues regarding the date or country of manufacture. Techniques for analysing and interpreting these clues are provided in Chapters 3, 4, and 5.

Figure 1.3 shows a readily identifiable weapon, marked with clear and well-known make and model markings. However, even if those particular marks were obscured or removed, the other markings on the weapon would provide valuable information. The calibre marking would help researchers to narrow down the possible models, for example, and the pictographic fire selector (with symbols for safe, semi-automatic, and automatic functions) would aid in this process. But there is other, less obvious, information to be gleaned from the markings. The two-digit serial number prefix ‘89’ indicates the model of the weapon under HK’s marking scheme; the letters ‘AK’ alongside the proof marks indicate the weapon was proofed (and likely manufactured) in 2009; and the ‘antler’ proof mark indicates the weapon underwent proof testing at the Ulm proof house (Beschussamt Ulm), where German-made HK weapons are proofed.

The documentation accompanying arms shipments and the packaging in which these items are shipped also contain valuable information about exporters, importers, export dates, and the quantity of weapons shipped. Examples of documentation and packaging for weapons and ammunition—and a sample of the insights that these materials provide—are included throughout the Handbook.

Official and unofficial data on international arms transfers is another rich source of information on arms flows. Governments and international organizations have

14 Less commonly, exporters or exporting countries.
### Table 1.3 Using this Handbook to identify arms and track arms flows

#### Identifying the weapon

<table>
<thead>
<tr>
<th>Determining class</th>
<th>Small arms</th>
<th>Light weapons</th>
<th>Heavy weapons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determining group</td>
<td>Hand guns</td>
<td>Long guns</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rifled</td>
<td>Smooth-bore</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Self-loading pistols</td>
<td>Self-loading rifles</td>
<td>Manually operated rifles</td>
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<tr>
<td></td>
<td>Revolvers</td>
<td></td>
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<tr>
<td></td>
<td>Smooth-bore handguns</td>
<td>Machine guns</td>
<td>Self-loading shotguns</td>
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<tr>
<td></td>
<td>Sub-machine guns</td>
<td>Self-loading rifles</td>
<td>Manually operated shotguns</td>
</tr>
<tr>
<td></td>
<td>Machine guns</td>
<td>Smooth-bore shotguns</td>
<td>Other smooth-bore long guns</td>
</tr>
</tbody>
</table>

#### Determining make, model, and variant

<table>
<thead>
<tr>
<th>Determining make, model, and variant</th>
<th>Small arms</th>
<th>Small arms ammunition</th>
<th>Light weapons</th>
<th>Light weapons ammunition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical features</td>
<td></td>
<td></td>
<td></td>
<td>Physical features</td>
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<tr>
<td>Markings</td>
<td></td>
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<td></td>
<td>Markings</td>
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<tr>
<td>Packaging and documentation</td>
<td></td>
<td></td>
<td></td>
<td>Packaging and documentation</td>
</tr>
</tbody>
</table>

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## Mapping the chain of custody

### Identifying the manufacturer and/or country of origin

<table>
<thead>
<tr>
<th>Small arms</th>
<th>Small arms ammunition</th>
<th>Light weapons</th>
<th>Light weapons ammunition</th>
<th>Small arms</th>
<th>Small arms ammunition</th>
<th>Light weapons</th>
<th>Light weapons ammunition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Markings on the item</td>
<td>Markings on the item</td>
<td>Markings on the item</td>
<td>Markings on the item</td>
<td>Markings on the item</td>
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<td>Packaging and documentation</td>
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<td>Packaging and documentation</td>
<td>Packaging and documentation</td>
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</tbody>
</table>

### Identifying the previous importers/owners

<table>
<thead>
<tr>
<th>Importing country(ies)</th>
<th>Recipient(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small arms</td>
<td>Small arms ammunition</td>
</tr>
<tr>
<td>Markings on the item</td>
<td>Markings on the item</td>
</tr>
<tr>
<td>Item packaging</td>
<td>Item packaging</td>
</tr>
<tr>
<td>Item documentation</td>
<td>Item documentation</td>
</tr>
<tr>
<td>Data on authorized transfers</td>
<td>Data on authorized transfers</td>
</tr>
<tr>
<td>Data on illicit arms flows</td>
<td>Data on illicit arms flows</td>
</tr>
<tr>
<td>Key informant interviews</td>
<td>Key informant interviews</td>
</tr>
</tbody>
</table>
published thousands of records on imports and exports of small arms and light weapons. The specificity and completeness of these records vary, but many contain important information about the sources and recipients of exported weapons and, to a lesser extent, ammunition. Social media is an increasingly important (primarily unofficial) source of information on arms flows. Using social media to systematically map chains of custody is difficult, but it is often a valuable supplement to official reporting. Chapter 8 provides a thorough overview of these data sources, their strengths and limitations, and strategies for analysing and interpreting them.

Mapping the transfer chain after a weapon is diverted to an illicit user is often significantly more challenging than tracking the item’s movement through authorized channels (which itself is no small feat). Data on illicit arms flows includes court documents, declassified intelligence reports, media articles, and reports from research organizations such as the Small Arms Survey and ARES. Data on seized weapons is also used to study illicit arms flows. Individual summaries of weapons seizures rarely reveal the sources or trafficking routes of illicit weapons but, when aggregated and combined with other data sources, they can shed light on the type and quantities of illicit weapons, and changes in illicit arms flows over time. Chapter 9 identifies key sources of data on illicit weapons and explains how to analyse them.

Table 1.3 shows the processes through which arms are identified and arms flows are tracked. It is important to note that not all of the details listed in the table are required for every type of analysis, and key details are often not available at all. At the same time, all information is potentially relevant, and seemingly unrelated data can be used to fill information gaps. These and other analytical strategies, tips, and techniques are explained in greater detail in the rest of the Handbook.

— Authors: N.R. Jenzen-Jones and Matt Schroeder

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15 See, for example, Schroeder (2013a; 2014b) and Schroeder and King (2012).
The 2030 Agenda for Sustainable Development explicitly links firearms, violence, and sustainable development (UNGA, 2015). Sustainable Development Goal (SDG) 16 includes global commitments to significantly reduce ‘all forms of violence and related death rates’ (Target 16.1) as well as illicit arms flows (Target 16.4) by 2030. In addition, the Inter-Agency and Expert Group on SDG Indicators recommends that states provide data on violence-related deaths disaggregated by instrument of violence, among other factors (IAEG–SDG, 2016, p. 6).

Measures that target the use, possession, and transfer of firearms—such as dedicated legislation, transfer controls, amnesties, or crackdowns on illicit possession—can help to reduce violent deaths in both conflict and non-conflict settings. Such measures can also assist in curbing non-lethal outcomes, such as the rate of firearm-related injuries, disability, and psychological trauma, on which comprehensive national data is scarce (Alvazzi del Frate and De Martino, 2013).

This Research Note analyses trends in firearm-related violent deaths. It presents estimates based on data in the Small Arms Survey’s database on violent deaths, which currently covers countries around the world from 2004 to 1 August 2016 and includes both conflict deaths and homicide data sets (Small Arms Survey, n.d.; see Box 1). The Note updates data published in the Global Burden of Armed Violence 2015 (Geneva Declaration Secretariat, 2015a). It finds that:

- Globally, firearms were used in an estimated 46 per cent of all violent deaths in 2010–15. Specifically, they were used in 50 per cent of homicides and 32 per cent of conflict deaths.
- The use of firearms in lethal violence is particularly prevalent in the Americas, as well as Southern Africa and Southern Europe. In most regions, the proportion of violent deaths that involved firearms was fairly stable from 2007–12 to 2010–15, although averages decreased in the Caribbean and increased in Southern Africa.
- National time-series data reveals differing patterns in Albania and Croatia. In Albania, firearm and non-firearm violent deaths have risen and fallen in parallel, suggesting that they are both influenced by common factors. In Croatia, the rate of firearm homicide decreased by 70 per cent between 2006 and 2013, independently of the rate of non-firearm homicide, which remained relatively stable.
- Efforts are required to improve the availability and quality of data on firearm deaths, particularly in Africa, Asia, and Oceania.

Firearms and violent deaths in 2010–15

Between 2010 and 2015, an estimated 46 per cent of violent deaths—214,000 per year on average—resulted from the use of firearms around the world (Small Arms Survey, n.d.).
Specifically, they were used in 50 per cent of homicides and 32 per cent of conflict deaths. As shown in Figure 1, the use of firearms was particularly prevalent in the Americas (Central America, the Caribbean, and South and Northern America), as well as in Southern Africa and Southern Europe. Due to a dearth of data for some countries that are disproportionately affected by armed conflict, this analysis excludes certain subregions.

This data is fairly similar to previously published figures for 2007–12 (Geneva Declaration Secretariat, 2015a, p. 75), although the proportion of firearm homicides increased in Southern Africa and decreased in the Caribbean. In comparison, Northern America and Southern Europe exhibit much lower rates of violent deaths, but the use of firearms in violent deaths, as opposed to other instruments, is also relatively high.

Figure 2 shows, wherever available, the proportion of firearm-related deaths in the 20 countries that registered the highest violent death rates in 2015, or in the latest year for which data is available (Widmer and Pavesi, 2016). The proportion of firearm deaths is high in most of the 20 countries. Most of the countries that were not affected by conflict are located in the Americas; just under half (nine) of the countries were emerging from or experiencing armed conflict.

The proportion of firearm deaths varies across conflict-affected countries, as well as over time in a single conflict. Such fluctuations reflect changes in the intensity or type of warfare. In Syria, for example, firearms accounted for about 80 per cent of fatalities in the early months of the war, between March 2011 and January 2012, when overall fatalities remained well below 2,000 people per month (see Figure 3). As the war intensified, in mid-2012, artillery use increased and the proportion of deaths by gunshot dropped below 50 per cent. In the second half of 2012, and particularly from 2015, air bombardments also increased. From January 2015, the annual share of fatal gunshots dropped
Figure 3  Number of violent deaths in Syria, by instrument, March 2011–February 2016

Source: Humanitarian Tracker (n.d.)
A Free Syrian Army fighter fires at snipers loyal to Syria’s President Bashar al-Assad, Aleppo, September 2013. © Molhem Barakat/Reuters

Figure 4 Countries where firearms were used in at least 50 per cent of violent deaths, 2015 or latest available year

<table>
<thead>
<tr>
<th>Country</th>
<th>Violent deaths by firearm</th>
<th>Violent deaths by other means</th>
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<tbody>
<tr>
<td>El Salvador</td>
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<tr>
<td>Honduras</td>
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<td>Jamaica</td>
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<td>Guatemala</td>
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<tr>
<td>Brazil</td>
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<td>Lesser Antilles</td>
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<td>Dominican Republic</td>
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<td>Panama</td>
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<td>Puerto Rico</td>
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<td>Argentina</td>
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<td>United States</td>
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<tr>
<td>Albania</td>
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<tr>
<td>Former Yugoslav Republic of Macedonia</td>
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<td>Serbia</td>
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<tr>
<td>Italy</td>
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</tbody>
</table>

Source: Small Arms Survey (n.d.)

below 30 per cent of total fatalities, with air bombardments often claiming more lives than either small arms or artillery.

Firearms can account for a significant proportion of violent deaths regardless of a country’s overall violent death rate. Figure 4 shows 19 countries that are not affected by armed conflict, have a population of more than 100,000, and registered that at least 50 per cent of violent killings were committed with firearms in 2015 or the latest available year. In these countries, violence reduction programming clearly needs to address the role of firearms.

Reflecting regional trends, 14 of these countries are located in Latin America and the Caribbean. In the Americas—unlike in other regions—the percentage of violent deaths by firearm is linked to the total violent death rate. That is, the higher a country’s violent death rate, the greater the proportion of firearm deaths within this total tends to be. Yet the proportion of firearm deaths is actually highest for countries with low violent death rates (fewer than 10 per 100,000 population). A case in point is the United
Police officers inspect an assault rifle found in a taxi, along with a woman’s body, after a shooting incident involving police, Acapulco, Mexico, July 2016. © Pedro Pardo/AFP/Getty Images

States, where almost 70 per cent of violent deaths were caused by firearms in 2010–15, although the total violent death rate was 4.5 per 100,000 (see Figure 4).

Another four countries in Figure 4 are in Southern Europe. Three of them are in the Western Balkans, whose firearm death rates are examined in the next section.

**Firearm homicide in the Western Balkans**

Figure 5 shows sex-disaggregated firearm homicide statistics for the Western Balkans. As noted above, while overall levels of lethal violence in Southern Europe are relatively low, a high proportion involves firearms. Albania has Europe’s second-highest firearm homicide rate, which is closely followed by Montenegro’s, although it is important to note that there have been very few cases of homicide in Montenegro in 2012, the latest year for which disaggregated data is available. In addition, in Montenegro and the former Yugoslav Republic of Macedonia

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**Figure 5** Percentage of homicide victims killed by firearm in Western Balkan states and Southern Europe, by sex, 2015 or latest year available

- Female victims
- Male victims
- Firearms homicide rate

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followed by two campaigns for the voluntary surrender of weapons, in 2007–09 and 2009–11, and a firearm awareness raising drive involving the Veterans Association, a women’s group, and community youths (Croatia, 2010). By December 2011 some 58,800 small arms, light weapons, and explosives (including more than 7,000 firearms) had been collected; by the end of 2012, more than 33,000 of these weapons had been destroyed (Croatia, 2014; SEESAC, 2011, 2012; UNDP, 2012). While correlation does not prove causation, the relationship warrants further study.

Conclusion

In pursuing the goal of ‘peaceful and inclusive societies for sustainable development’, UN member states undertook to ‘[s]ignificantly reduce all forms of violence and related death rates’ and ‘illicit [. . .] arms flows’ (UNGA, 2015, Goal 16), reflecting the linkages between lethal (and non-lethal) violence and firearms in many parts of the world.
The regions most affected by firearm violence are the Americas, Southern Africa, and Southern Europe, albeit with significant national—and gendered—variations. National trend analysis reveals diverging patterns for Albania and Croatia. In Albania, rates of firearm and non-firearm homicides have recently moved in step, suggesting that similar factors may influence both. In Croatia, on the other hand, firearm homicide rates have decreased independently of non-firearm homicides, possibly as a result of targeted firearm-related measures. In conflict-affected countries, the proportion of violent deaths involving the use of firearms tends to vary according to the type and intensity of warfare.

A more comprehensive understanding of firearm violence, and of possible responses to it, needs to take account of the motivations behind such violence, the identities of victims and perpetrators and their relationships to one another, the locations where firearm violence is perpetrated, the types and origins of weapons, and the interactions of these parameters with other risk factors. Time-series analysis is also important in evaluating the effectiveness of policies and interventions aimed at curbing firearm violence.

While many questions remain to be answered, the overall availability of quality data on firearm deaths is poor and, in certain regions, declining. These trends run counter to the ‘data revolution’ called for by the 2030 Agenda in all of the areas covered by the Sustainable Development Goals, but they can be reversed.
Notes

1. For more information and examples of measures, see ISACS (2012; 2015) and Wilson (2014).
2. For a list of data sources, see Geneva Declaration Secretariat (2015b).
3. Countries in this selection meet the following criteria: (1) the population exceeded 100,000 people; (2) disaggregated data is available; (3) there was no armed conflict; (4) at least 50 per cent of violent deaths were committed with firearms; and (5) at least 20 firearm homicides were registered.
4. The Western Balkans comprise Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, and Serbia. For more information on firearms and armed violence in the region, see Carapic (2014).
5. The designation of Kosovo is without prejudice to positions on status and is in line with UN Security Council Resolution 1244 and the International Court of Justice Opinion on the Kosovo declaration of independence.
6. Only the Russian Federation has a higher firearm homicide rate: an average of 3.8 per 100,000 in 2010–15 (Small Arms Survey, n.d.). For a discussion of gun crime in Albania, see Davies (2016).
7. A forthcoming Research Note will explore the gendered dimensions of violent deaths.
8. Future research could usefully consider the fact that Croatia had already implemented a similar programme to enhance security through the voluntary surrender of firearms, ammunition, and explosives in 2001 (Grillot, 2010, p. 155) and the country’s membership in NATO (as of 2009) and the European Union (as of 2013). For an epidemiological review of the link between firearm legislation and firearm-related injuries, see Sarna-Tenorio et al. (2016).

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About the Small Arms Survey

The Small Arms Survey is a global centre of excellence whose mandate is to generate impartial, evidence-based, and policy-relevant knowledge on all aspects of small arms and armed violence. It is the principal international source of expertise, information, and analysis on small arms and armed violence issues, and acts as a resource for governments, policymakers, researchers, and civil society. It is located in Geneva, Switzerland, at the Graduate Institute of International and Development Studies.

The Survey has an international staff with expertise in security studies, political science, law, economics, development studies, sociology, and criminology, and collaborates with a network of researchers, partner institutions, non-governmental organizations, and governments in more than 50 countries.

For more information, please visit: www.smallarmssurvey.org.

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Obligations of Exporting States

Guiding Questions:

1. What export prohibitions bind exporting states under Article 6? What is the standard for denying exports based on those prohibitions?
2. What export risk assessment must states conduct under Article 7? What is the standard for denying exports based on that risk assessment?
3. How have states in Southern Africa conceived of the Articles 6 and 7 export restrictions? How does it apply in Southern Africa?
4. How do Articles 6 and 7 relate to importing states?
5. How do Articles 6 and 7 relate to transit and transshipment states?

Resources:

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.
UNDERSTANDING THE ARMS TRADE TREATY
FROM A HUMANITARIAN PERSPECTIVE
to send weapons to its armed forces deployed abroad without subjecting such movement to the Treaty’s transfer controls. The implication is that, should these weapons change ownership during or at any time after they have been sent abroad, such change of ownership would qualify as a “transfer” and would therefore have to comply with the Treaty’s transfer criteria. In addition, although Article 2 (3) refers to the arms remaining under the State Party’s “ownership”, a State Party could not circumvent the Treaty by loaning or leasing the weapons after it has moved them abroad, for the reasons explained above in relation to the interpretation of Article 2 (2).

As weapons transfers of any kind can facilitate serious violations of IHL and international human rights law, the ICRC recommends that States Parties interpret the term “transfer” in the ATT in the broadest possible sense, including also non-commercial transfers, in accordance with the ordinary meaning of the term and the Treaty’s humanitarian purpose.

3.2 The Treaty’s core obligations
At the heart of the ATT are Articles 6 and 7, which subject the transfer of conventional arms, their ammunition, and parts and components to strict criteria, with the aim of ensuring that the weapons do not end up in the hands of those who would use them to commit serious violations of IHL or international human rights law, or other serious crimes. These provisions are crucial to achieving the ATT’s humanitarian purpose. They complement existing limits on arms transfers that stem in particular from the obligation to respect and ensure respect for IHL under Article 1 common to the 1949 Geneva Conventions,34 a key principle of the Treaty.

34 International humanitarian law and the challenges of contemporary armed conflicts, Report to the 32nd International Conference of the Red Cross and Red Crescent, held in Geneva, Switzerland, on 8–10 December 2015, October 2015, pp. 55–56.
Articles 6 and 7 establish a two-stage process to control transfers of arms, ammunition/munitions and parts and components:

- **Under Article 6**, a State Party must deny a proposed transfer if the transfer would violate specified international obligations, or if the State Party has knowledge that the transferred weapons would be used to commit genocide, crimes against humanity or war crimes.

- **If an export** is not prohibited under Article 6, the State Party must apply the risk assessment criteria of Article 7 and deny the proposed export where there is an “overriding” risk that exported weapons could be used to commit or facilitate serious violations of IHL or of international human rights law, or other serious crimes.

As indicated, Article 6 applies to all types of transfer referred to in Article 2 (2) of the Treaty, i.e. export, import, transit or trans-shipment, and brokering, while Article 7 applies only to exports.

The importance of Articles 6 and 7 is reflected in Article 23 of the Treaty, which invites signatory and ratifying States to apply these Articles provisionally, pending the Treaty’s entry into force for them.

### 3.2.1 Transfer prohibitions – Article 6

1. **Transfer prohibitions relating to international obligations under international agreements**

   Article 6 (1) prohibits the transfers of arms, ammunition and parts and components where the transfer would violate the State Party’s obligations under UN Security Council peace enforcement measures adopted under Chapter VII of the UN Charter, “in particular arms embargoes”.

   Article 6 (2) also prohibits transfers of such arms and items where the transfer would violate the State Party’s “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”. These obligations would include the transfer prohibitions of the Anti-Personnel Mine Ban Convention, the Convention
on Cluster Munitions, or certain Protocols under the Convention on Certain Conventional Weapons, as well as the 2001 Firearms Protocol, among other relevant instruments, insofar as the State is a party to these instruments and the weapons they cover fall within the scope of the ATT. In addition, some States have taken the view that Article 6 (2) includes transfer prohibitions arising from human rights and IHL treaties, among other international agreements to which the State is party.

(b) Transfer prohibition relating to war crimes and other international crimes

Article 6 (3) prohibits each State Party from authorizing any transfers of arms, ammunition or parts and components if the State Party 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.”

While this provision represents one of the ATT’s most commendable achievements, its wording raises some questions of interpretation, briefly examined below.

- Knowledge at the time of authorization that the arms or items would be used...

The term “knowledge” relates to what a State Party knows about the likely behaviour of the recipient, based on the facts at its disposal at the time it authorizes the weapons transfer. This implies assessing the current and past patterns of behaviour of the recipient, such as its respect for IHL in an armed conflict to which it is a party, among other factors.

35 For a list of relevant multilateral and regional instruments, see UN Office for Disarmament Affairs, Arms Trade Treaty Implementation Toolkit, Module 5, Prohibitions on Transfers, 21 August 2015, https://www.un.org/disarmament/convarms/att.
36 See the statement made by Norway on 4 June 2013, after the signing of the ATT.
37 Relevant indicators for this assessment include the recipient’s past and present record of respect for international humanitarian law, and for taking measures to prevent violations or cause them to cease, including by punishing those responsible.
There is a question whether the term “knowledge” in Article 6 (3) of the ATT includes an objective standard of “constructive” knowledge – whereby the State Party “should have known”, based for example on credible publicly available information, that the arms would be used to commit the listed crimes – or whether it refers to a subjective standard of “actual” knowledge in the possession of the State Party.

In their interpretative declarations upon ratification of the Treaty, some States have taken the first view, interpreting the term “knowledge” as meaning “that the State Party concerned shall not authorize the transfer if it has reliable information providing substantial grounds to believe that the arms or items would be used in the commission of the listed crimes”. On the other hand, some States apply in their arms transfer policies the standard of “actual knowledge”.

There are similar divergences of views under the law of State responsibility, regarding a State’s responsibility for aiding or assisting another State in committing an internationally wrongful act where the first State has “knowledge of the circumstances” of the said act. Still, there may be little practical difference between “actual” and “constructive” knowledge, to the extent that actual knowledge can be inferred from the circumstances.

In any case, Article 6 (3) refers to knowledge that the weapons “would” be used to commit the listed crimes, indicating a lower burden of evidence to deny the transfer than knowledge that the weapons “will” be used for such

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38 Interpretative declarations made by Lichtenstein (16 December 2014) and Switzerland (30 January 2015) upon ratification of the ATT (emphasis added).
40 See International Law Commission (ILC), Articles on Responsibility of States for Internationally Wrongful Acts, 2001, United Nations, 2005, Art. 16 (http://www.refworld.org/docid/3ddb8f804.html). In their observations and comments to the ILC on Article 16, some States interpret the standard of knowledge as one of actual knowledge or intent, while others apply a standard of constructive knowledge, i.e. that the offending State “knows or should have known” the circumstances of the wrongful act. See ILC, “State responsibility: Comments and observations received from Governments”, fifty-third session, UN Doc. A/CN.4/515 and Add. 1–3, 19 March 2001.
In other words, the level of knowledge required to prohibit a transfer under Article 6 (3) is not one of absolute certainty.

The aim of Article 6 (3) of the ATT is to prevent the commission of serious crimes such as genocide, crimes against humanity or war crimes by withholding the supply of weapons that would be used for such purposes. In this regard, the threshold of knowledge under the customary law obligation of States to prevent the crime of genocide is relevant to the interpretation of Article 6 (3). The International Court of Justice has determined that a State may be found to have violated its obligation to prevent the crime of genocide “even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was under way; for it to incur responsibility on this basis, it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed.” ATT States Parties would need to take this interpretation into account in implementing Article 6 (3), at the very least in relation to genocide. They should also do so in relation to all of the other listed crimes, as a matter of advancing the Treaty’s humanitarian purpose and principles, including ensuring respect for IHL.

41 A parallel can be drawn with the User’s Guide to [EU] Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (COARM 172 CFSP/PESC 393, 20 July 2015), which notes that the language “might be used” in Article 2, Criterion Two (a), of the Common Position “requires a lower burden of evidence than a clear risk that the military technology or equipment will be used for internal repression” (emphasis added). Criterion Two (a) and (c) requires EU Member States to “deny an export license if there is a clear risk that the military technology or equipment to be exported might be used for internal repression” or “in the commission of serious violations of international humanitarian law”.

42 ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, para. 432 (emphasis added). In articulating this test applicable to the obligation to prevent genocide under Article 1 of the Genocide Convention, the ICJ drew a distinction with complicity in genocide, interpreting the latter by reference to Article 16 of the ILC Articles on State Responsibility, which set out a higher standard of evidence akin to “actual knowledge” (ibid. para. 420). It further stated that the obligation to prevent genocide is one of conduct, not of result, comparable to the notion of “due diligence” (ibid. para. 430).
In sum, in the view of the ICRC, a State Party must deny a transfer under Article 6 (3) if it has substantial grounds to believe, based on information in its possession or that is reasonably available to it, that the weapons would be used to commit genocide, crimes against humanity or war crimes.

Applying the ordinary meaning of the term “knowledge” in the context of Article 6 (3) and in light of the object of the Treaty to establish the highest possible common international standards for regulating the international arms trade for the purpose of reducing human suffering:

➔ The ICRC recommends that the term “knowledge” in Article 6 (3) be interpreted objectively to include what a State Party can normally be expected to know, based on information in its possession or reasonably available to it.
• **The scope of genocide and crimes against humanity**

Genocide and crimes against humanity may be committed in peacetime as well as in armed conflicts. Both crimes are prohibited under customary international law.

The crime of genocide is defined in Article 1 of the 1948 Genocide Convention as any one of a list of acts committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.

Crimes against humanity are any one of several acts, including murder, enslavement, deportation, imprisonment, torture, rape and other forms of sexual violence, persecution and forced disappearance, among other inhumane acts, committed deliberately as part of a widespread or systematic attack directed against a civilian population. This definition appears with some slight differences in a range of international instruments, including the statutes of the international criminal tribunals.

• **The scope of war crimes**

War crimes are serious violations of IHL entailing individual criminal responsibility and which States have the obligation to prosecute and punish pursuant to treaty or customary law. Violations of IHL are considered serious, and are war crimes, if they endanger protected persons (such as civilians, or wounded or captured combatants) or protected objects (such as civilian buildings or infrastructure), or if they otherwise breach important values. Most war crimes

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43 The acts that would constitute genocide under Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide include, among others, killing members of the group, causing them serious bodily or mental harm, and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

44 See, for example, the Rome Statute of the International Criminal Court (ICC Statute) (2002), Article 7; the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) (1993), Article 5; and the Statute of the International Criminal Tribunal for Rwanda (ICTR) (1994), Article 3.
involve death, injury, destruction or unlawful taking of property.\textsuperscript{45}

Article 6 (3) of the ATT refers to three categories of war crimes: “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”. The latter category indicates that the scope of war crimes covered by Article 6 (3) varies depending on the treaties to which the transferring State is a party.

\textit{Grave breaches of the Geneva Conventions of 1949} are certain acts expressly designated as “grave breaches” under each of the four Geneva Conventions, which a State is required to prosecute and punish, irrespective of the nationality of the perpetrator and of where the act occurred.\textsuperscript{46} They are acts committed in international armed conflicts against persons or property protected by the relevant Geneva Convention, such as the wounded and sick, prisoners of war or the civilian population in occupied territory.\textsuperscript{47} Grave breaches of the Geneva Conventions are regarded as war crimes.\textsuperscript{48}

\textit{Attacks directed against civilian objects or civilians protected as such} are serious violations of customary international humanitarian law, whether committed in international or non-international armed conflicts, and are also regarded as war crimes.\textsuperscript{49} The term “as such” is meant to emphasize that


\textsuperscript{46} Each of the four Geneva Conventions of 1949 (in Articles 49, 50, 129 and 146, respectively) requires each High Contracting Party to criminally repress and provide effective penal sanctions for grave breaches, and to exercise universal jurisdiction over perpetrators.

\textsuperscript{47} The acts constituting grave breaches are listed in Articles 50, 51, 130 and 147, respectively, of each of the four Geneva Conventions of 1949, and include wilful killing, torture or inhuman treatment, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

\textsuperscript{48} This is expressly stated in Article 85 (5) of Additional Protocol I to the Geneva Conventions, and reflected in the definitions of war crimes in the statutes of the international criminal tribunals. For instance, according to Article 8 (2) (a) of the ICC Statute, “war crimes” means grave breaches of the Geneva Conventions of 1949.

\textsuperscript{49} See Henckaerts and Doswald-Beck, \textit{op. cit.}, Rule 156.
civilians are protected against attack as long as they are not directly participating in the hostilities.

Depending on the circumstances, indiscriminate attacks, disproportionate attacks, or attacks using indiscriminate weapons could qualify as “attacks directed against civilian objects or civilians protected as such” under Article 6 (3). This assertion is based on the interpretation of the ICTY, which has stated that such attacks “may give rise” to the inference of direct attacks on civilians, although this would need to be determined on a case-by-case basis.50

Other war crimes as defined by international agreements to which it is a Party refers to acts expressly designated as war crimes under relevant treaties, as well as acts defined by IHL treaties as serious violations entailing individual criminal responsibility and which States Parties to these treaties are required to prosecute and punish. Such international agreements include:

• Additional Protocol I to the Geneva Conventions, which applies in international armed conflicts, designates certain acts as “grave breaches” and expressly regards these as war crimes. The Protocol requires States Parties to prosecute and punish grave breaches.51
• The ICC Statute provides a lengthy list of war crimes over which the Court has jurisdiction.52 In addition to the above-mentioned grave breaches of the Geneva Conventions and of Additional Protocol I, the ICC Statute includes in its definition of war crimes acts designated as “serious violations of the laws and customs” applicable in both international and non-international armed conflicts, as well as serious violations of Article 3 common to the four Geneva Conventions, which applies in non-international armed conflicts.
• The 1999 Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict specifically defines five “serious violations” for which it establishes individual criminal responsibility,

51 See Articles 11 and 85 of Additional Protocol I of 1977.
52 See Article 8 of the ICC Statute.
and which each State Party is required to prosecute and punish.

Several States have stated their understanding that the ATT prohibits all transfers of arms that would be used in the commission of a wide range of war crimes in all types of armed conflict.\textsuperscript{53} Furthermore, a number of States Parties have declared upon their ratification of the Treaty that the scope of war crimes in Article 6 (3) encompasses acts committed in both international and non-international armed conflicts, including serious violations of common Article 3, as well as war crimes “as described in the Hague Convention IV of 1907 and its Regulations” and in both of the 1977 Additional Protocols, among other international agreements.\textsuperscript{54} In practice, most States that have established criminal sanctions for war crimes apply their criminal legislation to acts that constitute serious violations of common Article 3 and of customary IHL. It would therefore seem practical and logical for a State Party to the ATT to apply the transfer prohibition of Article 6 (3) to a broad range of war crimes in all types of armed conflicts.

It is important to recall that, apart from the transfer prohibition under Article 6 (3) of the ATT, each State has a duty to ensure respect for IHL in its arms transfer decisions.\textsuperscript{55} This is one of the key principles that a State must bear in mind when implementing the Treaty. The obligation includes refraining from transferring weapons to a party to an armed conflict if there is a substantial or clear risk that the recipient would use the weapons to commit violations of IHL. It requires a State to consider the risk of all forms of serious violations occurring, not just the three categories of war crimes listed in Article 6 (3). To comprehensively fulfil its obligations under international law, a State party to the ATT

\textsuperscript{53} See the joint declaration read out by Mexico on behalf of 98 States upon the adoption of the ATT by the UN General Assembly at the 71st plenary meeting of its sixty-seventh session, held on 2 April 2013, UN Doc. A/67/PV.71, p. 20.

\textsuperscript{54} See the interpretative declarations made upon ratification by New Zealand (2 September 2014), Lichtenstein (16 December 2014) and Switzerland (30 January 2015).

\textsuperscript{55} As explained in Section 2.3 above, this obligation stems from Article 1 common to the Geneva Conventions and from customary international humanitarian law.
If a proposed export of arms, ammunition or parts and components has not been prohibited under Article 6 of the ATT, a State Party is required to carry out a further assessment under Article 7 of the risk that the arms or items “could be used to commit or facilitate” serious violations of IHL or of international human rights law, or other serious crimes.

In particular, Article 7 (1) requires each State Party to assess “in an objective and non-discriminatory manner” the “potential” that the arms or items:

• “would contribute to or undermine peace and security”;
• “could be used to commit or facilitate” a serious violation of international humanitarian law, a serious violation of international human rights law, or an act constituting an offence under international instruments relating to terrorism or to transnational organized crime to which the exporting State is a Party.

The wording of Article 7 (1) indicates a lower threshold of risk assessment than that of Article 6 (3), as it is enough that there be the “potential” that the arms or items “could be used” not just to commit but also to “facilitate” the violation.
As explained in section 3.2.1, serious violations of IHL are those that endanger protected persons (such as civilians, or wounded or captured combatants) or protected objects (such as civilian homes or infrastructure), or otherwise breach important values.

As for serious violations of international human rights law, while no treaty defines this term, States and international human rights bodies tend to interpret it to include a range of violations based on their nature and effects, such as arbitrary arrest and detention, excessive use of force by law enforcement officials, rape and other sexual violence, torture and cruel, inhuman, or degrading treatment, and extrajudicial and summary executions, among other violations of the right to life. The terms “serious”, “grave”, “gross”, “flagrant” or “major” are often used interchangeably in characterizing the violations. Violations do not have to be systematic or widespread to be qualified as “serious”.

In the risk assessment, the exporting State Party must also take into account “the risk of” the arms or items “being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children”, pursuant to Article 7 (4). This requirement is yet another commendable advance of the ATT, as it represents the first time that a treaty links arms transfer decisions to the risk of gender-based violence.

Additionally, Article 11 (2) of the ATT requires an exporting State Party to assess “the risk of diversion of the export”. As explained in Section 3.4 below, although the Treaty does not define “diversion”, this term is understood to mean the transfer of arms to unauthorized recipients, including


57 In their statements made upon the adoption of the ATT by the UN General Assembly, at the 71st and 72nd plenary meetings of its sixty-seventh session, held on 2 April 2013, several States welcomed the fact that the Treaty explicitly includes the risk of gender-based violence and violence against women and children among its export assessment criteria. See, for example, each of the declarations made by Iceland, Italy, Lithuania, Norway and Senegal, UN Doc. A/67/PV.72. See also UN Doc. A/67/PV.71.
diversion to the illicit market. The aims of Articles 11 and 7 are interlinked in terms of preventing the diversion of weapons to end-users where there is a risk of their committing or facilitating the serious violations listed in Article 7. While the assessment required by Article 11 (2) refers only to “conventional arms” and not to ammunition or parts and components, it would seem highly impractical for a State Party to exclude ammunition and parts and components from its diversion risk assessment, whereas it must subject these same items to the risk assessment under Article 7.

In carrying out the assessment of the proposed export of arms or items, the exporting State Party may, in accordance with Article 8 (1) of the Treaty, request from the importing State Party relevant information including “end use or end user documentation”, which the importing State Party is required to provide pursuant to its national laws.

As part of the risk assessment, the exporting State shall also consider whether there are measures it can take to mitigate the risks of the above-mentioned negative consequences, including the risk of diversion. Articles 7 (2) and 11 (2) refer in particular to “confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.” Such joint measures can be seen as part of the broader international cooperation and assistance requirements that States owe each other under Articles 15 and 16 of the Treaty.

The State Party must deny the export if, after conducting the assessment, it determines that there is an “overriding risk” of any of the above-mentioned negative consequences. This would appear to suggest a balancing of the interests listed in Article 7. A number of States Parties have declared upon ratification that they will interpret the term “overriding” as “substantial” or “clear”, while others have stated their understanding that an “overriding risk” would exist whenever any of the negative consequences

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58 See e.g. the interpretative declaration made upon ratification by New Zealand (2 September 2014).
listed in the provision are more likely to materialize than not, even after consideration of mitigation measures.\textsuperscript{59} In the view of the ICRC, such interpretations are consistent with the ATT’s object and purpose of reducing human suffering, and States’ obligation to ensure respect for international humanitarian law, a key principle which States must take into account when implementing the Treaty.\textsuperscript{60} Such interpretations would also conform to the standards applied under regional arms transfer instruments,\textsuperscript{61} which States party to those instruments should also take into consideration when implementing Article 7.

The ICRC has proposed a range of \textit{indicators} that States should take into account in their risk assessments in arms transfer decisions. These include: the recipient’s past and present record of respect for IHL and human rights, and for taking measures to prevent violations or cause them to cease, including by punishing those responsible for these violations; the recipient’s formal commitments to respect IHL and human rights, and the measures it has taken to integrate these commitments into legislation, regulations, doctrine and training applicable to its armed and security forces and other agents; and whether it has in place the necessary legal, judicial and administrative measures to repress serious violations of IHL and international human rights law, among other factors.\textsuperscript{62} As the exporting State Party is also required by Article 11 (2) to assess the risk of diversion of exported arms, the export assessment should also consider whether the recipient has in place a

\textsuperscript{59} See the interpretative declarations made upon ratification by Lichtenstein (16 December 2014) and Switzerland (30 January 2015).

\textsuperscript{60} Regarding the obligation to ensure respect for international humanitarian law as it applies to arms transfers and as a guide to interpretation and implementation of the ATT, see Sections 2.3 and 2.4.

\textsuperscript{61} In contrast to Article 7 of the ATT, none of the regional arms transfer instruments or guidelines referred to in Section 2.3 apply the notion of “overriding risk”. Instead, they refer to a “clear risk” that weapons “might” be used to commit certain violations, to a “possibility” that weapons “might be used”, or to the fact that the weapons are “likely to be used”.

robust national control system including diversion-prevention measures, such as adequate stockpile management, effective export and border controls, and administrative and penal sanctions for diversion-related violations.⁶³

Regarding the potential that the arms or items would contribute to peace and security, in the view of the ICRC, it is difficult to see how exported weapons could ever make such a contribution in cases where there is a clear risk that they could be used to commit or facilitate serious violations of IHL or international human rights law. Such an outcome would seriously undermine the ATT’s humanitarian purpose. In this respect, the Treaty’s purposes of reducing human suffering and contributing to international and regional peace and security must be seen as interlinked and mutually reinforcing.⁶⁴

As for risk mitigation measures, they must be assessed cautiously in terms of what is realistically achievable in the circumstances to offset the risk of violations. They can be a positive tool as long as they are timely, robust and reliable, and as long as the exporter and importer have the capacity to effectively implement them, and do so in good faith. Specific risk-mitigation measures could include training by the exporting State of the recipient’s armed and security forces in IHL and human rights. The ICRC in any event encourages such training.⁶⁵ However, the ability of training to effectively offset the risk of violations will depend on the circumstances, including the time lapse between the training and its practical effects. Mitigation measures may also include post-delivery verifications by the exporting State, as well as diversion-prevention measures such as end-user certificates confirming that the recipient will not re-transfer the weapons to another party, and capacity-building programmes, for example to improve the physical security and management of the recipient’s stockpiled weapons. Regarding any form of assurances provided by the recipient of the weapons, these

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⁶³ See, in greater detail, Section 3.4.
⁶⁴ See Article 1 of the ATT. See also the Treaty’s preamble, which recalls that “peace and security and human rights are interlinked and mutually reinforcing”.
⁶⁵ It should be noted that recipient States and parties to armed conflicts are in any case required, under Article 83 of Additional Protocol I and customary international humanitarian law applicable in both international and non-international armed conflicts, to provide instruction in international humanitarian law to their own armed forces.
should be viewed against its policies and practices and in any case do not replace the exporting State's obligation under Article 7 to carry out a thorough assessment of the proposed export of arms or related items.

Finally, even after a State Party has authorized an export following the risk assessment, it is “encouraged” under Article 7 (7) to reassess the authorization if it “becomes aware of new relevant information”.

To fulfil the ATT’s humanitarian purpose, Article 7 should be interpreted and applied in a manner that will effectively prevent serious violations of international humanitarian law, serious violations of international human rights law, gender-based violence or serious acts of violence against women and children.

To this end, the ICRC recommends that, when assessing the risk that the arms or related items proposed for export could be used to commit or facilitate any such negative consequence, the exporting State Party:

➔ Carefully consider the recipient’s record of respect for IHL and human rights, the extent to which the recipient instructs and trains its armed and security forces to ensure such respect, its record of holding offenders accountable for violations, and its integration of its IHL and international human rights law obligations into its national legislation, military doctrine and training, as well as its diversion-prevention measures, among other factors indicated in the ICRC’s Practical Guide to Arms Transfer Decisions.

➔ Consider any proposed mitigation measures cautiously, in the circumstances, against the recipient’s policies and practices, and before taking any such measures, ensure that they are timely, robust and practical, and that both the exporting State and the recipient have the capacity to effectively implement them.

➔ Deny the export of arms and items when any of the serious violations or other negative consequences are more likely to materialize than not, or otherwise where there is a clear or substantial risk of such consequences.

➔ Even after an export has been authorized, continuously monitor the situation and cancel the authorization if new information comes to light indicating a clear or substantial risk of any of the negative consequences materializing.

➔ Include, as part of the Article 7 export assessment process, the diversion risk assessment required by Article 11 (2), and apply it not just to conventional arms but also to ammunition and parts and components.
Obligations of Importing and Transit States

Guiding Questions:

1. What are the obligations of importing and transit states under the ATT?
2. Does the ATT achieve the goals envisioned at the drafting, in terms of defining common state responsibilities for exercising control over the different stages of the arms transfer process?
3. How does the ATT regulate transit and trans-shipment?

Resources:

I. Introduction

Any country joining the Arms Trade Treaty (ATT) commits to putting in place effective measures to implement the Treaty.

Each State will decide which measures it needs to put in place in order to carry out its obligations under the ATT. These measures may vary from country to country.

Article 8 of the ATT explicitly requires States Parties to take measures to allow them to regulate, where necessary, the import of the conventional arms covered in Article 2 (1), but are encouraged to apply the provisions of the Treaty to the broadest range of conventional arms.¹

This seventh module, Import of conventional weapons, provides States with practical information to consider when establishing and maintaining control over imports.

II. National control system

➢ States Parties are required to establish and maintain a national control system, including a national control list.²

➢ States Parties have to designate competent national authorities to ensure the effective and transparent national control and regulation over the import of items covered under the ATT.³

III. States Parties’ obligations regarding imports of conventional arms

➢ States Parties shall adopt measures to regulate, where necessary, imports of conventional arms covered in Article 2 (1) into their jurisdiction.⁴ (The Treaty also provides that such measures may include import systems, but it does not provide further guidance on such systems.)

➢ States Parties can also adopt measures to regulate the import of ammunition and parts and components, although the ATT does not explicitly require them to do so under Article 8. Such measures would be consistent with Article 5 (5), by which States Parties are required to take the measures necessary to implement the provisions of the ATT and to designate national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms, ammunition and parts and components.

➢ States Parties shall prohibit the importation of conventional arms ammunition, parts and components if such importation would violate Article 6 of the Treaty.

¹ Article 5 (3).
² Article 5 (2).
³ Article 5 (5).
⁴ Article 8 (2).
IV. Regulation of import

- At a minimum, a State Party needs a system that can ensure the prohibition of import of items listed in Article 2(1), 3 and 4 if it violate the provisions contained in Article 6 of the ATT.

- Import regulation enables a State Party to authorize or deny applications for imports and to ensure that actual shipments into its territory are consistent with authorizations and the national control lists. Moreover, in line with Article 7(1) and 8(1), the importing State Party has to have in place measures to enable it to provide appropriate and relevant information to assist exporting States in the conduct of export assessments, when such information is requested and is consistent with the importing State’s national law.

- By exercising import regulation, the importing State is likely to have a mechanism for obtaining prior notification that enables the competent authorities to determine whether the goods should be allowed to enter the importing State’s territory and whether they should be subject to inspection upon arrival (including the possibility of seizure).

- Effective import regulation can help to prevent diversion of weapons, ammunition, parts and components.

- Proper import regulations can inform decision-making processes – including export assessments – of the national authorities in the exporting State. Importing States can thus help ensure the reliability of information contained in end-use/user documentation, and the authentication of such documentation.

- Import regulation can also contribute to build confidence with other States. Having an effective and transparent system in place for regulating imports can enhance the importing State’s credibility as a destination for weapons.

- Consequently, importing States Parties may have an incentive to review their import laws, policies, practices and procedures in order to ensure the effectiveness and transparency of their systems for regulating the import of weapons.

1. Elements of imports regulation

- The basic elements needed to effectively regulate imported conventional weapons are:
  a. National legislation, including a national control list;
  b. National authorities;
  c. Regulatory procedures, including record-keeping;
  d. Enforcement mechanisms.

2. National legislation, including a national control list

- The national legislation should state:
  a. Which items are subject to import regulation (national control list);
  b. Which government ministries, departments and agencies are responsible for regulating conventional arms imports (national authorities);
c. Criteria for granting or refusing import authorizations (regulatory procedures);
d. Record-keeping by applicants and national authorities;
e. The legal and/or administrative actions that would be applied in case of import offences (e.g., enforcement measures and mechanisms, prosecution and punishment).

States Parties are required to maintain and establish a national control list.5

➢ See module 6 for details on national control lists.

3. National authorities

➢ States Parties have to designate competent national authorities to ensure that they have an effective and transparent national control system for regulating transfers of items covered under the ATT.6

➢ The designated national authorities should consult with other relevant government ministries or departments before deciding on any authorization application.

➢ Tasks to be undertaken by the authorization agency may include:
   a. Receiving and reviewing import applications, including verifying and assessing end-use/user documentation, if applicable, feasible and practical;
   b. Issuing import authorizations;
   c. Keeping records of import licences/authorizations as well as actual imports, if applicable;
   d. Reporting to the oversight body and providing data for the national reports to be submitted to the ATT Secretariat, where applicable and in accordance with national laws;
   e. Requesting, where applicable, information from the exporting State on any pending or actual export authorizations where the importing State is the country of final destination of the export;
   f. Cooperating with the exporting State in its export assessment, as appropriate;
   g. Establishing or undertaking mitigation measures, such as confidence-building measures or jointly developed and agreed programmes with the exporting States, if required.

4. Regulatory procedures for the import of conventional arms

➢ Procedures to regulate imports of conventional arms establish the conditions under which import licences or import authorizations may be granted.

➢ There are different approaches for regulating imports of conventional arms:

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5 Article 5 (5).

6 Article 5 (5).
a. **Licensing system**: Importing entities (companies, associations etc) are required to obtain import licences, permits or authorizations prior to the transfer of the weapons, as well as the transfer of ammunition and parts and components, where such items are also subject to a licensing system. Specific requirements vary from State to State, such as:

- Provisions requiring that any import of weapons (and ammunition and parts and components, when applicable) need prior authorization;
- Limited provisions requiring that the imports of certain weapons (and ammunition and parts and components, when applicable) are subject to an import authorization;
- Limited provisions requiring that certain entities can import only after receiving an import authorization;
- Provisions stating that certain types of weapons are prohibited.

b. **Import regulation by customs authorities**: States use their customs as a primary means to inspect, regulate, and control imports of items.

➢ In both cases, custom authorities should control imports of items, including verifying all necessary documentation. Specific measures aimed to regulate or control imports of weapons do not supersede the broader prerogatives and responsibilities of customs authorities.

**Import procedures**

➢ When the items to be imported fall under the national control list, the importer should apply for import authorization to the national authority in the importing State.

➢ The typical sequencing of the import procedures is:

   a. Application for import authorization
   b. Review of application by national authorities
   c. Issuance/denial of import authorization
Prerequisite operating licence (only if required by national laws)

- States Parties, according to their national laws, may (but are not required to) establish an import licensing system whereby only the holders of a valid operating licence can apply for import authorization for each transaction.

- In such cases, the operating licence is a pre-requisite for applying for an import authorization.

Application for operating licence

- Applicants for operating licences should be required to meet the criteria set forth by national regulations.

- An application for an operating licence should be refused if:
  a. The applicant has failed to meet the licensing criteria established by national regulations;
  b. There is evidence of past involvement by the applicant in illicit trade of weapons;
  c. Information submitted in support of the application is false, inaccurate or incomplete;
  d. The applicant has been refused an operating licence in another State on grounds that would also apply in the State considering the application.

Expiration of the operating licence

- Where import licences are issued, the validity of licences should be limited in time. These documents should have an expiration date. The expiration date should be indicated clearly on operating licences.

Step 1 – Application for import authorization

- Applications for import authorization should be detailed, and preferably contain the following information:
  a. Name and contact details of the applicant (the importer);
  b. Name and contact details of the end-user;
  c. Country of export;
  d. Name and contact details of the exporter;
  e. Country of transit and trans-shipment, if practical and known at the time of application;
  f. Name and contact details of brokers and other intermediaries, if applicable and practical;
  g. Value / quantity of the import;
  h. Intended use of the items to be imported;
  i. Detailed descriptions of the items to be imported.
Step 2 – Review of application by national authorities

➢ The competent national authorities should assess each application for import authorization in accordance with clearly defined criteria.

➢ Article 6 provisions on prohibitions of transfers must be applied to the import assessment. In other words, imports shall not be authorized if they would violate Article 6 of the ATT.

➢ The competent authorities could also consider whether the quantity and the nature of the imported items are commensurate with the needs of the importer.

➢ Applicants and end-users should be checked and scrutinized during the assessment. Specifically, the assessment should verify that the applicant and the end-user:
   a. Are legally registered companies or individuals;
   b. Are in good legal standing and, when applicable, in good financial standing;
   c. Are not included on a black list;
   d. Have not previously misrepresented/falsified documents and information submitted;
   e. Have not been denied an application for import authorization;
   f. Have not been involved in transfers that constituted a violation of the prohibitions stipulated in Article 6;
   g. Have not been involved in transfers that undermined peace and security or were used to commit or facilitate any of the violations or acts listed under Article 7 (b).

Step 3 – Denial of import authorization

Suggested grounds for denial

➢ Import authorizations should not be granted if:
   a. The application is incomplete, contains wrong information, or is wilfully misrepresented;
   b. The proposed import is prohibited under Article 6;
   c. There is a risk that some or all of the items could be diverted before or after reaching the authorized end-user;
   d. The intended recipient is not legally entitled to be in possession of the items in the country of import;
   e. The importer does not have the storage facilities to securely store the imported items or cannot guarantee that the items will be safely and securely stored.

➢ Denial of authorization should be communicated in written form to the applicant.

➢ Information on denial of authorization is of particular use in preventing diversion and illicit trade of weapons. Thus States are encouraged to share the details with other States, in accordance with national laws.

7 For a detailed discussion of States Parties’ obligations under Article 6, see module 5.
**Step 4 – Authorization of import**

- Import authorizations should be detailed and specific. Without prejudice to relevant national law and regulation, the import authorization could include:
  
a. Import authorization number/record identifier;
  
b. Date of issuance;
  
c. Name of national authority issuing the authorization;
  
d. Signature, printed name and position of the designated official of the authority issuing the authorization;
  
e. Name and contact details of the recipient of the authorization;
  
f. Detailed description (e.g., type, model name, model number, calibre and quantity) of items authorized for import;
  
g. Date of expiration of authorization;
  
h. Countries/ports of transit and/or transshipment, if applicable, practical and known at the time of authorization;
  
i. Names and contact details of brokers, intermediaries or any other parties involved in the transfer, if applicable and practical;
  
j. Details of the transport route, including the means of transport to be used for each segment, if practical and known at the time of authorization;
  
k. Country of export;
  
l. Intended use of the items being imported;
  
m. Name and contact details of the authorized end user;
  
n. Detailed descriptions of the items to be imported, including their value;
  
o. Seal of national authority issuing the authorization. It should be noted that the shift towards electronic applications may bring about new forms of authentication other than watermarks and embossed stamps or seals. However, such traditional methods continue to serve their purpose where electronic systems are not in place or where hard copies are required in addition to electronic applications.
  
p. Any other conditions attached to the import.

**5. Enforcement mechanisms**

**5.1. Fines, penalties**

- Laws and regulations related to weapons imports should have sufficiently severe penalties for their violations. Penalties for import offences could include:
a. Fines;
b. Administrative sanctions
   - suspension or revocation of licences and/or authorizations;
   - barring violators from applying for licences or authorizations for certain lengths of time;
   - placing additional burdens or imposing restrictive conditions for subsequent application of licences or authorizations;
c. Imprisonment.

5.2. Control by customs officials

➢ At the point of entry, customs officials should determine that:
   a. The shipment of the imported items is accompanied by all required authorizations and documentation;
   b. Actual content of the shipment is consistent with the descriptions contained in the authorizations.

5.3. Delivery verification

➢ It is desirable that the importing State informs the exporting State that the shipment of the imported items has entered its territory. When possible, the importing State should also verify that the imported items reached the authorized end user.

➢ This can be done through different means, such as:
   a. Provision of a delivery certificate;
   b. Provision of other delivery documentation or notification;
   c. Post-delivery control and on-site verifications.

5.3.1. Delivery verification certificate

➢ A delivery verification certificate is a document certified by the customs or other competent authority of the importing State, confirming that imported items have been received by the authorized end-user.

➢ A commitment by the importer to provide the exporting State with a delivery verification certificate could be included from the outset in the end-use/user certificate or statement or sale contract.

➢ National authorities of the exporting State should verify the authenticity of documents submitted by the importer.

5.4. Non-re-export clause

An exporting State may require the inclusion of a non-re-export clause in a sales contract. In general, such clauses could stipulate that the end-user cannot re-export the arms at all or that the end-user must ask for prior written approval from the original exporting State.

6. Record keeping

➢ Each State Party should maintain records of conventional arms that are transferred to its territory as the final destination. The ATT does not explicitly require importing States to keep such records. However, under Article 13 (3), each State Party is required to submit an annual report concerning authorized or actual exports and imports of conventional arms.
CHAPTER 1.3

IMPORTING ARMS RESPONSIBLY: THE ATT FRAMEWORK

Far more states import arms than export them. However, import considerations did not figure prominently in the process to negotiate the Arms Trade Treaty (ATT).¹ Export standards and practices received the bulk of attention in the negotiation process, resulting in several assessment obligations and criteria that apply solely to exports. However, the Treaty also contains important obligations and recommendations related to imports.

The principles given in the first pages of the ATT include ‘respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations and to... import’ such arms. The ATT does not recognise this right to import arms as absolute, however. States’ ability to import arms is contingent on the assessment that their (potential) suppliers must make in line with Treaty provisions in Articles 6 (Prohibition) and 7 (Export). Few States saw an additional need to incorporate import criteria into the Treaty. Most agreed that import procedures be determined principally at the national level.²

¹ | Control Arms. 2012. Import and Transit Considerations in an Arms Trade Treaty – Findings Based on Case Studies of Barbados, Estonia and Namibia (Technical study conducted for Control Arms by the Center for International Trade and Security – University of Georgia, Institute for Security Studies, and Project Ploughshares)
However, the ATT requires commitments not only from States Parties that export conventional arms. Commitments are also needed from States that solely or primarily import these arms. All States Parties must have or put in place an array of general provisions, some of which relate to registering and reporting on conventional arms transfers, be they imports, exports, transit or transhipment. States Parties are also held to recognise a responsibility in a global endeavour to help combat illicit transfers of conventional arms, and to take mitigating measures to prevent the diversion of authorised transfers. The import provisions of the ATT define parameters for importing States Parties vis-à-vis their military trade relations with exporters. These parameters enable importers to meet their side of responsible transfer commitments, so as to serve both global and national security interests.

THE IMPORT-EXPORT NEXUS

Even if the Treaty text refers to exports in far more instances than imports, and in more elaborate ways, the ATT does mention importation 17 times. The central commitment with respect to imports is contained in Article 8 (Import), reviewed in detail below. Several other Treaty provisions, such as those in Article 6, also impose obligations on importing State Parties.

Article 8 concerns import most explicitly. Its first paragraph, Article 8.1, obliges each importing State Party to take measures to ensure that it can provide information to, and otherwise assist, an ‘exporting State Party in conducting its national export assessment’. The obligation to provide that information is not automatic, given that an importing State Party must only provide information ‘pursuant to its national laws’ and at the request of an exporting State Party. In addition, this first paragraph does not define the nature of the information, simply requiring that it be ‘appropriate’ and ‘relevant’. This phrasing, which at first glance appears vague and weak, is qualified at the end of the first paragraph, where it is suggested that these measures ‘may include end-use or end-user documentation’.

End-use documentation is not mandatory under the Treaty, but it does provide an important point of interplay between Article 8, the transfer prohibitions of Article 6 and the export assessments of Article 7. The use of this documentation could become a universal practice if exporting States consistently make it a requirement of their export assessment procedures under Article 7. As the Geneva Academy has noted, the reference to end-use or end-user documentation ‘could be a step towards universalising their acceptance and use’. For years, UN sanctions panels and others have pointed to improving standards in such documentation as an important means to prevent weapons diversion. The reference in Article 8.1 is an opportunity for States Parties to agree to universal norms for end-use certificates.

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In particular, Article 8.1 provides an opportunity for exporting States to make it standard practice to request details on end-use and end-users. If an importing State fails to comply, the authorities of an exporting State Party should refuse the export licence. This practice would be in keeping with Treaty obligations in Article 7 and elsewhere, which direct exporting States Parties to authorise arms exports only following a comprehensive assessment. To assess fully the legality of an envisaged arms export – and especially the risks of the arms being diverted – information on end-use and end-users would be needed.

Based on recent evidence from self-assessments published online by the ATT Baseline Assessment Project (ATT-BAP), several importing States may be able (and willing) to meet the requirements of Article 8.1. The ATT-BAP established that as of October 2014, 84 per cent of the 44 countries that had participated in the self-assessment reported having relevant national measures in place to ensure they can inform and otherwise assist an exporting State Party in its national export assessment. The ATT-BAP revealed interesting regional differences in levels of compliance. Only 44 per cent of the respondent sample from the Americas – where the large majority of States are primarily or solely arms importers – reported having relevant measures in place. This figure – far below ATT-BAP respondents from other regions – is intriguing, particularly in comparison with African respondents to the ATT-BAP assessment, where compliance is estimated to reach 80 per cent. This last figure may not be representative, however, as less than 10 per cent of Africa's nations participated in the ATT-BAP. However, these States do include an arms-exporting nation (South Africa), as well as several which primarily import conventional arms (mainly small arms and light weapons). The relatively high level of compliance by the sample of African nations does appear congruent with the fact that sub-regional instruments affecting import practices (such as the 2006 Convention of the Economic Community of West African States) already obliged several African nations to provide for such measures before the ATT came into force.

The request for end-use and end-user documentation could become a universal practice if exporting States consistently make it a requirement of their export assessment procedures.
NATIONAL REGULATION: A KEY ROLE

Article 8.2 obliges a State Party to take measures that will allow it to regulate imports of conventional arms under its jurisdiction. It indicates that this may be done by ‘national import systems’, which States Parties can develop from mechanisms they have in place or for which they may develop new mechanisms. The obligation is tempered by the phrase ‘where necessary’, suggesting that States have national discretion over whether and how to meet this obligation. Article 8.2 is also restricted to imports of arms covered under Article 2 and excludes ammunition, and parts and components, covered in Articles 3 and 4 respectively.

The ATT-BAP established that 91 per cent of the respondent countries reported having national legislation in place that allows them to regulate imports of conventional arms under their jurisdiction, in line with Article 8.2. Again, a slightly smaller proportion of countries from the Americas reported having relevant measures compared with the global aggregate. According to the collated results of the ATT-BAP, respondent countries grouped under Africa reported 100 per cent compliance with Article 8.2. However, a different appraisal of this level of compliance can be gleaned from baseline studies of 10 Francophone African nations, informed by field missions and desk reviews. Prior reports on arms control in some of these nations and of other countries on the African continent suggest a similar picture.

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7 | Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Mission reports 2014-15 (Côte d’Ivoire, Gabon, Mauritania and Niger) and case studies (2015) on Burkina Faso, Cameroon, Mali, Democratic Republic of Congo, Chad and Togo

8 | GRIP and Small Arms Survey (SAS). 2013. Final Report – Baseline Study for the African Union and EU project ‘The fight Against the Illicit Accumulation and Trafficking of Firearms in Africa’ and Annex II: Reports of country visits to Chad, Côte d'Ivoire, Democratic Republic of Congo, Kenya, Malawi, Rwanda, Somalia, South Sudan, Togo, Uganda and Zimbabwe
The baseline studies revealed that these countries’ import systems differ widely. They were seen to range from quite elaborate provisions (such as in Burkina Faso) to those which would result in far less impressive import control practices. While this may not be an obstacle per se, it is worth noting that in the majority of cases, the legal basis for these countries’ arms transfer control practices pre-dates the ATT and, in many instances, relevant (sub-)regional conventions. In some cases, the systems in place are based on legislation devised in the first years after decolonisation or even earlier. For example, Chad ratified the ATT soon after it came into force, based on existing legislation that predates the Treaty by more than half a century. These baseline studies also show that pre-existing legislation tends to cover only a segment of the arms imported into the country, often excluding (among others) imports for use by government security forces. These cases suggest that the obligation set by Article 8.2 is being misinterpreted or implemented in a minimalist manner. Crucially, constructive interpretation of the phrase ‘where necessary’ may be key to establishing effective norms here.

**TWO-WAY INFORMATION**

The third and final paragraph in Article 8 asserts the right of each importing State Party to request information from the exporting State Party on any pending or actual import where it is the final country of destination, rather than a country of transit or transhipment. Article 8.3 does not create an obligation on any side, but it should be read in combination with other Treaty articles. Like Article 8.1, it concerns the relationship between importers and exporters of conventional arms. Ideally, these provisions (like several others in the ATT) will ensure importers and exporters team up as responsible partners in a global endeavour to detect and prevent unauthorised arms transfers or the diversion of legitimate imports.

The obligations and recommendations the ATT establishes on imports in Article 8 are not only goals in themselves. They are also instruments to help meet the principles and objectives of the Treaty, especially those that relate to restricting illicit trade and trafficking based on diversion from authorised transfers. The Article 8 import obligations are an important counterpart to the export and other obligations of the Treaty, and must be seen in that context. The transfer prohibitions defined by Article 6 in particular apply not just to exporting States Parties, but also to importing States Parties, as well as those where arms may be transited or transhipped. Importantly, the scope of Article 6 prohibitions also extends beyond the equipment of Article 8 (solely Article 2.1 goods) to include the ammunition, and parts and components, of Articles 3 and 4. With regard to Article 6, the effective implementation of Article 8 therefore requires wider and stronger measures than those suggested by a strict interpretation.

The deeper significance of the import measures put in place by States Parties under Article 8 will not be demonstrated by the extent to which those States meet the vague and minimal terms of the Treaty. Rather, it will be determined by the effectiveness with which States interpret these terms to balance and strengthen export and other types of transfer obligations across all relevant articles of the Treaty. This is especially so for Articles 6 and 7, but also Article 9 (transit and transhipment), Article 10 (brokering) and Article 11 (diversion), and the more technical aspects covered in Article 12 (record keeping) and Article 13 (reporting). Additionally, because all States Parties import weapons and the majority will likely be primarily weapons importers, the import obligations of the Treaty are important to both the universalisation and effective implementation of the ATT. Meeting the obligations for import may be the Treaty point of entry for many States Parties.
BEYOND SELF-REPORTING: MONITORING IMPLEMENTATION

Self-reporting by States Parties is not sufficient to fully assess the implementation of obligatory and other provisions of the ATT. Numbers and trends cannot be sufficiently documented from national reports. The quality of Treaty implementation is far more difficult to measure and can only partly be ascertained from the number of States Parties which tick boxes on minimum requirements, such as having legislation in place to meet the obligation of Article 8.2. (The legislation which some States claim meets this obligation is incomplete, unspecified, obsolete or all three.)

It is not enough merely to establish whether laws are in place that provide for the import requirements set out in Article 8. The effectiveness of these provisions, and progress towards improving them, should be monitored as well, for example, on the basis of reports on ‘any new measures undertaken in order to implement this Treaty’. States Parties are obliged to communicate this to the Secretariat (albeit only when deemed ‘appropriate’), according to ATT Article 13. Good practice documents, guidelines and other instruments used by States Parties but not referred to in the text of the Treaty have recently been analysed for their relevance to enable and improve implementation.9

For obligatory measures and voluntary provisions to be effective, detailed and qualitative monitoring of efforts to avoid illicit trafficking and diversion is needed. An inherent methodological problem is clear: it is notoriously difficult to ascertain and monitor ‘what is avoided’, consequently such monitoring does not take place. However, part of the appraisal could be based on reports that States Parties are encouraged to make to other States Parties, through the Secretariat. These include measures taken to address the diversion of transferred conventional arms (Article 11.6), or other information provided by importers to help detection and possible prevention of irresponsible or illicit deals. For this, it is necessary that all States Parties accept they have a common target in preventing the supply of conventional arms to actors such as non-state groups, which may one day threaten their own territory.

It would also be useful in this respect to monitor the evolution of the assistance that States Parties afford one another in investigations, prosecutions and judicial proceedings related to violations of national measures established to implement the ATT. This is in line with Article 15.5 (on cooperation).

Although not on its own sufficient, national reporting by States Parties is key to monitoring implementation of the ATT import requirements. The accuracy and completeness of reporting on imports, which is implied in Article 13, would be a valuable indicator of the extent to which States Parties overcome their reluctance, in the name of national security, towards public reporting. The amount and value of the military equipment they import does reveal aspects of their military strength which not all would wish to disclose openly and unprompted. However, this sensitivity should not prevent them from complying with obligatory reporting on imports.

In addition, it would be useful to assess States Parties’ practice of the voluntarily reporting which several other articles in the Treaty encourage, for example, on measures taken against illicit trafficking and to detect and avoid diversion of authorised arms transfers. All States Parties to the ATT, including those that solely or primarily import conventional arms, accept obligations to do whatever is within their competence, and capacity, to assist in reaching all of these Treaty objectives.

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**Article 9. Transit or Trans-Shipement**

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.

**Overview**

9.01 Article 9 sets out the obligation for each state party to take action to regulate the transit and trans-shipment of conventional arms through its territory. The obligation does not extend to ammunition/munitions or parts and components. The inclusion of specific obligations with respect to transit and trans-shipment reflects the need to ensure that all activities that form part of international arms transfers are regulated in order for the object and purpose of the Arms Trade Treaty (ATT) to be achieved in practice. The obligation in Article 9 is heavily qualified in recognition of the practical and legal issues that limit the ability—and capacity—of states to regulate and control goods in transit.

**Relationship to Other Provisions**

9.02 Article 9 is to be interpreted in conjunction with several other provisions in the treaty. Article 2(2) stipulates that transit and trans-shipment are two of the activities that make up the ‘international trade’ in arms and form part of the corresponding collective definition of ‘transfer’. The obligations in Article 9 apply to the categories of conventional arms set out in paragraph 1 of Article 2 (Scope) and not to ammunition/munitions or parts and components (Articles 3 and 4). Paragraph 2 of Article 5 (General implementation) imposes a general obligation on states parties to establish and maintain a national control system in order to implement the provisions of the treaty. Any measures taken by a state party in accordance with Article 9 to regulate transit or trans-shipment through its territory should be an integral part of this system. Article 5(5) also requires each state party to ‘take measures necessary to implement’ the provisions of the treaty. This reinforces the
obligation in Article 9 to take ‘appropriate’ measures to regulate transit and trans-
shipment.

9.03 Article 7(6) requires each exporting state party to make information pertaining to export authorizations available, upon request and subject to national laws, practices, or policies, to the transit or trans-shipment states parties involved in the transfer. This puts the onus on those transit and trans-shipment states parties to request information from exporting states parties regarding possible transfers of conventional arms (or ammunition/ munitions, or parts and components) through their territories. The provision of such information in advance of the transit or trans-shipment will better enable the transit or trans-shipment state to monitor compliance with, and enforce any measures it has put in place to regulate, transit and trans-shipment in accordance with Article 9.

9.04 In addition to an obligation to regulate the transit or trans-shipment of arms through their territories, as states parties ‘involved in the transfer’ of arms, transit and trans-shipment states parties also have an obligation to prevent diversion of such arms under paragraph 1 of Article 11; to co-operate and exchange information to mitigate any detected risk of diversion under paragraph 3 of that provision; and to take action to address any diversion detected (paragraph 4). Measures taken to regulate transit and trans-shipment should dovetail with those broader measures that are needed to prevent and address diversion.

9.05 Article 12(2) encourages states parties to maintain records of conventional arms that are authorized to transit or trans-ship in territory under their jurisdiction. Where the measures adopted by a state party under Article 9 include issuance of transit or trans-shipment licences, permits, or other form of authorization, the state could usefully keep records of such documents.

9.06 With respect to the relationship with Article 6 (prohibitions), where the measures adopted by a state party under Article 9 include issuance of any form of transit or trans-shipment authorization, the state should certainly refuse to grant such authorization if any of the circumstances in Article 6 exist. Where, though, a state party adopts measures other than transit or trans-shipment licences or authorizations to regulate these activities, it must ensure the measures are ‘appropriate’ to enable it to prevent transit and trans-shipment in violation of the international legal obligations set out in Article 6.
Commentary

9.20 Thus, the cautious nature with which states approached the inclusion of specific obligations with respect to transit and trans-shipment is reflected in the conditional language that appears in Article 9. States parties are only required to take measures to regulate transit or trans-shipment that are ‘appropriate’ and only ‘where necessary and feasible’. States are required to regulate transit or trans-shipment ‘under their jurisdiction’ but any measures taken must be ‘in accordance with relevant international law’.

Appropriate Measures

9.21 Article 9 does not specify or even suggest what types of measures could or should be taken to regulate transit or trans-shipment. Arguably a clue lies in the use of the term ‘regulate’, which suggests legal regulation such as through legislation. An indirect suggestion also appears in Article 13 (reporting), which requires states parties to provide an initial report of ‘measures’ taken to implement the treaty ‘including national laws, national control lists and other regulations and administrative measures’. This non-exhaustive list of possible measures provides some guidance to states and indeed a draft of this provision included a specific reference to ‘legislative, administrative, and other measures’. The nature and scope of the measures in the provision as adopted to implement this provision are, though, to a large extent, left to the discretion of each state party. This is consistent with the general view among negotiators that measures to implement the treaty did not lend themselves to a ‘one-size-fits-all’ approach. By not suggesting concrete measures, states parties have the flexibility to adopt the most appropriate and efficient measures according to their legislative culture and specific circumstances.

9.22 The stipulation that the measures taken be ‘appropriate’ is only used to qualify those relating to transit and trans-shipment. The term is not used to describe measures to be taken to regulate other transfer-related activities, namely the export, import, and brokering of conventional arms (although other qualifying language does appear in the relevant articles). The term ‘appropriate’ is not defined in Article 9 and there was little discussion of it during the article’s evolution, though its appearance highlights the cautious approach states took to the transit and trans-shipment provisions during the negotiations. On its face, the term appears to give a significant degree of freedom to a state party to choose the types of measures it adopts to implement this provision, in addition to the discretion states already have in light of the absence of examples or suggestions of measures to be adopted. In the context of transit and trans-shipment, in contrast to other transfer activities, negotiating states did not want the treaty to be prescriptive in this regard.

9.23 The term ‘appropriate’ may be understood as encompassing such measures as are ‘necessary’ for the purpose of giving effect to the article. This presumably has both an (p. 310) objective and a subjective element. In the context of the 1966 Covenant on Economic, Social, and Cultural Rights, the effect of the term ‘appropriate’ has been described by the Committee on Economic, Social, and Cultural Rights in its comment on the nature of states parties’ obligations. The Committee noted that, by using the term ‘by all appropriate means’, the Covenant ‘adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account’. But it is also noted that this flexibility coexists with an obligation upon each state to use all the means at its disposal to give effect to the rights recognized in the Covenant. It further stated that: ‘Although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party.’

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9.24 One issue raised by the inclusion of the qualifying term ‘appropriate’ in the context of measures to regulate transit and trans-shipment is whether the omission of this term from the export, import, and brokering obligations means the obligation to take measures to regulate these activities differs from the obligation to regulate transit and trans-shipment. It is likely the inclusion of the qualifying term ‘appropriate’ in Article 9 was designed to accommodate the insistence among negotiating states that the transit and trans-shipment obligations in the ATT not be too onerous or cumbersome, and does not indicate a different nature of obligation. The lack of consistency in the language and drafting across the articles imposing an obligation to take ‘measures’ to regulate the export, import, transit, trans-shipment, and brokering of arms might reflect the fact the different articles were negotiated and drafted independently of each other rather than an indication of any deliberate intent to distinguish the nature of the obligations. In each instance, states parties are essentially under an obligation to adopt measures that will have the effect of regulating the activity concerned.

9.25 Unlike Articles 8 (import) and 10 (brokering), where examples of measures that can be taken are included, no specific measures are suggested in Article 9, giving states parties a certain margin of discretion to determine the measures that are ‘appropriate’ to regulate transit and trans-shipment. In the context of Article 9, the measures states parties could take to regulate the transit and trans-shipment of arms through their territories are many and varied (examples from existing instruments are included in Table 9.1). These could include:

- Adopting adequate laws, regulations, and administrative procedures to exercise effective control over the transit of weapons (specifically small arms and light weapons), in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients. This should include the use of authenticated end user certificates and effective legal and enforcement measures. The OSCE Document on Small Arms and Light Weapons also contemplates that a transit state may require shipments to be authorized, in which case the exporting state must ensure the transit state has authorized the transit before permitting the shipment to take place.
- Requiring weapons to be adequately secured while in transit through a state’s territory and also seeking the co-operation of commercial carriers of arms to prevent and detect illicit activities.
- Exchanging information on a voluntary basis about exporters, air carriers, and agents that failed to comply with requirements to provide information on transport (such as air carrier and freight-forwarding agents involved in the transportation; aircraft registration and flag; flight route to be used and planned stopovers; records of previous similar transfers by air; and compliance with existing national legislation or international agreements relating to air transport of weapons) or copies of certificates of (un)loading or of any other relevant document confirming the delivery of weapons.
- Exchanging information about cases of transit or trans-shipment by air of weapons that may contribute to a destabilizing accumulation or be a potential threat to security and stability in the region of destination.
- Adopting criminal sanctions associated with transit-related offences.
- Requiring the prior licensing of legitimate transit and trans-shipment operators.
- Requiring prior notification to the competent authority of the details of the transit or trans-shipment by the responsible party (though there are limits on a state’s ability to require prior notification in the context of goods transiting by sea—see below).
- Ad hoc controls that allow authorities to inspect a shipment and/or (temporarily) seize it.
Regulate

9.26 The use of the term ‘regulate’, meaning to control or direct, suggests that states parties should establish regulations or legal and administrative procedures to control the transit and trans-shipment of conventional arms. This is supported by the reference in Article 14 to the requirement that states parties take appropriate measures to enforce national laws and regulations that implement the treaty.

Where necessary and feasible

9.27 Article 9(2) does not indicate the circumstances when the regulation or control of transit and trans-shipment might be ‘necessary and feasible’, and so states parties have a certain (p. 313) discretion to interpret and apply this condition. The word ‘necessary’ generally means essential,47 which would include situations where there are legal obligations to do so, including under Article 6 of the treaty. The term ‘feasible’ means ‘possible and practical to achieve easily or conveniently’.48 Thus, read together, the inclusion of the qualifying phrase ‘where necessary and feasible’ means that states parties are only required to take appropriate measures to regulate transit and trans-shipment where this is essential and possible. What is ‘possible’ or ‘practical’ for states parties to adopt or implement in terms of transit and trans-shipment controls will depend on the mode of transport used in transit, the volume of transit, the capability and resources of customs agencies, as well as the nature of the geographical circumstances they face. For example, an archipelagic state with limited financial resources and a small coastguard may struggle to patrol its vast territorial sea as a means of adequately controlling transit through its territory.

9.28 Further, there are practical (as well as legal; see below) challenges to controlling ships or aircraft that transit through a state’s territorial waters or airspace without stopping along the way. It is difficult for small countries to control transit via road or railway because the time in which they can intervene is limited, especially if there has been no prior announcement of the transit. In fact: ‘Ports, inland harbours and airports where the goods “land” and are eventually transhipped are in practice the only locations where effective and systematic control is considered possible.’49 Where states experience a large volume of transit, they may have to prioritize scrutiny of certain types of transit considered problematic or sensitive due to the nature of the goods, their origin, or destination, or, among other things, based on the transport agents involved.

9.29 The feasibility of adopting certain control measures may also be affected by legal constraints facing the state party in question. For example, a state party may not be able to enforce a requirement that ships passing through its territorial waters obtain a transit licence or authorization prior to entering such waters as a measure to regulate transit, in light of the right of innocent passage under Article 17 of the 1982 UN Convention on the Law of the Sea. This limitation is also reflected in the qualifying phrase ‘in accordance with relevant international law’.50

The Meaning of Transit

9.30 As a comparative study of international and national documents concludes, ‘transit is not a legal concept with an unambiguous meaning’.51 It is generally understood as involving the movement or transportation of goods or persons through a certain territory, where those goods or persons are ‘passing through’ the territory on their way from one state to another. The transit of arms involves the international transfer from the original exporting state to the ultimate end user through the territory of one or more other states.52 While the term ‘transit’ appears in several arms control-related (p. 314) instruments,53 no definition is
provided in these instruments. The User’s Guide to European Union Council Common Position 2008/944/CFSP applies the following definition: “‘Transit’: movements in which the goods (military equipment) merely pass through the territory of a Member State.”

9.31 The 1965 Convention on the Transit of Land-Locked States defines the term ‘traffic in transit’ meaning

the passage of goods ... across the territory of a Contracting State between a land-locked State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage.

A ‘transit State’ is defined as any contracting state (i.e. state party) situated between a land-locked state and the sea ‘through whose territory “traffic in transit” passes’.

9.32 The central and common element is that transit involves the passage of goods through a state (the transit state) that forms a portion of a complete journey that begins and terminates outside the territory of the transit state. Whether trans-shipment or any other handling is involved during that journey is not relevant for the qualification ‘transit’. This is confirmed by the definition of ‘traffic in transit’ in the 1965 Convention on the Transit of Land-Locked States, which states that ‘the trans-shipment, warehousing, breaking bulk, and change in the mode of transport of such goods ... shall, not render the passage of goods outside the definition of “traffic in transit” provided that any such operation is undertaken solely for the convenience of transportation’.

9.33 A similar definition/concept of transit appears in the 1947 General Agreement on Tariffs and Trade (GATT), which notes in paragraph 1 of Article V (Freedom of Transit) that:

Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article ‘traffic in transit’.

9.34 The concept of ‘transit’ is thus relatively straightforward: ‘transit’ can be ‘with or without trans-shipment’, and in practice trans-shipment may occur while goods are in transit. Accordingly, contrary to what is frequently stated, ‘goods in transit are not required to use the same transport modality or transport means throughout the route’ and goods in transit (or the unit of transport into which they are loaded, such as (p. 315) a container) can be transferred from one means of transport to another, ‘provided certain customs-mandated procedures for their identification as “good in transit” are observed’. Indeed, as noted above, the draft definition proposed during the treaty elaboration defined transit and trans-shipment as the ‘physical passage across the territory of a State with or without warehousing or change in mode of transportation, as part of a complete journey’.

The Meaning of Trans-Shipment

9.35 As with the term ‘transit’, the term ‘trans-shipment’ appears in several arms-related instruments, though without being defined. Unlike for transit, the meaning of trans-shipment is less clear and its application varies. The User’s Guide to European Union Council Common Position 2008/944/CFSP proposes the following definition: ‘Transshipment:
transit involving the physical operation of unloading goods from the importing means of transport followed by a reloading (generally) onto another exporting means of transport.\textsuperscript{64}

9.36 The term ‘trans-ship’ is similarly defined in the Oxford English Dictionary as the transfer of cargo ‘from one ship or other form of transport to another’. For this reason, the assumption or claim is often made that the difference between ‘transit’ and ‘trans-shipment’ is that: goods in ‘transit’ do not experience a change in the mode of transportation, whereas goods that are trans-shipped do. However, the exact meaning of trans-shipment and the identification of activities covered by the notion are technically complex due to varying definitions in different policy areas, such as international customs law (and practice). Under the International Convention on the Simplification and Harmonization of Customs Procedures (as amended),\textsuperscript{65} the term ‘transhipment’ is defined as ‘the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation’.\textsuperscript{66}

9.37 In other words, under customs law ‘trans-shipment’ refers to a customs procedure, not simply the physical act of transferring the goods from one vessel to another. This latter activity is known as ‘transloading’, which concerns the mechanics of transport and a change in the mode of transport (e.g. transfer from a ship to a truck) or a transfer from a larger to a smaller ship.

9.38 It is also understood that, in practice, a broader, less technical meaning may be applied to ‘trans-shipment’ in that it may also indicate ‘the operation for which goods (containerized or bulk) are unloaded from an importing vessel at the trans-shipment hub and then loaded onto another vessel (feeder) in the same hub, to be further transported to their (p. 316) final destination in the same country of first arrival\textsuperscript{67} (emphasis added). In other words, they are not to be intended for onward transfer to another state.

9.39 The use of the term ‘or’ rather than ‘and’ in the phrase ‘transit or trans-shipment’ in Article 9 indicates that states may or may not differentiate between the two terms in their national legislation and control systems, and states parties may have flexibility to employ one or both terms in their implementation of this provision. The use of the term ‘or’ does not imply that states parties have the option to regulate either transit or trans-shipment but need not regulate both. Rather, it serves to acknowledge that, in practice, some states use one term rather than the other in their national legislation or they use one term to cover both concepts.

Under its jurisdiction

9.40 As noted above, the first reference to jurisdiction in the initial draft article on transit and trans-shipment in which the term appeared was to ‘territory under its jurisdiction’,\textsuperscript{68} and the obligation contemplated was that states parties would monitor conventional arms that transit or trans-ship through territory under their jurisdiction. The text evolved such that the reference to jurisdiction is no longer linked to ‘territory’ but rather to ‘transit and trans-shipment’.\textsuperscript{69} This is consistent with the insertion of the phrase ‘under its jurisdiction’ in Article 8 (import) and Article 10 (brokering), where the phrase is inserted after the relevant activity. The phrase was inserted in Article 8 and Article 9 (transit or trans-shipment) and moved to appear after the word ‘export’ in Article 7(2) (export and export assessment)—though later moved elsewhere in the article—in the President’s Non-Paper of 20 March 2013 to keep the text consistent, as the language already appeared in the draft articles on export and brokering.\textsuperscript{70} This may explain the placement of the term after ‘transit and trans-shipment’ rather than after ‘territory’.
9.41 The term ‘jurisdiction’ is not defined by the treaty but is a widely understood concept in international law. Jurisdiction concerns the power (and duty) of the state to regulate or otherwise impact upon people, property, and situations and is an aspect of state sovereignty; that is, a state’s independence combined with the right and power to regulate its internal affairs without undue foreign interference. This is reflected in the preamble of the treaty, which reaffirms ‘the sovereign right and responsibility of any State to regulate and control conventional arms exclusively within its territory’. The public international law of jurisdiction guarantees that foreign states’ interests are also taken into account and (p. 317) that ‘sovereignty-based assertions of jurisdiction by one State do not unduly encroach upon the sovereignty of other States’.

9.42 Territory is the primary basis for jurisdiction such that a state is at liberty to legislate and enforce legislation within its territory. In other words it has prescriptive jurisdiction as well as enforcement jurisdiction and adjudicative jurisdiction within its territory. However, a state may be permitted to exercise jurisdiction extraterritorially in certain circumstances under international law. This is broadly understood as referring to situations where a state exercises its jurisdiction without any territorial link and asserts its jurisdiction on the basis of the nationality, passive personality, protective, or universality principles. While states may be entitled in some circumstances to prescribe laws governing any subject or any person, irrespective of the person’s nationality or if the thing or person is located overseas, it is generally accepted that they are not entitled to enforce their laws outside their territory ‘except by virtue of a permissive rule derived from international custom or from a convention’.

9.43 There are also instances where international law restricts a state’s freedom to exercise its jurisdiction within its territory, such as sovereign and diplomatic immunities. Also, the general rule that enforcement jurisdiction is territorial must be qualified in respect of maritime law under which flag states may exercise criminal enforcement jurisdiction over acts committed on board a vessel at sea that is flying its flag and, in certain circumstances, so can non-flag states. In other words, the flag state and (possibly) non-flag states have extraterritorial enforcement jurisdiction over vessels at sea. Accordingly, when ships are in international waters or in the exclusive economic zone (EEZ) or contiguous zones of a coastal state, the coastal state will require flag-state consent in order to interdict the vessel.

9.44 There are three forms of coastal state jurisdiction acknowledged over adjacent waters under UNCLOS: a territorial sea, a contiguous zone, and an EEZ.

Territorial sea.

9.45 A state’s territorial sea is the belt of coastal waters extending up to 12 nautical miles (22.2 km; 13.8 miles) from the baseline (usually the mean low-water mark). The state’s sovereignty extends throughout this area, although its exercise of its sovereignty is subject to the provisions in UNCLOS and ‘other rules of international law’ such that foreign ships (both military and civilian) are allowed innocent passage through it. This sovereignty also extends to the airspace over and seabed below.

Contiguous zone.

9.46 The contiguous zone extends a further 12 nautical miles from the territorial sea, within which the coastal state may exercise ‘control’ (not sovereignty or jurisdiction) to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea; and punish such infringements already committed within its territory or territorial sea.
The outer limit of the EEZ extends from the outer limit of the territorial sea to a maximum of 200 nautical miles (370.4 km; 230.2 miles) from the territorial-sea baseline, thus it includes the contiguous zone. Under Article 56 of UNCLOS, the coastal state has ‘sovereign rights’ over economic resources and ‘jurisdiction’ over artificial islands, marine scientific research, and protection and preservation of the marine environment. Beyond what it is entitled to do with respect to its contiguous zone that forms part of the EEZ, coastal states may not infringe the freedoms of navigation and overflight enjoyed by all states in its EEZ.  

A final point to reflect on in the context of jurisdiction is: who has jurisdiction in the high seas (also referred to as ‘international waters’)? The high seas comprise those parts of the sea ‘that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State’. As a general rule, ships sailing the high seas are under the exclusive jurisdiction of the flag state (if there is one), though there are exceptions to this under international treaties. The same applies to planes flying in international airspace. This means that the laws of the state which the ship or plane is registered will apply while it is in transit through the high seas or international airspace. However, when a ship is involved in certain criminal acts, such as piracy, any state can potentially exercise jurisdiction.  

Another point to note in the context of the high seas is that warships on the high seas have complete immunity from the jurisdiction of any state other than the flag state and ships owned or operated by a state and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any state other than the flag state.  

Territory is one of the fundamental elements of a state in international law. A state’s ‘territory and its appurtenances (airspace and territorial sea), together with the government and population within its boundaries, constitute the physical and social base for the state’. Without territory, over which it has sovereignty or legal authority to govern the area, an entity cannot be a state under international law. The principle of respect for the territorial integrity of states, as reflected in Article 2(4) of the UN Charter, illustrates the central role territory plays in international law. The territory of each state can be physically identified and is legally delimited. It consists of a state’s land, territorial sea (including its seabed), as well as the airspace above and subsoil beneath these areas.  

The legal concepts of sovereignty and jurisdiction are closely linked to territory and indeed can only be understood in relation to territory. As noted by Judge Huber in the 1928 Islands of Palmas case: ‘sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular state’.  

As discussed above, the formulation used in early drafts of Article 9 required states parties to monitor and control transit or trans-shipment ‘through territory under its jurisdiction’. Ultimately, however, this was amended to a requirement to regulate ‘transit and trans-shipment under its jurisdiction’ of conventional arms ‘through its territory’ (Article 9). This change has a crucial impact on the scope of the obligation in Article 9. As noted above, flag states have jurisdiction over their vessels sailing anywhere in the world by virtue of the nationality principle and, in certain circumstances, they have exclusive jurisdiction (namely when ships are travelling on the high seas). Accordingly, were Article 9 to have retained the reference to ‘under its jurisdiction’ without a reference to ‘territory’, this would have meant that flag states would have an obligation to take measures (that are appropriate and ‘where necessary and feasible’ … ) to regulate the transit of conventional arms on the high seas, where they have exclusive jurisdiction over their vessels, and the territorial seas of other states, where they have concurrent
jurisdiction with the coastal state. Likewise they would be obliged to regulate the transit of conventional arms by vessels flying their flag(s) in other areas beyond the territorial seas of other states (i.e. the EEZ and contiguous zones of other states), since the flag state has exclusive jurisdiction over ships flying its flag in these bodies of water.

9.53 However, the replacement of the term ‘territory’ limits the obligation on the part of the flag state (or rather removes it) since each state party is only obliged to regulate transit which is not only ‘under its jurisdiction’ but also ‘through its territory’. The use of the possessive term ‘its’ makes it clear that this is referring to a state’s physical territory not the extraterritorial areas over which it may have jurisdiction. Accordingly, although they have jurisdiction over vessels flying their flag, flag states do not have any special obligations to regulate the transit of conventional arms by vessels flying their flags beyond their territory (i.e. on the high seas) under the ATT.

In Accordance with Relevant International Law

9.54 On the one hand, the term ‘in accordance with … international law’ limits a state party’s obligation to regulate the transit or trans-shipment of conventional arms through its territory by preventing it from regulating such transit or trans-shipment in such a way that is prohibited under applicable international law. But on the other hand, it also obliges states parties to regulate transit and trans-shipment where international law requires them to do so, and links to the phrase ‘where necessary’ used earlier in the provision. It emphasizes that any regulations introduced must be consistent with international law, which would include both customary and conventional norms. It also is not limited to law in force at the time of the ATT’s entry into force.

9.55 Negotiating states, notably transit states, were keen to ensure that the obligation to regulate transit and trans-shipment of conventional arms through their territories was consistent with—and subordinate to—existing international law limiting or restricting their ability to affect the passage of vessels in transit through their territories. The formulation ‘in accordance with … international law’ is not restricted to any particular corpus of international law and general public international law as well as the law of the sea, international aviation law, and international customs and trade law would all need to be considered, consonant with the reference to ‘relevant’ international law. A state party must consider international law that is pertinent to the matter including treaties it has ratified as well as obligations under customary international law.

Law of the Sea

9.56 Prominent in the minds of negotiating states when drafting this provision in the ATT was UNCLOS. Specifically, the right of innocent passage through the territorial sea enjoyed by ships of all states and enshrined in Article 17 of UNCLOS. This gives foreign vessels the right to enter the territorial sea of any state and navigate within it provided their passage remains ‘innocent’, as defined under Article 19(1): ‘Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.’

9.57 Article 19(2) also gives a list of categories of accepted ‘non-innocent’ passage including:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal state, or in any other manner in violation of the principles of international law embodied in the UN Charter

(p. 321) (b) any exercise or practice with weapons of any kind
(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal state

(d) any act of propaganda aimed at affecting the defence or security of the coastal state

(e) the launching, landing or taking on board of any aircraft

(f) the launching, landing or taking on board of any military device

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration, or sanitary laws and regulations of the coastal state

(h) any act of wilful and serious pollution contrary to UNCLOS

(i) any fishing activities

(j) the carrying out of research or survey activities

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal state

(l) any other activity not having a direct bearing on passage.

9.58 The coastal state through whose territorial waters the vessel is navigating has an obligation not to ‘hamper’ the innocent passage of foreign ships, including a duty not to impose requirements ‘which have the practical effect of denying or impairing the right of innocent passage’ or discriminating against ships of any state or against ships carrying cargoes to, from or on behalf of any state. However, Article 25 of UNCLOS permits coastal states to ‘take the necessary steps’ in its territorial sea to prevent passage which is not innocent. Coastal states do have the right to adopt laws and regulations on innocent passage with respect to a limited range of activities, including: navigational safety and maritime traffic, the protection of cables and pipelines, the conservation of living resources, preservation of the environment, and the prevention of infringement of customs, fiscal, immigration, or sanitary laws and regulations of the coastal state.

9.59 Accordingly, states parties to the ATT, in fulfilling their treaty obligation to regulate the transit and trans-shipment of conventional arms through their territories, specifically, their territorial seas, must not impose requirements that hamper innocent passage. The following section explains what constitutes ‘hampering’ or impairing innocent passage and when passage is not innocent.

9.60 ‘Hampering’ innocent passage. In the Corfu Channel Case, the ICJ addressed the issue of whether a requirement by a coastal state that warships transiting through an international strait obtain prior authorization from or provide advance notification to the coastal state constituted ‘hampering’ innocent passage. The Court stated:

It is, in the opinion of the Court, generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent. Unless otherwise prescribed in an international convention, there is no right for a coastal State to prohibit such passage through straits in time of peace.

(p. 322) 9.61 This interpretation is shared by many UN member states and was enshrined in the so-called Jackson Hole Agreement agreed in 1989 between the USA and the former Union of Soviet Socialist Republics. The Agreement addressed the interpretation of innocent passage more broadly: ‘All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the
terrestrial sea in accordance with international law, for which neither prior notification nor authorization is required.\textsuperscript{107} This supports the conclusion that a requirement that ships carrying conventional arms for commercial or other purposes through a state’s territorial waters obtain prior authorization (e.g. in the form of a licence or permit) or be obliged to give advance notice of their transit passage would not be consistent with international law.\textsuperscript{108} Accordingly, adoption of such measures by a coastal state to regulate transit in accordance with its obligation under Article 9 of the ATT would not be ‘in accordance with relevant international law’ as the provision requires.\textsuperscript{109}

9.62 The Jackson Hole Agreement also sets out the action a coastal state might take if it ‘questions’ or doubts whether the passage of a ship through its territorial sea is innocent, namely: inform the ship of the reason why it questions the innocence of the passage and provide the ship with an opportunity to clarify its intentions or correct its conduct in a reasonably short period of time.\textsuperscript{110} It goes on to state that if a ‘warship’\textsuperscript{111} engages in conduct which renders its passage not innocent and does not take corrective action upon request, the coastal state may require it to leave the territorial sea.\textsuperscript{112} But there is no mention of the coastal state intercepting the ship and seizing the cargo, for example.

9.63 Other states, however, regulate innocent passage in a way that may be considered inconsistent with UNCLOS\textsuperscript{113} (and therefore unlawful or, at a minimum, unenforceable). For example, Iran includes a provision in its legislation implementing UNCLOS titled ‘Exceptions to innocent passage’, which notes that the passage of warships ‘through the territorial sea is subject to the prior authorization of the relevant authorities of the Islamic Republic of Iran’.\textsuperscript{114} Malta requires a transit licence to be obtained for all items in transit and applies the European Union Common Position to its transit licensing decisions.\textsuperscript{115}

When is passage not innocent?

9.64 The mere carrying of conventional arms by a ship does not render its passage ‘not innocent’. Indeed, even the carrying of inherently dangerous substances or nuclear material does not render the passage of a ship ‘not innocent’ (although special precautionary measures must be taken).\textsuperscript{116} Laws and regulations adopted by a coastal state that discriminate against ships that are carrying certain types of cargo would be considered as ‘hampering’ innocent passage and are not permissible.\textsuperscript{117}

9.65 As noted above,\textsuperscript{118} Article 19(1) of UNCLOS provides that passage is innocent ‘so long as it is not prejudicial to the peace, good order or security of the coastal State’ and requires a direct nexus between the transit and the prejudice to the coastal state. Taken literally, therefore, Article 19 only allows a coastal state to restrict or impair passage if such passage affects the peace, good order, or security of the coastal state and excludes the coastal state from affecting passage with a view to protecting the interest of the community of states.\textsuperscript{119} While it may be tempting to argue that when an activity threatens international peace and security (as declared by the Security Council) it must also affect national security, this argument is not entirely satisfactory because it relies on an indirect threat to meet a direct nexus requirement. As noted by Guilfoyle, ‘While “prejudice” might comprehend inchoate threats to the coastal state, where a shipment of nuclear, biological, or chemical warfare materiel is intended for use against a distant state it is hard to see how its temporary presence in territorial waters is inherently prejudicial to the coastal state.’\textsuperscript{120}

9.66 The second sentence in Article 19(1) of UNCLOS defining innocent passage notes that ‘[S]uch passage shall take place in conformity with this Convention and with other rules of international law.’ This raises the question of whether passage could be considered not innocent because it is contrary to ‘other rules of international law’, which could include (p. 324) Security Council resolutions (such as those establishing embargoes) and treaty obligations. However, the focus of Article 19 is on the character of the ‘passage’ not the nature of the ship,\textsuperscript{121} and so long as the ‘purpose’ of the passage is to traverse the
territorial sea, it remains innocent. Indeed, the reference to ‘purpose’ in Article 19(1) is intended to make it clear that a ship navigating for the sole purpose of exercising the right of innocent passage is entitled to do so.\textsuperscript{122} So it is the external acts of a vessel rather than its internal economy that may prejudice a coastal state’s security. Accordingly, ‘[I]t is hard to see that a latent threat in the vessel’s hold, destined elsewhere, has any “external” manifestation capable of affecting the character of passage.’\textsuperscript{123} That said, it is also difficult to consider the passage of a ship that knowingly has arms on board in violation of an arms embargo as in accordance with international law.

\textbf{9.67} Article 19(2) of UNCLOS lists the circumstances when passage will not be considered innocent. The Jackson Hole Agreement asserted that the list of activities in Article 19(2) of UNCLOS that would render passage ‘not innocent’ constituted an exhaustive list, and that a ship passing through territorial waters that does not engage in the activities listed is in innocent passage.\textsuperscript{124} In the context of the ATT, the only activity in Article 19(2) that is arguably relevant to the question of whether or when the passage of a ship carrying conventional arms in transit through a coastal state’s territorial sea will or can be considered ‘not innocent’ is the activity listed in Article 19(2)(a), namely: ‘any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations’.

\textbf{9.68} So the question is whether a ship in the territorial sea of a coastal state carrying conventional arms as cargo to a state against whom an arms embargo has been established by the Security Council under Chapter VII of the UN Charter can be considered to be in violation of the ‘principles of international law embodied in the Charter of the United Nations’. The answer is: it probably depends on the terms of the arms embargo. For example, the arms embargo imposed on Libya by the Security Council in 2011\textsuperscript{125} prohibited the ‘direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types’,\textsuperscript{126} and called on UN member states to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from the Libyan Arab Jamahiriya, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited.\textsuperscript{127}

The resolution also authorized member states to seize and dispose of any relevant items found.\textsuperscript{128}

(p. 325) \textbf{9.69} Less than a month later, this provision in the resolution establishing the embargo was replaced with the following:

\begin{quote}
inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from the Libyan Arab Jamahiriya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited.\textsuperscript{129}
\end{quote}

In other words, the reference to ‘in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea’ was removed and enforcement of the embargo was extended to the ‘high seas’. The critical condition is that the state concerned must have ‘information that provides reasonable grounds’ to believe there are prohibited items in the ship’s cargo before it can conduct an inspection. If so, it has an obligation under the embargo to take action in the form of an
inspection to ensure it is not indirectly supplying arms to the Libyan Arab Jamahiriya through its territories.

9.70 This example helps illustrate why a narrow interpretation of the obligations under Article 6 ‘not to authorize’ certain transfers undermines the faithful application in practice of the international obligations set out in Article 6. Arms embargoes generally prohibit the sale, supply, transfer, or export of weapons to the affected state, not just the issuance of licences or authorizations for transfers to that state. That is partly in recognition of the fact that not all states control or regulate all transfers of conventional arms with a systematic licence or authorization requirement (which, for most types of transfer, is also not a requirement in the ATT). If Article 6 is interpreted in a way that states should only disallow transfers in violation of an arms embargo where those transfers in their national control system are subject to a systematic licence or authorization requirement, its obligation to not authorize any transfer of conventional arms if the transfer would violate an arms embargo would fall short of the broader prohibition in the actual arms embargo. In that sense, Article 6(1) would no longer be the restatement of existing international law (as it is often regarded now), but a watered-down version whose application in practice by a state will not respect their existing international legal obligations.

9.71 Article 6(1) can only be considered as a restatement of existing international law (and as ensuring compliance with those international law norms) if its obligation to ‘not authorize any transfer’ of conventional arms in case any of the situations mentioned in it is applicable entails that states parties cannot allow such transfers to take place and should have measures in place in order to prevent them (i.e. going beyond merely not issuing a licence or authorization). This also applies to transit and trans-shipment. Article 9 indeed ‘only’ obliges states parties to take appropriate measures to regulate, where necessary and feasible and in accordance with relevant international law, but in order to comply with Article 6 and its underlying international norms, it is necessary to take ‘appropriate measures’ in order to prevent transit and trans-shipment in violation of the international law obligations mentioned in Article 6.

9.72 In light of the Libyan arms embargo, transit controls based on ‘reasonable suspicion’ of embargo violations prompting a state party to take action would appear to be ‘appropriate measures’ that satisfy a state party’s obligations under both Article 9 and Article 6(1). In this example, however, the action to be taken by a state and the circumstances when that (p. 326) action must be taken, are clearly spelt out. But in the absence of clear language in resolutions establishing embargoes that specifically contemplates weapons in transit and empowers (indeed, requires) states to act based on ‘reasonable grounds’ to suspect embargoed items are on board a vessel (such that they would be in violation of their obligations under the embargo if they did not act), it is not clear whether the principle could be extended to the application of Article 6 generally. Equally, where this leaves us with respect to the interpretation of ‘authorization’ in Article 6 in the context of transit and trans-shipment is somewhat unclear, but certainly a strict interpretation of the term is not appropriate in the context of transit. Another question to be resolved is whether there is mention in Article 6 of international obligations that might take precedence over any rule of free innocent passage or, at least, the violation of which might make the passage not innocent. In other words, does Article 6 qualify the right of innocent passage? These and many other questions will no doubt be explored as state practice and jurisprudence with respect to the ATT evolve and the right of innocent passage is ‘tested’ against the provisions of the ATT.

International Aviation Law
The 1944 Convention on International Civil Aviation provides that state aircraft (that is aircraft used in military, customs, and police services of a contracting state) must obtain authorization before flying over or landing on the territory of another state. Similarly, no scheduled international air service may be operated over or into the territory of a contracting state except with the special permission or authorization of that state and in accordance with the terms of such permission or authorization. Article 5 of the Convention, however, entitled ‘Right of non-scheduled flight’, provides that:

Each Contracting State agrees that all aircraft of the other Contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing.

Article 5 of the Chicago Convention goes on to stipulate that states parties have the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions that are inaccessible or without adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights. In essence, however, the provision gives a right to aircraft engaged in non-scheduled flights to transit non-stop across another state party’s territory or make stops for non-traffic purposes without prior permission or authorization. In its guidelines on Article 5, the International Civil Aviation Organization (ICAO) has stated that ‘no instrument designated a “permit” should normally be required, even if it were automatically forthcoming upon application’. The guidelines further state that ‘A general requirement for prior negotiation over the use of routes or landing places would be in contravention of this clause.’ In the context of Article 9, therefore, and the obligation to regulate transit and trans-shipment under the ATT, a requirement that non-scheduled flights obtain a permit prior to transiting a state party’s airspace and/or that they use certain routes (other than for reasons of safety) would not be ‘in accordance with relevant international law’.

The ICAO guidelines go on to note that ‘advance notice of intended arrival for traffic control, public health and similar purposes could, however, be required’. Furthermore, the qualification in Article 5 of the Chicago Convention—‘subject to the right of the State flown over to require landing’—retains the right of a state party to require non-scheduled flights flying across any part of its territory to land. Though the right is unqualified, the ICAO explains that it ‘is one to be held in reserve with understanding that it will not be exercised in such a general way as to amount to a cancellation of the right granted to non-scheduled aircraft’ to make non-stop flights across the territory of a state party. In other words, it must be applied in good faith.

Other Relevant International Law

The 1965 Convention on Transit Trade of Land-Locked States recognizes the right of land-locked states to free access to the sea as an essential principle for the expansion of international trade and economic development, and grants land-locked states freedom of transit for traffic in transit and means of transport across a state lying between the land-locked state (the ‘transit state’) and the sea. Traffic in transit must not be subjected to customs duties or taxes nor to any special dues in respect of transit and only charges to defray administrative and supervisory expenses may be levied; states parties must apply administrative and customs measures that permit free, uninterrupted, and continuous traffic in transit; and they undertake to use ‘simplified documentation and expeditious methods in regard to customs, transport and other administrative procedures relating to
traffic in transit for the whole transit journey on their territory, including any trans-
shipment, warehousing, breaking bulk, and changes in the mode of transport as may take
place in the course of such journey'.144

(p. 328) 9.77 The Convention provides that exceptions to all the provisions may be made
on grounds of public health and security or in the case of emergency or war.145 Notably, the
Convention stipulates that it does not affect measures a state party may be required to take
in pursuance of provisions in another international or regional convention (existing or
concluded later) if they relate to export or import or transit of particular kinds of articles,
including ‘arms’ or any action necessary for the protection of its essential security
interests.146 The provisions of this Convention have been largely superseded by UNCLOS,
which expands the right of access and gives a guaranteed right of transit for land-locked
States.147 Although the right is limited by provisions in Article 125 that stipulate:

2. The terms and modalities for exercising freedom of transit shall be agreed
between the land-locked States and transit States concerned through
bilateral, subregional or regional agreements.

3. Transit States, in the exercise of their full sovereignty over their territory,
shall have the right to take all measures necessary to ensure that the rights
and facilities provided for in this Part for land-locked States shall in no way
infringe their legitimate interests.

9.78 As a consequence, ‘in reality, whether or not the right of transit can be implemented
depends largely on agreements between transit states and the land-locked states, as well as
measures taken by transit states under Article 125(3)’,148 though the transit state is
expected to act in good faith and measures taken by it cannot run contrary to the right of
transit principle. States parties to the ATT will need to take account of this principle when
adopting measures to regulate transit in accordance with their obligations in Article 9.

Convention concerning International Carriage by Rail.

9.79 States parties149 to the Convention concerning International Carriage by Rail (COTIF)
have agreed to adopt all appropriate measures in order to facilitate and accelerate
international rail traffic150 and undertake to: eliminate any ‘useless’ procedure, simplify and
standardize the formalities already required, and simplify frontier checks.151 They have also
agreed to seek to attain ‘the highest possible degree of uniformity in the regulations,
standards, procedures and methods of organisation relating to railway vehicles, railway
personnel, railway infrastructure and auxiliary services’.152 Further, Article 12(5) of COTIF
stipulates that ‘Railway vehicles may only be seized on a territory other than that of the
Member State in which the keeper has its registered office, under a judgment given by the
judicial authority of that State’. In other words, a transit state (one that is a state party of
COTIF) may only seize a railway vehicle registered in another state party if a court in that
other party has authorized it. States parties to the ATT that are also party to COTIF will
need to balance (p. 329) the obligation to regulate and control transit under Article 9 of the
treaty (including transit by rail) with the principles agreed to under COTIF.


9.80 Under the 1982 International Convention on the Harmonization of Frontier Controls
of Goods (Harmonization Convention)153 states parties have agreed, wherever possible, ‘to
provide simple and speedy treatment for goods in transit ... by limiting their inspections to
cases where these are warranted by the actual circumstances or risks’.154 They have also
agreed to take into account the situation of land-locked countries.155 The focus here, as in
other instruments with transit provisions discussed above, is to facilitate the movement of goods and minimize
interference and delays to goods in transit.
Diversion, Transit, and Transshipment

Guiding Questions:

1. What is meant by “diversion” under the Arms Trade Treaty cover?
2. What states have obligations related to diversion under the ATT? When do obligations arise?
3. What kinds of obligations are in place?
4. Who carries out these obligations?
5. How can states and officials institutionalize knowledge and best practices regarding diversion? Why is this important?
6. What other mitigation methods are recommended in the treaty?
7. How does diversion contribute to harms specifically concerning in Southern Africa, such as gender-based violence and wildlife poaching?

Resources:


CHAPTER 2

Understanding the Trade in Small Arms: Key Concepts
Introduction

The trade in small arms, light weapons, and their parts, accessories, and ammunition involves every country in the world.\(^6\) It includes transfers that are authorized by states and illicit flows of arms that violate national or international law. This chapter provides readers with the background knowledge and key concepts required to understand both aspects of the trade, and the linkages between them.

The authorized trade

The authorized trade in small arms is diverse and dynamic. It includes both new and surplus arms, and affects every geographical region, and every level of society. Military and law-enforcement agencies worldwide buy millions of imported weapons each year. In addition, hunters, recreational shooters, and other individuals privately buy millions of firearms and hundreds of millions of rounds of ammunition. In 2012, the Small Arms Survey estimated the annual value of international small arms transfers at more than USD 8.5 billion (Grzybowski, Marsh, and Schroeder, 2012, p. 241). More recent data suggests that the value of this trade has increased significantly since then (Pavesi, 2016, p. 14).

Despite its size, the authorized international trade in small arms and light weapons remains to a large extent opaque. Only a fraction of the trade is represented in publicly available data, and much of that data is incomplete or vague. Every year, thousands of small arms and light weapons transfers are therefore either inadequately documented or not documented at all, making it difficult to monitor arms transfers to problematic recipients or to identify the accumulation of excessively large weapons stockpiles (Grzybowski, Marsh, and Schroeder, 2012, p. 241).

Types of transfers

Authorized small arms transfers take many forms. From shipments of thousands of weapons purchased by foreign governments to individual rifles packed in the checked luggage of participants in international shooting competitions, these

\(^6\) The term ‘small arms’ is used in this chapter to refer to small arms, light weapons, and their ammunition (as in ‘the small arms industry’) unless the context indicates otherwise, whereas the terms ‘light weapons’ and ‘ammunition’ refer specifically to those items.
transfers are much more diverse than commonly assumed. The Small Arms Survey has identified the following types of transfers, which can be grouped into three main categories:

- **Sales** are the most common type of transfer and consist of exchanges of weapons for money or other commodities.\(^\text{17}\) Sales can be further divided into commercial exports and government-to-government exports.\(^\text{18}\)

- **Exports of weapons to governments** as part of foreign aid programmes or for use in military training exercises are a second important category of transfers. Arms and ammunition exported as part of foreign aid programmes are often provided at little or no charge. Weapons used in foreign military training exercises are sometimes given to the host country after the exercise.

- **Other categories** of authorized transfers include:
  - shipping weapons from troop-contributing countries to their peacekeeping forces deployed abroad;
  - sending weapons abroad for repair, demilitarization, or at the end of a lease;
  - transporting surplus or obsolete weapons to a foreign country for disposal;
  - temporarily exporting firearms for sporting and hunting purposes.

### The transfer chain

Common to all categories of imports and exports is the transfer chain, a series of transfers and retransfers of small arms that starts with the manufacturer and concludes with the delivery of the transferred item to its new owner or operator, often referred to as an ‘end user’. The first link in this chain is the transfer of a newly-produced weapon from the manufacturer to the original recipient. This transfer can be private, commercial, or governmental, and can be foreign or domestic. Any subsequent change of ownership is referred to as a retransfer. Retransfers to international recipients are often referred to as re-exports (if there is a change in ownership), while retransfers to entities in the same country are ‘domestic retransfers’.

The transfer chain is often long and circuitous, with exported weapons being transferred and retransferred to several end users over the course of years or decades. Figure 2.1 shows a hypothetical transfer chain.

\(^{17}\) Manufacturers also often ship small quantities of sample weapons to potential buyers as part of marketing efforts. See Dreyfus, Marsh, and Schroeder (2009, p. 9).

\(^{18}\) For more information, see Dreyfus, Marsh, and Schroeder (2009, p. 9, Box 1.1).
**Authorized but illicit**

Most authorized transfers are made in accordance with national and international laws. Yet some transfers may be permitted by the government of the exporting country, but viewed as a violation of international law by other countries and actors. The UN Panel of Experts on Libya and *The New York Times*, for instance, documented transfers of arms from the United Arab Emirates (UAE) to forces in Libya between 2013 and 2015, which the UAE government organized without notifying the UN Sanctions Committee, and which therefore violated the arms embargo. The items shipped included pistols that later resurfaced in Libyan black markets (Kirkpatrick, 2015; UNSC, 2015, paras. 125–31). Such examples illustrate the grey areas that exist between the authorized and illicit trade in small arms.

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**The illicit trade in small arms**

The illicit trade in small arms and light weapons occurs in all parts of the globe but tends to be concentrated in areas afflicted by armed conflict, violence, and organized crime, where the demand for illicit weapons is often highest. Illicit arms fuel civil wars and regional conflicts; stock the arsenals of designated terrorist organizations, drug cartels, and other armed groups; and contribute to violent crime and the proliferation of sensitive technology.

The Small Arms Survey defines illicit small arms as ‘weapons that are produced, transferred, held, or used in violation of national or international law’ (Schroeder, 2013a, p. 284). This definition acknowledges the many different forms
illicit arms flows can take (de Tessières, 2017, pp. 4–5). Three broad categories are reviewed here: the diversion of legal holdings of small arms, the illicit production of firearms, and the recirculation of existing stocks of illicit weapons.

Box 2.1 International efforts to curb illicit arms flows

The problem of illicit arms flows gained increased international attention following UN member states’ adoption of the 2030 Agenda for Sustainable Development. The Agenda stresses the connection between sustainable development and ‘peaceful and inclusive societies’ in Sustainable Development Goal (SDG) 16, and calls for a significant reduction in illicit arms flows by 2030 in SDG Target 16.4 (UNGA, 2015). How to achieve such a reduction? Above all, by implementing the arms control instruments adopted since the late 1990s at the subregional, regional, and global levels, and given practical effect in the national laws and regulations of participating governments (McDonald, Alvazzi del Frate, and Ben Hamo Yeger, 2017).

To varying degrees, these instruments cover the small arms and light weapons life cycle from manufacture to final disposal or destruction. They aim, first and foremost, to strengthen control over legal weapons throughout their life cycle to prevent them from being diverted into the illicit market; such diversion is the primary source of illicit weapons worldwide. Instruments such as the UN Firearms Protocol (UNGA, 2001a), the UN Small Arms Programme of Action (UNGA, 2001b), and the Arms Trade Treaty (UNGA, 2013a) thus require governments to assess and reduce diversion risks before authorizing an international arms transfer, employing measures such as end-user certification and brokering controls. At the same time, instruments such as the Programme of Action address the potential diversion of weapons and ammunition from state security force stockpiles, another major source of illicit material, through stockpile management and security measures.

As this chapter notes, a small but still significant portion of the illicit weapons market derives from illicit production. For this reason, the UN Firearms Protocol and Programme of Action require states to regulate arms manufacture and criminalize unauthorized weapons production. A related type of illicit arms flow mentioned in this chapter, the recirculation within illicit markets of weapons that were already illicit, is addressed through counter-trafficking measures that include the identification and interception of illicit arms shipments at border crossings.

The multilateral arms control instruments typically recommend that seized illicit weapons be destroyed in order to prevent them being diverted back into the illicit market, as sometimes occurs. Whatever form of disposal is selected, however, seized weapons need to be uniquely marked—if they do not already possess such markings—and recorded to reduce diversion risks and detect cases of diversion when they occur.

The International Tracing Instrument (UNGA, 2005), another global arms control instrument, establishes common international rules for weapons marking, record-keeping, and international cooperation. These aim to allow law enforcement officials to follow a recovered weapon’s history from the time of its manufacture (or of its last legal importation) to the point at which it was diverted into the illicit market. Law enforcement agencies can then identify and disrupt sources of illicit arms supply. A critical diagnostic tool, weapons tracing rounds out the international arms control arsenal outlined in this box, which, if effectively implemented, will allow governments to reduce illicit arms flows over time.

Author: Glenn McDonald
**Diversion of legal holdings**

Most illicit small arms are legally-produced weapons that are diverted to armed groups, criminals, and other unauthorized users at some point during their (often lengthy) life span. Yet the term ‘diversion’ is not clearly defined in international legal instruments. Experts generally refer to diversion not simply as the movement of arms from the legal to the illicit sphere, but rather as the unauthorized change in possession or use of these weapons (Parker, 2016, p. 118). Three main patterns of diversion are presented below.

**Transfer diversion**

A transfer diversion occurs when weapons are lost, stolen, or deliberately retransferred to a recipient who is not officially authorized to receive the weapons, or when the recipient violates end use agreements. As illustrated in Figure 2.2, transfer diversion can take place at most points along the transfer chain: in the country of origin (point of embarkation); en route to the intended end user (in transit); at the time of or shortly after delivery to the declared recipient (point of delivery); or some time after importation (post-delivery) (Schroeder, Close, and Stevenson, 2008, p. 115).

![Figure 2.2 Points of potential diversion in a typical transfer chain](image-url)
Some transfer diversions are planned and executed across several stages of the transfer chain. This is particularly true of diversions that occur in-transit or at the point of delivery. The measures necessary to divert weapons while they are in transit are often taken long before the ship or aircraft carrying the weapons leaves the port or airport of origin. Most in-transit and point-of-delivery diversions involve transportation by air or sea. Aircraft and ships that are used in major in-transit and point-of-delivery diversions are typically registered under flags of convenience, meaning they are registered in a state other than that of their owner, often in order to reduce operating costs or avoid regulations in the owner’s own state. Such vessels tend to be owned by offshore shell companies that frequently change their names and shift their locations and assets from country to country (Schroeder, Close, and Stevenson, 2008, p. 115).

Another key feature of transfer diversion is the use—or misuse—of documentation. Traffickers may forge transfer documents, such as end-user certificates, bills of lading, and flight plans, to include false information about the shipment or the parties involved. Alternatively, diversion may involve corrupt government officials who sign authentic transfer documents (Schroeder, Close, and Stevenson, 2008, p. 118).

Other transfer diversion techniques that are commonly used by arms traffickers in some parts of the world include:

- falsifying shipping documents, including commodity descriptions and personal information about the shipper and recipient;
- undervaluing illicit shipments of small arms to minimize scrutiny by customs officials;
- using circuitous routing and multiple transhipment points to conceal the destination of illicit shipments bound for countries of concern;
- scratching off, or painting over, serial numbers and other identifying markings on weapons and ammunition;
- disassembling weapons, mislabelling storage containers, and concealing illicit items within or behind household goods, building materials, and machinery; and
- using shell companies and straw purchasers to hide the identities of traffickers and their links to the illicit shipment.
Diversion from the national stockpile

Arms and ammunition can also be diverted from a stockpile under the control of a state’s defence and security forces (called the ‘national stockpile’). Weak oversight and poor physical security measures facilitate several forms of diversion of national stockpiles, including theft by personnel and by external actors as well as battlefield loss and capture.

National stockpiles are not usually held permanently in any one place. They are often relocated from one military base to another in response to patterns of deployment, changing demand, and the need for repairs or alterations (Parker, 2016, pp. 120–21). As a result, the possible points of diversion are numerous and include storage sites, convoys transporting equipment, and security personnel carrying the weapons on duty. Diversion affects all national and security forces, including those operating abroad in the context of peace operations (see Box 2.2).

Box 2.2 Diversion of arms and ammunition in peace operations

Around 110,000 police and military personnel are currently deployed as United Nations peacekeepers (known as Blue Helmets) in 14 UN peacekeeping operations (UNDPKO, 2018). Between 2004 and 2014 there were at least 35 notable incidents of diversion or loss of weapons and ammunition during peacekeeping operations in these countries. The Small Arms Survey estimates that losses during these incidents totalled more than 750 weapons and 1.2 million rounds of ammunition (Small Arms Survey, n.d.a). These incidents, each of which involved the loss of more than ten weapons or more than 500 rounds of ammunition, have occurred during patrols, during attacks on convoys, and on fixed sites.

In the notable incidents documented in South Sudan and Sudan alone, a total of more than 500 weapons and more than 750,000 rounds of ammunition were seized. These items include handguns, self-loading rifles, machine guns, grenade launchers, anti-tank weapons, and mortars, as well as the ammunition for these weapons. A single such incident resulted in the loss of more than 500,000 rounds of ammunition. Four others probably involved losses of at least 10,000 cartridges.

Very little equipment lost during these attacks has been recovered.

Accurate information is difficult to obtain, as there is imperfect reporting and record-keeping, and a noticeable reluctance to share bad news. Additionally, when weapons are recovered by peacekeepers in cordon and search operations, engagements with hostile forces, or raids on arms caches, there is rarely any systematic record-keeping. Some items are returned to the armed group from which they were taken, some are redistributed to local authorities, and others are destroyed or retained for safekeeping. The diversion of such weapons often goes unreported. Future diversions could be prevented by improved record-keeping, reporting, and oversight.

Sources: Based on Berman and Racovita (2015) and Berman, Racovita, and Schroeder (2017), with updated data from Small Arms Survey Peace Operations Data Set (PODS) (Small Arms Survey, n.d.a) and UNDPKO (2018)
The volume of diverted equipment can vary greatly depending on the type of incident. At the lower end of the spectrum is the theft of relatively minor quantities of weapons and ammunition by individuals and small groups of people. It may occur at all levels of the national stockpile, but is generally characterized by its links to localized illicit trade rather than to regional or international transfers. The problem is largely a result of local demand factors combined with poor stockpile management. It is often facilitated by the concealability and portability of small arms (Bevan, 2008, p. 47).

National stockpile diversion can also involve the theft of larger volumes of arms and ammunition, sometimes consisting of many hundreds of tonnes of weaponry. It is often facilitated by poor stockpile management practices, but in many cases it results from factors that are much broader than the management of arms and ammunition per se. Weak state structures, a lack of accountability within political and military administrations, and associated loopholes in transfer regulations sometimes combine to provide some highly placed individuals with the opportunity to divert weapons (Bevan, 2008, p. 56). However, in many significant cases of loss, such as Iraq in 2003 and Libya in 2011, it is primarily conflict and the ensuing collapse of state institutions that leads to mass looting of the national stockpile.

**Diversion from the civilian stockpile**

The ‘civilian stockpile’ comprises arms and ammunition acquired and held by a broad array of individuals and organizations, ranging from firearm manufacturers and wholesalers to gun shops and hunters. Diversion from any one of these locales has the potential to contribute to unlawful use, armed crime, and violence (Bevan, 2008, p. 62). In particular, the diversion of civilian-owned weapons and ammunition can be a significant source of weapons that are used in crime, including in the poaching of protected wildlife (see Box 2.3).

At one end of the spectrum are arms and ammunition that are inadequately stored in homes and vehicles. Weapons diverted from these sources often enter the illicit market as a by-product of other illegal activity, such as residential burglaries and theft from automobiles. At the other end of the spectrum are the relatively large quantities of weapons held in gun shops and wholesale warehouses, which are often attractive targets for organized crime. These cases can in some instances be a source of arms and ammunition for insurgent groups (Bevan, 2008, pp. 62–63).
Box 2.3 Firearms used in elephant and rhino poaching in Africa

Military-style firearms and relatively powerful hunting rifles are commonly used to poach elephants and rhinos in Africa (Carlson, Wright, and Dönges, 2015), and the impact of poaching on wildlife populations is considerable. Findings from a 2016 continent-wide census indicate that African elephant populations are decreasing at a rate of eight per cent, roughly 27,000 per year (Steyn, 2016). In 2015, more than 1,330 rhinos were killed by poachers—about five per cent of Africa’s total rhino population—marking the sixth consecutive increase in annual rhino poaching rates (IUCN, 2016).

An investigation of rhino poaching in Southern Africa highlights the potential benefits of tracing firearms to mitigate their illicit use. In South Africa, Kruger National Park (KNP) has the highest rhino poaching rate in the world; among the weapons seized from poachers in KNP are Mauser, Winchester, and Brno brand hunting rifles. Poaching groups in KNP typically operate in small teams of five or six people, and records of poaching arrests infer that roughly 80 per cent of poachers there are Mozambican nationals (Serino, 2015). Poaching rates in KNP increased from 50 incidents in 2009 to 827 recorded rhino kills in 2014 (Poaching Facts, 2018).

Strikingly, imports of hunting rifles to Mozambique increased at nearly an identical rate over the same four-year period. United Nations Commodity Trade Statistics Database (UN Comtrade) data reveals that the Czech Republic is among the major exporters of hunting rifles to Mozambique, and that it is also the place where the CZ Brno 550 rifle—increasingly popular with Mozambican poachers—is manufactured (UNSD, n.d.c). While the implications of a direct link between Mozambican hunting rifle imports and KNP rhino kill rates would be significant, more needs to be learned of possible correlations by matching seized weapons’ serial numbers with registration records in Mozambique and, potentially, with import and export records.

In some poaching areas, it is more difficult to identify and trace weapons used to kill wildlife. In Central Africa, for example, where armed groups including militias, rebel groups, and state security forces have conducted large scale elephant poaching, weapons seizures are less frequent than in places such as KNP, where poaching teams are smaller. However, an analysis of the headstamps of cartridge cases found at elephant kill sites can provide clues to which armed groups are poaching, or where they are sourcing their ammunition. Past investigations into fired cartridge cases recovered from kill sites in Cameroon, the Central African Republic, Chad, and the Democratic Republic of the Congo (DRC) have uncovered links to Sudanese government stores (Vira and Ewing, 2014), suggesting the possibility of access to common ammunition supply channels by poachers operating across a broad geographic region.

Many anti-poaching units are ill-equipped to confront the increasingly advanced firepower wielded by poachers in their pursuit of ivory and rhino horn. Unfortunately, systems to trace ammunition found at elephant kill sites often do not exist or are underutilized. When data on seized firearms is collected, it often contains little more than the total number of seized weapons, missing useful information about the types of weapons or their markings. These data gaps hinder efforts to improve understanding of supply chains and emergent patterns of poachers’ weapons and ammunition usage. More and better data—such as data collected by applying the principles outlined in this Handbook—would improve anti-poaching policies and assist governments to better equip and prepare wildlife rangers and other front-line defenders to fight the scourge of poaching.

Author: Khristopher Carlson, based on Carlson, Wright, and Dönges (2015)
*Illicit production of small arms*

While most small arms and light weapons are legally produced, there are notable exceptions to the rule. Weapons produced by individuals or small groups, typically operating outside of state control, as well as replica and deactivated firearms that are modified to function as real firearms, represent additional sources of illicit arms flows.

**Craft production**

The term ‘craft production’ refers mainly to weapons and ammunition that are fabricated primarily by hand, and in relatively small quantities. Improvised and craft-produced weapons are addressed in Chapter 6 of this Handbook. This type of production may sometimes be overseen and regulated by government authorities; an example of this is the production of high-end sporting firearms by skilled artisans. Most weaponry of this type, however, is made outside state control, or with limited oversight. These weapons may subsequently be used against government targets or in other criminal activity.

Improvised and craft-produced small arms and light weapons vary in quality from crude, improvised single-shot guns to semi-professionally manufactured copies of conventional firearms. Improvised and craft-produced weapons are made in sizeable quantities in states with significant authorized small arms manufacturing capabilities as well as in countries without significant domestic production capabilities.

The craft production of firearms has a long tradition in several parts of the world. In West Africa, for example, the practice is widespread, with blacksmiths producing a range of small arms. So-called ‘Daneguns’ (see Chapter 6), which are especially popular in Nigeria and Ghana, are based on 19th century European designs. In Pakistan, the Khyber Pakhtunkhwa province is home to numerous workshops that craft produce small arms. In Colombia, the Revolutionary Armed Forces of Colombia (FARC) have produced copies of Italian semi-automatic pistols and US sub-machine guns.

Ammunition for small arms and light weapons is also improvised and craft produced (see Chapter 6). Reloading ammunition—that is, reusing cartridge cases to
produce finished cartridges—is a popular pastime for hobbyists, who are sometimes known as handloaders. Reloading is usually practised on a small scale, with the ammunition intended for personal use. Evidence suggests that reloading ammunition is conducted on a much bigger scale in parts of Pakistan and elsewhere, however, where it is often intended for retail sale.

Several armed groups have developed the capacity to make light weapons. Mortars seem to be the most commonly produced type, as they are relatively easy to produce and store, and can often be fabricated from readily available materials. The Irish Republican Army (IRA), for example, manufactured numerous mortar designs, often featuring delay or remote-control mechanisms (Oppenheimer, 2008). More sophisticated light weapons are also craft produced, including grenade launchers and recoilless weapons. Various Palestinian armed groups, for example, produce large quantities of light weapons such as single-launch rockets, while in the Philippines, the Moro Islamic Liberation Front has made copies of the Soviet RPG-2 recoilless weapon and the US M79 grenade launcher. In the Iraqi city of Mosul, non-state armed group Islamic State (IS) developed the production of mortars and rockets on an industrial scale (Conflict Armament Research, 2016, p. 7).

One of the most common craft-produced weapons is the improvised explosive device (IED). These are often made from commercially available and relatively inexpensive materials such as ammonium nitrate, acetone, hydrogen peroxide, and potassium chlorate. The charge and booster are often taken from artillery shells, mortar bombs, or other conventional ammunition. IEDs are not generally considered light weapons and are not covered in this Handbook.

**Converted and ‘reactivated’ weapons**

Firearms conversion involves modifying an imitation or deactivated firearm to fire live ammunition. Converted firearms may be based on blank-firing firearms (sometimes called ‘alarm guns’), air guns, or even toy guns. Deactivated firearms—genuine firearms that have been rendered inoperable (that is, incapable of expelling a projectile)—may also be converted in a similar fashion.

The conversion changes the nature of the device so that it functions as—and meets the definition of—a real firearm. Converting a replica or deactivated firearm

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20 Section authored by Benjamin King, based on King (2015) and Florquin and King (2018).
21 Converted and ‘reactivated’ firearms are addressed in Chapter 6 of this Handbook.
essentially involves removing the barriers to normal firearm functionality put in place by manufacturers or deactivating authorities.

Those who purchase converted firearms do so to use them for self-defence, but also for criminal purposes (Jenzen-Jones and McCollum, 2017, p. 29). Converted firearms are relatively easy to find and are affordable: even after their conversion, they can cost as little as ten per cent of the price of real pistols and revolvers (King, 2015, p. 8). Moreover, converted firearms carry the added value of being generally less traceable than real guns, as some countries do not subject readily convertible imitation and deactivated firearms to the same registration and licensing restrictions as real firearms. As a result, smugglers typically purchase readily convertible weapons legally in countries where they are sold with few restrictions, before smuggling and converting them for illicit use in locations where firearm laws are stricter.

These characteristics have contributed to the worldwide proliferation of converted firearms in recent years. European states were the first to report the problem in the late 1990s. The use of converted firearms in criminal incidents appears to be particularly high in countries that ban, or heavily restrict, civilian possession of real pistols and revolvers, such as the Netherlands and the United Kingdom (de Vries, 2011, p. 214; Hales, Lewis, and Silverstone, 2006, p. 7). Overall, at least 19 European states have reported confiscating converted blank-firing firearms. Reactivated firearms have also been used in some high-profile attacks, including the January 2015 terrorist attacks in Paris.

The proliferation of converted imitation firearms in particular is also significant in the Middle East and North Africa. Turkey is a major manufacturer of blank-firing firearms, including several popular brands: Atak Zoraki, Ekol/Voltran, Blow, and Target Technologies (King, 2015, p. 4). Over the past six years, authorities in several countries have seized multiple large shipments of Turkish-made replica firearms en route to Djibouti, Egypt, Iran, Kenya, Libya, Somalia, Sudan, Syria, and Yemen (King, 2015, p. 8).

Recirculation of illicit weapons

In addition to diverted legal holdings and illicitly produced firearms, existing stockpiles of illicit weapons represent another source of illicit arms flows. In fact, in a number of conflict zones, weapons and ammunition designed, manufactured,
and distributed decades earlier—specifically in the context of cold war proxy arming—are still in use (Florquin, 2014, pp. 2–3).

A review of arms caches recovered in Afghanistan from 2006 to 2011, Iraq in 2008 and 2009, and Somalia from 2004 to 2011 revealed that the vast majority of seized small arms were AK-type rifles—the same patterns of rifles that have been used by governments and armed groups in these countries for decades (Schroeder and King, 2012, p. 314). These older models of firearms are also commonly available for sale at local open-air and undercover illicit markets, such as those documented by the Small Arms Survey in Lebanon, Pakistan, and Somalia (Florquin, 2013).

Perhaps more surprising, given its consumable nature, small-calibre ammunition produced during the cold war is still circulating widely in conflict areas. A review of 560 varieties of such ammunition documented since 2010 in seven conflict zones in Africa and Syria found that more than half of the identified types of ammunition had been produced before 1990 (Florquin and Leff, 2014, p. 189). Moreover, the age of small-calibre ammunition does not appear to greatly affect its price on the illicit markets of Lebanon, Pakistan, and Somalia (Florquin, 2013, p. 263).

While some ageing weapons and ammunition used in conflicts may have been diverted recently from legal, old surplus stockpiles, there is also evidence of the recirculation of illicit weapons between armed groups, sometimes spanning decades. This is the case in the conflict in the eastern DRC, where enduring armed groups such as the Forces Démocratiques de Libération du Rwanda (FDLR) have acquired weapons from a variety of state and non-state armed forces, both forcibly and through alliances, since the 1990s (Debelle and Florquin, 2015, pp. 199–204).

Conclusion

While the arms shipments arranged by high-profile arms brokers generally capture the headlines, the arms trade is an immensely complex and multi-faceted phenomenon that is often far less sensational in nature. Authorized international transfers take many forms, ranging from temporary exports of a single firearm for use in shooting competitions to the permanent transfer of thousands of weapons to militaries and police forces. The legal domestic trade is equally diverse.
Government arms depots in countries with large and active armed forces often contain a broad array of small arms and light weapons, while armouries in smaller countries that only have constabulary forces may contain few if any light weapons. Civilian markets tend to be more limited since most governments ban (or severely limit) the possession of light weapons by civilians. The types of firearms that can be legally purchased for hunting, sport-shooting, and self-defence vary significantly from country to country, however.

The illicit arms trade mirrors the authorized trade: the vast majority of small arms and light weapons on the black market were legally produced and owned before they were diverted to unauthorized recipients. There are exceptions, of course, such as those weapons which are improvised, craft produced, or converted. But even most craft-produced small arms and light weapons are assembled from components that are acquired from legal markets. Like the authorized trade, illicit arms flows vary significantly over time and from region to region. The types and sources of illicit weapons in one country are often completely different from those in another country, and there are sometimes even differences from region to region. These differences are explained by numerous factors, including—but not limited to—the types of weapons and ammunition available from local and regional sources, and the resources and objectives of illicit end users. Accurately researching and reporting on arms and ammunition therefore requires a nuanced understanding of the weapons identification process and the sources of data on authorized and illicit arms flows.

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UNDERSTANDING THE ARMS TRADE TREATY
FROM A HUMANITARIAN PERSPECTIVE
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apply only to “conventional arms covered under Article 2 (1)”, the ICRC has recommended in Section 3.1.1 that each State Party should apply, where feasible, the same transfer regulations to ammunition and to parts and components as they do to the transfers of the arms themselves.

To fulfil the ATT’s humanitarian purpose, it is essential that all activities of the arms trade be regulated in a manner that effectively prevents weapons from ending up in the hands of those who would use them to commit serious violations of IHL or international human rights law. To this end, the ICRC recommends that each State Party:

- In addition to applying the transfer prohibitions as required by Article 6 to the import, transit or trans-shipment, and brokering of arms and items, extend the risk assessment required of exports of arms and items under Article 7 to, at a minimum, import and brokering activities.
- Require all arms brokers operating under its jurisdiction to register and be licensed under its national law, and apply strong penalties for illicit brokering activities.
- Apply the same regulatory measures to the import, transit or trans-shipment, and brokering of ammunition and parts and components as it does to conventional arms.

3.4 Preventing diversion – Article 11
One of the objectives of the ATT spelled out in Article 1 is to “prevent and eradicate the illicit trade in conventional arms and prevent their diversion.” The Treaty does not define “diversion”, nor is there an internationally agreed definition of the term, even though a number of international instruments call for measures to prevent the diversion of conventional arms. The term is generally understood to mean the transfer of arms to unauthorized end-users or

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70 See the 2001 Firearms Protocol, Article 11, and the 2008 EU Common Position on arms exports, Article 2, Criterion Seven. See also the UN Programme of Action on Small Arms, Part II, paras 2 and 11.
end-uses, including but not limited to diversion to the illicit market.\textsuperscript{71}

Diversion is of humanitarian concern when there is a risk that the unauthorized recipients would use the weapons to commit serious violations of IHL or serious violations of international human rights law. Moreover, diversion of weapons to the illicit trade feeds the widespread and uncontrolled availability of arms and their misuse.

Diversion can occur in the country of origin from the point of embarkation (export), en route to the authorized recipient (transit or trans-shipment), and at or shortly after the point of delivery (import). The ATT therefore recognizes that preventing the diversion of conventional arms is the responsibility of all States that have jurisdiction over the arms transfer chain, whether at the stage of export, import, transit or trans-shipment, or brokering. Article 11 (1) of the Treaty unconditionally requires each of these States Parties to take measures to prevent the diversion of weapons.

As explained in Section 3.2.2, under Article 11 (2), exporting States Parties must assess the risk of diversion of each arms export and consider establishing mitigation measures. This assessment is to be carried out through the State Party’s national control system, and should logically be part of the same export assessment procedure required by Article 7. Effectively controlling arms exports is a critical means to prevent their diversion. In some cases the risk of diversion may be too high to authorize the export.\textsuperscript{72}

For States Parties involved in other forms of arms transfers, Article 11 does not specify which measures they should take to prevent diversion, leaving this to the discretion of each State Party. For importing States Parties in particular,

\begin{itemize}
    \item \textsuperscript{71} See \textit{The Arms Trade Treaty (2013): Academy Briefing No.3}, Geneva Academy, June 2013, p. 33. According to the Small Arms Survey, “[T]he term ‘diversion’ refers to a breakdown in the transfer control chain such that, either before or after arriving at their intended destination, exported weapons are transferred to unauthorized end-users or used in violation of commitments made by end-users prior to export”. \textit{Small Arms Survey 2008: Risk and Resilience}, Cambridge University Press, 2008, p. 156.
    \item \textsuperscript{72} As implied by the second sentence of Article 11(2). Examples of diversion-risk indicators and of diversion-prevention measures are given in Section 3.2.2.
\end{itemize}
diversion-prevention measures would include robust management and security of their stocks of weapons, including physical security measures, control of access to stocks, regular and comprehensive inventory management and accounting control, and staff training, as well as effective legislation for investigating and punishing theft, corruption and other diversion-related offences. Providing end-user and end-use certificates, strengthening border patrols and controls, and having in place strong export controls as part of their national control system also constitute fundamental diversion-prevention measures for importing States Parties. The establishment of a system to regulate the transit and trans-shipment of weapons is also a measure a State Party can take to prevent their diversion.

To be effective, many of these diversion-prevention measures rely on close cooperation and information-sharing between all of the States involved in the arms transfer chain, a fact recognized by Article 11 (3), which requires such cooperation and information exchange “where appropriate and feasible”. Article 11 (5) provides a non-exhaustive list of information that States Parties are encouraged to share with one another to help them better understand and prevent the diversion of weapons, including information on international trafficking routes, illicit brokers, sources of illicit supply, and methods of concealment.

If a State Party detects a diversion of transferred weapons, Article 11 (4) requires it to “take appropriate measures”, including pursuing investigations and law enforcement.

While Article 11 does not oblige State Parties to take measures to prevent the diversion of ammunition or parts and components, referring only to “conventional arms covered under Article 2 (1)”, the ICRC has recommended in Section 3.1.1 that each State Party apply the same diversion-prevention measures to transfers of ammunition and parts and components as it applies to transfers of the conventional arms themselves.

73 See UN Programme of Action on Small Arms, Part II, para. 17.
Preventing the diversion of authorized arms transfers is crucial to ensuring the effectiveness of the ATT and to fulfilling its humanitarian objectives. To this end, the ICRC recommends that each State Party:

- Establish and enforce measures to ensure that all arms, ammunition and parts and components transferred under its jurisdiction reach and remain with the authorized recipient, including legislation allowing effective investigation and punishment of violations.
- Take measures to effectively prevent the diversion of transferred weapons, including the robust management and security of the stocks of arms, ammunition and parts and components held within their territory, the provision of end-user and end-use certificates for imported arms and items, the strengthening of border patrols and controls, and the effective regulation of transit and transshipment of arms and items.
- Share information with other States relevant to the risks of diversion of arms and items, and cooperate with other States in implementing diversion-prevention measures.
- Apply the same measures to prevent the diversion of ammunition and parts and components as it does to conventional arms.

### 3.5 Ensuring implementation and compliance

The effective implementation and enforcement of the ATT at the national level, and cooperation among States Parties and transparency in the arms trade at the international level, are essential to achieving the Treaty’s objectives and to fulfilling its humanitarian purpose.

As explained in Section 2.4, the ATT must be implemented in a consistent, objective and non-discriminatory manner, bearing in mind the Treaty’s principles, which include ensuring respect for IHL and international human rights law. This is the overarching guideline for national implementation set out in Article 5 (1) of the Treaty.

Effective cooperation and assistance between States Parties will depend on a high degree of openness and transparency, through, for example, their initial and annual reports and the information they share during the arms
Meeting Summary

Examining Common Regional Understandings to Strengthen End Use/r Control Systems to Prevent Arms Diversion

Regional Consultative Meeting
Nairobi, Kenya
6–7 October 2016
Executive summary

This paper provides a summary of the discussions that took place during a two-day regional consultative meeting organized by the United Nations Institute for Disarmament Research (UNIDIR) at the United Nations Office at Nairobi, Kenya, on 6–7 October 2016. The meeting was organized as part of the UNIDIR project, “Tackling Diversion (Phase II): Promoting Regional Dialogue to Enhance Common Understanding and Cooperation to Strengthen End Use/r Control Systems”, which is supported by the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR). The meeting benefited from participation by seven States from the African region as well as specialized organizations such as Conflict Armament Research, the International Peace Support Training Centre (IPSTC) and the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA). The overall goal of this project is to provide a platform to facilitate a global, inclusive dialogue that examines and identifies possible options and avenues within and beyond existing global, regional and subregional instruments to strengthen end use/r control systems for the prevention of diversion of arms and ammunition.

This summary paper outlines the issues addressed and discussions held during the meeting. The paper consists of four parts: The first part introduces the project and its overall objective, as well as the purpose of the sub/regional consultative meeting series. Part two introduces the key issues for end use/r control systems in Africa, as identified by participants in the meeting, focusing on:

- Competing interests and limited cooperation within importing States between various government agencies and between regional and subregional governance bodies.
- Maintaining a system that manages imported arms, including resources and procedures to: mark weapons; keep accessible records of weapons holdings; oversee distribution and use within national borders; and ensure responsible disposal of imported arms.
- Operational-level constraints, such as inadequate resources and capacity to deal with the scale of the challenge and limited experience and intelligence to inform measures to address diversion risks;
- Decisions to re-transfer arms without seeking authorization from the original exporting State;
- The political consequences of identifying diversion risks in a “friendly State”; and
- Effective cooperation and communication during the transfer process between arms suppliers, transit States and importing States.

The third part of the paper provides three case studies of national end user control systems: to regulate arms exports; to regulate arms imports; and to regulate arms imports in a State subject to a UN arms embargo. This part also includes a summary of the responses by seven African States to the UNIDIR survey for examining options for cooperation to strengthen end use/r control systems. The fourth part of the paper summarizes the rich discussion in the group on the potential for using existing sub/regional and international frameworks, instruments and approaches for strengthening end use/r control systems in the African region. The group noted the importance of a solid legal framework to implement commitments made in subregional, regional and international instruments to address diversion, as well as the challenges faced in enforcing national legislation. In this regard, it was agreed that networks of relevant stakeholders
are useful for exchanging information and knowledge on effective implementation of national end use/r control systems. The group recognized the benefits of utilizing existing definitions and guidelines for the development of sub/regional and international guidance on effective end use/r control systems and measures to prevent diversion, but also stressed the need for African States to be able to “domesticate” such guidance.
1. Introduction

The diversion of authorized conventional arms transfers, including those of small arms, poses a persistent problem for security at the global, regional, subregional and national levels, and lies at the heart of the illicit proliferation of arms.\(^1\) Evidence from diversion cases suggests that differences between national end use/r control systems (in particular the content, format and use of end use/r documentation), as well as the lack of shared understanding of definitions and information among relevant stakeholders, pose a challenge to tackling diversion. UNIDIR’s research has identified several ways in which inadequate end use/r control systems have been evaded to divert arms to unauthorized end users, including:

- End use/r documentation is not authenticated by exporting States, and forgeries are used to acquire export licences to divert arms;
- End use/r documentation is not verified by exporting States, with information missing or which should prompt the exporting State to conduct a thorough investigation of the proposed transfer;
- Importing States lack the procedures for oversight and control of arms imports;
- Constraints at the operational level to regulate arms transfers and detect and interdict the attempted diversion of arms;
- States that host significant transit and transhipment hubs lack capacity to effectively manage risks to prevent diversion;
- Non-State end users in importing States with limited post-delivery monitoring and controls are considered a diversion risk;
- Assurances on end use or re-export are ignored by the importing State, adherence to assurances is not monitored by the exporting State and actions are not taken when reports of violations are presented to the exporting State and international community; and
- High-ranking officials in importing States are willing to provide authentic end use/r documentation to facilitate diversion to embargoed entities either en route or by undertaking an unauthorized re-export after taking delivery of arms and ammunition, for financial or strategic gains.

States in multilateral forums have repeatedly called for the examination of the harmonization of end use/r control systems to improve their role in preventing diversion. Despite these repeated international calls, a comprehensive and inclusive discussion at the global level has not yet been convened to consider possible ways and approaches to strengthen shared understandings and promote alignment in end use/r control systems. UNIDIR responded in 2015 with the project “Examining Options and Models for Harmonization of End User/r Control Systems” (Phase I), with support from the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR). Phase I of this project identified key aspects of end use/r control systems that could be examined by States to establish shared understandings that inform, legitimate and motivate dialogue and collective action in strengthening end use/r controls, including enhancing international cooperation, and where possible, working towards alignment in key terms and standards. A key

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\(^1\) For the purpose of this meeting summary paper, “arms” is used to cover all conventional arms, including small arms and light weapons (SALW), as well as ammunition.
element of this stage of the project included global distribution of a UNIDIR survey for examining options for cooperation to strengthen end use/r control systems (UNIDIR survey), which has collected information on national practices, challenges and options for multilateral processes from 48 UN Member States.\(^2\) A comprehensive study was released by UNIDIR in early February 2016.\(^3\) The key findings have been shared at various meetings, including:

- A side event during the First Conference of States Parties to the Arms Trade Treaty (ATT) in Cancún in August 2015;
- A side event during the meeting of the UN General Assembly First Committee in New York in October 2015;
- The Fifth Consultative Meeting of the European Union (EU) Non-Proliferation Consortium in Brussels in July 2016; and

Regional consultative meetings

The overall objective of this project is to enhance the knowledge and capacity of policymakers and practitioners to identify frameworks, procedures and practical measures aimed at developing shared understanding, strengthening national end use/r control systems and facilitating cooperation at sub/regional and global levels as a means of promoting dialogue between States conducive to mitigating risks of arms diversion.

Building on the key recommendations from the first phase, Phase II (2016) consists of a series of three regional consultative meetings with the aim of engaging with regions and States that are not participating in existing export control regimes—i.e. States in Africa, the Caribbean and Asia—in order to promote a comprehensive approach to strengthening end use/r controls to prevent diversion. The sub/regional consultative meetings have several connected objectives:

- Review efforts, initiatives and international and sub/regional frameworks and instruments that strengthen cooperation and align end use/r control systems;
- Identify the key areas that would enhance cooperation and strengthen end use/r control systems;
- Explore the feasibility and desirability of different options for a sub/regional or global approach to strengthening end use/r control systems; and
- Consider challenges and opportunities for a sub/regional or global framework for strengthening end use/r control systems.

In achieving these objectives, the project will contribute to the overall goal of consolidating sub/regional shared understandings of desired and feasible methods and approaches to enhance

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\(^2\) The UNIDIR survey was circulated to all UN Member States during Phase I of the project in summer 2015. Forty-one Member States—including major importing and exporting States across the world—provided a completed survey to UNIDIR. UNIDIR recirculated the survey in 2016 to States in regions and subregions that will participate in the regional and subregional consultative meetings as part of Phase II of the project. As of 7 October 2016, a total of 48 responses to the survey (2015–2016) had been received.

cooperation and strengthen end use/r control systems at the sub/regional and global levels. The regional consultative meetings in turn will help establish:

• Enhanced regional common understanding of potential approaches, procedures and practices, as well as roles and responsibilities of national actors involved in strengthening end use/r controls to mitigate the risk of diversion;

• Increased awareness and dialogue between stakeholders among those States that are not participating in existing export control regimes, on methods and processes to strengthen cooperation and alignment of end use/r control systems; and

• Improved regional understanding of practical steps States could take to undertake a sub/regional and/or global dialogue and process to strengthen end use/r control systems at the sub/regional and/or global levels.

The project will contribute to practical and effective implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN PoA) and the ATT, as well as relevant sub/regional instruments.

**African consultative meeting, 6–7 October 2016**

The second of the series of UNIDIR sub/regional consultative meetings was convened at the United Nations Office at Nairobi, Kenya, on 6–7 October 2016.

This regional seminar sought to bring together a cross section of African States, with not only geographical representation—i.e. participants from each of the subregions that have a SALW instrument—but also a balance of States that have export, transit and import profiles. In addition, the group included States that have been subject to UN arms embargoes. The meeting benefited from the participation of seven States from the African region, namely: Algeria, Burkina Faso, Ghana, Mauritius, Somalia, South Africa and the United Republic of Tanzania. The meeting brought together representatives from national arms transfer control authorities, presidential advisers and representatives of diplomatic missions located in Nairobi. In addition, experts from specialized organizations such as Conflict Armament Research, the International Peace Support Training Centre (IPSTC) and the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA) participated in the meeting. The overall guiding question for this regional consultative meeting was:

*How can States enhance shared understandings and cooperation to strengthen their national end use/r control systems in a practical manner in order to mitigate the risk of diversion to unauthorized end users and/or end uses?*

**2. Key issues for end use/r control systems in the African region**

The group considered a wide range of issues that constrain the ability of end use/r control systems to prevent the diversion of arms. The discussion covered the politics and praxis of the

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4 The first of the series of UNIDIR sub/regional consultative meetings was organized in partnership with the Caribbean Community Implementation Agency for Crime and Security (CARICOM IMPACS), in Port of Spain, Trinidad and Tobago, on 21–22 September 2016. For more information on the first consultative meeting, see [bit.ly/2cA28cS](http://bit.ly/2cA28cS).
regulation of arms exports, imports, transit and brokering to prevent diversion, focusing on the following issues:

- Competing interests and limited cooperation within importing States with regard to:
  - Relations between the central government and sub/regional governance bodies;
  - Relations between relevant government ministries and agencies with regard to regulating arms transfers and preventing diversion.
- Maintaining a system that manages imported arms, including resources and procedures to: mark weapons; keep accessible records of weapons holdings; oversee distribution and use within national borders; and ensure responsible disposal of imported arms.
- Operational-level constraints, such as inadequate resources and capacity to deal with the scale of the challenge and limited experience and intelligence to inform measures to address diversion risks;
- Decisions to re-transfer arms without seeking authorization from the original exporting State;
- The political consequences of identifying diversion risks in a “friendly State”;
- Effective cooperation and communication during the transfer process between arms suppliers, transit States and importing States.

Participants highlighted several challenges faced by African States seeking to manage arms that have been supplied to armed actors located within their national borders. First, participants acknowledged that there can be competing interests within their States that serve as a barrier to effective end use/r control systems. For example, subnational security forces in a State do not always communicate their arms acquisitions to the relevant central government authorities. This can result in situations in which a national government does not have a full inventory of all weapons located within the national territory. It was also noted that a State could centralize procedures for importing arms and have effective management at the point of entry, but could lose such “control”—or at least “oversight” could become limited—when arms are provided to subnational security forces that might seek to gain income by either selling or renting arms to other armed actors within the State or across national borders. A second dimension of this challenge was noted with regard to the competing interests of different government ministries or agencies. At the extreme end of this spectrum, imported arms could be used against political factions within the government or the State. In other cases, it was noted that certain ministries might be in favour of granting permission for an export or transit shipment of arms to a “friendly State”, while other ministries or agencies might consider that the risk of diversion and misuse is too significant to permit such authorization.

Participants raised the issue of operational-level constraints to the identification and prevention of diversion. The group noted the lack of adequate human and material resources to monitor borders, perform marking and record-keeping and gather intelligence on potential diversion risks. In some cases, international cooperation and assistance has been provided to support efforts to address these challenges. However, participants stated that the scale of the problem remains significant at the national level and there are concerns that the international assistance and cooperation available does not adequately support the establishment of the required

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5 Several participants in the Group used the term “friendly State” to indicate an ally or neighbouring State with which it sought to maintain good neighbourly relations.
sustainable end use/r control system. On the issue of intelligence to inform risk assessments before authorizing an export licence or granting permission for a shipment to transit through national territory, participants noted that open source intelligence can often be insufficient. The group noted that open source intelligence does not always provide the level of detail necessary to determine whether arms are being supplied to an end user in the importing State that has a good record with regard to arms management. For example, it could be the case that while the armed forces of the importing State have good arms management procedures, the police force could have a reputation for facilitating diversion. For this reason, it was noted that national intelligence services and diplomatic representations in other countries can be invaluable sources of information—if adequately resourced. At the same time, it was recognized that while capacity-building programmes can be established to tackle such challenges, political decisions can still be made that facilitate diversion and undermine seemingly robust end use/r control systems.

The group discussed the way in which importing States understand ownership of imported arms and national decisions on the most appropriate form of disposal for surplus arms or the supply of imported arms to end users without informing the original exporting State of a change in possession. Participants noted that State officials in Africa continue to provide authentic end use/r documentation to acquire arms and then divert these arms to embargoed entities or other unauthorized end users (e.g. insurgents, rebels and criminals) in neighbouring States for financial gain or ideological motivations. Yet this was only one of the reasons discussed by the group as to why some States might not respect non-re-export assurances provided in end user certificates (EUCs). The group considered a case of an “honest mistake” in which a State official could “forget” an assurance not to re-export imported arms, when called upon to donate arms and ammunition to help a neighbouring State that is fighting against insurgent forces. As soon as the arms change hands, the group agreed that the original supplier should be informed, but also noted that this does not always happen in practice. Therefore, the group emphasized that unauthorized re-export can also be the result of “forgetfulness” and not malicious intent alone.

The group discussed the importance for African States of better communication and cooperation during the shipment of arms. In this regard, the need for the exporting and importing States to be able to identify transit States in advance of a shipment leaving or arriving at their national borders was stressed. It was noted that cooperation with the arms and shipping industries is particularly important for facilitating and quickly expediting legitimate arms transfers. Participants explained that even transfers authorized by exporting and importing States can be held up by procedures for issuing a transit or conveyance permit if information is not provided in a timely manner by shipping agents located in the transit State. The group noted that military institutions in some importing States do not want to reveal information in advance about their procurement. This can create a problem for communication along the transfer chain, which in turn can impede the smooth passage of a legitimate shipment. In addition, the group discussed the challenges posed by container shipments and concerns over mislabelling and efforts to use transit States to facilitate arms supplies to parties to conflict.

Participants also considered that government agencies and ministries of African States that are infrequently engaged in the international arms trade might not be fully cognisant of the changing dynamics and challenges of the trade and diversion practices. For example, it was noted that

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entities that had previously only engaged in facilitating arms deals are now acquiring their own stock for sale and therefore becoming arms dealers. Participants considered the implications of an arms company in the global North establishing production facilities and subsidiaries in Africa to circumvent export controls in other parts of the world. At the same time, it was noted that this might increase the export control burden on African States, as such companies might need to continue to comply with standards established in the global North. In addition, it was noted that more attention should be paid to accessories for conventional arms, as well as military equipment more broadly, if States are interested in addressing diversion of military equipment that contributes to regional instability and conflict.

3. End use/r control systems in the African region

The group’s deliberations on end use/r control systems in Africa benefited from the information provided by seven African States in their responses to the UNIDIR survey on end use/r control systems, which are summarized in section 3.1. Three participants also provided an overview of elements of their national end use/r control systems, with presentations on:

- An African State’s export control system;
- An African State’s import control system;
- An embargoed African State’s import control system.

An African State’s export control system

The first case study consisted of an overview of an African State’s inter-agency system for oversight of international arms transfers (export, conveyance/transit and brokering). This State is an atypical African State with regard to its arms production capacity, membership of arms control and non-proliferation regimes and experiences and resources for regulating international arms transfers. At the top of the inter-agency system is a committee that brings together relevant ministers to decide on whether to authorize or deny a proposed transfer of conventional arms and military equipment. To support the day-to-day work of the committee, a secretariat is tasked with undertaking the technical and administrative functions of the committee, including gathering information to inform the committee’s decisions. All decisions are taken on a case-by-case basis in accordance with the State’s overall objectives for arms export policy. Overall, the system is intended to provide “oversight” rather than “control” of arms industry activities within the parameters established by national law.

The presentation provided information on some of the practical elements of the system. There are government regulations that provide information on the common elements that are expected to be included in EUCs. The State can attach additional conditions for some authorizations, such as the confirmation of a delivery received by an importer and post-delivery cooperation, including inspections. At the same time, this State is also conscious of the challenges in monitoring the implementation of assurances on re-export and post-delivery cooperation.

7 This system only applies to international transfers of conventional arms and military equipment. This section does not deal with the international transfer of firearms for this African State.
An African State’s import control system

The second case study provides an insight into a West African State’s import control system. In this State, only the President can authorize arms imports. Authority is delegated to the permanent secretary of the High Authority on Arms Imports Control and Their Use for all imports, the Ministry of Security (MoS) for civilian arms imports and the Ministry of Defence (MoD) for government arms imports. The system includes quarterly meetings of relevant agencies/ministries such as defence, foreign affairs and security, as well as aviation and transport agencies. This State is also currently developing a national law to implement the ATT, which is expected to define transit, transhipment, import and export and regulation measures.

The government can issue two documents to support an application for an arms import: an import authorization and/or an EUC. The State provides templates of both documents, with the list of elements contained in both documents outlined in Table 1 below. The import authorization and the EUC must be signed by the relevant minister and permanent secretary. If the document does not carry the signatures of both the minister and the permanent secretary, then it is not a legitimate document issued by the government of this State. In addition, this African State is a State Party to the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS Convention) and therefore an exemption certificate from the ECOWAS Secretariat is also required before SALW intended for the MoD can be imported.

For civilian arms imports—e.g. a private security company or a dealer—an application must be submitted to the MoS for consideration, detailing the type and volume of arms to be imported, before the relevant documentation can be provided regarding the proposed imports. If the MoS authorizes the import, it requests an import authorization document from the Prime Minister’s Office. The permanent secretary is responsible for providing a signed import authorization document to the Prime Minister’s Office, which is then passed on to the MoS. The minister signs the document and records its number, before providing the document to the applicant. The list of issued documents is kept by both the government and the importer. For civilian arms imports, the MoS also checks to ensure that the arms documented in the “import authorization” match the arms that have been imported. If there is not a match, then sanctions are imposed for “illicit trafficking”. Sanctions consist of a three-month ban, a six-month ban or permission permanently rescinded to import arms.

For government end users, a similar process takes place but with applications made to the MoD and an application also made to the ECOWAS Secretariat for a certificate of exemption.

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8 The provision of an EUC is not mandatory in all cases and is only provided if requested by the supplier.
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<th>Import authorization elements</th>
<th>EUC elements</th>
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<td>Official letterhead of the relevant ministry, including phone and fax numbers</td>
<td>Official letterhead of the relevant ministry, including phone and fax numbers</td>
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<tr>
<td>Number in the national register for import authorizations</td>
<td>Number in the national register for EUCs</td>
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<td>Complete name of relevant minister authorized to sign</td>
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<td>Importer details (e.g. full name, complete address and authorization to commercially operate)</td>
<td>Name and address of the importer and end user of the arms and ammunition</td>
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<tr>
<td>Exporter/manufacturer details (i.e. complete address and manufacturer)</td>
<td>Name of the exporter or manufacturer</td>
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<tr>
<td>Intermediary details (i.e. full name, complete address of brokers and other intermediaries)</td>
<td>Identity (name) and address(es) of broker(s) and intermediaries</td>
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<td>Description of the goods being imported</td>
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<td>Value of the goods being imported:</td>
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<td>Routing details</td>
<td>Exporting State and possible points of transit</td>
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<td>• Points of departure</td>
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<td>• Means of transport</td>
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<td>• Point of entry</td>
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<td>Country of final destination</td>
<td>Final destination</td>
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<td>Assurance on no re-export without authorization by the exporting State and manufacturer</td>
<td>Assurance on no re-export without prior written authorization by government of the exporting State</td>
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<td>Compliance of the subject import with ATT, in particular Article 6</td>
<td>Assurance of compliance with ATT, in particular Article 6</td>
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<td>Guarantee that the MoS will provide evidence of delivery</td>
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<td>Date of issuance of the import authorization</td>
<td>Certification that this governmental declaration is in accordance with national law, signature by the permanent secretary and date</td>
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<td>Signature by the relevant minister and date</td>
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</tr>
<tr>
<td>Period of validity (i.e. one year validity)</td>
<td></td>
</tr>
</tbody>
</table>
The third national case study concerns a State that is seeking to re-establish an end use/r control system following a long period of conflict for which it has been subject to a UN arms embargo. Recently, there has been a partial lifting of the embargo, with conditions introduced requiring exporting States and/or the embargoed State to notify the UN Sanctions Committee of authorizations and actual transfers. In order to comply with the terms of the partial lifting of the embargo, this State has established a national coordinating authority. The national coordinating authority communicates with the UN Security Council on authorizations and actual imports, and seeks to manage the import and subsequent distribution of imported arms. The authority is responsible for the storage of arms immediately after import, which should all be delivered to the capital of the State and stored in an armoury to be marked and recorded. Army units and police forces in the State can then submit written requests to receive arms and ammunition, providing information not only on their requirements but also where the items will be stored. The State is confident that the process for import, marking and record-keeping functions effectively. However, concerns remain regarding oversight and management of imported arms after distribution to army and police units located outside the capital. Therefore, the national government is seeking to roll out to other parts of the State the management system that has been piloted in the capital.

At the same time, the group was informed that States that provide peacekeeping forces for the peacekeeping mission in this State are providing arms to subnational security forces or militia without informing the Security Council or national government. Managing these donations is therefore an issue that is not yet under national government control, and such practices undermine the nascent efforts to establish a national end user control system that provides oversight and accountability for the State and the international community.

### 3.1 UNIDIR survey on end use/r control systems: results for States in Africa

Seven African States have provided information on their end use/r control systems in their responses to the UNIDIR survey on examining options for cooperation to strengthen end use/r control systems in 2015 and 2016, as well as in their reports on implementation of the UN PoA, their initial reports on implementation of the ATT, and their completed ATT Baseline Assessment Surveys. This subsection provides an overview of end use/r control systems in Africa, using information provided by seven African States by 7 October 2016 in response to the UNIDIR survey in 2015 (Burkina Faso, Mali and three African States that requested their names to be withheld) and 2016 (Somalia and South Africa). Information from these seven completed and returned surveys is presented below to help identify areas where systems already appear to be aligned at the subregional level, or where there are national examples of good practice that merit further consideration at the subregional level.

#### End use/r documentation requested by export licensing authorities

Of the seven African States that responded to the UNIDIR survey by 7 October 2016, three indicated that when they consider authorizing the export of conventional arms, including SALW, they require the applicant to submit end use/r documentation to the relevant national authorities as part of the application process. One State specified that when it considers authorizing an export of conventional arms, including SALW, it applies the provisions contained in the ECOWAS Convention. The other two respondent States provide to the applicant a template or checklist
of elements that must be included in end use/r documentation. The content of, and requested
details to be contained in, such documentation include the key elements indicated in UNIDIR’s
2015 study. Of the four other respondent States, three noted that they do not export arms,
and the fourth indicated that it does not currently have either domestic legislation or a national
system to control arms exports.

One respondent stated that it is willing to accept electronic copies of end use/r documentation.
All three States that require end use/r documentation before authorizing an arms export
licence require an original hard copy of the end use/r documentation to be submitted with the
application for an export authorization.

These three respondent States keep records of end use/r documentation submitted by applicants
for export authorization. Two of these States require applicants to keep such records. One of
these States requires applicants to keep records for a minimum of five years; this respondent
noted that the government is currently considering whether to extend this record-keeping
period.

End use/r documentation provided by importer and end user/s

Of the seven African States that have thus far responded to the UNIDIR Survey, five issue end
use/r documentation to the relevant national authorities in the exporting State to support an
application for authorization to export arms, for use by their State end users. Three of these
five States, as well as two other respondent States (a total of five States), use end use/r
documentation provided by the exporting States when importing conventional arms for State
end use/rs. Of the three ECOWAS Member States that responded to the UNIDIR Survey, two
respondents also noted the required issuance of a certificate of authorization or exemption
in accordance with the provisions of the ECOWAS Convention, without further specifying
the content of, or details contained in, such documentation. Four States also use end use/r
documentation which they have developed on a national basis. The end use/r documentation
developed by these States includes most of the essential elements and details of items, end use
and end user recommended in relevant international and regional guidelines and standards. Graph 1 provides an overview of the global responses to the UNIDIR survey with the results
from the African region.

All four States that provide end use/r documentation include a statement that the declared
end user will be the ultimate recipient of the conventional arms being exported, as well as a
declaration by the importer/end user not to divert or relocate the conventional arms to another
destination or location in the importing State. Two States also include a statement that the
importer/end user will provide to the relevant authorities in the exporting State, upon request,
written confirmation of the arrival of the arms at the intended final destination (e.g. a delivery
verification certificate (DVC)). Three of these four States do not include in their end use/r

10 P. Holtom, H. Giezendanner and H. Shiotani, Examining Options to Enhance Common Understanding and
Strengthen End Use and End User Control Systems to Address Conventional Arms Diversion, Geneva, UNIDIR, 2016,
pp. 44-48.

11 Three States do not include in their end use/r documentation the value of the arms being imported. One of these
States noted that it does not always include the value of the arms being imported, as they are sometimes donated
by another State. One State does not include in its end use/r documentation a description of the end use of the
arms.

12 For one of these two States, providing written confirmation of the arrival of the arms at the intended destination to
the Security Council is a requirement under the current sanctions regime.
documentation a provision to allow on-site verification by the exporting State’s competent authority. One of these four States has a joint verification team, consisting of national and international experts, which twice a year conducts monitoring on all arms and ammunition held by the national security and defence forces.

**Graph 1. UNIDIR survey results (2015–2016):**
Details contained in end use/r documentation issued by importing States

<table>
<thead>
<tr>
<th>Details contained in end use/r documentation issued by importing States</th>
<th>0</th>
<th>5</th>
<th>10</th>
<th>15</th>
<th>20</th>
<th>25</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exporter details (at least name, address and business name)</td>
<td>4</td>
<td>24</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>End user details (at least name and address)</td>
<td>4</td>
<td>22</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract number or order reference and date</td>
<td>4</td>
<td>18</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State of final destination</td>
<td>4</td>
<td>22</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of arms being exported (type, characteristics)</td>
<td>4</td>
<td>23</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quantity of conventional arms</td>
<td>4</td>
<td>22</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value of conventional arms</td>
<td>1</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature of the end user’s representative/importer/consignee</td>
<td>4</td>
<td>23</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date of issue of end use/r documentation</td>
<td>4</td>
<td>23</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Description of the end use of the conventional arms</td>
<td>3</td>
<td>20</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official letterhead of competent authority in importing State or entity</td>
<td>4</td>
<td>21</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name, address and contact details of the agency issuing the certificate</td>
<td>4</td>
<td>21</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature of competent authority in importing State or entity</td>
<td>4</td>
<td>23</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stamp of importing State authority to certify the end use/r document</td>
<td>4</td>
<td>22</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Details, where appropriate, of any intermediaries involved in the transfer</td>
<td>3</td>
<td>13</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Global: Yes, Global: Yes with exceptions, African region: Yes*
Four of the seven African States that responded to the UNIDIR survey certify end use/r documentation that is to be provided to the relevant national authorities in the exporting State to support an application for authorization to export arms for use by non-State end users (e.g. private security companies).

Three of these African respondent States keep records of end use/r documentation issued and certified for use in applications for authorizations to export conventional arms. Five require non-State entities that import conventional arms, including SALW, to keep records of their end use/r documentation.

**Use of end use/r documentation by competent authorities**

Four of the seven African respondents conduct checks on the information contained in end use/r documentation (see Graph 2). Of the other three respondent States, one noted that while no such checks are conducted currently, the national law is being reformed with such provisions expected to be included in the new legislation and/or regulations. Five States utilize measures to prevent the forgery or misuse of end use/r documentation, including:

- Use of documentation templates for “import authorization” or “final destination certificates” (“certificate de destination finale”) and end use certificates (“certificat d’utilisation finale”), which have been developed by the competent national authority in the importing State;
- The people authorized to sign the end use/r documentation are known and have been granted this authority by a Presidential decree;
- Limiting the number of officials within the competent national authority that are authorized to sign end use/r documentation;
- Providing the specimen signature to foreign diplomatic missions located in the importing State through diplomatic channels.

**Graph 2. UNIDIR survey results (2015–2016): Use of end use/r documentation by competent authorities**

<table>
<thead>
<tr>
<th>Respondent States conducting checks on information contained in end use/r documentation</th>
<th>0</th>
<th>5</th>
<th>10</th>
<th>15</th>
<th>20</th>
<th>25</th>
<th>30</th>
<th>35</th>
<th>40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respondent States utilizing particular measures to prevent forgery or misuse of end use/r documents</td>
<td>4</td>
<td>29</td>
<td>5</td>
<td>19</td>
<td>1</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Respondent States facing particular challenges when checking information contained in end use/r documentation</td>
<td>2</td>
<td>36</td>
<td>35</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

[Graph 2 image not included in text]
Three States noted in their responses to the UNIDIR survey that they faced challenges when checking information contained in end use/r documentation. Two of these States did not specify the types of challenges they faced. The third State explained that the government currently does not have access to certain areas of the country due to the security situation, and therefore is not able to freely check information contained in end use/r documentation.

**Post-delivery cooperation**

Graph 3 shows that five of the seven African respondents provide evidence of delivery upon request to the relevant authorities in the exporting State, when importing arms, including evidence that the arms arrived at the intended destination (e.g. a DVC). In their most recent reports on implementation of the UN PoA, three of these five States also reported that when importing SALW, they grant the right to the exporting State to conduct a physical check at the point of delivery.

Another African State noted that it provides evidence of delivery of arms to the relevant authorities in the exporting State, while noting that there is no need to provide evidence of delivery of ammunition.

Three African respondents include in their end use/r documentation a commitment to provide to the relevant authorities in the exporting State confirmation of arrival at the intended final destination (e.g. a DVC). The same States also include in their end use/r documentation template or checklist an agreement by the importer/end user to allow on-site verification by the exporting State’s competent authority.

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13 Three of the four States do so upon request. For one of the four States, providing evidence of delivery (e.g. a DVC) to the Security Council is a requirement under the current sanction regime.
International cooperation and information exchange

All seven respondent States provide information on the ministry or government agency that has been designated the competent national authority to certify and authenticate end use/r documentation, where applicable. Similarly, all seven States provide information on the ministry or government agency that issues end use/r documentation. Four of the seven respondents would be willing to provide information to other States on entities authorized to certify and authenticate end use/r documentation, while one State would be willing to do so with exceptions. Another State would be willing to provide information to other States on entities authorized to certify end use/r documentation noting, however, that a different entity is authorized to authenticate and verify end use/r documentation. Five out of the seven African respondents would be willing to exchange information on or share existing templates or checklists with other States.\(^{14}\)

4. Assessing the utility of existing international and regional frameworks, instruments and approaches

The group noted that there are several regional instruments in Africa that contain provisions for an effective end use/r control system (See Table 2). Participants also discussed the challenges that African States face in domesticating these instruments, given some of the challenges outlined in section 2. In addition, it was also noted that African States have commitments contained in various politically and legally binding international instruments, namely the ATT and UN PoA. The group noted that in several cases there are not only differences in the binding nature of the agreements, but also questions as to whether some of them can be effectively implemented by African States with limited resources, capacities and know-how. Given these considerations, the group considered the utility of existing instruments and guidelines for strengthening end use/r controls and enhancing cooperation in the African region, responding to the following questions:

*Can existing end use/r control definitions developed by international and regional organizations and export control regimes serve as the basis for harmonization efforts?*

The group agreed that existing definitions have already been tested and therefore, based on existing knowledge, such definitions could be utilized as the basis for regional or international discussions. Participants noted that there are differences between the definitions contained in international, regional and subregional arms control instruments. Therefore, one proposal was to consider whether it could be appropriate to consolidate the different definitions contained in African subregional and regional instruments before engaging in an international dialogue. One participant noted that the ECOWAS Convention provides definitions for “end user” that could be of interest to other African subregional or international instruments. The group considered that there is scope for a dialogue at the African regional level as well as in an appropriate international forum.

\(^{14}\) Of the two other African respondent States, one noted that it would not be willing to share template(s) of national end use/r documentation with other States at this time, due to security concerns in the country.
Table 2. Relevant African subregional arms control initiatives or instruments for strengthening end use/r control systems

<table>
<thead>
<tr>
<th>Relevant African arms control initiatives or instruments</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components that Can be Used for their Manufacture, Repair or Assembly (ECCAS, 2010)</td>
<td>Economic Community of Central African States</td>
</tr>
<tr>
<td>Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material (ECOWAS Convention, 2006)</td>
<td>Economic Community of West African States</td>
</tr>
<tr>
<td>The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa (Nairobi Protocol, 2004)</td>
<td>Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States</td>
</tr>
</tbody>
</table>

Is it feasible and desirable to agree in the African region on “common minimum elements” of details of items, end user and relevant entities involved in the transfer to be exchanged between the relevant entities in the importing and exporting States (e.g. the development of a standardized end user certificate)?

Participants noted that not all arms exporting States require an EUC to be provided as part of an application to export arms and ammunition. The group considered that it is important for all relevant stakeholders to have a common understanding of the common minimum elements that should be contained in end use/r documentation. Several participants noted that there is standardized documentation for the trade in other goods and that such practices could inform discussions on a standardized EUC. The group also noted that African Union (AU) Member States have a common goal of peace and development and that subregional arms control instruments help to provide the basis for achieving this goal. Therefore, the group considered that African States could be willing to explore options for the development of common minimum elements to be exchanged between the relevant entities involved in arms transfers.

At the same time, the group noted that the international arms trade is global and therefore expressed a preference for a global rather than a specifically African checklist or template of common minimum elements for an EUC. Most African States are primarily importers and EUC contents tend to be proposed by exporters; therefore, a dialogue between African States and exporting States regarding EUC contents was considered the best approach for Africa. Nevertheless, the group suggested exploring the possibility of aligning the ECOWAS Convention, ECCAS, the Nairobi Protocol and the SADC Protocol for an “African approach” to global negotiations. It would be easier for States and all relevant stakeholders to understand each other if the same information were to be requested by all exporting States.

In preparation for such discussions, the following elements could be included in a checklist or template EUC:

- Address of end user;
- Information on the exporter;
- Description and quantity of arms;
- The condition of the arms (e.g. surplus or new);
• Assurance on end use and re-export conditions;
• Information on all entities in the supply chain, including the transportation company.

One could argue that Mali and Togo have already made a first attempt to achieve this goal. Both States provided a list of recommended elements for an EUC in their views to the Secretary-General on the feasibility, scope and parameters of the ATT, which are summarized in Table 3. It is worth noting the overlaps in the list of recommended elements provided by Mali and Togo. In addition, these lists of recommended elements contain many of the recommended elements in best practice guidelines prepared by regional organizations and multilateral export control regimes.

Table 3. A comparison of the elements of an EUC recommended by Mali and Togo

<table>
<thead>
<tr>
<th>Mali: recommended EUC elements</th>
<th>Togo: recommended “certificate of final destination” elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Description of the weapon (type or model, calibre) and quantity (in the case of batches)</td>
<td>• A description of the arm (type or model, calibre)</td>
</tr>
<tr>
<td></td>
<td>• Its quality</td>
</tr>
<tr>
<td>(b) Contents of the marking</td>
<td></td>
</tr>
<tr>
<td>(c) Name and location of old and new owners and, as the case may be, successive owners</td>
<td>• The name and location of the former and new owners</td>
</tr>
<tr>
<td>(d) Date of registration</td>
<td>• The date of registration</td>
</tr>
<tr>
<td>(e) Information about each transaction, i.e.:</td>
<td></td>
</tr>
<tr>
<td>• The name and address of the consignor, any broker, consignee and end user</td>
<td>• The name and address of the sender, of any intermediary, of the recipient, and of the end user</td>
</tr>
<tr>
<td>• The origin, points of departure, possible transit and destination, as well as customs references and dates of departure, transit and delivery to the end user</td>
<td>• The origin, the points of departure and transit, the customs references, and the dates of departure, transit and delivery to the end user</td>
</tr>
<tr>
<td>• The export, transit and import licences (quantities of batches for each licence, and validity of licence)</td>
<td>• The export, transit and import licences</td>
</tr>
<tr>
<td>• Complete information on the carrier(s)</td>
<td></td>
</tr>
<tr>
<td>• The monitoring agency or agencies (at departure, transit and arrival points)</td>
<td></td>
</tr>
<tr>
<td>• The monitoring agency or agencies (at departure, transit and arrival points)</td>
<td></td>
</tr>
<tr>
<td>• The nature of transaction (commercial or non-commercial, private or public, weaponization, repair)</td>
<td>• The type of transaction (commercial or non-commercial, private or public, transformation, repair)</td>
</tr>
<tr>
<td>• As appropriate, the insurer and/or financing organization involved in the transaction</td>
<td>• The reason for the transfer (purpose)</td>
</tr>
</tbody>
</table>

How could roles and responsibilities of national entities responsible for end use/r control be enhanced?

Before the group began to consider in detail the roles and responsibilities for an effective end use/r control system, participants stressed the need for a solid legal framework at the national level that is consistent with international commitments. This was regarded as important before one can engage with arms manufacturers, suppliers or donors regarding roles and responsibilities in end use/r controls. It was recognized that while African States have legal frameworks for regulating arms transfers and end use/r controls, many need to update or establish national legal frameworks and legislation that correspond to commitments contained in regional and/or international instruments. Participants expressed the view that there is also scope for African States to coordinate their review and revision of legislation, especially at the subregional level. The group noted the next challenge for States to be the actual implementation and enforcement of such new legislation. To this end, the group stressed that it will be important for African States to build capacity and establish standard operating procedures for institutionalization of correct practices. A crucial first step, however, is to put in place a robust legal framework suitable for the national context, and aligned with subregional, regional and international commitments.

Is exchanging lessons learned and sources of information for risk assessment procedures and verification in the African region useful? Is it feasible?

The group agreed on the need to establish and maintain networks of relevant stakeholders to exchange information and knowledge for effective implementation of national end use/r control systems. Such networks can help to facilitate the exchange of lessons learned in establishing and maintaining end use/r control systems and the sharing of knowledge to improve the effective functioning of such systems. In addition, regional networks can help to build multilateral understanding of the issue. In the main, however, most sub-Saharan African States are not currently producers or significant exporters of conventional arms but transit or importing States—and in some cases, hosts for arms brokers. In this regard, the group expressed concerns regarding the potential ultimate use of information exchange by national actors for political and/or individual gain. Most of the discussion related to limiting the risk of diversion of imported arms via a comprehensive arms management programme. As noted in section 2, there was also discussion of risk assessment in relation to transit authorizations. It was noted that this tended to be primarily a procedural review of documentation as States did not want to be seen to be “interfering” in decisions on acquiring arms to enhance national defence capabilities in neighbouring States.

Should guidance be developed for assisting risk assessments on diversion?

The group considered that it could be useful to establish common guidelines at the international, regional and national levels. These guidelines do not need to be established from scratch, but can build upon existing EU and UN guidance. Such guidance will need to be “regionalized” for the African context, but also “domesticated” for use by African States. The group stressed the need for such guidance to be “flexible” to accommodate different national needs and interests.

Could “post-delivery cooperation” be useful for preventing diversion in the African region?

The discussion on “post-delivery cooperation” consisted of two elements:

- Post-delivery cooperation between relevant ministries, national agencies, the importer and/or end user in the importing State;
Post-delivery cooperation between the importing and exporting State.

Participants highlighted challenges to achieving good results with both forms of post-delivery cooperation.

The group agreed that good cooperation between relevant government ministries and agencies and other key stakeholders within an importing State is crucial for a robust end use/r control system. Several participants stressed that good cooperation at the domestic level is a prerequisite for effective post-delivery cooperation with other States and stakeholders. Centralized record-keeping and regular audits of the national stockpile, including military and police storage facilities located throughout the State, including in remote regions, were considered to be a good option for national oversight and cooperation to prevent diversion after delivery. It was also recognized that good cooperation within a State could help to prevent unauthorized re-exports and unintentional “diversion”. For example, if a State would like to donate surplus arms to a neighbour, there is a need for a system to ensure that this is carried out in accordance with commitments made to the original exporting State. It was noted that if such a system does not exist and the arms are donated in breach of re-export assurances, the State could be sanctioned and this could have implications when the State is seeking to import arms in the future.

The group discussed the importance of good cooperation between importing States and exporting States in the tracking of arms and sharing of information on diversion risks. In line with the UNIDIR survey findings outlined in subsection 3.1, the group was open to States confirming the delivery of arms to the exporting State (e.g. via a DVC or comparable document). Participants also discussed the sensitivity of requests for post-delivery inspections and conditionalities attached to proposed transfers, such as commitments by importing States to destroy or return arms being replaced by arms imports rather than disposal via export or sale. It was noted that compliance with international obligations, including assurances provided in end use/r documentation, can help demonstrate that a State is a responsible end user and provide confidence regarding post-delivery cooperation. Conversely, cases of unauthorized re-export or leakage from national stockpiles can have a detrimental impact on post-delivery cooperation and might result in exporting States requesting additional measures to prevent diversion, potentially including post-delivery inspections.

**Observations on potential opportunities and challenges**

Several potential measures could be undertaken by African States to strengthen end use/r control systems, including:

- Engage in an African **dialogue on key terms** that not only draws upon African regional and subregional definitions, but that seeks to align the definitions of key terms in African arms control instruments. This dialogue could be expanded to include consideration of definitions of key terms developed by the EU and the Wassenaar Arrangement, which could develop into a global dialogue with exporting States.
• Develop guidance on roles and responsibilities, especially with regard to import and transit, but also export and brokering, that is tailored for different stakeholders within a State (e.g. licensing, customs, law enforcement). The guidelines could be developed at the global, regional or subregional level, but would still need to be domesticated for national use.
  ○ The ATT working group on implementation represents a potentially valuable forum for a global framework for developing such guidance.
  ○ RECSA has developed general guidance for implementation of the Nairobi Protocol; such an exercise could be replicated for other regional small arms instruments to support the establishment of robust national end use/r control systems. At the same time, there remains potential for an African regional approach that could facilitate an exchange of good practices across the continent.

• Establish and maintain an effective and relevant national legal framework for an end user/r control system and arms transfer regulations. This will help to prevent diversion and implement international, regional and subregional instruments. The ATT and subregional small arms instruments provide the impetus for high-level political support for such legal reforms and the provision of necessary resources by the State. In addition, international assistance and cooperation programmes exist to support legal reforms to effectively implement the ATT and the UN PoA.

• Undertake sustainable capacity building at the operational level to ensure effective enforcement of the national system. It is important to institutionalize knowledge, practice and inter-agency cooperation within a State rather than relying on personal knowledge and networks. Several African States have established inter-agency commissions on small arms that could be utilized to support institutionalization.

• Sharing information and actionable intelligence on diversion risks via bilateral cooperation and multilateral networks is crucial for effective enforcement and benefits from the development of an information management system for data collection and analysis. Over time, the ATT could provide a forum to facilitate such an exchange of information. However, a potential forum dedicated to the African region to facilitate information sharing on the issue of diversion risks was not identified during the consultative meeting.

• Encourage States that contribute to AU and UN peacekeeping missions to apply stringent controls to arms and ammunition taken on missions, and not to supply arms and ammunition to armed actors in the host State without providing information to the national government on the type, quantity and markings.

• For post-delivery cooperation between exporting and importing States to be effective, the importing State needs to have strong mechanisms for information sharing and verification of records against stocks within the State. This enables good quality cooperation rather than monitoring and control from the exporting State towards the importing State.
ATT WORKING GROUP ON EFFECTIVE TREATY IMPLEMENTATION  
CHAIR’S DRAFT REPORT TO CSP4

Introduction

1. This Draft Report to the Fourth Conference of States Parties (CSP4) is presented by the Chair of the Working Group on Effective Treaty Implementation (WGETI) to reflect on the work carried out by the WGETI since CSP3 and to put forward both conclusions and recommendations for consideration by CSP4.

Background

2. The Second Conference of States Parties (CSP2) established an ad hoc open-ended Working Group on ‘Effective Implementation of the Arms Trade Treaty’ with the objective of sharing experiences, challenges and best practices on the national implementation of the Treaty’s provisions. The Third Conference of States Parties (CSP3) decided to establish a standing Working Group on Effective Treaty Implementation (WGETI) to operate under the Terms of Reference contained in Annex A of the Co-chairs’ report to CSP3 (ATT/CSP3.WGETI/2017/CHAIR/158/Conf.Rep), including a mandate to serve as an ATT continuous platform to:

   a. exchange information and challenges on the practical implementation of the Treaty at the national level;

   b. address, in detail, specific issues set by CSP as priority areas (topics) to take Treaty implementation forward; and

   c. identify Treaty implementation priority areas for endorsement by CSP to be used in Treaty implementation support decisions e.g. ATT Voluntary Trust Fund.

3. The Conference further endorsed the Work Plan highlighting priority topics for discussion by the Working Group in the period running up to CSP4, as contained in Annex B of the Co-chairs report. With due regard to the complexity and the long term nature of Treaty implementation, CSP3 directed the Working Group to further refine the order of the priority topics taking into account the suggestions from the working papers (paragraph 21, CSP3 Final Report, ATT/CSP3/2017/SEC/184/Conf.FinRep.Rev1).
ANNEX D

POSSIBLE MEASURES TO PREVENT AND ADDRESS DIVERSION

States Parties to the Arms Trade Treaty involved in the transfer of conventional arms have a legal obligation to take measures to prevent their diversion (Article 11(1)). This paper presents a non-exhaustive list of practical measures which States Parties may draw from, where relevant, useful and feasible within the available resources of each State, to prevent diversion as it may occur in their particular national context.

The measures have been drawn from a range of sources, including documents in the “List of possible reference documents on diversion” and input from States Parties and civil society. Some measures relate directly to specific legal obligations or guidance in the text of the Treaty. In these cases, the measures listed are to be understood only as suggested options for implementation of the relevant obligations or guidance. The measures are not intended to reinterpret, add to, or derogate from relevant obligations in any way.

Transfer chain stage 1: Before the transfer/Country of origin/point of embarkation

1. Requiring all conventional arms transfers to be subject to prior authorisation (Article 5).

2. Performing consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2)).

3. Requiring that importing States provide proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances) to the competent authorities in exporting States, upon request (Articles 8(1) and 11(2)).

4. Not authorising the export if a significant risk of diversion is detected (Article 11(2)).

5. Including the following measures in their consistent and objective transfer risk assessments:

   - Establishing the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2)).

   - Also examining the risks:

      - Arising from the proposed shipment arrangements.

      - Arising from the potential unreliability of controls in the importing country and the transit country (if applicable).

      - Arising from insufficient resources to allow for effective enforcement of national laws concerning the transfer of conventional arms.

      - Arising from political instability in the importing country.

      - That a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.
Utilising interdepartmental / inter-agency examination of the exportation requests, enabling analysis of diversion risks to be based on reliable information, from diverse sources (diplomatic, customs, intelligence unit, UN experts’ reports, information exchanges between States).

Maintaining and/or consulting national databases identifying natural or legal persons previously sanctioned and/or involved in illicit trafficking.

6. Conducting a thorough review of the proper documentation (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances) (Articles 8(1) and 11(2)) provided by importing States, including:

- Authentication of documentation (including checks for forged or inauthentic documentation, including authentication of EUCs through diplomatic channels or the importing country’s national authority by using the declared Point of Contact).

- Verification of contents of the documentation through establishing the legitimacy and credibility of the stated end-use/r.

- To prevent any falsification risk, importing States could institute national procedures for issuing EUCs for government and private end-users.

7. Including the following details in EUCs (Articles 8(1) and 11(2)), required for the contents of the documentation to be verified for end-use and user, as well as to inform a risk assessment:

<table>
<thead>
<tr>
<th>Element</th>
<th>Essential</th>
<th>Optional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties involved in the transfer</td>
<td>• details of the exporter and end-user, such as name, business name, address, phone, etc.</td>
<td>• details of the intermediate consignee and final consignee</td>
</tr>
<tr>
<td>Goods to be transferred</td>
<td>• description;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• reference to contract, purchase order, invoice or order number;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• quantity and/or value.</td>
<td></td>
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<tr>
<td>End-use</td>
<td>• indication of end-user;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• undertaking, where appropriate, that the goods will not be used for purposes other than the declared end-use and/or used for Chemical Biological Radiological and Nuclear (CBRN) etc.</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td></td>
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<tr>
<td></td>
<td>• certification that goods are to be installed at/used at premises of end-user;</td>
<td></td>
</tr>
</tbody>
</table>
### Documentation
- signature, name, title of consignee/end-user representative;
- original or legally-certified copy.
- signature and certification by government of final consignee/end-user and only by specific representatives of that government;
- unique identifier/number provided by the government authority;
- validity terms and date of issue;
- kept with conventional arms all along the transfer.

### Re-export / diversion
- an undertaking not to re-export/transship at all, or at least not without notification or express permission from original exporting state’s competent authorities.

### Delivery verification
- provide a Delivery Verification Certificate / proof of arrival.

8. Encouraging all parties involved in conventional arms transfers (exporters, freight forwarders/intermediate consignees, brokers (Article 10), shipping agents, and end-users) to be registered with national authorities.

9. Applying the following measures when they are transit, trans-shipment, or importing States in an international transfer:
   - Requiring prior authorisation for the transit and importation of conventional arms through and to their territory (Article 9).
   - Requesting or providing documents that indicate whether the transfer has been authorised or is subject to any objection (Article 11(3)).

10. Requiring particular conditions to be met prior to export authorisation, such as:
   - Provision of information related to transport prior to the grant of the exportation authorisation: mode of transport, name of the transporter, nationality, route to be taken.
   - Agreement to specific conditions on storage facilities (location, conditions, specific management measures and security).
   - Verification through physical inspections of the adequacy of the recipient’s storage facilities.
- Enforcement of technical conditions to secure conventional arms, such as systematic marking and implementation of systems preventing use by non-authorised persons.

- Agreement to particular disposal requirements (e.g. conditioning the sale of new small arms and light weapons on the verified destruction of old stocks).

11. Including concrete, unambiguous suspension or cancellation clauses in the wording of all conventional arms contracts other relevant documentation / inter-governmental agreements.

12. Encouraging parties involved in conventional arms transfers to introduce internal export control compliance programs to assist them in complying with national export control legislation and regulations, and increase awareness and mitigation of diversion risks.

- Internal compliance programs could include provisions for parties to conduct their own risk assessments, record-keeping on international commercial operations, and cooperation and information sharing with competent authorities (e.g. regular reporting on licences used, cooperation with compliance visits by government agencies etc.).

Transfer chain stage 2: During the transfer / En route to the intended end-user / In transit

1. Ensuring close cooperation and information sharing, pursuant to their national laws, where appropriate and feasible, with the governments of transit States (Article 11(3)).

2. Requiring or encouraging delivery notification by any transit countries (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3)).

- Note that in the case of delivery by air, the exporter may be required to provide a ‘certificate of unloading’ to confirm delivery.

3. Monitoring and protecting conventional arms shipments, in cooperation with industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc) from the time the arms leave the warehouse in the exporting state until the intended end-user receives them (and verifies delivery), including through:

   - Physically accompanying the shipment or remote monitoring via satellite.

   - Stringent physical security requirements (such as ensuring that arms and ammunition are transported in separate vehicles, the use of alarm systems on transport vehicles and container seals, and physical inspection during transit and at the point of delivery).

   - Scrutiny of arms shipments and documentation by customs agents in all the States involved in the transfer (exporting, transit, and importing States).

Transfer chain stage 3: At or after importation / Post-delivery

1. Requiring or encouraging delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3)).
• Note that in the case of delivery by air, the exporter may be required to provide a ‘certificate of unloading’ to confirm delivery.

2. For exporting States: conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin, including through:

   ▪ Checking end-use certificates by, for instance, checking delivery signatures against the list of authorised signatories by directly contacting such signatories using contact information provided in advance of the certificate.
   
   ▪ Organising regular on-site visits to verify the ongoing use(r) of the arms.
   
   ▪ Conducting physical inventories of exported conventional arms to ensure they are properly accounted (Article 12(1)).
   
   ▪ Investigating suspected violations of end-use and re-transfer conditions agreed to by the end-user.

3. For importing States: registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)).

4. For exporting and importing States: initiating and responding in a timely manner to tracing requests, including through utilisation of existing tools such as the INTERPOL Illicit Arms Records and Tracing Management System (iARMS).

Transfer chain stage 4: Post-delivery storage / National stockpiles

1. Establishing and maintaining robust stockpile management procedures for the safe storage of conventional arms and ammunition, including by:

   ▪ Establishing and conducting inventory management and accounting procedures (including centralized record-keeping, which entails storing records of transactions made by all departments in a single, central authority).

   ▪ Controlling access to stockpiles.

   ▪ Applying physical security measures (such as fencing and locking systems).

   ▪ Ensuring the security of stockpiles that are in transport.

   ▪ Destroying all surplus arms and ammunition in accordance with international norms and standards.

   ▪ Ensuring appropriate staff training in safe and secure stockpile management procedures.

   ▪ Note useful guidance provided in the ISACS Module on ‘Stockpile management’ and the International Ammunition Technical Guidelines (IATG).
2. Ensuring adequate border controls and patrols.

Other comprehensive measures applicable across the transfer chain

1. Establishing a strong national control system for the authorisation of international transfers of conventional arms (including transit and trans-shipment), and the enforcement of national laws and regulations (Articles 5 and 14).

2. Ensuring that when a diversion is detected, appropriate legal and administrative measures are taken to address the diversion, enabling the competent national authorities to seize the illicit conventional arms (Article 5).

3. Ensuring close cooperation and information-sharing with other States involved in the arms transfer chain, including information on: weapons transportation providers; denials of export and import licences export/import, transit/trans-shipment licence/authorisation; end-user certificates data; international trafficking routes; illicit brokers, sources of illicit supply and methods of concealment (Articles 8(1), 11(3), 11(4), 11(5), and 15(4)).

4. Sharing information with other States on measures taken that have been proven effective in addressing the diversion, including through: the ATT Secretariat; other mechanisms such as the Working Group on Effective Treaty Implementation; and databases for information exchange such as the ATT website (Article 13(2)).

5. Taking the following measures when a diversion is detected:
   - Alert potentially affected States Parties.
   - Examine diverted shipments of conventional arms.
   - Take follow-up measures through investigation and law enforcement, including the establishment of criminal offences and the capacity for sanctioning violators in relation to diversion detected during post-delivery checks or at any time during an arms transfer (Article 11(4). It is recommended that available sanctions should be both administrative (including confiscation of conventional arms) and criminal (sufficiently high to serve as deterrents).

6. Ensuring that officers responsible for administering the national control system are trained in the detection of fraudulent behaviour across the different stages of the transfer chain.

7. Maintaining open communication and cooperation across licensing, customs, law enforcement, intelligence and other government agencies domestically and amongst States.

8. Providing sufficient resources to national authorities, especially customs authorities, to ensure they have effective control over conventional arms flows into and out of their territory.

9. Pursuing cooperation through regional and sub-regional groups, such as the EU.

10. Ensuring effective legislation for investigating and punishing theft, corruption, and other diversion-related offences.

11. Running industry outreach programmes (such as with industry associations) to share diversion risk assessment guidance and encourage industry to play a cooperative role in risk assessment and management.
12. Reinforcing cooperation between national authorities and the private sector (armament industry, transporters, banks, etc.) to ease the detection and the interception of the illicit flows.

13. For both exporting and importing States: jointly developing and agreeing programmes to identify challenges identified, which may take various forms depending on the challenges identified (Article 11(2)).

- For example, the exporting and importing States could collaborate on measures to improve the security of stockpiles and the disposal of surplus stocks, or to eradicate organised criminal activity and combat corrupt practices.

14. Ensuring transparency through communicating information on authorised or completed legal transfers of conventional arms in annual reports (Article 13(3)).
International Assistance

Guiding Questions:

1. What are the treaty recommendations for information sharing?
2. What measures and systems are in place in your country at the moment for the purposes of international cooperation and information exchange?
3. Under what circumstances should information be shared with other state parties?

Resources:


ATT-RELATED OUTREACH AND ASSISTANCE ACTIVITIES IN SUB-SAHARAN AFRICA: IDENTIFYING GAPS AND IMPROVING COORDINATION*

CHRISTINA ARABIA AND MARK BROMLEY

I. Introduction

The Arms Trade Treaty (ATT) entered into force on 24 December 2014, 19 months after it opened for signature. The ATT is the first international legally binding agreement to establish standards for regulating the trade in conventional arms and preventing their illicit trade.1 The ATT creates a range of obligations for states parties in the field of arms transfer controls. These obligations include (a) establishing and maintaining an effective transfer control system for conventional arms; (b) prohibiting certain arms transfers and not authorizing certain arms exports; (c) taking steps aimed at preventing the diversion of conventional arms, particularly small arms and light weapons (SALW) to the illicit market; and (d) complying with certain reporting requirements. During the process of negotiating the ATT, many states highlighted the need for the treaty to include provisions for financial, technical and material assistance aimed at helping states to fulfil treaty obligations.2 Reflecting these calls, the final text of the ATT includes provisions on international cooperation and assistance—suggesting areas where such assistance might be focused, who might provide it and detailing the mechanisms through which it might be carried out. This need is particularly acute in sub-Saharan Africa where many states have been severely affected by the proliferation of SALW.


* While the authors of this paper analyse information that they collected in the implementation of a joint programme carried out by SIPRI and the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC), the information and the views expressed in this publication are not endorsed by the United Nations.
In recent years, a range of activities have been carried out in sub-Saharan Africa aimed at building state capacity in areas relevant to ATT-implementation. In an effort to contribute to the better planning and implementation of ATT-related assistance activities, SIPRI and the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) collected information about ATT-relevant cooperation and assistance activities involving states from sub-Saharan Africa that have taken place over the past five years (2011–15). This information is available in a searchable online database and forms the basis of the analysis presented in this Background Paper. In summarizing this information, this Background Paper highlights potential gaps in the types of ATT-relevant cooperation and assistance activities carried out in sub-Saharan Africa up until the end of 2015 and proposes mechanisms through which states and regional, international and non-governmental organizations (NGOs)—as well the ATT Secretariat itself—could help to fill those gaps.

Section II touches on the impact of the proliferation of SALW in sub-Saharan Africa and sketches the region’s role in and relationship to the ATT. Section III summarizes the range of areas in which states may require assistance with implementing the ATT and gives further information about the scope and focus of the mapping study carried out by SIPRI and UNREC. Section IV gives an overview of ATT-relevant cooperation and assistance efforts in sub-Saharan Africa during 2011–15, dividing the analysis between those involving states from West Africa, East Africa, Central Africa and Southern Africa. Section V draws together some of the key conclusions and offers recommendations, focusing on (a) areas where lessons can be learned from past cooperation and activities; and (b) steps that the ATT Secretariat can put in place to facilitate the ‘matching of needs and resources’ in relation to ATT implementation, as called for under the treaty.

II. Sub-Saharan Africa and the Arms Trade Treaty

A number of reports have argued that the illicit trade in conventional arms, particularly SALW, has had a disproportionate effect on states in sub-Saharan Africa. Moreover, states in sub-Saharan Africa are seen to have some of the weakest arms transfer control systems and some of the most significant gaps in their related enforcement capacities. For these

3 For more information, see Mapping ATT-Relevant Cooperation and Assistance, ‘About the project’, <http://www.att-assistance.org/?page_id=10>. See section IV for how the authors defined ‘ATT-relevant’ and ‘ATT related’ cooperation and assistance activities.

4 For the purposes of this paper, sub-Saharan Africa consists of Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic (CAR), Chad, the Comoros, Côte d’Ivoire, Democratic Republic of the Congo (DRC), Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, South Sudan, Swaziland, Togo, Uganda, Tanzania, Zambia, Zimbabwe.


reasons, it was argued during the ATT negotiating process that states from sub-Saharan Africa would have the most to gain from an effective treaty as well as the greatest need for implementation assistance. States from sub-Saharan Africa also played a crucial role in the process of negotiating the ATT, not least by bringing China into the negotiations and ensuring that SALW and ammunition remained within the scope of the treaty. However, despite initial expectations to the contrary, the process of ratifying the ATT in sub-Saharan Africa has been comparatively slow. Of the 80 states that have ratified the ATT, only 18 of a possible 49 are from sub-Saharan Africa. An additional 20 states from sub-Saharan Africa have signed the ATT. By comparison, most states from Latin America and the Caribbean and the European Union (EU)—the two other state groupings that played a key role in the negotiating process—have ratified the ATT.

One of the potential reasons for the ratification gaps in sub-Saharan Africa to date is the often bureaucratic nature of the ratification process in many states in the region. However, there are other reasons aside from bureaucracy why states may be reluctant to fast track the ratification of the ATT. First, arms transfer controls—where they do exist—are often shrouded in government secrecy and national security sensitivities. Thus, many states in the region may be unwilling to engage in open discussions about the details of these controls or how they can be improved, or agree to mechanisms that make them more transparent. Second, since most states in sub-Saharan Africa are heavily reliant on arms imports for meeting their defence acquisition needs, there may be unease about the potential impact that the ATT could have on their ability to acquire weapons from abroad—including the extent to which implementing the ATT might lead to supplying states denying sub-Saharan states requests for arms transfers. Ratification gaps may also reflect the prioritization of other more pressing issues—such as attempting to resolve ongoing armed conflicts, promoting economic development and tackling other social challenges in the region.

There is also a sense that—even as a means of tackling the proliferation of SALW—the ATT does not necessarily touch on the tools and policy responses that are of greatest relevance for states in sub-Saharan Africa. In particular, the ATT has a strong focus on improving arms transfer controls, something that does not necessarily represent the most effective means for tackling SALW proliferation in the region. For example, several studies have argued that the majority of SALW in the hands of criminals or armed groups in sub-

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8 The states in sub-Saharan Africa that have ratified or acceded to the ATT are Burkina Faso, CAR, Chad, Côte d’Ivoire, Ghana, Guinea, Liberia, Lesotho, Mali, Mauritania, Mauritius, Niger, Nigeria, Senegal, Seychelles, Sierra Leone, South Africa and Togo.
9 These states are Angola, Benin, Burundi, Cameroon, Cabo Verde, the Comoros, Republic of the Congo, Djibouti, Gabon, Guinea-Bissau, Madagascar, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Swaziland, Tanzania, Zambia and Zimbabwe.
10 Poitevin (note 6).
Saharan Africa have been acquired from national stockpiles or supplied by neighbouring states.\textsuperscript{13} Thus, destroying surpluses and building a political consensus about the risks posed by supplies to armed groups may be more effective than improving states’ arms transfer controls.

Nonetheless, the need to establish and implement effective arms transfer control systems is real and acute as such systems have the potential to contribute to preventing the illicit proliferation of SALW in sub-Saharan Africa.\textsuperscript{14} While most states in the region have limited arms exports, they all have the capacity to act as re-exporters of surplus or second-hand equipment, and some states’ capacities in the field of arms production are expanding.\textsuperscript{15} Consequently, all have the potential to benefit from the implementation of more effective arms import and arms transit and trans-shipment controls. In addition, greater transparency and accountability in the acquisition of arms by national security forces would help to strengthen democratic oversight and build interstate confidence.

Although the provisions of the ATT are focused primarily on arms transfer controls, the treaty also includes a range of other steps that states should take in order to combat the illicit proliferation of SALW. These include stockpile management, and disarmament, demobilization and reintegration (DDR). Hence, the ATT has the potential to connect with existing international and regional instruments in the field of SALW control to create a comprehensive set of standards for states to fulfil in order to prevent the illicit proliferation of SALW. In addition, it could be used to develop mechanisms to match offers of and requests for assistance in meeting those standards.

In recent years, a significant number of cooperation and assistance activities aimed at establishing or improving national arms transfer controls and preventing the diversion of SALW have been carried out by states, international and regional organizations and NGOs in partnership with states in sub-Saharan Africa. Some of these activities have had the explicit goal of assisting states in the region with ATT implementation but most have had the aim of supporting those states with the implementation of existing international, regional and national standards in the areas of arms transfer or SALW controls. A significant proportion of these activities have focused on improving states’ arms transfer controls, while the majority have attempted to build capacity in other fields relevant to preventing the illicit proliferation of SALW, such as stockpile management, DDR, marking and tracing, and destruction of surplus stocks.

The following section reviews the obligations laid down in the ATT and the mechanisms it puts in place in relation to cooperation and assistance. It then examines ATT-relevant activities in sub-Saharan Africa specifically.

III. Cooperation and assistance activities relevant to the ATT

The ATT creates a range of obligations for states parties in the field of arms transfer controls. These can be broadly divided into eight different areas:


\textsuperscript{14} Poitevin (note 6).

\textsuperscript{15} See Wezeman, Wezeman and Béraud-Sudreau (note 11).
(a) establish and maintain an arms transfer control system; (b) prohibit certain arms transfers and not authorize certain arms exports; (c) regulate arms imports; (d) regulate arms transit and trans-shipment; (e) regulate arms brokering; (f) establish and maintain enforcement mechanisms; (g) share information with other states parties; and (h) maintain records on arms transfers. The ATT notes that assistance may be requested and provided in each of these areas. This assistance may include ‘legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance’ (Article 16(1)). States parties in a position to do so are required to provide the types of assistance outlined in Article 16(1) on request. States parties may request, offer or receive such assistance through, among others, ‘the United Nations, international, regional, sub-regional or national organizations, non-governmental organizations, or on a bilateral basis’ (Article 16(2)). The preamble to the ATT also states that regional organizations can assist states parties in implementing the treaty, and civil society and industry can also support treaty implementation. In addition, the ATT provides that a voluntary trust fund will be set up to assist states with treaty implementation.

The ATT also establishes a clear role for the ATT Secretariat in the field of cooperation and assistance. In particular, the ATT notes that the Secretariat charged with assisting states parties in the effective implementation of the treaty will facilitate ‘the matching of offers of and requests for assistance for Treaty implementation’ (Article 18(3)). A number of key actions and decisions shaping the ATT Secretariat were made at the First Conference of States Parties in August 2015. A management committee was formed and a directive outlining states parties’ expectations on the operation of the ATT Secretariat was adopted. The states parties selected the South African official Dumisani Dladla as the head of the ATT Secretariat and Geneva, Switzerland, as its location. The ATT Secretariat will likely be a lean organization with limited resources. As such, it will need to draw on existing resources from organizations already active in the field of arms transfer controls in order to carry out its tasks effectively.

The ATT makes reference to the need for states to build and maintain capacities in areas that are not directly connected to arms transfer controls but which can play a role in preventing the diversion of conventional arms, especially SALW, to the illicit arms market. Specifically, the ATT notes that assistance provided in connection with the implementation of the treaty may include ‘stockpile management, disarmament [and] demobilization and reintegration [DDR] programmes’ (Article 16(1)). However, other issues that are of direct relevance to preventing diversion—particularly creating systems for marking and tracing SALW, destroying surplus weapons, and maintaining effective systems for regulating civilian ownership of arms—are not referenced in the ATT.

Detailed guidelines on the areas not explicitly covered in the ATT are included in a range of other existing instruments in the field of SALW con-

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trols, particularly the UN Programme of Action on SALW (POA), which outlines international, regional and national measures aimed at countering the illicit trade in SALW. These include (a) creating legislation, regulations and administrative procedures to control the production and transfer of SALW; (b) criminalizing the illegal manufacture, possession, stockpiling and trade of SALW; (c) marking of SALW; (d) improving the tracing of SALW; (e) seizing and collecting illegally possessed SALW; (f) destroying surplus SALW; and (g) implementing effective DDR programmes. In addition, states in sub-Saharan Africa have developed a range of regional mechanisms aimed at improving controls on SALW. These instruments include (a) the Southern African Development Community (SADC) Protocol, (b) the Nairobi Protocol, (c) the Economic Community of West African States (ECOWAS) Convention, and (d) the Kinshasa Convention. These instruments contain provisions for arms transfer controls but are more broadly focused on curbing the supply and misuse of SALW by way of provisions for marking weapons, managing stockpiles and disposing of surplus weapons.

**Pre-ATT cooperation and assistance activities**

Efforts have been made to develop mechanisms for mobilizing and coordinating cooperation and assistance activities aimed at supporting states with the implementation of existing SALW instruments. For example, the UN Office for Disarmament Affairs (UNODA) is tasked with assisting states’ implementation of the POA. In carrying out this work, UNODA is aided by its three regional centres: UNREC, the UN Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD) and the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC). As part of its work, UNODA identifies requests for assistance contained in states’ national reports on POA implementation and makes this information more widely available online via the POA’s Implementation Support System (POA-ISS). UNODA also maintains a list of ‘project proposals to be funded’ on the POA-ISS.

Within sub-Saharan Africa, the different regional economic communities (RECs) play a crucial role in assisting states with the implementation of the various regional agreements on SALW controls. The RECs—which include ECOWAS, the Economic Community of Central African States (ECCAS), the

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21 UN POA-ISS (note 20).
Intergovernmental Authority on Development (IGAD) and the SADC—were established in the 1980s and 1990s to promote African integration. They are formally recognized by the African Union (AU) and are meant to have a formal role in all AU programme areas.22

ECOWAS plays a key role in assisting states with the implementation of the ECOWAS Convention. The ECCAS Secretariat performs similar tasks with regard to the Kinshasa Convention. Both ECOWAS and ECCAS help to coordinate implementation efforts and have a mandate to mobilize funds and implement cooperation and assistance activities. The SADC and IGAD also actively support states with SALW controls. Other relevant regional organizations include the AU Regions Steering Committee on SALW and DDR and the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA).

IV. Regional overview of cooperation and assistance activities relevant to the ATT

SIPRI and UNREC collected information on ATT-relevant cooperation and assistance activities carried out during 2011–15 involving states from sub-Saharan Africa. In order to be as comprehensive as possible, SIPRI and UNREC adopted a wide definition of what constituted an ‘ATT-relevant’ cooperation and assistance activity.23 This included activities focused on the core concerns of the treaty, particularly transfer controls, brokering controls, import controls, transit and trans-shipment controls, risk assessments, reporting on arms transfers and reporting on arms transfer controls. It also encompassed activities focused on areas of wider relevance to preventing the illicit proliferation of SALW and which are covered by the POA and the different regional instruments on SALW controls, such as border controls, DDR, civilian ownership, inventory and stockpile management, marking and tracing. Additionally, the definition included cooperation and activities focused on dual-use transfer controls since, in many states, the laws and regulations that control transfers of dual-use goods are the same as those for conventional arms.24 As well as being categorized according to their focus, activities were categorized according to their type. The four types identified were ‘technical, material or financial assistance’, ‘sensitization and outreach’, ‘legal or legislative assistance’ and ‘institutional capacity building’.

Each of these focus areas and activity types has been the subject of past and ongoing cooperation and assistance activities involving states in sub-

22 The AU formally recognizes 8 RECs: Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); the Southern African Development Community (SADC). Certain African states are members of more than one REC, which creates duplication of programme work and competition for resources. ‘The role of the regional economic communities (RECs) as the building blocks of the African Union’, South African Department of Foreign Affairs, 21 July 2004.


24 Dual-use goods—including software and technology—can be used for both civil and military purposes and include any item which can play a role in the development of weapons of mass destruction and their means of delivery.
Saharan Africa. The following sections give examples of activities carried out in West Africa, East Africa, Central Africa and Southern Africa during 2011–15. In each case, the paper highlights the main focus and type of activities undertaken, noting the organizations that have been most active in their implementation and summarizing key points regarding the needs in each region and the difficulties encountered. The paper also distinguishes between ATT-relevant activities (which include the broad spectrum of arms control and arms transfer control issues listed above) and ATT-related activities (which have focused in whole, or in part, on areas covered by the treaty itself).

**West Africa**

Of the 16 states in West Africa, 12 have ratified the ATT and 3 have signed it. West African states’ experience with negotiating and implementing the ECOWAS Convention on SALW, as well as ECOWAS’s efforts to support the implementation of the convention and awareness of the ATT has likely influenced the region’s high level of engagement with the ATT. As of the end of 2015, 14 of the 15 ECOWAS states have ratified the ECOWAS Convention and the one remaining non-ratifying state has signed it. Many of the convention’s provisions overlap with those of the ATT. Notably, the ECOWAS Convention contains provisions relating to arms transfer controls—including import controls—and regional information sharing that do not appear in the other subregional agreements on SALW controls in place in sub-Saharan Africa. Under the ECOWAS Convention states are only allowed to import SALW if they first demonstrate that the SALW are for legitimate defence and security needs, law enforcement, or participation in peace-support operations.

During 2011–15, at least 100 ATT-relevant cooperation and assistance activities were carried out involving states from West Africa. The main areas of focus of these activities were inventory and stockpile management and regional cooperation, with a strong emphasis on SALW. A smaller number of activities were carried out with a focus on ‘transfer controls’. The most common types of activities carried out were ‘sensitization and outreach’ and ‘institutional capacity building’. Most of these activities involved Mali, Togo, Niger, Nigeria, Burkina Faso and Senegal and were implemented by UNREC, the Mines Advisory Group (MAG), ECOWAS and/or the German Federal Office for Economic Affairs and Export Control (BAFA).

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25 Each section outlines the states comprising the respective subregion.
27 Burkina Faso, Côte d’Ivoire, Ghana, Guinea, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo have ratified the ATT. Benin, Cabo Verde and Guinea-Bissau have signed it.
28 The 14 states are Benin, Burkina Faso, Cabo Verde, Côte d’Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo have ratified the ECOWAS Convention; Gambia has signed it. Of the 16 West African states, Mauritania is the only state not member to ECOWAS.
29 ECOWAS official, Interview with author, 16 Oct. 2015.
30 ECOWAS Convention (note 19).
UNREC has carried out several sensitization seminars for government representatives, parliamentarians and civil society organizations in West Africa focused on the ATT and its synergies with the ECOWAS Convention on SALW. Furthermore, UNREC has provided a range of technical assistance to states in West Africa, including support for drafting SALW national action plans (NAPs), managing stockpiles, marking and registering arms, making needs assessments and providing legislative assistance.\(^\text{31}\) MAG is supporting a number of West African states with physical security and stockpile management (PSSM) and weapons destruction through its Sahel–West Africa project.\(^\text{32}\) ECOWAS is working with states in West Africa on the development of a regional database for SALW transfers and has developed a roadmap for PSSM that is specific to the ECOWAS region. However, more work is required to align the roadmap with the demands of the ATT.\(^\text{33}\) BAFA has worked with a number of West African states to strengthen their arms transfer control systems as part of its EU-ATT Outreach Programme.\(^\text{34}\) Indeed, most of the African states that have received initial country visits and hosted sensitization seminars under the EU-ATT Outreach Programme have been located in West Africa.\(^\text{35}\)

The majority of ATT-relevant activities carried out up until the end of 2015 have focused on inventory and stockpile management. Almost all of the SALW stockpiles in West Africa are in a dilapidated state so there is an obvious need for ongoing assistance in this area.\(^\text{36}\) Nonetheless, states in West Africa have a strong record of engaging with a fairly broad range of ATT-relevant cooperation and assistance activities, including those focused on transfer controls. However, regional improvements are necessary in numerous areas.

Developing systems of electronic record keeping for SALW is a key priority for a region where most work in this field is still performed manually.\(^\text{37}\) West African states also need to develop SALW NAPs that accurately reflect the needs and resources in each state.\(^\text{38}\) As it stands, many SALW NAPs are not regularly updated and are based on desktop research rather than a concrete needs assessment involving visits to storage facilities to assess the risks.\(^\text{39}\)

States in West Africa also need to overcome significant hurdles in order to expand the number and focus of ATT-relevant cooperation and assistance activities, largely due to limited human and technical resources. For example, sustainable work on stockpile management and other ATT-relevant activities during 2011–15, at least 100 ATT-relevant cooperation and assistance activities were carried out involving states from West Africa.
areas requires the active engagement of national governments. However, national governments in the region face competing priorities and are often unwilling or unable to devote resources to the SALW national commissions, and instead look to the international community for material and financial support.

**East Africa**

Of the 13 states in East Africa, only 1 has ratified the ATT and a further 5 have signed it. Most states in East Africa have already agreed on the Nairobi Protocol and many of its provisions overlap with those of the ATT. At the end of 2015, 6 states have ratified the Nairobi Protocol and a further 9 have signed it. However, despite the overlaps between the two instruments, the level of engagement with the Nairobi Protocol has yet to be matched by support for the ATT. One challenge to achieving wider adoption of the ATT in East Africa is a perceived connection between the ATT and the International Criminal Court (ICC). There is a concern that the ICC has targeted African states and this has affected regional attitudes towards new international conventions—including the ATT. In East Africa, the ICC has indicted members of the Kenyan and Sudanese governments. Both Kenya and Sudan have yet to sign the ATT. In the case of Kenya, this is particularly striking since it was one of the seven states that co-sponsored the 2006 UN General Assembly resolution that initiated the UN-level negotiating process sparking the ATT. Another challenge to marshalling support for the ATT in East Africa is that in many states it is unclear how responsibility for implementing the provisions of the ATT will be divided and coordinated among the various national institutions and ministries.

During 2011–15, at least 80 ATT-relevant cooperation and assistance activities were undertaken involving states from East Africa. The main areas of focus for these activities were inventory and stockpile management and regional cooperation, most of which had a strong emphasis on SALW. A smaller number of activities were carried out with a focus on transfer controls. The most common types of activities undertaken were sensitization and outreach followed by institutional capacity building. Most of these activities involved Kenya, Uganda, South Sudan and Somalia. The majority of them were implemented by the East African Community (EAC), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, a German corporation that assists the German Government with its international cooperation efforts), RECSA and the United States.

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40 MAG Sahel-West Africa Office representative (note 36).
41 ECOWAS official (note 29).
42 East Africa comprises 13 states: Burundi, the Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda.
43 Seychelles has ratified the ATT; Burundi, the Comoros, Djibouti, Rwanda and Tanzania have signed it.
44 Burundi, DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Sudan and Uganda have ratified the Nairobi Protocol; CAR, Republic of the Congo, Seychelles, South Sudan and Tanzania have signed it.
45 APFO Representative, Interview with author, 17 Nov. 2015.
46 UN General Assembly Resolution 61/89, 6 Dec. 2006.
47 APFO Representative (note 45).
RECSA has provided a variety of technical and material assistance to states in East Africa in areas such as marking arms, keeping electronic records, establishing SALW national focal points and national commissions, developing SALW NAPs and drafting national legislation. RECSA has recently held sensitization workshops on a study on the synergies between the ATT, the POA, the Nairobi Protocol and the Kinshasa Convention. Between 2006 and 2012, GIZ provided technical and political advisory services to the EAC states. GIZ also worked with the EAC to provide marking machines and relevant training to its member states, and to support East African states to implement their commitments under the Nairobi Protocol and the POA. The US Department of State’s Export Control and Related Border Security Program (EXBS) has been operating in Kenya since 2004 with the aim of assisting the Kenyan authorities to develop effective strategic trade controls. In August 2015, the EXBS sponsored a two-day workshop in Kenya focused on creating ‘comprehensive trade management legislation’ for both dual-use goods and conventional arms. During 2008–10, UNREC carried out a project aimed at improving East African states’ controls on arms brokering. The final phase of this project took place in 2011 when UNREC handed over a standardized electronic register of brokers to Tanzania and related hardware to Uganda.

Many ATT-relevant activities have focused on inventory and stockpile management and regional cooperation. Key needs in the region are managing both the circulation of licit and illicit arms and preventing the diversion of SALW from state-owned stockpiles. A high number of ATT-related activities have focused on sensitization and outreach. While the activities carried out up until the end of 2015 have contributed to building state capacity, further awareness raising and technical training schemes are necessary in order to increase knowledge and understanding of states’ obligations under the ATT.

The implementation of ATT-related cooperation and assistance activities in East Africa faces a number of challenges. Many of the activities have placed a focus on marking, tracing and record keeping. However, such actions can be difficult to implement due to a general lack of reliable data on weapon holdings. More specifically, in some East African states, several different institutions are authorized to carry SALW and detailed records are lacking. At the same time, the range of challenges facing states in East Africa varies significantly, making it problematic to develop regional standards in arms controls. Kenya is home to Mombasa, Africa’s third largest port, but it lacks the equipment it needs to scan containers effectively. Kenya is working with the USA to develop more effective strategic trade controls, work that could benefit from ATT-related cooperation and assistance—if and when it

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The main areas of focus for ATT-relevant cooperation and assistance activities in East Africa related to inventory and stockpile management and regional cooperation

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51 In Kenya the army, police and wildlife service are permitted to carry SALW. APFO Representative (note 45).

52 APFO Representative (note 45).
joins the ATT. Meanwhile, Somalia and South Sudan face ongoing conflicts and armed violence, and the need for effective stockpile management is acute in both states. However, the unstable political and security situation in those states makes it difficult to perform effective stockpile management work at present.\(^{53}\)

**Central Africa\(^{54}\)**

Of the 9 states in Central Africa, 2 have ratified the ATT and a further 5 have signed it.\(^{55}\) Many states in the region have already agreed to the Kinshasa Convention and many of its provisions overlap with those of the ATT. As of the end of 2015, 5 states have ratified the convention and a further 7 have signed it.\(^{56}\) The Kinshasa Convention will enter into force 30 days after the deposit of its sixth instrument of ratification. During the ATT negotiations, states in Central Africa adopted the São Tomé Declaration on a Central African Common Position on the Arms Trade Treaty demonstrating high-level political support for the negotiating process within the region.\(^{57}\) However, the fact that the Kinshasa Convention has yet to enter into force nearly five years after its adoption points to the challenges facing ATT signature and ratification in the region.

During 2011–15, at least 70 ATT-relevant cooperation and assistance activities were carried out involving states from Central Africa. The main areas of focus of these activities were regional cooperation and international instruments, most of which had a strong emphasis on SALW. None of the identified activities had a focus on transfer controls. The most common types of activities carried out were sensitization and outreach and to a lesser extent institutional capacity building. Most of these activities involved Chad, the Central African Republic (CAR) and the Democratic Republic of the Congo (DRC) and were implemented by the ECCAS, RECSA and various UN agencies.\(^{58}\)

RECSA has provided a variety of technical and material assistance to states in Central Africa, covering the same areas as their work involving states from East Africa (see above). The ECCAS Secretariat has provided technical assistance to member states for establishing and operationalizing national commissions to combat the proliferation of arms in the region as well as

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\(^{54}\) Central Africa comprises 9 states: Angola, Cameroon, Chad, CAR, DRC, Republic of the Congo, Equatorial Guinea, Gabon, and São Tomé and Príncipe.

\(^{55}\) Chad and CAR have ratified the ATT; Angola, Cameroon, Congo, Gabon, and São Tomé and Príncipe have signed it.

\(^{56}\) Cameroon, CAR, Chad, Republic of the Congo and Gabon have ratified the Kinshasa Convention; Angola, Burundi, DRC, Equatorial Guinea, Rwanda, and São Tomé and Príncipe have signed it.


\(^{58}\) Although geographically part of Central Africa, Chad is often included in cooperation and assistance activities involving states from the Sahel or West Africa.
for organizing national sensitization forums. The UN Regional Office for Central Africa (UNOCA) and the UN Standing Advisory Committee on Security Questions in Central Africa (UNSAC) have held numerous meetings promoting regional cooperation on disarmament, arms limitations, cross-border criminality and counterterrorism. Both MAG and RECSA have implemented a number of weapons destruction and PSSM activities in the region. The Transitional Demobilization and Reintegration Program (TDRP) has been providing technical assistance to CAR, the DRC and the Republic of the Congo on DDR activities.

Many ATT-related cooperation and assistance activities involving states from Central Africa have focused on regional cooperation and international instruments as there is a particular need for these states to grasp the scope and implications of existing arms control and arms transfer control agreements. States in the region must also develop more comprehensive and coordinated arms control strategies in order to effectively manage the arms already in their possession. Moreover, several states in Central Africa require assistance with amending and updating their laws for regulating arms possession, many of which date back to the 1960s and 1970s. Finally, states in the region should continue to build technical capacity to enable them to keep track of the changing dynamics in small arms proliferation and produce updated SALW NAPs. A high number of ATT-related activities are focused on sensitization and outreach reflecting the fact that the current challenge in the region is not in implementing but in signing the ATT and building implementation capacity.

States in Central Africa must overcome significant obstacles in order to expand the number of ATT-related cooperation and assistance activities. A great deal of support to Central Africa has centred on training and the procurement of marking equipment but these only address one aspect of states’ needs in this area. Without follow-up assistance—and particularly the development of comprehensive and coordinated national approaches to PSSM—it is difficult for states to implement relevant international requirements. The AU and UNREC have carried out only one activity on identification and tracing for the ECCAS states, indicating that this is an area requiring further attention. Additional support is necessary in the areas of sensitization and outreach and institutional capacity building. At the same time, there are also very limited financial and human resources at the national level for states to pursue accession, ratification and implementation of the ATT. Moreover,
the fragile security situation in parts of CAR and the DRC and the porosity of borders in the region threaten any efforts made towards building regional and national capacities to implement the ATT.

**Southern Africa**

Of the 11 states in Southern Africa, 3 have ratified the ATT and a further 7 have signed it. Most states in the region have already agreed to the SADC Protocol: 9 states have ratified the protocol and a further 4 have signed it. The SADC Protocol aims to standardize controls on the manufacture, transfer and disposal of firearms. Unlike other regional instruments, it uses the term ‘firearms’ rather than SALW. However, it defines ‘firearms’ in a way that encompasses SALW.

During 2011–15, at least 30 ATT-relevant cooperation and assistance activities were carried out involving states from Southern Africa. The main areas of focus of these activities were regional cooperation and international instruments. A smaller number of activities were undertaken with a focus on marking and inventory and stockpile management. Only one activity has taken place that had a focus on transfer controls. The most common types of activities undertaken mainly related to sensitization and outreach and, to a lesser degree, institutional capacity building. The majority of these activities involved Mozambique and Malawi and were implemented by the USA or a handful of organizations, which include the Institute for Security Studies (ISS), MAG and the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) with assistance from Interpol (the International Criminal Police Organization).

Since 2014, ISS has been engaged in the ATT and POA Implementation and Compliance Support project, which provides technical and capacity-building assistance to all governmental and inter-governmental organizations and NGOs involved in the ratification of the ATT in Swaziland, Tanzania, Malawi and Lesotho. Between 2010 and 2012, ISS, in cooperation with MAG, provided marking and tracing equipment to 10 states in Southern Africa and trained police personnel in its correct use. In 2013 and 2014 the US Africa Command (AFRICOM) implemented conventional weapons disposal training, conventional munitions stockpile assessments and training, and programme assessments in Mozambique. SARPCCO has played a key role in arms control in the region through sensitization seminars and training workshops focused on database management, brokering, marking,

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64 Southern Africa comprises 11 states: Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe.

65 Lesotho, Mauritius and South Africa have ratified the ATT; Madagascar, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe have signed it.

66 Botswana, Lesotho, Malawi, Mauritania, Mozambique, Namibia, South Africa, Tanzania and Zambia have ratified the SADC Protocol; DRC, Seychelles, Swaziland and Zimbabwe have signed it.


weapons collection and destruction of small arms and ammunition. SARP-CCO has also assisted states to reform and harmonize firearms legislation and has initiated regional dialogues, developed best practice guidelines and coordinated cross-border operations.footnote{70}

A large number of ATT-relevant activities focused on international instruments and regional cooperation. Key needs in the region include greater sensitization to state obligations under existing arms control and arms transfer control instruments, and many ATT-related activities focused on sensitization and outreach. With limited institutional support and coordination among ministries, ATT signatory states in Southern Africa face major challenges in their respective parliaments or cabinets when pushing for a decision to ratify the ATT.footnote{71}

Obstacles to the implementation of ATT-related cooperation and assistance activities by states in Southern Africa mainly stem from limited human, technical and financial resources. For instance, the weak capacity to oversee porous borders is aggravated by institutional limitations or insufficient infrastructure to detect and manage the movement of arms. In addition, as in East Africa, the challenges facing states in Southern Africa vary significantly, making it difficult to develop regional approaches. When it comes to ATT implementation, the differences within the region are particularly wide. South Africa, for example, is a member of the Wassenaar Arrangement and already has a well-developed arms transfer control system in place.footnote{72} It has also been working with the US Government on developing its strategic trade controls for several years, though mostly in the area of dual-use goods and technologies.footnote{73} However, other states in the region have very limited arms transfer controls and would require assistance in building capacity to be able to implement the provisions of the ATT. For example, Madagascar, like the other African small island developing states (SIDS), faces unique challenges in monitoring shorelines and vast ocean territory and must take several additional steps before it can implement the ATT effectively.footnote{74} Such steps include awareness raising on current international arms regulations and relevant standards for firearms possession and arms control systems.footnote{75}

V. Conclusions and recommendations

In total, at least 250 ATT-relevant cooperation and assistance activities have been carried out during 2011–15 involving states from sub-Saharan Africa.

74 SIDS include Cabo Verde, the Comoros, Guinea-Bissau, Mauritius, São Tomé and Príncipe and Seychelles.
75 Government of Madagascar Representative, Communication with authors, 12 Oct. 2015.
Most of these activities have involved states from West Africa. East African and Central African states have been involved in fewer activities but still substantially more than states from Southern Africa (see table 1). The significant majority of these activities have focused on the broader range of issues relevant to preventing the illicit proliferation of SALW rather than the core issues covered by the ATT. Hence, while 49 activities were identified with a focus on inventory and stockpile management, only 8 were identified with a focus on transfer controls and 2 with a focus on brokering controls. Other areas of central concern to the ATT, such as import controls and transit and trans-shipment controls were not the main focus of any cooperation and assistance activities identified during the study. The focus of ATT-related cooperation and assistance activities in sub-Saharan Africa has instead been on sensitization and outreach in order to increase political support and to spur signature and ratification. As the ATT process moves forward, the types of cooperation and assistance activities will need to shift towards capacity building through technical assistance.

Overall, the study reflects the fact that—for the majority of states in sub-Saharan Africa—the core concern remains the broader issue of SALW controls rather than the more specific issue of arms transfer controls. Other studies of the priorities for states in sub-Saharan Africa note that marking, stockpile management and border controls are the most important issues.76 In general, there is a clear sense that arms transfer controls are not a major priority for states in sub-Saharan Africa and that elements of implementing effective and transparent arms transfer control systems are likely to be challenging for many states in the region—both in terms of human and technical resources and political will. A key fact supporting this prognosis is that during 2015 no state from sub-Saharan Africa made a submission to the UN Register of Conventional Arms (UNROCA)—and reporting on arms transfers is one of the main requirements of the ATT. If states in sub-Saharan Africa are unwilling or unable to report transfers to the UNROCA, it seems unlikely that they will be willing and able to do so for the ATT.77

Nevertheless, there are signs that the process of signing and ratifying the ATT is encouraging states to engage in cooperation and assistance projects in the field of arms transfer controls. As noted in this paper, states in West Africa are actively participating in the EU-ATT Outreach Programme and have been involved in discussions on improving their arms transfer controls in order to meet the requirements of the ATT. Indeed, the regional trend suggests that states in West Africa appear to be showing the greatest willingness to engage on these issues, which is likely a product of their long-

76 Poitevin (note 6).
77 Unlike the UNROCA, states will likely have the option of making their annual reports on arms imports and exports under the ATT only available to other states parties. This may induce more states to produce reports, but it will not contribute to the overall transparency of arms transfers in the region. See ATT Secretariat, ‘Reporting and deadlines’, <http://www.thearmstradetreaty.org/index.php/en/resources/reporting>.
standing commitment to and implementation of the ECOWAS Convention. The region has also benefited from strong support from a large number of donor countries. At the same time, West Africa suffers from a severe lack of human and technical resources, which negatively impacts on its potential for long-term and effective capacity building. Other regions face similar issues but also struggle to generate enough political will to make ATT ratification and implementation a priority.

International assistance can help to build capacity but national ownership and accountability are required for such assistance to be sustainable. National ownership is dependent on a strong political commitment to the process at all levels, the dedication of human and financial resources and an inclusive and coordinated approach. Furthermore, achieving national ownership is intrinsically related to strengthening the role and capacity of regional and subregional organizations in providing ATT-related cooperation and assistance. In this regard, the establishment of an information exchange network for parliamentarians on successful ways to promote the ATT and its benefits would be a valuable starting point. Indeed, the Parliamentary Forum on SALW—a global network of parliamentarians focused on arms control and violence prevention—is already engaged in work aimed at creating such a network. It has undertaken ATT-related sensitization and outreach workshops in a number of sub-Saharan African states, including Benin, Burkina Faso and Togo.

Building links between the ATT and the POA

A key priority for those seeking to expand ATT adoption and implementation in sub-Saharan Africa is to ensure that the ATT, the POA and existing regional SALW control instruments work in harmony with each other. Taken together, these instruments can be used to develop focused national strategies for improving control systems in ways that effectively cover all stages of the weapons lifecycle. This approach is already gaining traction in sub-Saharan Africa, with a number of past and ongoing cooperation and assistance activities aimed at optimizing the synergies between these instruments.

Crucial to the success of these efforts will be the work undertaken by the ATT Secretariat. Given the likelihood of limits on its resources and the constraints of its mandate, the ATT Secretariat is unlikely to be able to organize activities independently, but should be able to identify international and regional partners, jointly plan and organize events, and play a coordinating role in matching offers and requests for assistance. Indeed, the ATT Secretariat is specifically charged with carrying out ‘the matching of offers of and requests for assistance for Treaty implementation’ (Article 18). As the ATT Secretariat seeks to perform this task, the range of ATT-relevant cooperation


and assistance activities that have been carried out involving states from sub-Saharan Africa presents both an opportunity and a challenge. There is a clear opportunity since there already exists a solid foundation on which to build and a wealth of experience from which to draw.

However, the operational reality of the POA-ISS demonstrates that the creation of a central location for coordinating the planning and administering of all ATT-relevant cooperation and assistance activities related to implementation will likely be problematic. The ATT touches on many different areas of government activity hindering attempts to establish a single centralized location for channelling all relevant efforts. In addition, many donor states have traditionally been unwilling to abandon their own bilateral mechanisms for coordinating and providing assistance in these areas. Maintaining a database similar to the one that SIPRI and UNREC have put together would help to build a more comprehensive picture of the work that has already been undertaken and could act as a first step towards the more effective coordination of future efforts.

There is also a risk of duplication—particularly if a limited awareness of existing projects is coupled with an expansion of the scope of the matching work beyond core ATT-related activities to also include those that are ATT-relevant. This has the potential to put further strain on already stretched national resources. As such, the ATT Secretariat must look to quickly establish working relationships with UNODA, the AU and the RECs in order to build on existing coordination work and maximize the impact of cooperation and assistance activities. If the ATT Secretariat, POA-ISS and RECs all run parallel efforts to match offers and requests for assistance, they risk creating overlapping mechanisms that will further drain national capacities and increase confusion. Within sub-Saharan Africa, the ATT Secretariat can work through RECs to assist states within each subregion in developing new arms regulations that are in line with the ATT, the POA and regional agreements on SALW controls. Working through RECs not only builds the capacity of the RECs, but it also ensures the sustainability of assistance programmes.

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80 Holtom and Bromley (note 2).
81 Bauer and Bromley (note 16).
Abbreviations

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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AFRICOM</td>
<td>United States Africa Command</td>
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<td>ATT</td>
<td>Arms Trade Treaty</td>
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<td>AU</td>
<td>African Union</td>
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<td>BAFA</td>
<td>German Federal Office for Economic Affairs and Export Control</td>
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<td>CAR</td>
<td>Central African Republic</td>
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<td>DDR</td>
<td>Disarmament, demobilization and reintegration</td>
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<td>Democratic Republic of the Congo</td>
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<td>ECCAS</td>
<td>Economic Community of Central African States</td>
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<td>ECOWAS</td>
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<td>International Criminal Court</td>
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<td>IGAD</td>
<td>Intergovernmental Authority on Development</td>
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<td>ISS</td>
<td>Institute for Security Studies (South Africa)</td>
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<td>MAG</td>
<td>Mines Advisory Group</td>
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<td>NAP</td>
<td>National action plan</td>
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<td>NGO</td>
<td>Non-governmental organization</td>
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<td>POA</td>
<td>United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects</td>
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<td>POA-ISS</td>
<td>United Nations Programme of Action-Implementation Support System</td>
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<td>PSSM</td>
<td>Physical security and stockpile management</td>
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<td>RECs</td>
<td>Regional economic communities</td>
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<td>Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States</td>
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<td>Southern African Regional Police Chiefs Co-operation Organisation</td>
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<td>Small arms and light weapons</td>
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<td>UNLIREC</td>
<td>United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean</td>
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<td>UNREC</td>
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<td>UNROCA</td>
<td>United Nations Register of Conventional Arms</td>
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<td>UNSAC</td>
<td>United Nations Standing Advisory Committee on Security Questions in Central Africa</td>
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ATT-RELATED OUTREACH AND ASSISTANCE ACTIVITIES IN SUB-SAHARAN AFRICA

CHRISTINA ARABIA AND MARK BROMLEY

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Module 4
Information Exchange, International Cooperation and Assistance

Available on: www.un.org/disarmament/ATT
I. Introduction

Any country joining the Arms Trade Treaty (ATT), commits to putting in place adequate measures to implement the Treaty. States will decide which measures are best to fulfil their obligations under the ATT. These measures may vary from country to country.

After reviewing the reporting requirements under the ATT in module 3 of this toolkit, this fourth module, Information exchange, international cooperation and assistance, aims to assist States in setting up mechanisms to exchange information and facilitating international cooperation and assistance to implement the Treaty.

This module will discuss the role of the national points of contact and the conference of States Parties. It will also address international cooperation and assistance to implement the Treaty.

II. Channels to exchange information

States Parties are in charge of their implementation efforts to comply with the obligations under the ATT. States Parties must designate national points of contact to exchange information on ATT implementation matters.1 The conference of States Parties will also provide them with an opportunity to exchange information and discuss matters related to the Treaty’s implementation.2 These channels are established by the ATT. In addition, States Parties may engage in direct contact with other States and use any regional mechanisms or arrangements that may be set up to exchange information on ATT-related matters.

1 National point of contact

1.1 What is a national point of contact?

Article 5 (6) stipulates that States Parties must designate one or more national points of contact (NPC) to exchange information on matters related to the implementation of the ATT. The establishment of an international network of NPCs is a common practice in international treaties and agreements (i.e. UN Programme of Action on Small Arms and the International Tracing Instrument). The ATT does not provide a definition for NPC. However, it could be understood as:

A government unit/ institution designated to perform functions related to the ATT such as liaising with officials from other States, the ATT Secretariat, and relevant sub-regional, regional and international organizations; liaising with other national authorities responsible for arms transfer controls; receiving information requests related to the ATT; sharing ATT-related information and lessons learned; receiving assistance requests; coordinating the provision of ATT assistance to other States.

1 Article 5 (6).
2 Article 17 (4).
1.2. Responsibilities of the NPC

The NPC’s primarily role shall be to share information among States Parties. Information to be exchanged by or through the NPC could include:

- Information on matters of mutual interest regarding the implementation and application of the Treaty;3
- Correspondence with the ATT Secretariat, including on matters related to national reports;
- Pending or approved export authorizations, where appropriate and in coordination with the relevant national authorities on arms transfers controls;
- Facts and advice needed for arrangements to mitigate the risk of diversion of the transfer of conventional arms with all States concerned (importing, transit, trans-shipment and exporting States Parties);
- Assistance requests for the implementation of the ATT;
- Provision of assistance to other States on ATT implementation matters;
- Effective ATT implementation practices and lessons learnt.

1.3. Designation of the NPC

➢ Each State Party to the ATT will designate its NPC in accordance with its national laws. Typically, the NPC tasks would be assigned to the most relevant unit in the ministry of foreign affairs, ministry of trade, ministry of defence, ministry of interior, President’s office, or a law enforcement agency. As each State Party is required to have competent national authorities for an effective and transparent national transfer control system,4 these authorities would often been seen as best suitable to perform NPC tasks.

➢ It is recommended that the NPC has authority to request relevant information from other public or private entities within the State Party on matters related to the implementation of the ATT.

Tip: Participation of the NPC in national delegations to the ATT conferences of States Parties and their relevant meetings of subsidiary bodies, as well as in relevant regional and international meetings and events related to the ATT, would enable the NPC to build networks and to keep abreast of developments and lessons learnt in the implementation of the Treaty.

1.4. Communicating the designation of the NPC

The Treaty does not specify what NPC-related information should be communicated to the ATT Secretariat.5 The following information would be useful:

a. Name of the designated unit/ institution;

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3 Article 15 (2).
4 Article 5 (5).
5 Article 5 (6).
b. Address;
c. Contact person;
d. E-mail address (preferably not a personal e-mail address but an e-mail address accessible by the unit/ institution);
e. Telephone and fax number.

Any changes in the information related to the NPC must be communicated to the ATT Secretariat forthwith.6

1.5. List of NPCs

➢ The ATT Secretariat is responsible for maintaining the list of NPCs and for making it available to States Parties.7 The conference of States Parties may decide to make the list available to the public.
➢ The NPC network can be an important tool for enhancing cooperation and exchanging information among States Parties.

1.6. NPCs in other instruments

➢ Several international instruments in the field of conventional arms, including transparency in armaments, request States Parties to designate an NPC, such as:
  • Firearms Protocol;
  • Programme of Action on Small Arms;
  • International Tracing Instrument;
  • UN Register of Conventional Arms;
  • UN Report on Military Expenditures.

➢ States may designate the same NPC for different instruments.
➢ States may also choose to designate different NPCs for different instruments and have them cooperate closely (e.g. preparation of reports under the PoA/ITI and ATT).  

2. Conference of States Parties8

The conference of States Parties (CSP) of the ATT provides an opportunity for States to gather regularly to exchange information and discuss matters of importance.

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6 Ibidem.
7 Article 18 (3)b.
8 Article 17.
2.1. Issues to be discussed and decided at CSPs

a. At its first meeting, its rules of procedure;
b. Establishment of any subsidiary bodies and the CSP oversight over them;
c. Establishment of a voluntary trust fund;\footnote{Article 16 (3).}
d. Financial rules for the CSPs, the Secretariat and any subsidiary bodies it might establish;
e. Tasks and budgets of the Secretariat;
f. Budget for the financial period until the next ordinary session;
g. Implementation and operation of the ATT, including the promotion of its universality;
h. Administrative, logistical and financial provisions regarding the implementation of the Treaty;
i. Issues arising from the interpretation of the ATT;
j. Amendment to the Treaty six years after its entry into force and henceforth, only every three years;\footnote{The Treaty entered into force on 24 December 2014 therefore, the conference of States Parties could consider proposed amendments on its meeting in 2020 if any State Party had submitted such proposal to the ATT Secretariat. Henceforth, the conference of States Parties will only consider such proposals every three years.}\footnote{Article 17 (5).}
k. Any other function consistent with the ATT.

2.2. Extraordinary meetings of the conference of States Parties\footnote{Article 17 (5).}

Extraordinary meetings of the conference of States Parties could be held:

- When deemed necessary by the CSP;
- Upon written request of any State Party supported by at least two-thirds of the States Parties.

**Tip:** Participation of arms export/import control experts in national delegations to the ATT conferences of States Parties and their relevant meetings of subsidiary bodies, as well as in relevant regional and international meetings and events related to the ATT, would enable those experts to build networks and to keep abreast of developments and lessons learned in the implementation of the Treaty.

III. International cooperation and assistance to implement the ATT

1. International cooperation
Regulating the international conventional arms trade and the effective implementation of the ATT requires extensive cooperation among States Parties. International cooperation under the ATT can take various forms, including:

a. Exchange of information, experiences and lessons learned on the implementation of the ATT through its network of national points of contacts;
b. Review of the implementation of the Treaty, including developments in the field of conventional arms at the conference of States Parties;
c. Collaboration and exchange of information between the exporting and importing States Parties on pending or actual export authorizations where the importing State Party is the final destination of such transfer;¹²
d. Partnership and exchange of information to prevent diversion;
e. Mutual assistance in matters such as investigations, prosecutions and judicial proceedings;
f. Coordination to prevent that arms transfers become subject to corrupt practices;
g. Dialogue on ATT implementation matters at bilateral or regional level;
h. Provision of assistance to implement the Treaty, including funding from the voluntary trust fund to be established under Article 16 (3) of the ATT, bilateral agreements or regional, sub-regional and international organizations.

1.1. Information exchange among State Parties

➢ Adequate information exchange among countries involved in a transfer, or among all relevant States Parties for instance on lessons learned and good practices, is an essential component for the successful implementation of the ATT.
➢ It also leads to increased transparency and accountability in arms transfers.
➢ There are many ways in which States Parties can engage in information exchange, including for example:
  • Direct dialogue between NPCs;
  • Communication between the NPC of one State Party and the national transfer control authorities of another;
  • Meetings between officials, at bilateral or regional levels, or in the margins of a multilateral meeting;
  • Correspondence between the national transfer control authorities of different States Parties;
  • Circulation of information through appropriate channels within the framework of existing or new bilateral, regional or multilateral mechanisms for information-sharing and exchange.

1.1.1. Information exchange on the implementation of the ATT

States Parties should share information to effectively support the implementation of the ATT. Information to be exchanged should include:

a. Matters of mutual interest regarding the application of the ATT;¹³

¹² Article 8 (3).
¹³ Article 15 (2).
b. Data regarding illicit activities and actors to prevent and eradicate diversion of conventional arms under Article 2 (1):\textsuperscript{14}
c. Lessons learned on any aspect of the ATT.\textsuperscript{15}

1.1.2. Cooperation and information exchange to ensure accountability and to prevent diversion

Exporting, importing, transit and trans-shipment States Parties must cooperate and share information, pursuant to their national laws, where appropriate and feasible, to mitigate the risk of diversion of the transfer of covered weapons.\textsuperscript{16}

Any exporting State Party shall make available appropriate information about an authorization, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to the exporting State's national laws, regulations or policies;\textsuperscript{17}

States Parties should share information regarding illicit activities and actors to prevent and eradicate diversion of conventional arms.\textsuperscript{18}

1.1.3. Information exchange through the ATT Secretariat

States Parties are required or encouraged to provide the following information to the Secretariat, which in turn is mandated to communicate it to all States Parties:

a. National control lists, pursuant to each State Party's national laws (required);\textsuperscript{19}
b. NPC (required);\textsuperscript{20}
c. Initial report on measures taken to implement the ATT (required);\textsuperscript{21}
d. Reports on any new measures undertaken in order to implement the ATT when appropriate (required);\textsuperscript{22}
e. Annual report (required);\textsuperscript{23}
f. Information on measures that have proven effective in addressing the diversion of conventional arms (encouraged).\textsuperscript{24}

1.2. Settlement of disputes\textsuperscript{25}

States Parties shall consult and, by mutual consent, cooperate to pursue the settlement of any dispute that may arise between them regarding issues concerning the interpretation or application of the Treaty. States Parties shall seek a solution by:

a. Negotiations;

\textsuperscript{14} Article 15 (4).
\textsuperscript{15} Article 15 (7).
\textsuperscript{16} Article 11 (3).
\textsuperscript{17} Article 7 (5).
\textsuperscript{18} Ibidem.
\textsuperscript{19} Article 5 (4).
\textsuperscript{20} Article 5 (6).
\textsuperscript{21} Article 13 (1).
\textsuperscript{22} Ibidem.
\textsuperscript{23} Article 13 (3).
\textsuperscript{24} Article 13 (2).
\textsuperscript{25} Article 19.
b. Mediation;

c. Conciliation;

d. Judicial settlement;

e. Arbitration;

f. Any other peaceful means.

2. International assistance

➢ States Parties to the ATT shall take appropriate enforcement measures for the effective regulation of international transfers of conventional arms, ammunition and parts and components and for preventing their diversion.26

➢ Any State Party should ensure that it counts with governmental institutions, an adequate legal framework, financial and technical resources to implement the Treaty.

➢ To that effect, many States Parties may consider requesting assistance.

➢ International assistance under the ATT helps all States Parties to implement the Treaty in an effective manner.

➢ International assistance can be granted through bilateral agreements between States Parties as well as by regional and international organizations.

2.1. Areas of assistance

Each State Party may assess the level, nature and extent of assistance it wants to seek.27 Article 16 (1) indicates examples of areas where assistance could be sought:

a. Legal or legislative assistance;

b. Institutional capacity-building;

c. Technical assistance;

d. Material assistance;

e. Financial assistance.

2.1.1. Legal or legislative assistance

➢ Legal or legislative assistance may include revising existing legislation and regulatory frameworks or developing new ones, such as:

• Trade control legislation and regulation, including administrative and criminal penalties;

• Customs laws and firearms regulation and control acts;

• Regulatory procedures, including import and export control policies and administrative procedures;

• Legislation, regulatory procedures aimed at preventing the diversion of conventional arms;

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26 Article 14.

27 For example, the Arms Trade Treaty Baseline Assessment Project has developed a survey that helps countries to identify areas where they need assistance. See www.armstrade.info.
• National control lists.

International assistance programmes to provide legal or legislative assistance could take many forms, including: Workshops, seminars, and training programmes aimed at assisting in the drafting or review of relevant legislation, policies and procedures;
• Round-tables to share information on effective legislation, policies and procedures;
• Development of model legislation by States Parties;
• Technical expertise provided by consultants;
• Sharing of lessons learned and good practices.

2.1.2. Institutional capacity-building

International assistance programmes to enhance institutional capabilities could include the following activities:

a. Assistance in establishing the national export/import control system;

b. Support to inter-agency processes and national coordination mechanisms;

c. Training for officials and personnel such as:

• National points of contact;
• Licensing/authorization officials;
• Law enforcement officials, including customs and border control;
• Military and security forces officials on weapons and ammunition stockpile management, intelligence gathering, and weapons marking and tracing;
• Parliamentarians and officials entrusted with oversight responsibilities, where applicable.

2.2. Types of assistance

Assistance can be provided mainly in three forms: technical, material and financial.

2.2.1. Technical assistance

Examples of technical assistance are:

a. Workshops, seminars, round-tables, training courses;

b. Development of instruction materials, booklets, documents, software applications;

c. Sharing of lessons learned and good practices;

d. Peer-to-peer training, mentoring;

e. Consultancy services;

f. Training visits, personnel exchanges;

g. Building or refurbishing stockpiles and depots.
2.2.2. Material assistance

Equipment needed to implement the ATT could be provided, loaned, leased (including at a preferential rate) or contributed in-kind.

2.2.3. Financial assistance

Sources of financial support could be found in:
   a. Bilateral and multilateral aid;
   b. Funding from the voluntary trust fund to be established under Article 16(3) of the ATT or other trust funds established for similar purposes, including the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR).  

2.3. Additional considerations

In providing assistance, States Parties could consider the following criteria:
   a. Applying flexibility and accounting for specificity: no one size fits all;
   b. Fostering national ownership;
   c. Safeguarding sustainability;
   d. Ensuring a gender-sensitive approach.

2.3.1. No one-size-fits-all

Assistance provided to implement the ATT should be tailored to specific needs of the recipient State. When designing assistance programmes, the following circumstances could be taken into consideration:
   a. Country size;
   b. Geography (e.g. border length, border accessibility);
   c. Infrastructure, major trading routes;
   d. Historical, cultural, and political contexts;
   e. Socio-economic development;
   f. Constitutional and government frameworks and administrative practices;
   g. Levels of regional cooperation;
   h. Volume and value of arms exports and/or imports;
   i. If the recipient State Party is particularly affected by problems related to the proliferation of illicit conventional arms, including SALW;
   j. If the recipient State Party faces diversion problems;

28 More information on UNSCAR is available at www.un.org/disarmament/UNSCAR.
k. Available local resources;
l. Existing relevant programmes, including by regional organizations and by in-country UN partners such as UNDP or UNODC;
m. Existing assistance programmes provided by other donors in the field of disarmament and non-proliferation;
n. Existing projects related to the ATT being implemented in the recipient State or in the region.

2.3.2. National ownership

➢ National ownership is a key factor in ensuring the success of any assistance programme. Recipient States authorities are in the best position to assess their needs, to steer their ATT implementation process and to apply those ATT lessons learned that will help their own implementation efforts.

➢ In order for international assistance to be effective, recipient States will need to conduct an in-depth assessment to identify the assistance they require in implementing the Treaty.

➢ Recipient States should also be willing to be involved hands-on throughout the ATT implementation process (at all stages of the assistance project-cycle: assessment of needs, design of the targeted assistance programme, monitoring of the programme implementation, evaluation and follow-up phase of the programme, formulation of lessons learned).

➢ Recipient States should contribute local human resources and, when possible, material and financial resources to ensure ownership but also sustainability of effective ATT implementation measures.

2.3.3. Sustainability

A truly effective assistance programme is one that has a long-lasting and sustainable impact in the recipient State. Such programme may contain:

a. Development of guidelines, manuals, instructions and “how-to” guides;

b. Inclusion of a ‘train-the-trainers’ component, so that the training and knowledge imparted through assistance could be replicated and multiplied within the recipient State;

c. Adequate training on the use and maintenance of equipment provided (if equipment is provided as part of the assistance programme).

2.3.4. Gender-sensitive approach

States Parties may also incorporate a gender perspective in their international assistance programmes through, for example:

a. Considering the value of gender-sensitive risk assessments and how these can be undertaken;

b. Promoting participation of women and women’s groups in the recipient State in the decision-making process as well as planning and implementation of the programme;²⁹

c. Including of women in the recipient State as a beneficiary/target/trainee in the assistance programme;

d. Addressing the consequences of arms diversion for women;

²⁹ The preamble of the ATT recognizes that civil society can play an active role in raising awareness of the object and purpose of the Treaty, as well as in supporting its implementation.
e. Including women in train-the-trainers components.

2.4. Requesting assistance

Any State Party may request assistance to implement the ATT. Assistance may be requested through:

a. The ATT Secretariat;
b. Other States Parties/States at bilateral dialogue;
c. Regional and sub-regional organizations;
d. International organizations such as the UN;
e. Non-governmental organizations.

2.5. Elements for an assistance request

The below elements include key information that might be useful in a request for assistance to implement the ATT.

a. Contact details (The State Party may consider channelling its request through its NPC)
   - Institution:
   - Contact person:
   - Position:
   - Phone and Fax number:
   - E-mail address:

b. Summary of assistance requested
   [Provide a short summary of the assistance request]

c. Specification of requested assistance
   - Legal or legislative assistance
     - Model legislation
     - Strategic trade control legislation
     - Customs and border control legislation
     - Implementing regulations
     - National control list

   Other, specify:
   - Institutional capacity-building
     - Setting up a national control system
- Supporting inter-agency process
- Setting up a record-keeping system
- Development of procedures for information sharing
- Disarmament, demobilization and reintegration
- Marking of weapons
- Weapons tracing

Training
General Implementation

Guiding Questions:

1. What measures should states parties have in place to implement the ATT?
2. What are some best practices that can help with implementation?
3. How can countries learn from other to implement the ATT?

Resources:


The Arms Trade Treaty
A Practical Guide to National Implementation
Edited by Sarah Parker
3.1 What is a national control system?

A national control system in the context of the ATT is a regime established at the national level to control the transfer of conventional arms, related ammunition/munitions, and parts and components. It comprises the national legislation, regulations, and administrative procedures established by a government both to administer the import, export, transit, trans-shipment, and brokering of arms and other items and to process applications for licences and authorizations to conduct these activities and monitor their trade. The national control list identifies the arms and items that a national control system seeks to control—see Section 4 for details on national control lists.

3.2 Why is a national control system necessary?

Each state party is required to implement the ATT at the national level by establishing and maintaining a national control system for the transfer of conventional arms, related ammunition/munitions, and parts and components. This obligation is set out in Article 5 of the Treaty.

A national control system is essential if a state party is to assess effectively each request for authorization to transfer or export conventional arms, related ammunition/munitions, and parts and components, as stipulated in Articles 6 and 7 of the Treaty. This is primarily a matter of national implementation.

3.3 How is a national control system constructed?

The ATT does not instruct states parties on how to construct a national control regime; instead, it directs them to establish one and to ensure that (1) it contains a national control list that specifies which conventional arms, related ammunition/munitions, and parts and components are to be regulated by the control regime, and that (2) it covers the minimum scope detailed in the ATT. Moreover, the system must address all the activities that fall under its definition of transfer: export, import, transit, trans-shipment, and brokering. The Treaty also stipulates that states parties must designate competent national authorities as part of the control system, as well as one or more national points of contact to exchange information on matters related to the implementation of the Treaty.
3.3.1 The authorization process

The national control system must be constructed in a way that requires any individual or entity, whether private or public, to seek authorization through the system prior to exporting any arms, related ammunition/munitions, or parts and components that are contained in the national control list. The system must enable a state to be in a position to assess objectively each request and to make principled and consistent decisions based on the evidence.

Some of the general principles that apply to authorizations are:

- **timing and sequencing**: authorizations should be issued prior to a transfer of conventional arms or other items; they should not be issued retroactively;
- **validity**: transfer authorizations should be limited in time, and the expiry date should be clearly indicated;
- **revocation**: states parties should reassess a transfer authorization that has been granted in certain circumstances, for example if the authorization was obtained on the basis of inaccurate information, if there is a change in the situation in the importing state, or if new relevant information comes to light, as encouraged under Article 7(7) of the Treaty; and
- **reporting**: entities that are granted a transfer authorization should be required to report to or notify the competent national authorities on the use of the authorization, such as by reporting that authorized activities have taken place (UNCASA, 2014a, p. 5).

**NOTE**: A reporting process that requires entities that are granted a transfer authorization to report to or notify the competent national authorities when the authorized activities have taken place (such as when the arms authorized for export have been delivered to the end user) will assist the authorities in collecting the data required to fulfil the reporting obligation under Article 13(3) of the Treaty — see Section 10 for details on record-keeping.

3.3.1.1 Is authorization always required before a transfer can take place?

Under Article 2(3) of the Treaty, international movement of conventional arms by, or on behalf of, a state party are exempt from the application of the Treaty, provided that the conventional arms are being moved for the state’s use and that they remain under its ownership. Accordingly, such transfers need not be subjected
to the same authorization process as transfers of conventional arms destined for end users other than the state.

3.3.1.2 What information and documentation should be included in an application for a transfer authorization?

Based on the International Small Arms Control Standards (ISACS), Box 3.1 suggests some of the key information and documentation that should be included, if it is available, in any application for authorization to transfer conventional arms and other items.

**Box 3.1 Applications for transfer authorizations**

Information and documentation that should be provided, if available and relevant, in applications for authorization to transfer conventional arms and other items include:

a) the name and contact details of the applicant for authorization;
b) the applicant’s operating licence or brokering registration;
c) the import authorization;
d) the export authorization;
e) the transit and trans-shipment notifications;
f) end-user documentation, such as an end-user certificate (EUC) or end-user statement;
g) the intended end use of the item(s);
h) the names, contact details, and roles of all parties involved in the transfer, including:
   1) brokers;
   2) freight-forwarding agents;
   3) transport/shipping carriers; and
   4) intermediate consignees;
i) details of the transport route, including the means of transport to be used for each segment; and
j) a description of the item(s), including:
   1) quantity;
   2) value;
   3) model/type;
   4) country of manufacture or most recent import; and
   5) if the transfer involves small arms and light weapons:
      a) calibres;
      b) serial numbers;
      c) markings;
      d) types (such as revolver, pistol, rifle, sub-machine gun, light machine gun, heavy machine gun, grenade launcher, mortar, recoilless rifle, anti-aircraft gun, anti-tank gun, anti-tank rocket system, anti-tank missile system, anti-aircraft missile system, including man-portable air defence systems, or MANPADS); and
      e) actions (such as manual, semi-automatic, or automatic).

*Source: UNCASA (2014a, s. 5.3)*
3.3.1.3 What form should a transfer authorization take?

When the competent national authorities decide to grant authorization to transfer conventional arms or other items, they should produce a formal document evidencing the authorization. The authorities should ensure that the document cannot be easily forged or falsified. Box 3.2 suggests what each transfer authorization should contain.

Box 3.2 Contents of transfer authorizations

Authorizations and notifications of transfers of conventional arms and other items should include the following elements, if relevant and available:

a) a unique transfer authorization number;
b) the identities of the competent national authorities issuing the authorization, which can include an official stamp;
c) the signature, printed name, and position of the designated officials of the competent national authorities that are issuing the authorization;
d) the name and contact details of the recipient of the authorization;
e) the date of issuance;
f) the date of expiration;
g) the country of export;
h) the name and contact details of the exporter;
i) the countries of transit and/or trans-shipment (if known);
j) the country of import;
k) the name and contact details of the authorized end user;
l) the authorized end use of the item(s);
m) the names and contact details of all parties involved in the transfer, including:
   1) brokers;
   2) freight forwarding agents;
   3) transport/shipping carriers; and
   4) intermediate consignees;

n) details of the transport route, including the means of transport to be used for each segment; and

o) a description of the consignment, including:
   1) quantity;
   2) value;
   3) model/type;
   4) country of manufacture or most recent import (if the item is being re-exported); and
   5) if the transfer involves small arms and light weapons:
      a) calibres;
      b) serial numbers;
      c) markings;
      d) types (such as revolver, pistol, rifle, sub-machine gun, light machine gun, heavy machine gun, grenade launcher, mortar, recoilless rifle, anti-aircraft gun, anti-tank gun, anti-tank rocket system, anti-tank missile system, anti-aircraft missile system, including MANPADS); and
      e) actions (such as manual, semi-automatic, or automatic).

Source: UNCASA (2014a, s. 5.5)
3.3.2 Competent national authorities

Each state party is required to designate competent national authorities as part of its efforts to establish an effective and transparent national control system to regulate transfers, as specified in Article 5(5) of the Treaty. The authorities must thus have the capacity as well as the necessary mandate to carry out control functions. Each state party has considerable discretion regarding the competent authorities’ form, structure, and legislative basis.

The Treaty stipulates that each state party must designate competent national authorities (plural), but does not specify how many authorities should be established. A state party may decide to establish a single competent national authority and entrust it with the responsibility of regulating and authorizing the import, export, and brokering of arms and other items, or it may divest responsibility across several competent national authorities. If this responsibility is not invested in a single central agency, the principles laid out in Box 3.3 apply.

There is no specific obligation to make the competent national authorities interministerial bodies, although arms transfers are likely to be of relevance to numerous government ministries and agencies, such as border control and customs, defence, finance, foreign affairs, interior, justice, trade, and transportation—see Table 4.2 for relevant ministries and agencies. Police forces and judicial bodies should play a critical role in enforcing national legislation and regulating or enforcing the actions of state agencies (Casey-Maslen, Giacca, and Vestner, 2013, p. 23).

Competent national authorities typically comprise a political authority and a national authority, both of which should be established in arms control legislation and policy. The competent national authorities should ensure that arms transfer decision-making is both transparent and predictable. In addition, the authorities

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**Box 3.3** Principles governing decentralized authorities

- The number of state agencies mandated to issue authorizations should be kept to a minimum, in line with the efficient, effective, and timely administration of the authorization system.
- There should be clear and direct lines of communication between the agencies concerned.
- Information should be shared among these agencies on a regular basis regarding the import, export, and brokering of any conventional arms.
- Within each agency, the number of officials mandated to sign transfer authorizations should be kept to a minimum.

*Source: UNCASA (2014a, s. 5.2.3)*
should seek to ensure adequate coordination among government bodies that are involved in the regulation of arms transfers (Lamb, 2012, p. 66).

The central role of the political authority is to authorize or deny applications for arms transfers, and to establish measures to prevent corruption and bribery in connection with the arms trade. Political authority and oversight of arms transfers is typically vested in the executive arm of the state. The political authority is also responsible for ensuring adequate coordination between the relevant government bodies. Hence, in many states that frequently trade arms, the political authority is generally a body composed of representatives from government departments, ministries, and agencies that deal with issues relevant to the arms trade (Lamb, 2012, p. 66).

The national authority typically fulfils the arms transfer control implementation function; it is usually located within an appropriate government ministry, such as defence or foreign affairs, or it is a separate government body. The national authority should be staffed with personnel with the necessary arms transfer expertise. More specifically, a national authority should be able to:

- establish and maintain a system to administer arms transfer controls, such as authorization requests (mainly through registration and the issuing of licences) and the processing of EUCs;
- attend to the administrative requirements and instructions of the political authority;
- maintain accurate records in relation to arms transfers;
- compile relevant reports when required;
- facilitate regular inspection and compliance visits to verify that companies and individuals with export, import, and brokering licences are acting in compliance with national laws and regulations; and
- conduct outreach activities to inform brokers and transport businesses of national arms transfer control obligations (Lamb, 2012, p. 67).

A dedicated national body is in a position to verify the authenticity of arms import requests and arms transfer documentation (such as EUCs) and produce its own documentation. In this way, such an entity may be able to uncover any fraudulent arms transfer documentation and thereby prevent the diversion of arms to illegal markets and problematic destinations.

Each state will need to ensure that its national competent authorities are given the necessary human, technical, and financial resources to enable them to ensure
effective control over international arms transfers, exchange relevant information with partner states, and address measures to prevent diversion.

3.3.3 National points of contact

Each state party must designate a national point of contact to exchange information on Treaty implementation; it must also provide up-to-date details of that point of contact to the ATT Secretariat, in accordance with Article 5(6) of the Treaty. The national point of contact may be part of the national competent authority, but this is not a Treaty requirement.³

3.4 What is the role of national legislation?

While the ATT does not explicitly require legislation to create the control regime, Article 14 contains a provision on enforcement that requires states parties to take ‘appropriate measures’ to enforce national laws and regulations that implement the Treaty. Arms control legislation embeds the ATT’s arms transfer control requirements in the domestic legal frameworks of states parties. Policies help to elaborate the detailed context in which the legislation is framed, guided, and formulated. The ATT calls on states parties to adopt or have in place measures—such as legislative provisions and administrative guidance—for:

- national control lists (as per Article 5(2));
- the designation of competent national authorities as part of a national control system to regulate imports, among other activities (as per Article 5(5));
- the prohibition of certain transfers (as per Article 6);
- export assessments (as per Article 7);
- arms importation mechanisms (as per Article 8);
- transit and trans-shipment processes (as per Article 9);
- the regulation of brokering (as per Article 10);
- the maintenance of records (as per Article 12); and
- the enforcement of adopted control measures (as per Article 14).

As a rule of thumb, specific legislation is typically needed, in particular to make circumvention (or attempted circumvention) of the national control regime a criminal offence, as well as to set out the sanctions for violation of that legislation. Violations include unauthorized export, import, transit, trans-shipment, and brokering of arms
and related items. Individuals engaged in such activities should be prosecuted under relevant national criminal law. Details of the types of criminal offences that may be established for different types of transfer are provided in the relevant sections of this Guide. See Section 5.4 on export controls; Section 6.3.6 on import controls; Section 8.3.3 on controlling brokers and brokering; and Section 10.5.2 on record-keeping.

Ideally, the national control regime itself should have a statutory basis. The criteria that the regime uses to make decisions to grant or deny authorization, on the other hand, should be laid down in administrative regulations or provisions, as these may need to change over time.

In its preamble, the ATT also references the UN Disarmament Commission Guidelines for international arms transfers, which offer further details on possible arms control legislation and policy (UNGA, 1996). These guidelines recommend that legislation and policy include the following measures, among others:

- respect for UN Security Council arms embargoes;
- a system of export and import licences for international arms transfers with requirements for full supporting documentation;
- identification of the types of arms that civilians, the police, the military, and other security forces are permitted to possess;
- measures to prevent corruption and bribery in connection with arms transfers; and
- punitive measures for those found responsible of illicit arms trafficking or related acts (UNGA, 1996).

Further resources

ATT Implementation Toolkit (UNODA)

European Union ATT implementation support programme, adopted under Council Decision 2013/768/CFSP on 16 December 2013

ISACS: National Controls over the International Transfer of Small Arms and Light Weapons

Acknowledgements

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SECTION 4

National control lists
4.1 What is a national control list?

In general terms, a national control list comprises items that are subject to special regulation by a state because of their sensitive or dangerous nature. The establishment of a national control list of conventional arms, related ammunition/munitions, and parts and components is an essential part of ATT implementation. Article 5(2) specifically requires such a list from each state party. The national control list promotes confidence among all states parties and can also ensure broader transparency, in line with Article 5(4), which encourages each state to make its control list publicly available. In turn, industry can benefit from a more open environment.

4.2 What arms and items must be included?

Put simply, a national control list must encompass at least as many conventional arms as are covered in applicable UN agreements as well as treaties and regional instruments to which a state is a party. Sections 4.2.1 and 4.2.2 review the arms and other items that must be included in the national control lists of states parties to the ATT.

4.2.1 Conventional arms

The conventional arms that must be included in a national control list are set out in Articles 2 and 5 of the ATT. Under Article 2(1), these must encompass all conventional arms within the following categories:

- battle tanks;
- armoured combat vehicles;
- large-calibre artillery systems;
- combat aircraft;
- attack helicopters;
- warships;
- missiles and missile launchers; and
- small arms and light weapons.

Article 5(3), which encourages each state party to apply the ATT to the ‘broadest range of conventional arms’, stipulates that small arms and light weapons must ‘not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty’. The other conventional arms must ‘not
cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force’ of the ATT.

Table 4.1 presents the definitions of the categories covered by the UN Register of Conventional Arms as of 24 December 2014, the date of the ATT’s entry into force.

### Table 4.1 Categories of the UN Register of Conventional Arms

<table>
<thead>
<tr>
<th>Category</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>I: Battle tanks</td>
<td>‘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 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre’ (UNGA, 2003a, annexe IV).</td>
</tr>
<tr>
<td>II: Armoured combat vehicles</td>
<td>‘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 12.5 millimetres calibre or a missile launcher’ (UNGA, 2003a, annexe IV).</td>
</tr>
<tr>
<td>III: Large-calibre artillery systems</td>
<td>‘Guns, howitzers, artillery pieces combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above’ (UNGA, 2003a, annexe IV).</td>
</tr>
<tr>
<td>IV: Combat aircraft</td>
<td>‘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 these aircraft which perform specialized 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’ (UNGA, 2003a, annexe IV).</td>
</tr>
<tr>
<td>V: Attack helicopters</td>
<td>‘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 and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions’ (UNGA, 2003a, annexe IV).</td>
</tr>
<tr>
<td>VI: Warships</td>
<td>‘Vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or above, and those with a standard displacement of less than 500 metric tons, equipped for launching missiles with a range of at least 25 kilometres or torpedoes with similar range’ (UNGA, 2006b, para. 124).</td>
</tr>
<tr>
<td>VII: Missiles and missile launchers</td>
<td>‘(a) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. [. . .] this sub-category includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles. (b) Man-Portable Air-Defence Systems (MANPADS)’ (UNGA, 2003a, annexe IV).</td>
</tr>
</tbody>
</table>
Small arms and light weapons, which are not listed among the seven UN Register categories, must also be defined in national control list legislation. As Article 5(3) specifies, such definitions must not cover less than the descriptions used in relevant UN instruments. The minimum requirements are set out in the 2005 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, known as the International Tracing Instrument (ITI), which states:

For the purpose of this instrument, ‘small arms and light weapons’ will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

(a) ‘Small arms’ are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) ‘Light weapons’ are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, 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 millimetres (UNGA, 2005a, para. 4).

Other definitions of small arms and light weapons may be broader, and states parties may avail themselves of such language as long as the definitions encompass at least the above-cited ITI categories. It is important to note that the definition in the introductory text (or chapeau) in Paragraph 4 of the ITI is much broader than the two separate ones listed for ‘small arms’ and ‘light weapons’ under Paragraphs 4(a) and 4(b); indeed, the latter two are not exhaustive, since they specify that the listed materiel is cited ‘inter alia’. Thus, while shotguns, for example, do not fall within the small arms categories listed, they are covered by the phrase ‘any man-portable lethal weapon’ in the introductory definition of Paragraph 4. The Small
Arms Survey has proposed additions to the ITI definitions, notably regarding single-rail-launched rockets and 120 mm mortars that can be transported and operated as intended by a light vehicle (Small Arms Survey, n.d.).

4.2.2 Ammunition/munitions and parts and components

In addition to the definitions for the eight categories of arms given in its Article 2(1), the ATT specifies in Article 3 that the export of all ammunition/munitions fired, launched, or delivered by any of the arms covered by the Treaty must also be regulated through the national control system—and therefore be included in the national control list. Further, Article 4 of the Treaty requires regulation of the export of parts and components of the arms listed in Article 2(1) ‘where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1)’.

States parties that lack expertise in ammunition and parts and components will find that a great deal of competence in this area is publicly available. For one, the Wassenaar Arrangement website provides access to its Munitions List (ML), which is updated annually (WA, n.d.a). The ML3 includes language on the kinds of ammunition that Wassenaar Arrangement participating states attempt to control:

ML3. Ammunition and fuze setting devices, as follows, and specially designed components therefor:

a. Ammunition for weapons specified by ML1., ML2. or ML12.;

b. Fuze setting devices specially designed for ammunition specified by ML3.a.

Note 1 Specially designed components specified by ML3. include:

a. Metal or plastic fabrications such as primer anvils, bullet cups, cartridge links, rotating bands and munitions metal parts;

b. Safing and arming devices, fuzes, sensors and initiation devices;

c. Power supplies with high one-time operational output;

d. Combustible cases for charges;

e. Submunitions including bomblets, minelets and terminally guided projectiles.

Note 2 ML3.a. does not apply to any of the following:

a. Ammunition crimped without a projectile (blank star);

b. Dummy ammunition with a pierced powder chamber;
c. Other blank and dummy ammunition, not incorporating components designed for live ammunition; or
d. Components specially designed for blank or dummy ammunition, specified in this Note 2.a., b. or c.

Note 3 ML3.a. does not apply to cartridges specially designed for any of the following purposes:

a. Signalling;
b. Bird scaring; or
c. Lighting of gas flares at oil wells (WA, n.d.a).

Two points need to be made here. First, examination of the other categories under the Munitions List (ML1, ML2, and so on) demonstrates that great care has gone into defining the weapons categories agreed upon by the Wassenaar Arrangement’s participating states, and precision is vital if ML3 and its language on ammunition are to be of value. Second, ML3’s Note 1 contains precise language on parts and components, and it offers an example (among many in the Munitions List) of how states that seek to create their own ATT national control lists can usefully draw on this information.

In addition to the required categories of arms, ammunition/munitions, and parts and components, states parties may wish to consider integrating other classes of items into their national control lists. For example, they might choose to include less-lethal weapons that are not covered by the ATT, such as electric-shock weapons.

4.3 How detailed does a national control list need to be?
Government authorities can use a national control list to limit specific sensitive items by law, control their export or import, or perhaps prohibit their export altogether.

NOTE: The greater the precision applied to the definitions in the national control list, the greater the chance that the implementation of the relevant law will be straightforward.

Government officials who are responsible for arms control under the ATT can benefit from precise definitions of weapons categories, as these can facilitate the
process of identifying weapons. Sub-categories such as ammunition/munitions and parts and components should also be clearly defined. Such clarity and precision will permit government officials to understand sections of a national control list more readily and to place fewer strains on national resources as a result.

4.4 Who is responsible for a national control list?

A national control list is generally included in national legislation or official policy documents that govern the export and import of controlled items. Various government agencies involved in the regulation and processing of arms transfers should play a role in the administration and implementation of a national control list, and the competent national authorities should provide the requisite administrative support—see Section 3.3.2.

The creation of the national control list is an important legal responsibility and should be undertaken with the informed consent of the highest national authorities. At a minimum, states parties should involve the agencies and ministries listed in Table 4.2 in the creation of a national control list. The ministry of foreign affairs may be the body best placed to interact with the ATT Secretariat on the national control list, as required by Article 5(6) of the Treaty, as well as with the governments of other states parties.

Effective coordination among national authorities that represent different issues is essential to the successful creation of the national control list, and to the ongoing productivity and ease of operation of the ATT process within a national

<table>
<thead>
<tr>
<th>Ministry or authority</th>
<th>Key sector or personnel</th>
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</thead>
<tbody>
<tr>
<td>Customs and border control</td>
<td>Customs enforcement officials</td>
</tr>
<tr>
<td>Defence</td>
<td>Armed forces and police</td>
</tr>
<tr>
<td>Finance</td>
<td>Customs enforcement officials</td>
</tr>
<tr>
<td>Foreign affairs</td>
<td>Experts engaged in Treaty reporting</td>
</tr>
<tr>
<td>Interior</td>
<td>Intelligence-gathering and border security organizations</td>
</tr>
<tr>
<td>Justice</td>
<td>Prosecutorial authorities</td>
</tr>
<tr>
<td>Trade</td>
<td>Local businesses, such as arms and ammunition manufacturers, distributors, and exporters</td>
</tr>
</tbody>
</table>
government. Interaction among the ministries listed in Table 4.2, as well as others involved in national legislation and practice, may be coordinated by the nation’s executive authority—either the office of the prime minister or that of the president, whichever wields executive authority in government—in the generation of a national control list. The stakeholders may be assisted in these tasks by the competent national authorities whose establishment the Treaty requires.

The national control list should not be included in national ATT implementing legislation, as it may require rapid amendment at a future date. Although the ATT does not require such updates, changes to technology will almost certainly be reflected in future work of Groups of Governmental Experts to amend the UN Register category definitions—see Box 11.2; states that do not attempt, from time to time, to keep up with these amendments may eventually find themselves out of step with international practice.

Resources available to states parties that seek to update their national control lists include the Wassenaar Arrangement Munitions List and the Common Military List of the European Union (EU), both of which are updated annually. They represent the consensus work of specialists from many of the world’s largest and most sophisticated producers and exporters of arms, ammunition, and parts and components. Although neither the Wassenaar Arrangement nor the EU is a globally representative body, states can take advantage of the expertise these lists represent, as well as their regular updating, to avoid having to use scarce national resources to, in effect, ‘reinvent the wheel’ in national control list definitions. As the Wassenaar Arrangement points out:

Although the Arrangement does not have an observer category, a diverse outreach policy is envisaged in order to inform non-member countries about the [Wassenaar Arrangement] objectives and activities and to encourage non-members to adopt national policies consistent with the objectives of greater transparency and responsibility in transfers of conventional arms and dual-use goods and technologies, maintain fully effective export controls and adhere to relevant non-proliferation treaties and regimes (WA, n.d.b).

Wassenaar Arrangement outreach activities have led states as disparate as China, Israel, and Singapore to adopt aspects of its Munitions List in their national arms transfer legislation.4
While customs officials may be partially responsible for implementing and interpreting the national control list on a day-to-day basis, several other groups need to be made aware of ATT-linked export and import issues. In particular, as UNODA points out, there is a need to involve national authorities with responsibilities in the control of imports and exports of conventional arms, including:

- officials in charge of export, import, transit, and trans-shipment licences;
- procurement officials (from the ministries of commerce, defence, and interior);
- officials from the ministry of foreign affairs;
- law enforcement officials (such as the police, customs agents, and intelligence officials);
- ombudsmen offices; and
- monitoring entities of civil society (UNLIREC, n.d.).

**Further resources**

**Multinational control lists**
European Union Common Military List
Wassenaar Arrangement Control Lists

**Selected national control lists**
Australian Defence and Strategic Goods List
Canada Export Control List
Singapore Strategic Goods Control List
UK Strategic Export Control Lists
US Registration and Licensing of Brokers

**Guides on how to prepare national control lists**
ATT Implementation Toolkit (UNODA)
United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR)
Contact: unscar-unoda@un.org

**Acknowledgements**

**Principal authors**
Ted Seay and Stuart Casey-Maslen
Comparative Analysis of Global Instruments on Firearms and other Conventional Arms:
Synergies for Implementation
5. Synergies

5.1 National transfer control systems

The Firearms Protocol, the Programme of Action (PoA) and the Arms Trade Treaty (ATT) all require States to establish and maintain national control systems. All three instruments are not directive on the particulars of those systems, though the Firearms Protocol requires an “effective system” of export and import authorization or licensing, as well as of measures on international transit for the transfer of firearms, their parts and components and ammunition. In the PoA, States undertake to “put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients”. Article 5(2) of the ATT requires each State party to “establish and maintain a national control system including a national control list, in order to implement the provision of this Treaty”.

As the name suggests, a “control” system is an essential element in being able to monitor the movement of conventional arms, creating delineation between legal and illicit trade and enabling criminal justice activities to prosecute such illicit activities. A national control system is a cornerstone of compliance with the ATT and many of the provisions of the Firearms Protocol. However, each of these instruments provides a varying degree of detail on what a national control system should entail.

Firearms Protocol

Article 10(1) of the Firearms Protocol requires States to establish or maintain an effective system of licensing or authorization to control the import and export of firearms, their parts and components and ammunition. The Protocol also requires that States take “measures” on the international transit of firearms, their parts and components and ammunition. Such a system must ensure that firearms are not exported to or through countries that have not authorized the transfer, and that the content of the documents used for legal import and export is sufficient to support the prosecution of the offence of trafficking.

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32 Article 10(1), Firearms Protocol.
33 Section II, paragraph 2, Programme of Action.
34 Article 10, paragraphs 2 and 4, Firearms Protocol.
35 Article 10(3), Firearms Protocol.
States must also take measures to enhance accountability and security associated with their import and export systems.36

The Protocol does not specify in detail the form the system of licensing of import and export or the measures on international transit a State must take. This is left largely to the discretion of the States parties. In addition to ensuring that legislation incorporates all the mandatory provisions of the Protocol, States might have existing obligations under other multilateral, regional and subregional agreements that have application to the international import, export or transit of firearms, their parts and components and ammunition.37

Programme of Action

At the national level, States implementing the Programme of Action have undertaken to “establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons”.38 No particulars on such a national system are set out, though the Firearms Protocol, and now the ATT, provide further elaboration on the possible content of such a system.

Arms Trade Treaty

In addition to establishing and maintaining a national control system, article 5 (2) stipulates that States parties must establish a national control list. Control lists are the basic tool in any national trade control system, setting out the range of conventional arms and related items that are subject to national trade controls as well as the definitions for them. The ATT, in recognizing that a national control system will require definitions (and none are provided in the Treaty itself) requires that national definitions reflect, at the very least, existing definitions in the United Nations Register of Conventional Arms and those used in relevant United Nations instruments when the ATT entered into force. Competent national authorities are to be designated and the control system must be “effective” and “transparent”.

36 Article 10 (5), Firearms Protocol.
37 These include for example the Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community; the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa; the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Related Materials; and the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly.
38 Section II, paragraph 11, Programme of Action.
### Comparative table — National control systems

<table>
<thead>
<tr>
<th>Treaty/Instrument</th>
<th>National Control Systems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organized Crime Convention</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Firearms Protocol</strong></td>
<td></td>
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<tr>
<td>• Establish or maintain an effective system of licensing or authorization to control the import and export of firearms, their parts and components and ammunition.</td>
<td></td>
</tr>
<tr>
<td>• Take “measures” on international transit for firearms, their parts and components and ammunition.</td>
<td></td>
</tr>
<tr>
<td>• Such a system must:</td>
<td></td>
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<tr>
<td>– Ensure that firearms are not exported to or through countries that have not authorized the transfer.</td>
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<tr>
<td>– Ensure that the content of the documents used for legal import and export is sufficient to support the offence of trafficking.</td>
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<tr>
<td>• States must also take measures to enhance accountability and security associated with their import and export system.</td>
<td></td>
</tr>
<tr>
<td><strong>Arms Trade Treaty</strong></td>
<td></td>
</tr>
<tr>
<td>• Establish and maintain a national control system, including a national control list.</td>
<td></td>
</tr>
<tr>
<td>• 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 articles 3 and 4.</td>
<td></td>
</tr>
<tr>
<td><strong>Programme of Action</strong></td>
<td>Establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons.</td>
</tr>
<tr>
<td><strong>International Tracing Instrument</strong></td>
<td>n/a</td>
</tr>
</tbody>
</table>

### 5.2 Authorization/licensing of arms transfers

The authorization or licensing of arms transfers is a fundamental aspect of control in the international trade of conventional arms. Creating a process for applying for authorization or a licence, as well as the legislative requirements to be met prior to issuing authorizations or licences, is a key component of all the instruments.

#### Firearms Protocol

The Firearms Protocol and its system of authorizations of international transfers of firearms is based on reciprocity, requiring States to provide authorizations to one another before permitting shipments of firearms to leave, arrive or transit across their territory. The Firearms Protocol sets out procedural requirements that must be in place. Before an export licence or
authorization for a shipment of firearms, their parts and components and ammunition, a State party must verify that:

- The importing States have issued import licences or authorizations.
- Without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

The Firearms Protocol contains no export criteria against which to assess a potential licence or authorization for security or arms control purposes. However, the ATT does contain export criteria, and also sets out the circumstances under which a transfer must be prohibited (discussed below). In addition, many States already have provisions in their national legislation on the export of military conventional weapons that set out the criteria under which licence applications will be assessed for approval or rejection. States might also have obligations under one of the numerous multilateral, regional or subregional documents that provide elaborated criteria for the review of licence applications. Such provisions would not normally appear in legislation dealing solely with firearms, but would be part of export control legislation dealing with exports of a broad range of conventional arms (as set out in a national control list), particularly with respect to the export of arms for military end use or end users.

**Programme of Action**

The Programme of Action (PoA) provides broadly that States undertake to “assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade”. What the body of “relevant international law” is specifically in relation to exports of small arms and light weapons is not made clear. However, the PoA clearly suggests that there is a body of law directly relevant to exports of small arms and light weapons. In this regard, the subsequent adoption of the ATT fills in the details in setting out a range of relevant bodies of law, including international human rights law and international humanitarian law.

**Arms Trade Treaty**

One of the objectives of the Arms Trade Treaty (ATT) is to “Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms”. In this sense, the ATT is quite different from the Firearms Protocol. The Firearms Protocol seeks in part to constrain the possibility of illicit trade through procedural licensing and authorization requirements. The ATT establishes global

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39 For example, the 2006 ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials; the EU Common Position defining common rules governing control of exports of military technology and equipment; and the 2004 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.

40 See the UNODC Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

41 Section II, paragraph 11, Programme of Action.

42 Article 1, Arms Trade Treaty.
benchmarks for the circumstances when an export or transfer is permitted or prohibited, based on its potential negative consequences. This is done primarily through two articles in the Treaty.

Article 6 on prohibitions creates new, and codifies existing, standards on the international transfer of conventional arms, ammunition/munitions and parts and components, reflecting the international law standards alluded to in the Programme of Action. Article 6 sets out three circumstances when a transfer of all items included in the ATT is prohibited:


2. Where 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. Where a State party 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 6 (2) makes specific reference to relevant international treaties concerning the authorization of transfers of, or the illicit trafficking in, conventional arms and related items. The Firearms Protocol must be a relevant international obligation for the purposes of article 6 (2), given that it is an international treaty concerning illicit trafficking. Authorization of exports in accordance with the terms of the Protocol is set out in article 10 and requires, inter alia, prior import authorization before issuing the export licence or authorization, and verification from transit States that there is no objection to the transit. Minimum information is required on export and import documentation. States parties are also obliged to require appropriate simple markings on each imported firearm.

Article 7 sets out the conditions when a State party shall not authorize an export of conventional arms and related items. If the exporting State party determines that there is an “overriding risk” that the export would result in any of the negative consequences set out in article 7 (1), then the exporting State party must not authorize the export.

These include those situations where there is an overriding risk that the export would undermine peace and security, or could be used to commit or facilitate a serious violation of international humanitarian law, a serious violation of international human rights law, or a terrorism, or transnational organized crime offence under international conventions or protocols to which the exporting State is a party (including the Firearms Protocol).

By referring to transnational organized crime offences under international conventions or protocols to which the exporting State is a party, the ATT is reiterating and reaffirming existing obligations a State might have. In terms of the ATT, the offences related to firearms as set out in the Firearms Protocol are particularly relevant. In assessing the risk of the offence of illicit trafficking being committed, for example, the exporting State party should

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43 Article 10 (2)-(3), Firearms Protocol.
44 Article 8 (1) (b), Firearms Protocol.
consider whether the marking of firearms as required by article 8 of the Protocol has been done (at manufacture) and will be done (on import).

The distinction between article 6 and article 7 must be understood particularly in regard to the incorporation of existing obligations under other instruments, and in particular the Firearms Protocol. Article 6(2) imposes a strict obligation not to authorize a transfer, imposing a “strict liability” standard—meaning where certain conditions are not met (and thus violating existing obligations in relevant international agreements), the transfer is prohibited. This is different from the standard of knowledge required in article 6(3) or the assessment of risk required in article 7, which presumes a due diligence standard on the part of the State party to consider possible risky outcomes—for example, that the export would result in illicit trafficking in firearms.

5.3 Import systems

All three arms control instruments—the Firearms Protocol, the Programme of Action and the Arms Trade Treaty—require some form of control over imports. Systems for importing conventional arms of a State take into account a number of factors: a State will control what type of conventional arms and related ammunition/munitions enter its territory as well as control who can receive and use which types of weapons. In order to import in the first place, a State is required to provide varying degrees of information to the exporting State.

Firearms Protocol

States parties to the Firearms Protocol are required to establish or maintain an effective system of import licensing or authorization for firearms, their parts and components and ammunition. While not overly prescriptive, the Firearms Protocol does set out some requirements:

- Require appropriate simple marking on each imported firearm, permitting identification of the country of import, therefore the national system must accommodate this obligation.
- Import authorizations are to be obtained before an export authorization can be issued, therefore the national system must be able to provide such authorizations issued within a national legal framework.
- Minimum information must be included on import authorization: the place and the date of issuance, the date of expiry, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit.
- Information contained in the import licence must be provided in advance to the transit States.
- The importing State party, when requested, is to inform the exporting State party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.
- States parties may adopt simplified procedures for the temporary import (and export and transit) of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.
Programme of Action

The Programme of Action (PoA) requires States to exercise “effective control over the import of small arms and light weapons with the aim to prevent illegal manufacture or illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients”. The PoA also requires States to establish a national system of import licensing or authorization.

International Tracing Instrument

The International Tracing Instrument (ITI) does not refer to import control systems but does require simple marking on imported small arms and light weapons permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking. This provision is stated in article 8(b) with reference to the import marking requirements set out in the Firearms Protocol.

Arms Trade Treaty

While import controls were discussed throughout the negotiations as an element of the Arms Trade Treaty, there are more detailed provisions on exports than imports. However, articles 6 and 8 set out requirements for importing States:

- Upon request, an importing State party is to provide appropriate and relevant information to assist an exporting State party in its export assessment under article 7.
- Take measures to regulate imports where necessary, which may include establishing “import systems”.
- Where the importing State party is the final destination of the arms, it can request information from the exporting State party on pending or actual export authorizations of those arms.
- A State party will need to ensure that its national control system enables the thorough assessment of all imports of conventional arms and related items in order to effectively implement the article 6 prohibitions.
## Comparative Analysis of Global Instruments on Firearms and other Conventional Arms: Synergies for Implementation

### Comparative table — Requirements for arms transfer authorizations, export and import controls

<table>
<thead>
<tr>
<th></th>
<th>Firearms Protocol</th>
<th>Programme of Action</th>
<th>Arms Trade Treaty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Export</strong></td>
<td>• Establish or maintain an effective system of export licensing or authorization (art. 10 (1)).</td>
<td>• Establish an effective system of export licensing or authorization (sect. II, para. 11).</td>
<td>• Establish and maintain a national control system, including a national control list (art. 5 (2)).</td>
</tr>
<tr>
<td></td>
<td>• Verify: (a) importing States have issued import licences or authorizations; and (b) written notice that transit States do not object (art. 10 (2)).</td>
<td>• Take appropriate measures, including legal and administrative ones, against activities that violate arms embargoes (sect. II, para. 15).</td>
<td>• Establish and maintain national control systems to regulate export of ammunition/munitions (art. 3) and parts and components (art. 4).</td>
</tr>
<tr>
<td></td>
<td>• Documentation must include: place and date of issuance, date of expiry, country of export, country of import, final recipient, description and quantity of the items, and transit countries (if relevant) (art. 10 (3)).</td>
<td>• Assess export applications according to strict national regulations and procedures that are consistent with international law and that take into account the risk of diversion (sect. II, para. 11).</td>
<td>• A State shall not authorize transfers that would:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Maintain a national contr</td>
<td>• Establish and maintain national control systems to regulate export of ammunition/munitions (art. 3) and parts and components (art. 4).</td>
</tr>
<tr>
<td></td>
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<td>ol system, including a national control list (art. 5 (2)).</td>
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<tr>
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<tr>
<td></td>
<td></td>
<td>• Establish and maintain national control system, including a national control list</td>
<td>• Violate United Nations Security Council Chapter VII obligations (in particular arms embargoes) (art. 6 (1)).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Establish and maintain national control systems to regulate export of ammunition/munitions (art. 3) and parts and components (art. 4).</td>
<td>• 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 (art. 6(2)).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• A State shall not authorize transfers that would:</td>
<td>• 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 (art. 6(3)).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• A State shall not authorize transfers that would:</td>
<td>• Each exporting State party must make a national assessment of whether the arms under consideration:</td>
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<tr>
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<td></td>
<td>• A State shall not authorize transfers that would:</td>
<td>• Would contribute to or undermine peace and security; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• A State shall not authorize transfers that would:</td>
<td>• Could be used to commit or facilitate a serious violation of international humanitarian law or of international human rights law; or an act constituting an offence under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• A State shall not authorize transfers that would:</td>
<td>• Also, under article 7(4), when making the national assessment the exporting State is required to take into account the risk of the arms and other items under consideration being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.</td>
</tr>
</tbody>
</table>
5. Synergies

- The exporting State must consider whether there are measures that can be taken in conjunction with the importing State to mitigate the risks of any negative consequences identified in the assessments under article 7(1)(a) and (b).
- Under article 7(3), if the exporting State party determines that there is an "overriding risk" that the export would result in any of the negative consequences foreseen under article 7(1)(a) and (b), then the exporting State party must not authorize the export.

<table>
<thead>
<tr>
<th>Import</th>
<th>Each State party shall establish or maintain an effective system of import licensing or authorization (art. 10).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The importing State party shall, upon request, inform the exporting State party of the receipt of the dispatched shipment (art. 10(4)).</td>
</tr>
<tr>
<td></td>
<td>Establish an effective system of import licensing or authorization (sect. II, para. 11).</td>
</tr>
<tr>
<td></td>
<td>The importing State shall ensure that relevant information (which may include end use or end user documentation) is provided, upon request, to assist the exporting State party (art. 8(1)).</td>
</tr>
<tr>
<td></td>
<td>The importing State shall take measures to allow it to regulate, where necessary, imports under its jurisdiction. Measures may include import systems (art. 8(2)).</td>
</tr>
<tr>
<td></td>
<td>The importing State may request information from the exporting State regarding relevant pending or actual export authorizations (art. 8(3)).</td>
</tr>
<tr>
<td></td>
<td>Importing States required to apply the prohibitions on imports set out in art. 6.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transit</th>
<th>Establish or maintain effective measures on international transit (art. 10(1)).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Establish or maintain effective measures on international transit (sect. II, para. 11).</td>
</tr>
<tr>
<td></td>
<td>States parties to take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment through their territory (art. 9).</td>
</tr>
<tr>
<td></td>
<td>States parties must apply article 6 to transit and trans-shipment.</td>
</tr>
</tbody>
</table>

*Article 6 applies to all “transfers” defined in article 2 (2) as exports, imports, transit, trans-shipment and brokering.*
5.4 Brokering

Both the Firearms Protocol and the Programme of Action were the first initiatives at the global level to address brokering. The inclusion of suggested controls on brokering activities in the international trade in conventional arms recognizes that often brokering is done with little or no regulation by States. Since the development of the Firearms Protocol and the PoA, there has been an increased understanding within the United Nations on the activities that are encompassed by brokering and the need for States to control such activities strictly. This shift is represented by the fact that the ATT includes a mandatory provision for States parties to regulate brokering pursuant to its national laws.

Firearms Protocol

The Firearms Protocol requires States to consider establishing a system to regulate those who participate in brokering activities. Three suggested measures are given:

- Registration of brokers operating within their territory
- Requiring licensing or authorization of brokering
- Requiring disclosure of import and export licences or authorizations, or accompanying documents of the names and locations of brokers involved in the transaction

The Firearms Protocol also suggests that States include information on brokers and brokering in their exchanges of information under article 12 of the Protocol and retain records regarding brokers and brokering as part of their record-keeping obligations set out in article 7.

The Firearms Protocol does not explicitly suggest establishing appropriate penalties for illicit brokering activities (as the Programme of Action does). However, the ancillary offences contained in article 5(2) of the Firearms Protocol can provide some support for the investigation and prosecution of illicit brokering activities. Moreover, the provisions of the Organized Crime Convention apply mutatis mutandis to the Protocol. The Organized Crime Convention can therefore be relevant to prosecuting and establishing appropriate penalties for illicit brokering to the extent that those activities are deemed to be “serious” offences as defined under the Convention.

Programme of Action

The Programme of Action (PoA) encourages States “to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering”.

The PoA sets out three suggested measures that should be included in national legislation or procedures:

- Registration of brokers
- Licensing or authorization of brokering transactions
- Appropriate penalties for all illicit brokering activities performed within the State’s jurisdiction and control (para. 14)

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45 Article 15, Firearms Protocol.
46 Section II, paragraph 14, Programme of Action.
Arms Trade Treaty

The Arms Trade Treaty (ATT), as noted, represents an increased recognition by the international community of the necessity of regulating brokering by requiring States parties to take measures, pursuant to its national laws, to regulate brokering “taking place under its jurisdiction for conventional arms covered under article 2(1)”.47

While the ATT requires States parties to take measures, the treaty provides less direction on suggested measures than either the Firearms Protocol or the Programme of Action. The ATT suggests two possible measures:

- Requiring brokers to register
- Requiring brokers to obtain written authorization before engaging in brokering

In considering the necessary measures in implementing the ATT, States should therefore draw on the additional suggestions in the Firearms Protocol and the Programme of Action (see recommendations below in section 6).

<table>
<thead>
<tr>
<th>Comparative table — Brokering</th>
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<tbody>
<tr>
<td>Firearms Protocol</td>
</tr>
<tr>
<td>Arms Trade Treaty</td>
</tr>
<tr>
<td>Programme of Action</td>
</tr>
</tbody>
</table>

5.5 National focal points

Establishing a focal point (or points) is common to all three instruments. Broadly, the role of a focal point is to act as a national liaison office between their State and the international community. Generally, the role of a national focal point is to exchange information on the implementation of the treaties or the PoA with other States and regional and international organizations.

Firearms Protocol

Article 13 (2) requires each State party to identify a national body or a single point of contact to act as liaison between it and other States parties on matters relating to this Protocol.

47 Article 10, Arms Trade Treaty.
Programme of Action

The Programme of Action suggests that States designate two points of contact:

- A national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action.\(^ {48}\)
- A point of contact within subregional and regional organizations to act as liaison on matters relating to the implementation of the Programme of Action.\(^ {49}\)

In terms of implementation, a number of States have reported that they have established a National Coordination Agency (NCA) (also known as National Commissions) on small arms, and a number of States have also established a National Point of Contact (NPC) (also known as a National Focal Point) on the PoA.\(^ {50}\)

International Tracing Instrument

The International Tracing Instrument also requires the establishment of a national focal point. States are to designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of this instrument.

Arms Trade Treaty

The Arms Trade Treaty, as part of general implementation obligations, requires each State party to designate one or more national points of contact to exchange information on matters related to the implementation of the Treaty (art. 5(6)).

<table>
<thead>
<tr>
<th><strong>Comparative table — Points of contact</strong></th>
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<tbody>
<tr>
<td><strong>Firearms Protocol</strong></td>
</tr>
<tr>
<td><strong>Arms Trade Treaty</strong></td>
</tr>
</tbody>
</table>
| **Programme of Action** | Suggests designation of:  
- A national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action.  
- A point of contact within subregional and regional organizations to act as liaison on matters relating to the implementation of the Programme of Action. |
| **International Tracing Instrument** | States are to designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of ITI. |

\(^ {48}\) Section II, paragraph 5, Programme of Action.

\(^ {49}\) Section II, paragraph 24, Programme of Action.

\(^ {50}\) A Decade of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of National Reports, UNIDIR, p. 12.
5.6 International cooperation

What is common across all three instruments is the promotion of international (or regional) cooperation to tackle the challenges posed by the proliferation of weapons and their negative consequences. This is considered one of the primary means through which the obligations are to be implemented. International cooperation and assistance emanating from such cooperation is limited to the boundaries of the treaty.

Organized Crime Convention

The Organized Crime Convention (UNTOC) provides significant and broad-ranging tools for international cooperation. States parties to the UNTOC shall afford one another “the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings” in relation to the offences covered by the Convention, inter alia, the offences established under the Firearms Protocol (article 18). A broad range of legal assistance may be requested: taking evidence or statements; serving judicial documents; executing search and seizure; examining objects and sites; providing information, evidence and expert evaluations; documents and records; tracing proceeds of crime; facilitating the appearance of witnesses; and any other kind of assistance not barred by domestic law. Article 18 of the Convention applies also to international cooperation in the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation (as set out in article 13).

Specific international cooperation mechanisms are also necessary to enable countries to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property. Article 13 sets out the procedures for international cooperation in confiscation matters. A State party that receives a request from another State party is required by article 13 to take particular measures to identify, trace and freeze or seize proceeds of crime for purposes of eventual confiscation. Article 13 also describes the manner in which such requests are to be drafted, submitted and executed.

Article 18 (1) establishes the scope of the obligation to provide mutual legal assistance. States parties are required to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention as provided in article 3 (this includes the offences established under the Firearms Protocol). Each State party must ensure that its mutual legal assistance treaties and laws provide for assistance to be provided for cooperation with respect to investigations, prosecutions and judicial proceedings. Article 18 (1) requires the provision of mutual legal assistance where the requesting State party has reasonable grounds to suspect that the offence is transnational in nature and that the offence involves an organized criminal group. The fact that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party constitutes in itself a sufficient reasonable ground to suspect that the offence is transnational. Importantly, States parties do not need to enter into new agreements to cooperate with each other where the UNTOC is the basis of the cooperation.

Firearms Protocol

The Firearms Protocol requires States parties to cooperate at the bilateral, regional and international levels to combat illicit manufacturing and trafficking51 (art. 13). Particulars of

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51 Article 13 (1), Firearms Protocol.
such cooperation are not detailed, however cooperation that involves information-sharing is set out in detail in article 12. Under this article, more specific forms of cooperation are delineated, including sharing information on:

- Case-specific matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.
- Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition.
- The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition, and ways of detecting them.
- Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition.
- Legislative experiences and practices related to prevention of illicit manufacturing and illicit trafficking.
- Relevant scientific and technological information useful to law enforcement authorities.

States parties are also required to cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked (article 12 (4)).

In addition, the United Nations Office on Drugs and Crime (UNODC) has been mandated by the Conference of the Parties (COP) to the UNTOC to conduct a study on the transnational nature, routes and modi operandi used in firearms trafficking and to continue gathering information from States parties on illicit trafficking in firearms on a regular basis (COP resolutions 5/4, 6/2 and 7/2). Subsequently, the intergovernmental Working Group on Firearms, established by the Conference of the Parties, further reiterated the request to UNODC to continue collecting information from Member States on firearms trafficking, and recommended that the Conference consider requesting the Secretariat to produce a biennial study on the dimension, patterns and flows of trafficking at the national and, if appropriate, regional and international levels.52

Programme of Action

Cooperation figures prominently in the PoA. For example, section III of the Programme of Action (PoA) is dedicated to “implementation, international cooperation and assistance”. The PoA recognizes that States need “close” international cooperation to prevent, combat and eradicate the illicit trade in small arms.53 In this regard, the PoA provides, inter alia, that:

- States should enhance cooperation, the exchange of experience and training among competent officials, including customs, police, intelligence and arms control officials, at the national, regional and global levels in order to combat the illicit trade in small arms and light weapons in all its aspects.54

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53 Section III, paragraph 1, Programme of Action.
54 Section III, paragraph 7, Programme of Action.
• States are encouraged to consider international cooperation and assistance to examine technologies that would improve the tracing and detection of illicit trade in small arms and light weapons.55

• States are encouraged to exchange information on a voluntary basis on their national marking systems on small arms and light weapons.60

At the regional level, States undertake to create mechanisms for transborder customs cooperation and networks for information-sharing among law enforcement, border and customs control agencies.57 Importantly, the PoA emphasizes the need for coordinated cooperation, noting that States undertake “to cooperate and to ensure coordination, complementarity and synergy in efforts to deal with the illicit trade in small arms and light weapons in all its aspects at the global, regional, subregional and national levels […]”58

**International Tracing Instrument**

The International Tracing Instrument (ITI) has extensive provisions on international cooperation, which is not surprising since the successful tracing of illicit small arms and light weapons is highly dependent on cooperation at all levels. In this regard, the ITI contains the basic requirement that States cooperate on a bilateral and, where appropriate, on a regional and international basis to support the effective implementation of the ITI.59

States that are able to do so are to consider rendering technical, financial and other assistance, both bilaterally and multilaterally, in building national capacity in the areas of marking, record-keeping and tracing,60 as well as assistance to examine technologies that would improve the tracing and detection of illicit small arms and light weapons, and measures to facilitate the transfer of such technologies.61

States are also to cooperate with the International Criminal Police Organization (INTERPOL) to support the effective implementation of the ITI, including by promoting such implementation.62 States are encouraged to use INTERPOL’s mechanisms to facilitate tracing operations and investigations to identify and trace illicit small arms and light weapons, and to build national capacity to initiate and respond to tracing requests.63

**Arms Trade Treaty**

The Arms Trade Treaty (ATT) requires cooperation between its States parties to implement the Treaty (art. 15). Article 15 sets out a number of cooperative measures States are encouraged to undertake. This includes:

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55 Section III, paragraph 10, Programme of Action.
56 Section III, paragraph 12, Programme of Action.
57 Section II, paragraph 27, Programme of Action.
58 Section III, paragraph 2, Programme of Action.
59 Article 26, ITI.
60 Article 27, ITI.
61 Article 28, ITI.
62 Articles 33 and 34, ITI.
63 Article 35, ITI.
• Exchanging information on matters of mutual interest regarding the implementation and application of the ATT.

• Consulting on matters of mutual interest and to share information, as appropriate, to support ATT implementation.

• Sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under article 2(1).

• Cooperating with each other to prevent the transfer of conventional arms covered under article 2(1) becoming subject to corrupt practices.

• Exchanging experience and information on lessons learned in relation to any aspect of the Treaty.

The ATT requires specifically that States parties “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.”64 However, the ATT does not serve as a legal basis for the purpose of such cooperation. In the absence of an existing or sufficiently broad cooperation agreement, States parties to the Organized Crime Convention may want to explore the possibility of using the Convention as the legal basis. This relates directly to enforcement provisions (discussed below).

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### Comparative table — International cooperation

<table>
<thead>
<tr>
<th>Organized Crime Convention</th>
<th>States parties to ensure “the widest measure of mutual legal assistance” in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention, and mutatis mutandis, the offences established under the Firearms Protocol (article 18).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A broad range of legal assistance may be requested: taking evidence or statements; serving judicial documents; executing search and seizure; examining objects and sites; providing information, evidence and expert evaluations; documents and records; tracing proceeds of crime; facilitating the appearance of witnesses; and any other kind of assistance not barred by domestic law.</td>
</tr>
<tr>
<td></td>
<td>International cooperation in the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation (as set out in article 13).</td>
</tr>
<tr>
<td></td>
<td>States parties do not need to enter into new agreements to cooperate with each other where the UNTOC is the basis of the cooperation.</td>
</tr>
</tbody>
</table>

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64 Arms Trade Treaty, article 15(5).
### Firearms Protocol
- States parties to cooperate at the bilateral, regional and international levels to combat illicit manufacturing and trafficking (art. 13).
- Specific sharing of information on:
  - Case-specific information.
  - Organized criminal groups known to take part or suspected of taking part in illicit manufacturing or trafficking.
  - The means of concealment used in illicit manufacturing or trafficking.
  - Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking.
  - Legislative experiences and practices related to prevention of illicit manufacturing and illicit trafficking.
  - Relevant scientific and technological information (art. 12).
- Required to cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked (article 12 (4)).

### Arms Trade Treaty
- Requires cooperation between its States parties to implement the Treaty (art. 15). Encourages:
  - Exchanging information on matters of mutual interest.
  - Sharing information regarding illicit activities and actors to prevent diversion.
  - Cooperation to prevent transfers being subject to corrupt practices.
  - Exchanging experience and information on lessons learned.
- States parties to afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the Treaty.

### Programme of Action
- Cooperation at the regional and global level emphasized, including the exchange of experience and training, examining technologies, information on marking systems, etc.
- At the regional level, create mechanisms for transborder customs cooperation and networks for information-sharing among law enforcement, border and customs control agencies.
- Emphasizes the need for coordinated cooperation.

### International Tracing Instrument
- States to cooperate on a bilateral and, where appropriate, on a regional and international basis to support the effective implementation of the ITI.
- States to consider rendering technical, financial and other assistance in the areas of marking, record-keeping and tracing, and technologies that would improve the tracing and detection of illicit small arms and light weapons.
- States to cooperate with INTERPOL to support the effective implementation of the ITI.
5.7 Enforcement

Enforcement is a basic requirement in instruments that aim to establish legal controls and adopt criminal law approaches to counter illegal activities. However, the instruments take different approaches.

Organized Crime Convention

The Organized Crime Convention has broad application and can also be invoked for other “serious crimes” if they are transnational in nature and involve an organized criminal group (Organized Crime Convention, article 2 (a) and (b) and article 3 (b)). A serious crime is defined in article 2 (b) to be any offence carrying a maximum penalty of four years deprivation of liberty or a more serious penalty.

The Organized Crime Convention is not limited to a list of predetermined offences. Rather it adopts an approach that takes into account the seriousness of the acts it covers. While the Convention applies to offences that are transnational in nature and involve organized criminal groups, this does not mean that these elements themselves are to be included as elements of the domestic offences. On the contrary, drafters must not include a transnational element in the definition of domestic offences unless expressly required by the Convention or its Protocols. The definition of “serious crime” facilitates a more uniform approach at the global level, and considerably enhances the potential use of the Convention for the purposes of international cooperation. States parties that establish as “serious crimes” certain offences (for example, illicit brokering) can then use the law enforcement and international cooperation provisions of the UNTOC (such as mutual legal assistance, extradition, etc.) to facilitate their investigation and prosecution.

Firearms Protocol

The Firearms Protocol sets out the specific criminal offences that must be established in national law by States parties with the presumption that prosecution of those offences (i.e. enforcement) should occur. The Protocol requires the criminalization of three groups of central offences:

(a) Illicit manufacturing:
   (i) Any manufacturing or assembly of firearms without marking; and
   (ii) Any manufacturing or assembly from illicit (trafficked) parts and components; and
   (iii) Any manufacturing or assembly without legal permit or authorization.

(b) Illicit trafficking:
   (i) Any transnational transfer without legal authorization; and
   (ii) Any transnational transfer if firearms are not marked.

(c) Removing or altering serial numbers of other markings.

The Firearms Protocol must be read in conjunction with its parent Convention, the UNTOC, especially in relation to the criminal offences and their enforcement. The provisions of the
Convention apply mutatis mutandis to the Protocol (Protocol, art. 1, paras. 2 and 3), and offences established pursuant to the Protocol are to be considered offences established under the Convention. This means that States must also criminalize the Convention offences of participation in an organized criminal group (Convention, art. 5), laundering of proceeds of crime (Convention, art. 6), corruption (Convention, art. 8), and obstruction of justice (Convention, art. 23) and apply them to firearms-related offences. This also requires States to take a number of measures into consideration with respect to the offences established by the Protocol. These are set out in article 11 of the Convention and include, for example, conditions of release for people accused of Protocol offences, general conditions for parole or early release, and statute of limitations.

Programme of Action

The Programme of Action refers to the establishment of offences and their subsequent enforcement. For example, at the national level, States undertake “to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes” (para. 3). States also undertake “to adopt where they do not exist and enforce, all the necessary measures to prevent the manufacture, stockpiling, transfer and possession of any unmarked or inadequately marked small arms and light weapons” (para. 8). Such necessary measures could include criminal provisions relating to marking.

International Tracing Instrument

Tracing is fundamentally a law enforcement tool and so in this sense, the International Tracing Instrument (ITI) is essentially about enforcement. The main purpose of the ITI is to identify and trace illicit small arms and light weapons. Under article 6 of the ITI, small arms and light weapons are “illicit” if:

(a) They are considered illicit under the law of the State within whose territorial jurisdiction the small arm or light weapon is found;

(b) They are transferred in violation of arms embargoes decided by the Security Council in accordance with the Charter of the United Nations;

(c) They are not marked in accordance with the provisions of this instrument;

(d) They are manufactured or assembled without a licence or authorization from the competent authority of the State where the manufacture or assembly takes place; or

(e) They are transferred without a licence or authorization by a competent national authority.

While the ITI does not specify offences, the elements of “illicit” as set out in article 6 support the offence of illicit trafficking as set out, for example, in the Firearms Protocol.

Arms Trade Treaty

During the negotiations for the Arms Trade Treaty (ATT), discussions on enforcement measures suggested specific forms of measures, including the establishment of penalties and the
ability to inspect and seize shipments. However, the final treaty text does not proscribe any particular enforcement measures. In determining what may constitute “appropriate measures”, States can draw on the other instruments for guidance. For example, States parties to both the ATT and the Organized Crime Convention can establish as “serious crimes” offences to enforce the ATT, and are able to use the Organized Crime Convention provisions for its enforcement.

### Comparative table — Enforcement

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<tr>
<td><strong>Firearms Protocol</strong></td>
<td>States parties to create the offences of:</td>
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<td></td>
<td>• Illicit manufacturing of firearms, their parts and components and ammunition.</td>
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<td></td>
<td>• Illicit trafficking in firearms, their parts and components and ammunition.</td>
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<td></td>
<td>• Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by the Protocol.</td>
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<td>• Attempting to commit or participating as an accomplice in these offences.</td>
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<td>• Organizing, directing, aiding, abetting, facilitating or counselling the commission of the above offences (art. 5, para. 2); illicit reactivation of firearms (&quot;optional&quot; offence) (art. 9).</td>
</tr>
<tr>
<td><strong>Arms Trade Treaty</strong></td>
<td>States parties are required to enforce national laws and regulations that implement the provisions of the Treaty (without further specifications).</td>
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<td><strong>Programme of Action</strong></td>
<td>Establish as national offences:</td>
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<td></td>
<td>• Illegal manufacture</td>
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<td>• Illegal possession</td>
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<td>• Illegal stockpiling</td>
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<td>• Illegal trade (no description of the criminal conduct provided)</td>
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<tr>
<td><strong>International Tracing Instrument</strong></td>
<td>No specific offences set out, though tracing to assist in enforcement of offences.</td>
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6. Applying synergies for implementation

As the previous discussion highlights, there are a number of areas of interplay as well as differences between the Organized Crime Convention, the Firearms Protocol, the Programme of Action (PoA) and the Arms Trade Treaty (ATT).

Some understanding and widening support for certain issues, such as brokering, have advanced in the intervening years between the adoption of the Firearms Protocol and the PoA. Other issues are less extensively covered in the newest instrument to address the international trade in conventional arms, the ATT (for example, enforcement measures). This could be a reflection of the political dynamics of the negotiations or because States wanted to emphasize other areas of control (for example, export assessment in the ATT). In this regard, the different instruments are important in their potential to complement each other and become “building blocks” in elaborating control regimes anticipated by these instruments.

Applying the identified synergies is not automatic, and may require careful consideration by law and policymakers. The next section makes a number of recommendations to assist legislators and policymakers in the implementation of their obligations at the national level, where they have multiple obligations under the different instruments to which they are a State party. They relate to the following areas:

- General recommendations
- Establishment of national points of contact
- Developing legislation regulating brokering
- Criminalizing illicit trafficking as a serious crime
- Addressing corruption in international transfers
- Implementing preventive measures:
  - National control systems
  - Marking requirements
- Expanding enforcement measures: criminalization
- Facilitating international cooperation
6.1 General recommendations

As a first general recommendation, States that have not yet done so are encouraged to consider becoming party to the three legally binding instruments (ATT, UNTOC and the Firearms Protocol) and to afford full implementation to all international instruments as complementary and mutually reinforcing building blocks of a single comprehensive framework.

6.1.1 Conduct thorough reviews of the domestic legal frameworks in light of all international instruments

When developing their national regulatory and policy frameworks, States wishing to comply with their international obligations and commitments, should not consider them in isolation, but as a complementary suite or ensemble, enhancing and expanding provisions to be integrated into their national practices.

When conducting a legislative review in light of their obligations under these treaties or commitments, States are encouraged to be as holistic as possible and consider all relevant pieces of legislation in order to avoid conflicting or contradictory provisions. This includes reviews of relevant codes and other secondary legislation.

Furthermore, when reviewing their legislation, States should address as a matter of priority the appropriate synergies with regards to transfer controls, criminalization of illicit trafficking and other related offences, as well as the adoption of enabling measures for international cooperation.

States parties may also find it useful to conduct comparative studies on good legislative practices among countries in the region and beyond, as well as broad-based, non-mandatory stakeholder consultation processes, to prepare the ground for legislative reforms.

6.1.2 Take relevant regional instruments into account

When seeking to comply with the international instruments, States should also take into account obligations that they may have under other regional instruments on firearms/small arms and light weapons (SALW) to which those States may also be a party.

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65 As part of the UNSCAR-funded activities to promote the ratification and implementation of the Arms Trade Treaty and related instruments, UNODC organized, in October 2015, in Abidjan (Côted’Ivoire) and in San José (Costa Rica), two regional meetings with policy- and lawmakers from 13 Latin American and 11 West and Central African countries. The outcomes of the discussion and recommendations stemming from the two regional meetings have been in part reflected in the present Paper. See http://www.unodc.org/unodc/en/firearms-protocol/news.html

66 See above. Outcome documents of the two regional meetings held in October 2015 in Abidjan (Côted’Ivoire) and in San José (Costa Rica) (available upon request).

67 These include, for example, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA), the Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community (SADC Protocol); the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Nairobi Protocol); the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Related Materials (ECOWAS Convention); the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention), as well as several binding EU Common Positions, Directives and Regulations on SALW, on transfer control regulations and on the implementation of the Firearms Protocol. A detailed list of international and regional instruments on firearms and SALW is included in annex I to this Paper.
In this regard, participants at the regional meeting in Abidjan further considered whether they should revise and expand the scope of the ECOWAS Convention and the mandate of its Commission on SALW in order to incorporate the conventional arms covered by the ATT as well.68

6.1.3 Should States develop one comprehensive law or separate laws on firearms and conventional arms?

Recurrent questions raised by Member States included how best to address the synergies between global instruments and apply them to their domestic legal frameworks, as well as the fundamental question of whether States should maintain or develop separate pieces of legislation on firearms and other conventional weapons, or whether they should aim at one comprehensive law that addresses most aspects covered in the ATT and in the other more specific firearms/SALW control instruments.

Both approaches can be applied and present different advantages:

- On the one hand, States parties to both the ATT and the Firearms Protocol may find it easier to maintain a firearms act and a conventional arms act that address the Firearms Protocol and the ATT obligations separately—while taking into account where the different instruments can support or enhance those obligations, as this Paper discusses. The rationale behind this approach is based on the fact that the specific nature of firearms and the firearms-related cross-border crimes that the Firearms Protocol addresses are in part distinct and more specific than the ones contained in the ATT. The distinct obligations contained in the Protocol would be best implemented in firearms-specific legislation—and this reflects widespread State practice—whereas the ATT applies to a broad range of conventional arms. Furthermore, many States already regulate a much broader range of arms, many with a specific military use.

- On the other hand, combining under one consolidated and coherent arms transfer act the requirements applicable to firearms/SALW and other conventional arms covered by the ATT overtly acknowledges the fact that the greatest synergies between these global instruments apply in particular to the field of transfer controls. As a matter of fact, many States already apply export and import controls and other measures not only to firearms, but also to other categories of arms. Aiming at one consistent international arms transfer control regime for all arms categories would facilitate the joint implementation of the instruments and contribute to higher levels of harmonization at the national and international levels between the various instruments (notwithstanding the intrinsic differences that exist and have been highlighted in the present Paper). Those laws and regulations would need to be revised by States in order to ensure compliance with the obligations in the ATT and the Firearms Protocol, at the least—again taking into consideration the areas of possible overlap and complementarity with the other instruments.

This question was also intensively debated during two regional seminars organized by UNODC in October 2015 in Abidjan (Côte d’Ivoire) and in San José (Costa Rica) among national practitioners, where diverging views emerged: Some participants were inclined to work on one comprehensive law—while keeping the specificities for the different arms categories—whereas

68 See above. Outcome documents of the regional meeting held in Abidjan.
some others, cognizant of the efforts already displayed in reforming their firearms legislation, were more inclined to keep separate laws, but to ensure strong connecting provisions among them.69

Participants considered that one way to ensure respect for the substantive differences among international instruments could be to develop a comprehensive law with separate sections for the different categories of weapons and common sections for overlapping requirements, such as those involving transfer controls and the criminalization provisions.

To ease their task, States parties could also consider drawing upon the UNODC Model Law for the Firearms Protocol for additional guidance in developing a national control system and specific legislative suggestions for implementing all the obligations in the Protocol, as well as specific ATT provisions.70

6.2 Establishment of national points of contact

The Firearms Protocol, the PoA, the ITI and the ATT all require States to identify a national point of contact to act as liaison with other countries on matters relating to these instruments. In the case of the PoA, regional points of contact are also suggested.

It is recommended that, where appropriate and feasible, a State should designate the same national point(s) of contact for the different instruments. Where this is not possible or feasible, States parties should ensure that there is internal coordination between the different points of contact. For example, in the case of the Firearms Protocol, a majority of States parties have notified UNODC that their National Points of Contact are authorities responsible to the Ministers of the Interior and Justice. In the case of the ATT, States parties might consider that authorities responsible to the Minister of Defence would be most appropriate. Regardless of what a State decides, it should be made clear who the national point(s) of contact is (are) both at the national level for internal coordination, and at the multilateral level, so other States know who to contact and how to contact them. The ATT requires that this information be provided to the Secretariat.

Where a new body is established as the national point of contact, legislation may be needed to do so. In cases where a new unit is created within an existing national agency, such as law enforcement, the need for legislation will depend on whether this is authorized by existing legislation or not.

Beyond the broad mandatory obligation that the national point(s) of contact liaise with other States parties on matters relating to implementation, the Protocol, the PoA and the ATT do not set out any specific responsibilities of the national point of contact.

It is at the discretion of the State to determine the specific scope of its functions and activities. It is recommended that, where a State has more than one national point of contact, the specific responsibilities of each should be clearly delineated to avoid duplication of roles.

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69 See above. Outcome documents of the two regional meetings.

70 See UNODC Model Law on Firearms, 2nd revised version, in particular the provisions on transfer control, criminalization and international cooperation. United Nations publication, Sales No. E.14.V.8 (Vienna 2014).
6.3 Developing legislation regulating brokering

States parties to the ATT are required to take measures to regulate brokering. While not a mandatory obligation under the Firearms Protocol or the PoA, both of these instruments provide detail on what such measures might include, beyond what is set out in article 10 of the ATT.

States parties to the ATT should consider these measures in their implementation of article 10. Equally, those States that are party only to the Firearms Protocol should consider implementing measures to control brokering, given that there is now widespread acknowledgement of the need to regulate such activities, including:

- Registration of brokers
- Licensing or authorization of brokering transactions
- Ensuring that there are appropriate penalties for all illicit brokering activities performed within the state's jurisdiction and control

Where a State chooses to regulate the activities of brokers, it should ensure that brokers are also required to maintain records.

States parties will also need to define “brokering” in their national law.

The report of the United Nations Group of Governmental Experts (GGE)\(^\text{71}\) on illicit brokering of small arms and light weapons provides a basis for a definition:

- \textit{Broker} shall mean a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT] in return for some form of benefit, whether financial or otherwise;

- \textit{Brokering activities} shall mean:
  \begin{itemize}
    \item \text{(i)} Serving as a finder of business opportunities to one or more parties to a transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT];
    \item \text{(ii)} Putting relevant parties to a transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT];
    \item \text{(iii)} Assisting parties in proposing, arranging or facilitating agreements or possible contracts involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT];
    \item \text{(iv)} Assisting parties to a transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT]; or
    \item \text{(v)} Assisting parties to a transaction [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT] in arranging the necessary payments.
  \end{itemize}

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\(^{71}\) Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapon (A/62/163).
The 2015 European Union User’s Guide on its Common Position for Arms Exports also provides a suggested definition. Here, “brokering activities” are activities of persons and entities:

- Negotiating or arranging transactions that may involve the transfer of items on the EU Common Military List from a third country to any other third country; or
- Who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country. 72

Regional instruments also contain definitions of brokering that States might consider. For example, the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials defines “brokering” as “work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons”. 73

### 6.3.1 Registration of brokers

Legislation could include the following:

1. Any person who is a citizen of or resident in [insert name of State] and any person located in [insert name of State] who engages in brokering activities [as defined in article X] with respect to [items on the national control list reflecting at a minimum the conventional arms included in article 2 of the ATT] is required to be registered with [insert name of designated authority].

### 6.3.2 Requirement for brokering licence

Legislation could include the following:

1. No brokering activity or proposal to engage in a brokering activity from or within the territory of [insert name of State] may be carried out or pursued by any person who is a citizen of or resident in [insert name of State], and any person otherwise subject to the jurisdiction of [insert name of State] without the prior receipt of a licence [written authorization] issued in writing by [insert name of licensing authority] for the negotiation or arrangement of transactions involving [items on the national control list reflecting at a minimum the conventional arms included in article 2 of the ATT] between [insert name of State] and another country, or to a third country and any other third country.

2. No brokering activity or proposal to engage in a brokering activity from or within the territory of another country may be carried out or pursued by any person who is a citizen of or resident of [insert name of State] without complying with the requirements of paragraph 1. 74

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73 Article 1(8), ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials

74 This suggested legislation is adapted from the UNODC Model Law on the Firearms Protocol.
Registration of brokers will also require a delineated application procedure as well and the legal requirements as to who qualifies to be a broker. The licence or authorization procedures for discreet brokering activities will also require procedures (including the application, validity of licences, licence conditions, and revocation or amendment of licence procedures).

### 6.3.3 Offences for illicit brokering activities

Should a State adopt a regime for brokering, it should also create an associated offence for illicit brokering. Where a State chooses to implement a system of registration or authorization of those who engage in activities as a broker, it should also consider the inclusion of an offence of operating as a broker without registration.

The Organized Crime Convention (UNTOC) can also be drawn upon in the prosecution of illicit brokering. For example, certain violations should be classified as “serious crimes” incurring the minimum sentences as set out in the UNTOC. Such violations could include brokering activities that violate an arms embargo. Creating “serious crimes” will also make other UNTOC provisions applicable to enforcing these offences (including mutual legal assistance, extradition, etc.).

Legislation could include the following:

1. Every person who [insert level of intent, as appropriate] engages in any brokering activity without legal authorization or a licence issued within the terms of [insert name of this Act] commits an offence.

2. A person guilty of an offence under paragraph (1) shall upon conviction be subject to [imprisonment for...] and/or [a fine of/up to...] and/or [a fine of the ... category].

### 6.4 Criminalizing illicit trafficking as a serious crime

Article 14 leaves it to States parties to determine the appropriate measures required to enforce national laws that implement the ATT.

Given its grounding in criminal justice, States parties should draw upon the Firearms Protocol in developing its national enforcement measures.

Given that one of the purposes of the ATT is to prevent and eradicate the illicit international trade in conventional arms and prevent their diversion (article 1), States parties to the ATT should adopt legislation that creates offences for illicit activities, both criminal and administrative, that adequately reflect the seriousness of the offence. Specifically States parties should include the provisions on illicit trafficking applicable to a broad range of conventional arms. Legislation could include the following:

1. Every person who [insert level of intent, as appropriate] imports, exports or otherwise acquires, sells, delivers, moves or transfers [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT] from or across the territory of [insert name of country] to another State, without legal authorization or a licence issued within the terms of [insert name of this Act] commits an offence.
2. A person guilty of an offence under paragraph (1) shall upon conviction be subject to [imprisonment for [...] and/or [a fine of/up to [...]] and/or [a fine of the ... category].

States parties should bear in mind that corporate entities that violate arms control legislation may consider the imposition of significant fines a greater deterrence. Additionally, States parties should consider national legislation criminalizing other offences related to the licence application process, such as providing false statements or documentation. Failure to keep required records should also be criminalized. Different violations may involve differing levels of involvement, differing levels of intent or negligence, and penalties should take all these into account.

The creation of this offence should meet the standard of a “serious crime” under the UNTOC to enable States that are party to both the ATT and the Firearms Protocol to draw upon the wide-ranging investigatory and enforcement provisions such as mutual legal assistance and extradition.76

6.5 Address corruption in international transfers

The ATT encourages States parties “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” (art. 15(6)). The UNTOC also requires that States parties criminalize corruption (art. 8) and adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

States should consider the development of specific offences relating to corruption within arms transfers applicable to the full supply chain of a transfer. For example, in implementing enforcement measures pursuant to the ATT, States parties could make corruption a “serious crime”, thereby opening up the application of the UNTOC provisions to those States that are also party to the Convention.

6.6 Enhance preventive measures: national control systems

The Firearms Protocol requires that States parties establish and maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition. Beyond the requirements of import and transit authorizations prior to issuing an export authorization and minimum informational requirements on import and export documentation, the Firearms Protocol does not elaborate further on the contents of a national control system.

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75 This suggested legislation is adapted from the UNODC Model Law on the Firearms Protocol.

76 The importance of introducing adequate criminalization offences was also widely discussed during the two regional meetings mentioned earlier, where participants recommended undertaking comprehensive reviews of domestic legal frameworks, and comparative analysis of existing criminalization offences, with a view to fostering regional harmonization, and to introduce adequate offences to give full effect to the Protocol and to the illicit conducts considered in the ATT.
Here, States parties can draw on the ATT, which provides more details. These elements can be incorporated into a control system that a State has to specifically deal with firearms, their parts and components and ammunition (such as a Firearms Act). These include:

- A national control list.
- Incorporate the prohibitions in article 6 and the export risk assessment procedures in article 7 of the ATT into the control system specifically for firearms.
- Incorporate controls for the trans-shipment of firearms, their parts and components and ammunition into the national control system anticipated by the ATT.
- Measures to address diversion as set out in article 11 of the ATT could also be incorporated—such as 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, or other appropriate measures.

### 6.6.1 Incorporate existing Firearms Protocol obligations into prohibitions under the ATT

As discussed, the ATT specifically refers to existing obligations that a State has if it is party to the Firearms Protocol. These are referenced in articles 6(2) and 7(1) of the ATT.

Article 6(2) prohibits a State party from authorizing any international transfer of conventional arms covered under article 2(1) or of items covered under article 3 or 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. While the full extent of what would be included within “relevant international obligations” is not made clear, the Firearms Protocol is most certainly included.

As mentioned in the discussion above, article 6(2) imposes a form of strict liability on prohibitions, in the sense that the transfer authorization must be prohibited in an existing international obligation without any knowledge requirement as in article 6(3) or risk assessment as in article 7(1).

Authorization of exports in accordance with the terms of the Protocol is set out in article 10. Specifically, two elements are required to meet the obligations of the Protocol for authorization. The first is prior import authorization before issuing the export licence or authorization, and second is verification from transit States that there is no objection to the transit.

This obligation applies only to the export of firearms and/or their parts and components and/or ammunition. Article 6(3) applies to all forms of international transfer (export, import, transit, trans-shipment, brokering) and all conventional arms and related items covered by the Treaty. However, while the relevant international obligations existing in the Firearms Protocol have selective application in the ATT, this should still be reflected in the national control systems set up by States parties in accordance with article 5 of the ATT.
States’ legislation could incorporate the article 6 (2) prohibition either in obligations directed to the export licence authority or the applicants of export licences. Regardless of the form chosen, legislation could include the following provision:

1. No export licence [for firearms and/or their parts and components and /or ammunition] shall be granted without:
   
   (a) A copy of the import licence or authorization. The licence or authorization must state the country of issuance, date of issuance and expiry, identification of authorizing agency, the final recipient and a description and the quantity of the firearms, and/or parts and components, and/or ammunition [included in the national control list incorporating conventional arms as set out in article 2 of the ATT]; or a copy of documentation demonstrating that an application for an import licence or authorization has or will be made; and
   
   (b) Copies of in-transit authorizations (as applicable).

6.6.2 Incorporate Firearms Protocol offences in ATT export assessment criteria

The assessment required by article 7 (1) (a) of the ATT involves a weighing up of both the positive and the negative consequences of an export in terms of its impact on peace and security. Article 7 (1) (b) sets out the range of possible negative consequences to be considered in a State’s deliberations on whether to authorize a transfer. Here, each exporting State party must make a national assessment of whether the arms under consideration could be used to commit or facilitate a serious violation of international humanitarian law or of international human rights law or an act constituting an offence under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party.

Reference to “an act constituting an offence under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a Party” envelopes the mandatory offences set out in the Firearms Protocol within the legal framework of the ATT.

In developing implementing legislation for the ATT a State party that is also party to the Firearms Protocol should specify the full range of offences that an exporting State should consider as a potential risk in its assessment under article 7 (1). Article 5 of the Protocol establishes a series of mandatory offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and tampering with firearms markings. These offences will need to be specified in national export criteria. For example, legislation could include the following:

1. The [insert appropriate competent authority] will consider an export licence application on a case by case basis and shall not issue such a licence [authorization]:

   (a) Where there is an [overriding]77 risk that the export could be used to commit or facilitate:

77 Article 7 (3) of the ATT states: “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.”
(i) Illicit manufacturing of firearms or firearms parts and components, including:
   a. Any manufacturing or assembly of firearms without marking; or
   b. Any manufacturing or assembly from illicit (trafficked) parts and components; or
   c. Any manufacturing or assembly of firearms or firearms parts and components without legal permit or authorization;

(ii) Illicit trafficking, including:
   a. Any transnational transfer without legal authorization; or
   b. Any transnational transfer if firearms are not marked.

6.6.3 Implement marking requirements

The Firearms Protocol and the International Tracing Instrument (ITI) both set out provisions and requirements for marking. States are encouraged to apply the provisions of the ITI as fully as possible to facilitate the identification and tracing, in a timely and reliable manner, of illicit small arms and light weapons.

In this regard, States parties should, in line with the ITI:

- Ensure that, whatever method is used, all marks required under this instrument are on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as technically possible, recoverable.
- Mark small arms and light weapons at the time of manufacture in line with the ITI provisions.
- Require markings on imported small arms and light weapons permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking.
- Ensure markings that enable tracing at the time of transfer from government stocks to permanent civilian use of a small arm or light weapon.
- Ensure that all small arms and light weapons in possession of government armed and security forces for their own use are duly marked.
- Ensure that illicit small arms and light weapons are found on a State’s territory are uniquely marked and recorded, or destroyed, as soon as possible.

States should also promote the systematic tracing at the national and international levels in line with the provisions of the ITI.
6.7 International cooperation: using the Organized Crime Convention to support investigations and enforcement, including export violations and “serious” crimes

The Organized Crime Convention (UNTOC) can be used by its States parties to support investigations and enforcement, for example, export enforcement investigations. States parties have used the UNTOC in the past and it is an important tool in such investigations. A 2010 UNTOC report on Mutual Legal Assistance and International Cooperation for the Purpose of Confiscation, and the Establishment and Strengthening of Central Authorities reported on (then) ongoing investigations where States parties had requested assistance. One Member State, for example, reported that it received a request in an ongoing investigation under the UNTOC for mutual assistance from another Member State in relation to “suspected trading of military goods without appropriate export licensing”.

The instrument has been used by law enforcement and prosecutors in trade investigations and States parties should continue to use it in their export enforcement activities. The definitions in the UNTOC are sufficiently broad to allow for States parties to assess that in certain situations, international business arrangements (suppliers, freight-forwarders, financial institutions) form a structured group—regardless of whether there were formally defined roles, and provided that the subjects of investigation acted for financial benefit.

States parties to the ATT and the Firearms Protocol should use the international cooperation and mutual legal assistance tools provided by the UNTOC in investigating and enforcing “serious crimes” such as illicit trafficking in the context of the ATT. Importantly, as described above, the UNTOC can serve as an alternative to mutual legal assistance treaties and extradition treaties, as the UNTOC forms the basis for such assistance without the need for specific bilateral treaties.
Poaching and the Arms Trade Treaty

Guiding Questions:

1. What are some of the developments in illegal wildlife poaching with respect to the arms trade?
2. What are some of the treaty ATT obligations triggered by the diversion of arms to poaching groups?
3. How can the ATT be used to address wildlife poaching? Are there creative solutions available through the treaty and broader arms control?

Resources:

1. Summary
A four-year long investigation by the Conflict Awareness Project (CAP) has uncovered evidence that an international gunrunning network funneled thousands of high-caliber hunting rifles from Europe and the U.S. to poaching kingpins in southern Africa, touching off a massive poaching crisis. Poachers have killed 8,000 rhinos over the last 10 years, nearly two every day. If poaching continues at this rate, South African rhinos will be extinct within a decade.

Acting as a criminal enterprise, the gunrunning network operated over five countries and three continents and is referred to in this report as the Rhino Rifle Syndicate.

CAP has identified members of the Rhino Rifle Syndicate and pieced together how they hatched a world-wide conspiracy to equip poaching teams in Mozambique and South Africa with CZ rifles manufactured in the Czech Republic. Some of these rifles were intended for the American market and bore a roll mark reading, “CZ-USA, Kansas City, KS.” These rifles were designed and marketed to kill big game, and they have wreaked devastation across Kruger National Park, home to the largest concentration of rhinos in the world.

The Rhino Rifle Syndicate exploited lax gun regulations and government corruption to traffic firearms undetected for years. Once the firearms arrived in Africa, they were acquired by a transnational criminal organization (TCO) and its local rhino poaching affiliates—collectively referred to in this report as the “TCO.” By systematically supplying the TCO with firearms, the Rhino Rifle Syndicate helped elevate small-scale commercial rhino poaching to an extraordinary industrial level. Together, the TCO and Rhino Rifle Syndicate illicitly profited off the global trade in rhino horn.

1 Various actors across multiple jurisdictions comprise the TCO, including poaching operatives, middlemen traffickers, transporters, high-level buying and selling agents, and the purveyors of poached horn. Typically, a five-level schematic pyramid structure is used by experts and law enforcement agents for characterizing the rhino crime organization. See for example: [https://www.usaid.gov/sites/default/files/documents/1865/W-TRAPS-Elephant-Rhino-report.pdf](https://www.usaid.gov/sites/default/files/documents/1865/W-TRAPS-Elephant-Rhino-report.pdf)
**What is a TCO?**

A transnational criminal organization is an association of individuals who operate in more than one country or commit criminal offenses impacting more than one country. A TCO uses illegal means to obtain power, influence, and money or other forms of commercial gain. A TCO protects its activities through violence, corruption, illicit commerce and/or cross-border structures.

TCOs traffic guns, drugs, people, body parts, and other forms of contraband, often using the profits to finance terrorism and illegal armed groups. TCOs are a significant threat to national security. They are also major perpetrators of wildlife crimes. Trafficking in wildlife and wildlife parts has an estimated value of between $7 billion and $23 billion a year.

The Rhino Rifle Syndicate obtained the CZ rifles from the arms manufacturer en masse and then distributed them among poachers on the ground by establishing a well-coordinated trafficking network and two dedicated international gun supply chains. Members of these supply chains actively aided and abetted rhino poaching efforts through a combination of direct rifle sales, the facilitation of rifle sales, the trafficking and illicit distribution of rifles, and other forms of financial and logistical assistance. Acting in concert, the members of the Rhino Rifle Syndicate also operated as a criminal racket, protecting and covering for one another, and relying upon corruption and bribery to ensure the success of their criminal enterprise, all while downstream clients perpetuated cross-border wildlife crimes on a catastrophic scale.

Members of the gunrunning network included business elites, government officials, police, safari operators, arms dealers, middlemen, and local “poaching bosses.”

The predominant rifles on the rhino killing fields—amounting to as many as 90 percent of the weapons recovered in Kruger—were produced by Česká zbrojovka Uherský Brod, or CZUB, the Czech Republic’s biggest gunmaker. Commonly referred to as “CZs,” these rifles were chosen by the Rhino Rifle Syndicate because they were chambered to fire .375- or .458-caliber rounds, cartridges powerful enough to kill big game with a single piercing shot. Some of the recovered CZ rifles bore trademark engravings from CZ-USA, CZUB’s wholly-owned American subsidiary, located in the state of Kansas. The CZ-USA rifles were ostensibly made for the American market but were diverted to Africa for use by rhino poachers.

By using a “follow-the-guns methodology,” our investigation documented the movement of CZUB and CZ-USA firearms, starting from their place of manufacture to their end use by poachers at crime scenes. The firearms predominantly moved from CZUB’s company headquarters in the Czech Republic through arms dealers in Portugal to gun retail shops in Mozambique. After arriving at the Mozambican gun shops, the rifles were purchased by South African and Mozambican middlemen. High-ranking Mozambique government officials and police officers conspired with the middlemen to facilitate the purchases. After the

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4 Calculation is based on available data of weapons recovered from poaching crime scenes and incidents as demonstrated later in this report

middlemen purchased the rifles, they were disseminated among poaching teams by business and political elites, safari company staff, security forces, and local poaching bosses.

Multiple CZ rifles appeared at rhino poaching crime scenes within months or even weeks after their first sale from the Mozambican gun retail shops. Such a short time-to-crime helped us prove that the middlemen purchased the rifles with the specific intent to divert them for criminal use.

Our investigation also identified smaller-scale arms networks that aided and abetted the rhino poaching syndicates, in addition to the Rhino Rifle Syndicate. Independent, though often working through overlapping conduits, these smaller networks supplied silencers/suppressors, big “bore” hunting cartridges, ammunition, and other types of rifles and small arms.

This report is based on a four-year-long CAP field investigation that tracked the illicit flow of CZ rifles across three continents. It presents evidence of gun trafficking, wildlife crime, racketeering, corruption, bribery, and fraud, among other crimes.

CAP amassed evidentiary dossiers detailing crimes committed by the key individuals and companies involved in the Rhino Rifle Syndicate. Afterward, CAP presented the dossiers to law enforcement in five affected countries—the Czech Republic, the U.S., Portugal, Mozambique, and South Africa—and has continued to work with authorities to end impunity and foster justice. But despite receiving troves of evidence, authorities have failed to dismantle the gunrunning networks behind the rhino crisis as well as bring charges against the traffickers. Frustrated by this lack of accountability, CAP decided to publish its key findings.

Rhino poaching prevention is long overdue. There is a straightforward way to halt the mass butchery before the species goes extinct: curtail the influx of high-caliber hunting rifles, silencers, and ammunition, and deprive the TCO of the means to shoot its prey. Choking off these supplies will also reduce the number of people dying in the poaching wars and limit the arms race between poachers and anti-poaching forces.

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**United States Statement On Wildlife Crime**

Poachers, wildlife smugglers, and black market merchants are operating all over the world. Their criminal acts harm communities, degrade our institutions, destabilize our environment, and funnel billions of dollars to those who perpetrate evil in our world.

These criminals must and can be stopped. Future generations must not say that the nations of the world sat back or responded with action that was too little or too late, while great species disappeared forever.


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To this end, CAP is calling on national governments and multilateral bodies to tighten regulations for the exportation and sale of hunting rifles and other similar recreational weapons. Hunting firearms have become some of the primary tools of criminal organizations involved in rhino horn trafficking and other wildlife crime.

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* For the purpose of this report, CAP will use the more common legal term, “silencers,” although the two words are often used interchangeably. See https://blog.silencershop.com/silencer-suppressor*
CAP is also calling upon South Africa and Mozambique to prosecute the gunrunners. The U.S., Czech Republic, and Portugal should intervene on the gun supply side and target the arms dealers operating on their soil. The arms manufacturers should implement stronger due diligence measures, and, as a remedy, compensate conservation areas hardest hit by their complicity and failures.

Furthermore, hunting rifle and gun manufacturers should form a voluntary association to assist in the tracing of serial numbers identified on guns used in wildlife crime. Members of the association should commit to banning sales to areas where evidence indicates large-scale or repeated wildlife crime and poaching offenses.

By releasing this report, CAP hopes to foster public awareness and prompt initiatives against the illegal spread of rifles, silencers, and ammunition used to poach endangered species and further the aims of wildlife trafficking syndicates worldwide. This report demonstrates that disrupting the supply of weapons used in wildlife crime worldwide is a much-needed—and often overlooked—conservation tool.

In short: Follow The Guns. Save A Species.

**Key Findings**

- **New Trends:** The types and sources of firearms used by poachers in Kruger National Park and surrounding wildlife areas have changed over time. Stolen firearms and guns recycled from previous wars have increasingly given way to newly minted high-caliber hunting rifles. Poachers often outfit these rifles with silencers to avoid detection by anti-poaching forces. The .375 and .458 are the most commonly used ammunition calibers.

- **Weapons of Choice:** Many of the .375- and .458-caliber rifles used in rhino poaching trace back to Mozambique imports during the past decade. While the poaching rifles were manufactured in the Czech Republic by Česká zbrojovka Uherský Brod (CZUB), some of them bore “CZ-USA Kansas City, KS” roll marks. The roll marks indicate that CZ-USA—CZUB’s wholly owned American subsidiary—was meant to import the rifles for sale in the U.S.. Instead, these guns were diverted to Mozambique before they were moved cross-border to kill rhinos in South Africa.

- **Corruption:** High-level corruption and political influence peddling have fueled the proliferation of CZ rifles in Mozambique and South Africa. Government and law enforcement inaction against the gunrunning networks is an indicator of corruption in South Africa and Mozambique.

- **Power Dynamics:** The TCO and its poaching bosses initially controlled the sourcing and distribution of CZ rifles, guaranteeing direct shares of the profits. This changed in 2016 as the criminal enterprise became more diffused. Poaching teams and syndicates began to break off to form splinter groups, expanding poaching to outlying areas previously less-impacted by the scourge.

- **The Arms Pipeline:** The tracking and tracing of weapons and ammunition through each phase of the supply chain—from their foreign manufacture and export to their local importation, sale, and distribution—is
a valuable method of collecting forensic evidence and implicating top-level players and foreign actors within the wildlife crime syndicates. Authorities need to systematically collect data and analyze trends associated with firearms used in wildlife crimes. These are important crime-fighting and anti-poaching tools that law enforcement and conservation organizations have overlooked for far too long.

- **Deterrents:** The threat of criminal prosecution and asset forfeiture are two of the most powerful instruments governments have to deter high-level criminals within the wildlife trafficking syndicates. The evidence dossiers compiled on the Rhino Rifle Syndicate should be prioritized by law enforcement in the five countries where the network operates with the aim of building criminal cases that lead to arrests and prosecutions when warranted. The goal of criminal prosecutions is accountability and ultimately deterrence of future crimes.

- **Arms Race:** Conflicts between poaching and anti-poaching forces will continue to escalate unless more attention is paid to the source of firearms used by wildlife crime syndicates. The poaching war has already claimed over a thousand lives and led to extra-judicial killings, torture, and the alleged planting of crime scene evidence for profit. It has also ignited an arms race that threatens to undermine security in the region for decades to come.

- **International Cooperation:** Given the multi-jurisdictional nature of poaching and wildlife trafficking syndicates and the costs involved in tackling their cross-border networks, law enforcement agencies urgently need to pool resources and strengthen international partnerships.

- **National Loopholes:** The export, sale, and possession of recreational weapons—including hunting rifles and associated ammunition—tend to be lightly regulated compared to other types of firearms. Given how organized crime and terrorist-affiliated networks are increasingly using hunting rifles and associated ammunition, it is urgent that policymakers in impacted countries and regions closely examine gaps in export laws, end-user controls, licensing regimes, government inspection activities, and weapon destruction programs pertaining to hunting and other forms of recreational weapons.

- **Action Required:** Arms manufacturers, legal arms dealers, the professional hunting community, and governments must take concrete steps to halt the flow of firearms used to slaughter rhinos, elephants, lions, and other wildlife species in southern Africa. Stifling the influx of firearms will have the added value of curtailing the expansion of transnational organized crime and drying up sources of financing for criminal enterprises, terrorist groups, and rogue regimes. Public outcry can help draw attention to the Rhino Rifle Syndicate gunrunning investigation and ensure there is adequate political will in 2019 to disrupt the gun supply chains.

2. **Introduction & Methodology**
   2.1 **The Rhino Crisis**
   One of the world’s largest remaining mega-fauna, rhinos are herbivores of prehistoric origin, sometimes referred to as the Last Dinosaurs. But poaching by humans has threatened to wipe them off the face of the

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The stated objective of the official delegation to Massingir was to reach an agreement—referred to locally as the ‘Massingir Declaration’—whereby the Massingir community would cease poaching activities in exchange for amnesty. Every official we spoke to said the agreement would not require Massingir to surrender its firearms and ammunition; nor would it subject poaching bosses and other kingpins to arrest.

Based on our interviews and observations, those behind the agreement appeared to be intent on weakening law enforcement and stifling government initiatives aimed at holding the TCO, corrupt officials, ruling party elites, and poaching bosses accountable. These entities have engaged and continue to engage in criminal activity including mass-scale rhino poaching, illegal trafficking and possession of guns, cross-border offenses, corruption and bribery, and murder and other violent acts. The culprits should be prosecuted for these crimes, not granted amnesty.

14. Arms Trade Treaty Imperatives

In December 2018, Mozambique became the 100th State Party to ratify the global Arms Trade Treaty (ATT). The ATT is recognized as the world’s only treaty aimed at ensuring transparency, responsibility and accountability in international transfers of conventional arms. To uphold its commitment to the ATT, Mozambique must endeavor to stop illicit transfers of rifles into South Africa.

The Czech Republic and Portugal are also signatories of the ATT. As such, all three countries are required to prevent the diversion of international arms transfers into the hands of UN sanctions busters, terrorists, and major organized crime groups, including those members of the Rhino Rifle Syndicate and TCO identified in this report.

15. Conclusion

National governments and multilateral organizations have failed to halt the proliferation of rifles among transnational organized crime, allowing them to become the weapons of choice for rhino poachers in southern Africa. Concerted action to better regulate and monitor the export, sale, and possession of hunting rifles and other recreational and sporting weapons is required to help reduce Africa’s poaching and wildlife crimes. Curtailing the global illicit trade in hunting rifles and other recreational weapons will simultaneously help reduce international security threats posed by wildlife TCOs, sanctions busters, and terrorists profiting from wildlife crime. Wildlife now ranks as the world’s fourth most lucrative form of contraband, trailing only behind drugs, arms, and human beings.

Our four-year-long investigation revealed how the Rhino Rifle Syndicate exploited lax arms control policies and systemic corruption to establish two overlapping conduits for arming rhino poachers in southern Africa with high-caliber CZ rifles from the Czech Republic. Despite having received criminal dossiers implicating syndicate members, authorities in the five affected countries—the U.S., Czech Republic, Portugal, Mozambique and South Africa—have so far failed to hold these criminals to account and close the gaps that allowed their illegal enterprise to flourish virtually unchecked.

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https://controlarms.org/blog/mozambique-becomes-the-100th-att-state-party/
Our investigation also demonstrated the usefulness of a “follow-the-guns” approach. Such an approach is effective for identifying key players within wildlife crime syndicates as well as criminal patterns and typologies. Law enforcement authorities, anti-poaching agencies, and conservation watchdog groups should work together to incorporate follow-the-guns approaches in the monitoring, detection and solving of wildlife crime. Finance and banking industries, anti-money laundering platforms, and arms control regimes can also play a role. The “follow-the-guns” approach should be a major topic of discussion within the United Nations as well as during the next CITES meeting to be held in Sri Lanka from May 23 to June 3, 2019.344

In October 2018, the United States Attorney General reaffirmed America’s commitment to tackling wildlife crime, saying President Donald Trump “fully supports strong prosecution of those involved in the illegal wildlife trade.”345 The U.S. should live up to these words by prioritizing law enforcement activities against the Rhino Rifle Syndicate and the TCO identified in this report. By levying criminal charges and seizing assets as warranted, the U.S. can bolster its reputation as a global leader in the fight against wildlife crime.

The Czech Republic, Portugal, Mozambique and South Africa should likewise allocate resources to investigating the Rhino Rifle Syndicate and prosecute any and all entities and individuals as appropriate. In the meantime, all countries should work through international bodies such as the UN to strengthen cooperation with the aim of pursuing TCO members wherever they operate and/or reside. This work should focus on dismantling the arms trafficking networks and preventing future illegal gun supply chains from taking root.

Or, in short: Follow The Guns. Save A Species.

344 https://cites.org/eng/news/pr/CITES_CoP18_will_be_held_in_Colombo_Sri_Lanka_in_May_2019_14122017
345 https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-statement-behalf-united-states-london-illegal-wildlife
Using the Arms Trade Treaty to Address Wildlife Poaching in East Africa: A Human Security Approach

“Illegal wildlife trade undermines the rule of law and threatens national security; it degrades ecosystems and is a major obstacle to the efforts of rural communities and indigenous peoples striving to sustainably manage their natural resources. Combatting this crime is not only essential for conservation efforts and sustainable development, it will contribute to achieving peace and security in troubled regions where conflicts are fueled by these illegal activities.”

a. Executive Summary

This policy brief explores the potential for the Arms Trade Treaty (ATT) to be applied to curb the supply of weapons to wildlife poaching and trafficking networks in East Africa. There is a disturbing trend of militarization in anti-poaching efforts that threatens to exacerbate conflict by increasing arms flows to already destabilized contexts, marginalizing local capacities for peacebuilding and sustainable development. This paper advocates for a human security and sustainable development-centered approach to wildlife crime, while taking care not to formulate generalizations of the many complex contexts of wildlife poaching in East Africa. While there are no “one-size-fits-all” solutions, it argues that the ATT can be used by East African (and arms exporting) States as one of many tools to strengthen rule of law, encourage respect for human rights in countering wildlife crime, curb the proliferation of weapons to poachers, monitor trafficking networks and empower local civil society advocacy for peace and environmental sustainability.

It ends with recommendations that East African States\(^1\) accede to the ATT, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and and establish

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\(^1\) It is possible that the recommendations of this paper may also be relevant to other wildlife-rich States, in Sub-Saharan Africa and beyond, that face major threats from poaching.
systems for its effective implementation, in coordination with other relevant international instruments (such as the Programme of Action on Small Arms and Light Weapons (PoA) and the Conventions on Transnational Organized Crime and Corruption). In particular, States should enact measures to safeguard against the risk of certain kinds of shipments of arms, ammunition and relevant parts and components – such as high-calibre hunting rifles (and associated ammunition) and silencers – being used by or diverted to wildlife poaching and trafficking networks. Regional civil society civil society and media should consider ways to encourage governments to use the ATT to engage in monitoring and advocacy on wildlife crime, calling the attention of civil society in arms exporting States to the use of weapons in poaching. Finally, it calls on the UN General Assembly and ECOSOC to make reference to the ATT in any future resolutions regarding the poaching and/or the illicit trade in wildlife and references to poaching in ATT resolutions. States should also consider potential linkages to the UN Environment Assembly and ongoing debates on conflict and the environment in the International Law Commission.  

b. The Arms Trade Treaty and East Africa

The 2013 United Nations Arms Trade Treaty (ATT), which entered into force in December 2014, established global standards for the trade, transfer and trans-shipment of conventional weapons. Articles 6 prohibits arms transfers to States and organizations where the exporting State has knowledge weapons will be used for war crimes. Article 7 requires exporting States to assess the risk that the arms could be used to abuse human rights and humanitarian law, or in organized crime or terrorism. Where the risk is overriding, the transfer must be denied. It also requires States to “take into account the risk” of whether weapons will be used to commit gender-based violence. While covered by less stringent clauses, transfers of ammunition, as well as parts and components of weapons are also regulated by the ATT. Exporting, importing and trans-shipment States all have obligations to mitigate risks of problematic transfers (Articles 7, 8 and 9). While the ATT is criticized for its potential weaknesses (such as the resistance of arm exporting States to implement it rigorously and worries that it may legitimize some of the arms trade), many commentators argue that it offers a useful tool for those working to build human security and sustainable development.  

As a report by Chatham House argues:

The ATT has the potential to advance human security through improving accountability, responsibility and transparency in international arms transfer controls. In doing so, the treaty aims to create a safer and more secure environment for all those living under the threat of violence.

During the negotiations, African States and civil society through the Control Arms Coalition were at the forefront of pushing for a strong ATT, successfully demanding the inclusion of small arms and light weapons (SALW) in the ATT’s Scope (Article 2). This was driven by a

humanitarian imperative – the African continent disproportionately bears the human costs of the arms trade, particularly of SALW. A 2007 investigation found that the cost of armed conflict in Africa – in military expenditures, health costs, reconstruction, lost tax revenue and depressed productivity – was approximately $18 billion a year, on average reducing a state’s economic output by 15%. Kenya was a co-author of the 2006 UN General Assembly Resolution A/RES/61/89, which initiated the negotiation process, and remained a lead State in the negotiation process up until 2012. Almost all African States voted in favor of Resolution A/RES/67/234B adopting the treaty in 2013 and none opposed it (Egypt and Sudan abstained). Most African States have signed the ATT (as of November 2015 there are 16 African States Parties and a further 23 signatories) but the level of accession in the East African and Horn region has been low. Burundi, Djibouti, Rwanda and Tanzania are signatories (though have not yet ratified). Democratic Republic of the Congo (DRC), Ethiopia, Eritrea, Kenya, Somalia, South Sudan, Sudan and Uganda have not yet joined. The Institute for Security Studies (ISS) has published a useful guide for African States seeking to accede to and implement the ATT.

The following section explores the potential usefulness of the ATT for East African States and civil society organizations seeking to address and mitigate the human and wildlife impact of armed violence in the region, focusing on wildlife poaching. This is by no means the only form of organized violence in the region, nor is its coverage here exhaustive. Rather, I aim to offer a possible application of the ATT that others in the region can critique and build upon.

Orphaned elephants receive care at the David Sheldrick Wildlife Trust in Kenya.
c. The Human Security Impact of Wildlife Poaching in East Africa

Popular depictions of wildlife poaching in East Africa use pathologizing discourses that simplify complex and interrelated problems of human/wildlife conflict, environmental degradation and entrenched political-criminal networks. However, poaching is linked to global flows of rare and illicit wildlife trafficking that have intensified in recent years, with surging demand for ivory and rhino horn. According to Global Financial Integrity, trafficking in illicit wildlife is worth some $10 billion a year, making it the fifth largest global black market. Rhino horn has surpassed the value of gold or cocaine, but penalties for wildlife trafficking are typically low. While often depicted as an "African problem", poaching and wildlife trafficking is driven by demand from China, the US and EU, which are the three largest markets for illicit specimens. In its 2014 report, The Environmental Crime Crisis, the UN Environment Programme (UNEP) raised alarm at the “pace, level of sophistication, and globalized nature” of the illegal trade in wildlife.

Trade in wildlife is regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which entered into force in 1975 and controls the import, export and trans-shipment of specimens of controlled species. All African States are parties to CITES with the exception of South Sudan. In 2013, the UN Commission on Crime Prevention and Criminal Justice designated wildlife trafficking as a “serious crime”, increasing pressure on States to step up enforcement. Nevertheless, wildlife crimes remain under-enforced and penalties in many States are surprisingly low when compared to trafficking in people, weapons or drugs. In 2014, the UN Security Council identified wildlife poaching in Africa as a regional security threat (S/RES/2134 and S/RES/2136) and the CITES Secretariat recommended a number of East African States – DRC, Kenya, Tanzania and Uganda – establish national action plans to address ivory poaching. The African Ministerial Conference on the Environment (AMCEN) 2014 meeting in London resulted in a “political commitment” to end the “detrimental economic, social and environmental consequences of the illegal wildlife trade.” Later that year, the first UN Environment Assembly called for “cross-agency cooperation at all levels to tackle the environmental, economic, social and security dimensions of the illegal trade in wildlife” (UNEP/EA.1/L.16). In 2015, the UN General Assembly urged States to “take decisive steps” to “prevent, combat and eradicate the illegal trade in wildlife” (A/RES/69/314) and African leaders committed in Brazzaville to develop “a unifying strategy to help Africa combat illegal trade in wild flora and fauna.”

While popular news media often frames poaching as the predation of “evil” people on “innocent” animals, widespread poaching also has a human cost. Press investigations in eastern DRC have found links between wildlife poaching and armed groups with patterns of documented human rights and humanitarian law violations. The embedded criminality of poaching networks has contributed to political corruption in the region as well as allegedly the funding of armed groups engaged in terrorism and violations of human rights and humanitarian law, such as the Janjaweed in Sudan, Mai Mai in DRC and the Lord’s Resistance
Army (LRA) in the central African region.\textsuperscript{23} In his 2014 remarks to the UN General Assembly, Tanzanian President Jakaya Mrisho Kikwete stated that “poaching” and “illicit exploitation of natural resources” are “making the world less secure.”\textsuperscript{24} According to UNEP, the illegal wildlife trade is “a rapidly rising threat to the environment, to revenues from natural resources, to state security, and to sustainable development.”\textsuperscript{25} As such it threatens East African States’ ability to meet their obligations under the Sustainable Development Goals (SDGs), by degrading the environment (SDG 15); drawing resources out of the legitimate economic sector and threatening sustainable tourism (SDGs 8 & 12); and undermining the promotion of peaceful and inclusive societies (SDG16). It also poses a threat to public health, given the potential for animal diseases to migrate to human populations (SDG3).\textsuperscript{26} As Valerie Hickey, an environment scientist at the World Bank, has put it:

[W]ildlife crime is leading to the proliferation of guns in exactly those areas that need less conflict, not more; it is providing money for corruption, in exactly those countries in which corruption has already stalled all pro-poor decision-making and doing business legitimately is already hard enough; and it is oiling the engine of crime and polluting efforts at good governance, democracy and transparency in exactly those communities that need more voice, not more silence. It is anti-worker, anti-women and anti-poor.\textsuperscript{27}

In 2012, then US Secretary of State Hillary Clinton called the illegal trade in wildlife a “national security issue” and the following year, President Barack Obama signed Executive Order 13648 on Combating Wildlife Trafficking committing the US to “assist” governments “in anti-trafficking activities.”\textsuperscript{28} Growing international attention to wildlife crime has led some thinktanks and civil society organizations to call for a securitization of wildlife protection, including supplying East African countries’ rangers and security forces with better weaponry, surveillance equipment (including unmanned drones), training and assistance from private military companies.\textsuperscript{29} At the time of writing, a Global Anti-Poaching Bill was moving through US Congress; the House of Representatives text called for the US government to “provide defense articles (not including significant military equipment, defense services, and related training” to African security forces “for the purposes of countering wildlife trafficking and poaching.”\textsuperscript{30} Given the problematic record of US military deployment and arms transfers in East Africa and elsewhere, it important to consider the potential that forces ostensibly engaged in anti-poaching efforts may use this as a cover for other activities. Indeed, the trend of militarizing wildlife protection – described as a “war against poaching”\textsuperscript{31} – has had some disturbing effects, including an escalating aggressiveness in clashes between poachers and anti-poaching units. It has spurred an arms race, with increasingly sophisticated weaponry used on both sides.\textsuperscript{32}

Calls to arm state security forces rest on an assumption that poaching and wildlife crime is only a non-state actor problem. Several experts have shown how claims of a poaching-terrorism nexus are often exaggerated, driven by those interests that benefit from militarization and increased fundraising.\textsuperscript{33} Meanwhile, there are many cases of state military involvement in the poaching and the illicit trade in wildlife.\textsuperscript{34} For example, Congolese, Ugandan, Kenyan and South Sudanese security forces have been implicated in wildlife profiteering.\textsuperscript{35} In one notorious incident in 2012, members of the Ugandan armed forces – ostensibly searching for LRA commander Joseph Kony – allegedly killed 22 elephants in DRC
from a Mi-17MD military helicopter.\textsuperscript{36} According to the International Fund for Animal Welfare (IFAW), authorities are increasingly facing poachers armed with military-grade weapons (such as M-16 and G3 automatic rifles and rocket-propelled grenades) that could only have been “acquired from military sources.”\textsuperscript{37} A significant amount of illicitly trafficked weaponry starts in the “legitimate” and legal sector.\textsuperscript{38} Similarly, it would be a mistake to simply pathologize the illicit trade in wildlife without acknowledging its interlinkages with the supposedly legal trade.

Given the “remote” locations of many wildlife reserves and conservancies in East Africa, efforts to address wildlife poaching intersect with broader conflicts in the region’s “peripheries,” such as pastoralist conflicts.\textsuperscript{39} Such areas were long neglected by colonial and post-colonial development efforts. Pastoralist conflict is often misrepresented as a localized, outmoded and “primitive” practice of “cattle rustling.” However, it is embedded in sophisticated organized criminal complexes and neo-patrimonial patronage systems that are connected by trafficking networks of arms, patronage and stolen cattle that extend throughout the region and even the world. Some countries in the East African region have addressed the problem of armed pastoralist conflict better than others.\textsuperscript{40}

Numerous researchers have found that militarized state interventions to address cattle rustling or poaching often exacerbate the situation, introducing new weapons (that enter the non-state sector through theft or illicit sale) and extrajudicial violence. It is also expensive, diverting important resources away from sustainable development.\textsuperscript{41} As \textit{Small Arms Survey} put it, “militarization strategies can have unintended consequences… [and it] is not clear…that poaching has a military solution.”\textsuperscript{42} For example, in 2013 a Tanzanian shoot-to-kill anti-poaching operation resulted in major abuses of human rights.\textsuperscript{43} In 2014, the Associated Press reported allegations that Kenyan wildlife rangers had killed 18 poachers in an effort to cover up official complicity in elephant poaching.\textsuperscript{44} State and civil society interventions that have sought to reduce conflict and engage local capacities for peace, alternative livelihoods and sustainable environmental protection have been more effective than military/police repression.\textsuperscript{45} As stated by UN ECOSOC Resolution 2014/21, “when developing crime prevention programmes” Member States should look beyond policing measures to “consider…such issues as social inclusion, the strengthening of the social fabric, access to justice, social reintegration of offenders and access to health and education services, to consider the needs of victims of crime … and to promote a culture of lawfulness and the well-being of individuals…..” The 2014 AMCEN London Declaration called for “supporting community efforts to advance their rights and capacity to manage and benefit from wildlife and their habitats.”\textsuperscript{46} The UN Environment Assembly raised similar concerns.\textsuperscript{47} The community addressing wildlife crime should draw on lessons learned in the humanitarian and development sectors on “Doing No Harm” when intervening in conflicted contexts.\textsuperscript{48}

The “human security” framework offers a useful alternative to the militarized, “national security” framing of poaching and wildlife trafficking. A human security paradigm recognizes that the object of protection, and of analysis, should be human beings and their communities, not the state. This approach is centered in a respect for human rights, a bottom-up approach, multilateralism and building legitimate civilian-led governance.\textsuperscript{49} A useful precedent is the
Conservation Initiative on Human Rights, an NGO consortium that seeks “to improve the practice of conservation by promoting integration of human rights in conservation policy and practice.” Instead of increasing the supply of weapons to an already deadly conflict (which too often leak to organized crime networks or are misused by state actors), States, international organizations and NGOs should seek to slow this supply and empower local social structures that already work for peace, rule of law and sustainability. For example, a 2013 IFAW report, *Criminal Nature*, recommended addressing wildlife crime through the strengthening of “policies and legal frameworks … at the local, national, and international levels.” The ATT could be play a useful role in the development of such a framework in East Africa.

Wild rhinoceroses in Kenya

**d. Using the Arms Trade Treaty to Stem the Flow of Arms to Wildlife Trafficking Networks in East Africa**

The ATT offers a useful building block for a human security approach to wildlife crime in East Africa. In his 2013 comments to the UN General Assembly, Prime Minister Nicolas Tiangaye of the Central African Republic, identified “the circulation of a large flow of weapons” as a major
factor in the “the degradation of natural resources and wildlife.” Similarly, the 2015 Small Arms Survey identified SALW proliferation as an enabling factor in wildlife poaching and trafficking in the East African region. Stemming this flow could offer a potentially less militarized intervention to disrupt and decrease the deadliness of poaching networks. For example, several specific kinds of weapons have often been associated with wildlife poaching in Africa, including large calibre hunting rifles (such as the Czech CZ550 and .458 Winchester Magnum) and Kalashnikov-pattern automatic rifles. There are also numerous reports of poachers using silencers to evade detection (both by anti-poaching units and other animals) when killing targeted animals. One could imagine national ATT enforcement mechanisms establishing efforts to pay particular attention to shipments of such items, demanding evidence of measures to reduce the risk of their use by or diversion to poaching networks.

However, care will need to be taken to ensure that national control mechanisms established by the ATT (whether in exporting, trans-shipment or importing States) do not simply rubber stamp weapons flows to security forces engaged in wildlife protection. As noted above, elements of East African security and wildlife protection forces have themselves been involved in poaching and wildlife profiteering. ATT enforcement will not only be the responsibility of exporting States. Rather ATT enforcement can be used as leverage by national civilian and civil society actors to tighten controls over security forces, reducing the potential for abuse or “leakage” of weapons. This approach – rather than arbitrary martial repression – could aid in strengthening rule of law while undermining poaching. For example, Article 7 of the ATT calls for risk mitigation measures to prevent the misuse of weapons. This could create opportunities for cooperation between arms exporting and importing States on training for wildlife protection forces in human rights, forensic analysis of weapons and ammunition and/or data collection.

Given the overlapping networks involved in illegal weapons trafficking and wildlife crime, there is clear potential for synergies between CITES and ATT monitoring and enforcement. However, the potential intersections between CITES and the ATT (as well as other relevant instruments like the Programme of Action on SALW (PoA)) remains under-examined in the policy and scholarly literature. For example, when States report elephant deaths to the CITES-mandated Monitoring the Illegal Killing of Elephants (MIKE) program, the form allows for recording the weapons used. Poor marking of weapons stocks in the region and anti-poaching units’ low forensic capacity have limited the quality of this data. Linking MIKES firearms and ammunition data with ATT implementation could enable national control systems to flag weapons commonly used in poaching in their transfer risk assessments. For example, according to Article 12 of the ATT, importing States must keep records of the weapons transferred into its territory. This would enable tracing of leakages of legitimately transferred weapons that end up in the hands of poachers. Linkages with other instruments such as the PoA, could aid in coordinating stockpile management and destruction to reduce the supplies of SALW typically used in poaching and prevent its leakage and recirculation. On 30 November 2015, Lithuania and Angola plan to host a Security Council Arria Formula meeting – open to all States and civil society – on the impact of illicit arms transfers of SALW on poaching in Africa. This could lead to further exploration of potential linkages between the ATT, PoA and CITES.
Besides import and export control mechanisms, the ATT offers a framework to establish new layers of accountability and oversight. The Stimson Center report *Killing Animals, Buying Arms* found a key challenge in illicit wildlife trade interdiction was effectively mapping the supply chain, “moving beyond anecdotal glimpses” to “comprehensively map the illicit trade.” Under the ATT, States must report to annual Conferences of States Parties and Control Arms has established *ATT Monitor* as a global civil society monitoring mechanism to consolidate information from researchers around the world on compliance and noncompliance with the ATT. This has the potential to spur further research on the routes and conduits of arms that end up being used in poaching and wildlife trafficking networks.

There are, of course, limitations to the ATT as a tool in addressing wildlife crime. A significant proportion of the trade in SALW in East Africa operates at a micro-level often undetected by state customs and import/export control systems. Much of this “ant trade”, as some call it, operates across the largely unsecured borderlands of many East African “peripheries” such as the arid region spanning northeastern Uganda, southern South Sudan, northern Kenya and southern Somalia. Weapons flood into “hot zones” of conflict; when the conflict dissipates, the weapons diffuse throughout the region, re-concentrating in newly violent areas. This is a much more complex market to regulate than traditional state-to-state arms transfers. *Small Arms Survey* also found that poachers used a variety of artisan-crafted weapons – including firearms, bows and arrows and spears – that are locally-made, necessarily not covered by the ATT Scope and difficult to detect. There is a risk that calls for ATT implementation will translate into militarizing border security operations that would be ineffective at actually stemming the micro-level production and movement of arms while introducing new weapons and aggressive tactics into border regions. This could have the counterintuitive impact of creating incentives for poachers to adopt more sophisticated weaponry.

However, the ATT is not just about state enforcement. It also establishes a framework within which civil society can draw attention to critical human security issues and their regional and global connections. Paul Todd of IFAW has argued that “if American or Chinese or Russian or European weapons are being used to slaughter elephants and the rangers who protect them, the citizens of those countries deserve to know about it and demand change.” In directing civil society attention to linkages between poaching in East Africa and the global arms trade, it offers a new opportunity for transnational advocacy, development of norms and “naming and shaming” of problematic actors.
e. Building Local Capacity for Monitoring, Advocacy and Programming

The East African region has vigorous civil society and faith networks engaged in monitoring, advocacy and programming in the environmental sustainability, development and human security sectors. African religious leaders and civil society activists played a key role in pushing for the ATT and pushing African States to adopt strong, progressive positions. In East Africa, Africa Peace Forum (APFO), Burundi Armed Violence Observatory (BrAVO), East African Sub-Regional Support Initiative for the Advancement of Women (EASSI), Kenya Pastoralist Journalist Network, East Africa Action Network on Small Arms (EAANSA), Kikandwa Rural Communities Development Organization and the All-Africa Council of Churches were particularly active in ATT advocacy. Control Arms’ member the International Action Network on Small Arms (IANSA) has numerous member organizations throughout the region. Similarly, local civil society has been very effective in raising awareness of the impact of wildlife crime, as well as engaging in grassroots peacebuilding and community-based conservation efforts. Examples of such organizations include: Northern Rangelands Trust, Wildlife Direct, Space for Giants, David Sheldrick Wildlife Trust, East African Wild Life Society and Green Belt Movement.

The ATT offers new opportunities for these organizations to link with global civil society and media networks to trace damaging flows of arms and wildlife specimens, hold States and corporations accountable for their complicity and publicize abuses. The new civil society-run ATT Monitor will facilitate representation of local concerns to global policymaking forums,
including the ATT Conferences of States Parties and UN General Assembly First Committee. However, in establishing links to local civil society and media, international NGOs engaged in ATT monitoring should be careful to establish methods of investigation and research that avoid exposing local activists and journalists to retribution. There are significant – and violent – vested interests in wildlife crime and external actors should remind themselves to “do no harm” in their work.

**f. Recommendations**

1. International, regional and local actors should rethink militarized approaches to addressing wildlife crime, instead seeking to “do no harm” and elaborate strategies rooted in human security and sustainable development frameworks.

2. East African States should accede to the ATT and explore potential synergies between ATT and CITES implementation, along with other relevant international instruments, such as the PoA and the Conventions on Transnational Organized Crime and Corruption.

3. East African States, as well as arms exporting and trans-shipment States should enact measures to safeguard against the risk of certain kinds of shipments of arms, ammunition and parts and components – such as high-calibre hunting rifles (and associated ammunition) and silencers – being used by or diverted to wildlife poaching and trafficking networks. Such measures could include marking and tracing of weapons, improved stockpile control and extra scrutiny of arms shipments.

4. East African States, civil society and academia researchers should seek innovative ways to link MIKE data on firearms and ammunition used in elephant poaching to ATT and PoA implementation, such as targeting for control weapons commonly used in wildlife crime.

5. Local civil society and media should consider ways to use the ATT to engage in advocacy on the impacts of wildlife crime, calling the attention of civil society in arms exporting States to the use of weapons in poaching.

6. International civil society organizations and aid donors should explore opportunities to build the capacity of local actors in ATT implementation and monitoring, taking care not to expose them to retribution.

7. ATT States Parties authorizing arms transfers to East African States should engage in dialogue, and if appropriate, cooperate on mitigation measures that include human rights training for wildlife services, as well as forensic analysis and data collection.

8. Local and international civil society organizations should seek linkages and partnerships between those working on environmental sustainability and human security sectors.

9. The UN General Assembly and ECOSOC should make reference to the ATT in any future resolutions regarding the poaching and/or the illicit trade in wildlife and references to poaching in ATT resolutions. Linkages should be made to parallel
processes in the UN Environment Assembly and ongoing debates on conflict and the environment in the International Law Commission.

10. All actors involved in efforts to reduce poaching and the illegal wildlife trade should avoid advocating simplistic “silver bullet” solutions, instead seeking a complex and multi-faceted understanding of the problem and potential measures for increasing human security and sustainable development.

**g. Note on Methodology**

This paper relies on references to secondary policy and scholarly literature on the ATT and wildlife crime in East Africa. However, it is rooted in observations and reflections from two trips by the author to East Africa (covering Kenya, Uganda and Rwanda) in 2014 and 2015; this paper draws on his consultations with local civil society as well as a review of local media. He has conducted research in the region (including DRC, Sudan and South Sudan) since 2000. He was an advisor to Control Arms during the ATT negotiations in New York and has published widely in academic and news media on issues of disarmament and arms control. As the paper is written by a British-American, with some experience in East Africa but certainly little claim to its future (recognizing colonial legacies), it is intended as a contribution to the conversation, rather than a “last word.” It seeks merely to highlight possibilities and issues for further study and research by civil society, diplomats and journalists in the region.

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**Endnotes**


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In June 2014, armed poachers entered the Ol Jogi sanctuary in Kenya and killed four rhinos in one evening. The Kenya Wildlife Service (KWS) described the attack as the worst perpetrated against rhinos since the 1988 killing of five rhinos in Meru National Park (Jorgic, 2014). A month prior to the rhino attack at Ol Jogi, KWS rangers found themselves caught between two gangs of armed poachers. When the shootout ended, 25-year-old KWS ranger Paul Harrison Lelesepei was dead from gunshot wounds (Heath, 2014). The two recent incidents underscore the danger armed poachers pose to wildlife and rangers alike, not only in Kenya, but across African range states where poachers target elephants and rhinos for their ivory and horn, fuelling a thriving international illicit trade.

In Africa, elephant populations on the whole are in decline and the illicit killing of rhinos has escalated sharply over recent years. The actors involved in poaching these animals include armed militias, rogue military officers, commercial poachers, and bush meat and subsistence hunters. Poachers are making widespread use of military-style weapons and high-calibre hunting rifles in their pursuit of elephants and rhinos, complicating the efforts of wildlife rangers to stop them.

This chapter draws on interviews with leading wildlife conservation experts and open-source material to examine the challenges facing and strategies adopted by anti-poaching forces and wildlife management agencies in African range states with elephant and rhino populations. Based on original field research conducted in Kenya, the chapter also offers insight provided by rangers, conservationists, and others affected by poaching in the country. The main findings are that:

• Poachers use multiple means to kill elephants and rhinos, including firearms and non-firearm methods.
• As demand for ivory and rhino horn remains high, some poachers and anti-poaching forces are becoming increasingly militarized, using military-style weapons and adopting more aggressive tactics.
• Firearms and ammunition found at poaching sites are not systematically identified, recorded, or traced despite the potential use of such techniques in identifying the sources and trafficking routes of poacher weapons.
• Armed groups have been responsible for major cases of large-scale elephant poaching, yet poaching allegations have also been levelled against some government military forces.
• Small groups of poachers also target elephant herds and rhinos, killing significant numbers of animals over time, particularly in rangeland where elephant and rhino populations are dense.
• Without a substantial reduction in the demand for ivory and rhino horn, efforts to deter poachers through armed interventions may disrupt poaching, but not stop it.

The chapter begins with an overview of poaching in Africa, covering trends and drivers in elephant and rhino poaching. It then discusses armed groups involved in poaching, highlighting the cases of groups operating primarily in Central African states. Next, it provides insight into the different types of weapons used in poaching, including military-style weapons, hunting rifles, and craft firearms, as well as traditional weapons and methods, such as spears, arrows,
and poison. The final section reviews national responses to poaching and the roles of law enforcement, the military, and local communities.

**OVERVIEW OF POACHING IN AFRICA**

Poaching is the illegal killing of wildlife in contravention of national or international law. Since 2010, the illegal killing of elephants in Africa has outpaced natural population replacement rates (Wittemyer et al., 2014); meanwhile, conservationists estimate that rates of rhino poaching could surpass birth rates by 2018 (Save the Rhino, n.d.). The 1970s and 1980s witnessed earlier escalations in the illegal killing of elephants and rhinos (Blanc et al., 2007; Okello et al., 2008; UNEP et al., 2013).

species that it classifies as threatened or endangered. In 1989, a CITES vote listed elephants on Appendix I—a classification given to the most endangered species—in essence prohibiting all trade, with a few exceptions, including scientific research. In 1990, the trade ban came into force in CITES countries and territories. In 1997, the elephant populations of Botswana, Namibia, and Zimbabwe were relisted to Appendix II, which comprises ‘species that are not necessarily threatened with extinction but that may become so unless trade is closely controlled’ (CITES, 1973). White and black rhinos are on CITES Appendix I, with the exception of southern white populations in South Africa and Swaziland, which are listed on Appendix II for acceptable trade in live animals and hunting trophies.

Sport hunting of elephants is permitted under a quota in a number of countries, subject to domestic legislation; CITES also allows the export of hunting trophies (such as ivory) collected by hunters as long as it is for non-commercial use (FWS, 2013). Wildlife services are also allowed to carry out the controlled killing of animals that pose a danger to the public.

Poaching of various types takes place across African range states (see Maps 1.1–1.2). In Central Africa, where some elephant populations have decreased significantly, poachers include armed militias, rogue law enforcement officers,

Map 1.2  **Rhino rangeland in Africa**
commercial poachers, and subsistence hunters. The potential threat that armed groups pose to governments and wildlife alike has prompted the UN Security Council to identify poaching in Central Africa as a regional security threat requiring urgent action (UNSC, 2014a; 2014c).

As discussed in this chapter, the problem of poaching extends well beyond Central Africa. The CITES Secretariat has recommended that a number of African states parties to the Convention, including Angola, Cameroon, the Democratic Republic of the Congo (DRC), Gabon, Kenya, Mozambique, Nigeria, Tanzania, and Uganda, develop national action plans to combat ivory poaching and trafficking, and monitor progress in their implementation (CITES Secretariat, 2014b).

Poaching trends

The latest population estimates of elephants in Africa range from 419,000 to 650,000 (UNEP et al., 2013, p. 22). Established under CITES and operational since 2002, a monitoring system known by its acronym, MIKE—Monitoring the Illegal Killing of Elephants—is used to estimate poaching rates. MIKE determines the cause of an elephant’s death, making distinctions between illegally killed elephants, non-intentional elephant deaths (such as death due to natural causes), and intentional but legal killings, such as those resulting from sport hunting or the control of problem animals. Elephant kills can involve an array of weapons, including firearms, spears, machetes, and poisons, and can result from commercial poaching, bush meat hunting, or human–elephant conflict. Data collected from kill site investigations is used to establish the proportion of illegally killed elephants (PIKE). PIKE is the total number of illegally killed elephants discovered, divided by the total number of carcasses encountered per year for each site investigated (UNEP et al., 2013).

In 2011, PIKE rates were at their highest levels following a steady upward trend that began in 2006 (see Figure 1.1). Data shows a slight decline in overall PIKE rates after 2011; yet, despite this decline, aggregate levels are probably unsustainable. PIKE rates from 2013 show that the illegal killing of elephants across Africa accounted for almost two-thirds of all discovered elephant carcasses that year (CITES Secretariat, 2014a).

![Figure 1.1 PIKE trends in Africa, 2002–13](image-url)

Notes: The graph is based on 12,073 carcasses, with confidence intervals at 95 per cent. PIKE rates that exceed 0.5—the level at which half of the dead elephants found are deemed to have been illegally killed (marked by a red line)—are likely to be unsustainable.

Source: CITES Secretariat (2014a, p. 18)
only large sums of money from ivory, but also meat and other products of value to poachers, as evidenced in a number of Central African countries (Stiles, 2011, p. 86).

**Types of poaching**

**Large-scale poaching**

Large-scale poaching is the targeting and illegal killing of a concentrated population of elephants in a short period of time. Documented cases have involved the use of firearms, large quantities of ammunition, and even military helicopters. By one account, large-scale poaching is facilitated by automatic weapons such as Kalashnikov-pattern rifles, particularly if elephants gather into groups as a defensive mechanism, such as when they sense danger (Crone, 2014). Yet large-scale poaching does not always involve firearms, as illustrated by a mass poisoning event that reportedly killed hundreds of elephants in Zimbabwe over several months in 2013 (Thornycroft and Laing, 2013).

A conservationist interviewed for this chapter identified two major types of groups involved in large-scale poaching. The first type is non-state armed groups, such as former ‘janjaweed’ members from Sudan and Mai Mai militias of Congolese origin; they are heavily armed with military-style weapons and carry out large-scale poaching in groups of more than ten members. The degree of organization of their ivory sales varies across groups. The second type of group engaged in large-scale poaching is rogue military units that also use military-style weapons. Operating on the orders of specific officers, these groups usually take a highly organized approach to selling ivory, as discussed below.

Evidence of large-scale poaching can be found by comparing DNA taken from seized ivory with DNA samples of mapped elephant populations. Between 2002 and 2006, DNA testing was conducted on samples from more than 20 tons of ivory seized from a number of container consignments in Asia. Findings showed that the samples had been drawn from a small number of elephant populations belonging to related elephant herds (Wasser et al., 2008), suggesting that the poachers may have targeted particular geographic areas.

Shipping containers loaded with multi-ton ivory consignments are the product of hundreds of elephants’ ivory and point to the involvement of organized criminal networks in the storage and preparation of these shipments. Nevertheless, containerized ivory consignments are not necessarily linked to large-scale incidents, as they could also result from leakage from government stockpiles or traffickers' consolidation of ivory over a period of time or broad geographic region.

Two major poaching incidents in Cameroon and Chad provide some sense of the magnitude of large-scale poaching and its impact on herds. In Cameroon’s Bouba N’Djida National Park, between 300 and 600 elephants were allegedly killed by armed raiders in 2012 (UNEP et al., 2013, p. 58). A year later, 89 elephants were poached in southern Chad, with dozens of pregnant females and 15 calves among those killed (WWF New Zealand, 2013).

Following the incident in Cameroon, the secretary-general of CITES warned that the attack was reflective of a growing trend across African range states, where armed poachers with military-style weapons were decimating elephant populations (CITES Secretariat, 2012). Most national parks were—and, in some cases, still are—ill-equipped to defend against such large-scale poaching.

**Small-scale poaching**

Small-scale poaching is the targeting of an individual elephant or rhino, or small numbers of them, for profit. In contrast to large-scale poaching, which involves the concentrated killing of a herd in a short period of time, small-scale poaching tends to be conducted over a significant period of time. The poachers make use of firearms and non-firearm methods to kill animals. Like large-scale poaching, small-scale activities are mainly driven by profit from illegal ivory.
The groups involved in small-scale poaching vary considerably. In some areas, small groups of local people with knowledge of the bush may target animals to supply a known dealer. This type of poaching has been documented in the Samburu area of Kenya and typically involves the use of firearms (see Box 1.4). Local people who target nearby elephants and rhinos often operate with a low degree of organization and unsophisticated weapons, such as snares, spears, artisanal weapons, or poison. These types of weapon may benefit poachers in areas where security patrols are active, as rangers will not be alerted by a gunshot.

Outsiders may also travel to elephant and rhino rangeland to poach small numbers of animals. Such poachers tend to be well organized, with groups consisting of 2–12 hunters and porters. Using hunting rifles or military-style firearms, they may carry out poaching to order or be self-financed; their sale of ivory or rhino horn also tends to be well structured. Military and law enforcement personnel are known to have engaged in small-scale poaching—sometimes opportunistic, sometimes planned; their activities normally involve the use of military-style firearms.!

While a single elephant kill may not garner news headlines in the same way larger raids in places such as Cameroon and Chad have, PIKE levels in East Africa, where large-scale poaching incidents have not recently been reported publicly, exceeded 40 per cent from 2010 to 2013 (CITES Secretariat, 2014a, p. 19).

Rhinos are not as numerous as elephants, nor do they gather in large herds or migrate. For these reasons, they are most often poached individually and cases of several rhinos being killed together are rare. As a consequence, rhino horn is trafficked in smaller quantities than ivory, although this distinction also reflects the fact that its selling price is much higher than that of ivory.

**Box 1.2 The Lord’s Resistance Army**

In a 2013 report, the UN Security Council called upon UN member states and regional partners to combat illicit trade networks operating in Central Africa, citing in particular the LRA and its involvement in poaching (UNSC, 2013a). Consisting of an estimated 200 fighters, plus abducted civilians, the LRA reportedly poaches elephant tusks to trade for food, weapons, ammunition, and other supplies, including radios (Resolve, Enough Project, and Invisible Children, 2014). While it lacks the logistical capacity to move large quantities of ivory, the group can reportedly access trafficking routes, including Sudanese ones, to move what it manages to poach (Poffenberger, 2013; Ronan, 2014).

The LRA’s poaching activity is not as significant as that of other armed groups operating in the DRC, however. This has led some conservation experts and researchers to express concern that media interest in the LRA, including its elephant poaching, has deflected attention away from the more serious regional threats that elephants face (Duffy and St. John, 2013). These include national armed forces, or elements of those forces, and non-state armed groups other than the LRA, such as Séléka fighters in the Central African Republic, Mai Mai militias in the DRC, and the Forces démocratiques de libération du Rwanda (Democratic Forces for the Liberation of Rwanda, or FDLR) (Titeca, 2013).!

**ARMED GROUPS**

Armed groups involved in poaching encompass a variety of actors and include pro-government militias and armed opposition forces, as well as economically motivated bands of former or current state military. As these groups can potentially operate in large numbers and possess considerable firepower, they can pose unique challenges to rangers and others charged with protecting wildlife.

Over the past decade, armed groups from Darfur have allegedly killed elephants in Chad and Cameroon (Gettleman, 2012a); meanwhile, multiple non-state groups and military forces have been blamed for the killing of elephants in the DRC (UNSC, 2014c). The Lord’s Resistance Army (LRA), active since 1986, is among the groups that have reportedly killed elephants in the DRC (Agger and Hutson, 2013; see Box 1.2). Despite the efforts of national wildlife agencies, security providers, conservancy organizations, and UN bodies to combat illegal poaching, armed groups continue to kill elephants for their ivory.
Poaching by national armed forces

The Forces Armées de la République Démocratique du Congo (Armed Forces of the Democratic Republic of the Congo, FARDC) have been identified by independent observers as among the most ruthless ivory poachers in the DRC, where the state military is reportedly responsible for 75 per cent of all poaching in nine of 11 investigated areas with elephant populations in the country (Kakala, 2013). FARDC soldiers, who are often deployed into elephant range areas in eastern DRC, allegedly control large criminal poaching networks and trading routes that move ivory out of the region and into foreign markets (Vira and Ewing, 2014, p. 38). In 2004, the FARDC apparently moved 17 tons of ivory out of the Okapi Wildlife Reserve in six months (Apobo, 2004)—evidence of the sophisticated logistical arrangements in place and the intense pace at which elephant poaching can be conducted.

Allegations have also been made against high-ranking officers in the FARDC concerning collusion with rebel groups and other poachers. In 2012, a UN report accused FARDC Gen. Gabriel Amisi of trading weapons and ammunition in exchange for poached ivory (UNSC, 2012). President Kabila suspended Amisi soon after the UN accusations, but in August 2014 he was cleared of all charges, reinstated, and promoted in the military (RFI, 2014).

There are also accusations that soldiers from other countries’ militaries have poached elephants in the DRC. In 2012, a poaching incident in Garamba National Park, 22 elephants were killed and stripped of their tusks. Fifteen of those elephants were shot through the top of their heads, suggesting they were shot from above. In fact, witnesses claim that a helicopter—later identified as an Mi-17MD transport helicopter registered with the Uganda People’s Defence Force (UPDF)—was flying above the area at the time the elephants were killed (Gettleman, 2012a). In addition, there are allegations that poached ivory from Virunga National Park was smuggled into Uganda with the assistance of an armed escort provided by a former senior UPDF officer (UNSC, 2014b, para. 234).

During Sudan’s civil war (1983–2005), the main agents of the ivory trade in Sudan were reportedly members of the national armed forces who poached elephants in what was then southern Sudan, as well as in the Central African Republic (CAR) and the DRC (UNEP, 2007). Observers assert that since the independence of South Sudan, its military has poached elephants in Garamba National Park and engaged in shootouts with park rangers (Gettleman, 2012a).

Non-state armed groups in Central Africa

Among armed groups in Africa, those operating in Central Africa have had the most significant impact on elephant herds; their poaching activity in the region has been condemned by international bodies, including the UN Security Council and CITES.

Poaching and other forms of illicit trading in resources—such as minerals and timber—enable these groups to purchase weapons and ammunition with which to challenge local and national authorities, such as the military and the police, as well as security forces affiliated with UN missions (Agger, 2014; UNSC, 2014a). International reports on poaching by armed groups in Central Africa highlight the transnational nature of their activities; these groups move across international borders to poach wildlife, to exploit trafficking routes that furnish them with weapons and ammunition, and to supply distant markets with ivory (ICG, 2014; UNEP et al., 2013). Most poachers operating in CAR are believed to originate in neighbouring states, particularly Chad and Sudan, although Séléka fighters (insurgents) in CAR are also engaged in poaching (Agger, 2014; ICG, 2014). Local bands of armed poachers in CAR and in Cameroon have reportedly transported ivory westward to Nigeria (Lombard, 2012).

Independent observers claim that some armed groups entering CAR from Sudan receive funding from prominent Sudanese businessmen, including several based in the Nyala area in Darfur, who equip them with firearms, night-vision
goggles, and satellite phones (Agger, 2014; ICG, 2014). The continued presence of armed groups in remote areas of CAR, coupled with weak governance and corruption, suggests that law enforcement and government officials are either absent or colluding with the poachers (ICG, 2014, p. 14).

Poaching by armed groups in Central Africa is not new. In what are today CAR and Sudan, Sudanese groups have been killing elephants for their ivory for centuries, supplying Khartoum, one of the world’s oldest ivory carving centres (UNEP, 2007). More recently, in 2013, it was reported that bands of Khartoum-supported fighters, including ‘janjaweed’ members, poached more than 3,000 elephants in Chad and Cameroon (Gettleman, 2012a). In 2010, UPDF soldiers searching for LRA camps inside CAR encountered what they described as a ‘janjaweed caravan’, alleging that the group counted more than 400 members and was well armed. The encounter resulted in the deaths of ten Ugandan soldiers (Gettleman, 2012a).

Across the border from CAR in the DRC, many armed groups have poached elephants, including Mai Mai militias, the Allied Democratic Forces–National Army for the Liberation of Uganda, the Congolese March 23 Movement (until its recent demise), and the Forces démocratiques de libération du Rwanda (Democratic Forces for the Liberation of Rwanda, FDLR) (FDLR–FOCA). Some of these groups reportedly attacked ranger patrols and poached wildlife in national parks such as Garamba, Lomami, and Virunga, as well as in the Okapi Wildlife Reserve (Vira and Ewing, 2014, p. 37).

In the DRC and elsewhere, armed groups are believed to assist each other in the collective pursuit of ivory and other resources. Mai Mai fighters supply ivory in exchange for material provisions and support from other groups (Vira and Ewing, 2014, p. 41). The Katanga and Gedeon Mai Mai militias, with 8,000 fighters or more, are believed to acquire most of their revenue from poaching (IRIN, 2013).

The revenues that some groups can generate from illicit trading, including dealing in ivory, are high. One report estimates that the FDLR previously generated as much as USD 71 million per year from a combination of illicit tax collection and trading, including in ivory (AllAfrica, 2014a). There are indications that some armed groups involved in poaching are now disarming, with large numbers of FDLR fighters having done so already (Mwai, 2014; FDLR–FOCA); it is still too early to determine whether such disarmament campaigns will lead to any significant reductions in poaching in Central Africa.

POACHERS’ WEAPONS

The weapons used by armed groups and other poachers, both commercial and subsistence, vary considerably, ranging from hunting rifles and Kalashnikov-pattern rifles to craft muzzle-loading firearms. In addition to firearms, pastoralists and subsistence poachers also use traditional weapons and methods to kill wildlife, such as spears and poisons. The complicity of some government officials reportedly facilitates the supply of firearms and ammunition to armed groups involved in poaching in Central Africa (ICG, 2014, p. 14; see Box 1.3). To a certain extent, it appears this is also true of commercial poaching networks operating independently of armed groups in the sub-region (Stiles, 2011).

Firearms and ammunition

In Central Africa, illicit weapons reportedly originate from multiple sources, including Libya (UNODC, 2013; UNSC, 2013b). Individual poachers and poaching groups across Africa have sourced other weapons from conflict zones in countries including Angola, Burundi, Mozambique, South Sudan, and Sudan. Some armed groups, such as those in...
the DRC, are believed to be so flush with weapons that they have little need to acquire more (UNODC, 2013).

Kalashnikov-pattern rifles are prominent among the military-style weapons used for poaching in Central Africa, while 12-gauge shotguns, sometimes loaded with craft bullets, are also reported to be in use (Independent, 2013; Stiles, 2011, p. 13). A report on weapons and ammunition use among hunters in four Central African countries finds hunting rifles to be less common than automatic military rifles and shotguns, possibly due to the high price of hunting rifles (USD 1,365–2,200) and hunting ammunition (Stiles, 2011, p. 48).

Firearms commonly used to hunt elephants and other big game can be classified into three groups: hunting rifles of various calibres; automatic military-style small arms, including assault rifles and light machine guns; and shotguns (Stiles, 2011). Large-calibre rifles are considered ideal for hunting large game, with the .375 calibre bullet representing the minimum calibre needed to kill either an elephant or a rhino with one shot (McAdams, 2014). The larger .458 calibre bullet, also commonly used for hunting big game, has a firing range of more than two miles (more than 3.2 km). Automatic military small arms, including Kalashnikov-pattern rifles, are chambered for smaller-calibre cartridges (such as 7.62 × 39 mm) and, in comparison with most hunting rifles, have decreased range and stopping power, making them less suitable than hunting rifles for poaching big game.

Many firearms reach poachers, including armed groups, after having been diverted from government security forces, particularly in situations where ethnic and political alliances trump national security interests (UNODC, 2013, p. 98). A 2014 report links ammunition found at elephant kill sites in Cameroon, CAR, Chad, and the DRC to ammunition in Sudanese government stores (Vira and Ewing, 2014). It is unclear whether the ammunition was transferred deliberately, or instead leaked accidentally from Sudanese stockpiles.

While it is possible to trace firearms used by poachers that bear certain markings, such as the country of manufacture or country of last legal import, many anti-poaching forces have not been trained to do so. Moreover, wildlife rangers rarely have the opportunity to seize weapons used by poachers. Fired cartridge cases are sometimes found at poaching sites and bullets—if not fragmented—can be recovered from the remains of dead animals, but ballistics checks are only exceptionally run on these items, despite their potential value in identifying poachers, their guns, and broader arms trafficking networks.

Although information on weapons and ammunition used by poachers could provide insight into the networks that support and conduct poaching, including weapons sources and supply lines, it is not systematically collected or analysed. The form used to gather MIKE data at elephant kill sites includes a section for the type of weapons used, but this information is provided on a voluntary basis. Richard Leakey, the director of the Kenya Wildlife Service from 1989 to 1994, implemented a system to recover components of fired cartridges—typically projectiles and cartridge cases. As a result, his agency was able to trace several poaching incidents back to a small number of firearms registered with the Kenyan police. These guns, it appears, were being hired out to multiple poachers. Yet a lack of firearm registration data from neighbouring countries, where many of the weapons his rangers seized were thought to originate, prevented investigations into the origins of many other firearms.

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as little as USD 0.17 a piece (Stiles, 2011, pp. 49–50). The same study concludes that bush meat hunters in the Republic of Congo use between 18 and 60 pieces of 7.62 × 39 mm cartridges to kill an elephant, while in Cameroon hunters typically use between three and five .458 calibre cartridges for this purpose. This translates to a total cost per animal of USD 90–170 in the Cameroon case, versus USD 3.60–42.00 in that of the Republic of Congo (Stiles, 2011, p. 50).

Some poachers have used homemade sound suppressors in rhino conservancies in central Kenya. Ammunition produced by the former Royal Ordnance Factories facility at Radway Green in the UK—both 5.56 × 45 mm and 7.62 × 39 mm—has reportedly been found in rhino conservancies in Kenya. Conservancy security officers posit that the ammunition, manufactured for the British Armed Forces, has been picked up from British firing ranges following training exercises.

As seen in countries such as South Africa, some poaching groups carry different types of weapons for different purposes. Most rhino poaching groups entering Kruger National Park are composed of three poachers; roughly a dozen such groups are inside the park at any given time (Ramsey, 2014). Mozambican poaching groups commonly employ a designated shooter. While the shooter wields a hunting rifle, the other members of the group tend to use military-style rifles to provide a protective perimeter during the tracking of animals and the extraction of horns or ivory (Vira and Ewing, 2014, p. 73).
The fight against poaching may be able to benefit from civilian firearm controls. Mozambique has passed a new bill—to be enacted in 2015—that increases the fines for poaching with illegal firearms, regardless of whether the poacher in possession of the firearm kills wildlife (AllAfrica, 2014b). Neighbouring South Africa already has stringent laws against the use of illegal firearms in hunting, with poachers and permit-carrying hunters alike subject to fines and/or imprisonment for the use of prohibited weapons (Library of Congress, 2014).

To kill rhinos, Mozambican poachers appear to prefer hunting rifles over other firearms available to them. There is evidence that Czech CZ 550 bolt-action rifles have become more popular with poachers in recent years (MacLeod and Valoi, 2013). While obtaining a rifle through official channels in Mozambique can take up to six months, there is a brisk trade in illicit hunting rifles, as evidenced by some recent seizures of hunting rifles affixed with sound suppressors, including a Winchester Magnum rifle chambered for .458 ammunition (Bloch, 2012; MacLeod and Valoi, 2013). While it is possible to suppress the sound of a .458 Winchester Magnum rifle by using a reduced-power subsonic cartridge, doing so requires significant technical expertise on the part of users.

In several cases, firearms seized by Mozambican police and rangers have been traced to multiple poaching incidents (Vira and Ewing, 2014, p. 71), indicating that security forces and ranger patrols were negligent in storing seized weapons or were resupplying criminals, or both. In fact, poachers arrested or killed in Mozambique have included active
and former members of the army, border guards, and police (Vira and Ewing, 2014). Active and former state security providers who are involved in poaching may have insider access to state-held firearms. Moreover, they are often professionally trained in the use of such weapons. Depending on their experience and former duties, poachers with military backgrounds may also have knowledge of bush combat tactics and possess skills that can be adapted to wildlife tracking.

Given the high price of rhino horn and elephant tusks, the financial rewards from poaching are considerable. There is evidence that increasing numbers of ‘non-professionals’ are getting involved in poaching, with kill-site investigations in Tanzania identifying the use of ‘spray and pray’ methods that involve shooting an animal with many more bullets than are strictly needed to kill it.\(^{21}\)

Similarly, in Kenya, some rhino killings have reportedly involved the use of large numbers of bullets. This may largely be determined by the types of weapons or ammunition available to the poacher. As noted above, a poacher will need more bullets to kill a rhino with an automatic rifle than with a hunting rifle. Limited financial resources may force some poachers to use a Kalashnikov-pattern rifle, in part because compatible cartridges are much less expensive than some hunting rifle ammunition.

**Traditional and craft weapons**

As noted above, poachers do not always use firearms to kill wildlife. In Tsavo National Park, in Kenya’s Coast province, the percentage of elephants killed by gunshot is much lower (34 per cent) than in the North Rift region of the country (85 per cent) (Vira, Ewing, and Miller, 2014). Instead of relying on firearms to kill animals, poachers in the Tsavo area use trusted methods that often involve traditional weapons that have the advantage of not drawing the attention of rangers—unlike a discharged firearm.\(^{25}\)

According to a member of the African Elephant Specialist Group of the International Union for Conservation of Nature, traditional weapons—including poison-tipped spears and arrows—are commonly used for poaching in Tsavo.\(^{26}\) These ‘silent’ methods often kill animals more slowly than a high-calibre gunshot, but the poachers are patient, avoiding detection and tracking the animal over many hours as they wait for it to die. One such case is that of Satao, a giant tusker killed with a poisoned arrow in Kenya in 2014 (Tsavo Trust, 2014).

Some members of the Maasai use poison-tipped traditional spears. Data collected by the NGO Big Life in a Maasai area outside Amboseli National Park indicates that of the 42 elephants poached in 2011–13, more than three-quarters (32) were killed with poisoned spears. Of the remaining ones whose means of death could be identified, five elephants died from gunshot wounds, one was killed by a snare, another by poison, and a one by arrows.\(^{27}\)

Poisoning is used in many locations in East, Central, and Southern Africa. In some areas, conservationists find that poisoning is increasing (Ogada, 2014). Although the reasons for the increase are unclear, it could be linked to hunters’ growing use of silent methods of killing to avoid detection by anti-poaching patrols. Poisons are easy to transport and widely accessible, as they can be made from local flora or commercial ingredients that are available in trading centres and towns. Plant-based poisons are typically used on spears or arrows, whereas shop-bought poisons tend to be used on bait foods, such as pumpkins, watermelons, and pineapples, which are left near watering holes or crops and eaten by elephants.\(^{28}\)

Craft firearms and ammunition offer an inexpensive alternative when factory-made materiel is beyond poachers’ means. Commonly used by subsistence and small-scale local poachers, they are principally made by hand in relatively small quantities (Berman, 2011). Blacksmiths are known to make cheap and effective shotguns, as well as firearms constructed from car steering columns that are loaded with melted-down gunshot to make single, pointed bullets (Chappaz, 2006).
Gender and Gender-Based Violence

Guiding Questions:

1. What is “gender”?
2. What is “gender-based violence”?
3. What does the ATT require regarding GBV?
4. How are arms, the arms trade, and GBV interconnected?

Resources:

1. “What is the difference between sex assigned at birth and gender identity? (video),” Stanford University, 2017. Available at this link.


4. “How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment,” Control Arms. [Provided separately in print. Document can be accessed online at this link.]

5. Executive Summary, “Preventing Gender-based Violence through Arms Control,” Reaching Critical Will. [Appears in an earlier session: “ATT and International Law.”]

Gender-responsive Small Arms Control
A Practical Guide

Edited by Emile LeBrun
Core concepts related to gender

This Handbook understands **sex** as the physical or biological classification as male or female⁴ assigned to a person at birth based on a combination of bodily characteristics, such as chromosomes, hormones, internal reproductive organs, and genitals (IASC, 2015, Annexe 2, p. 320). It is contrasted with the concept of **gender**, which gives meaning to the sex category. For the purpose of this Handbook, **gender⁵** refers to socially constructed ideas about the attributes and opportunities associated with a person based on their assigned sex (male, female, or other) and in the context of social, political, economic, and cultural relationships. These constructed attributes, opportunities, and relationships are learned through socialization processes, vary across contexts, and can change over time. In short: gender is socially and culturally constructed, relational, context specific, and changeable.

**Gender norms** are social rules that define what is desirable and possible for persons within a gender category in terms of social and economic roles, political power relations, sexual orientation, and a range of other behaviours. They establish normative ideals of what it means and entails to ‘be a man’ (**masculinities**) or ‘be a woman’ (**femininities**).⁶ Such ‘hegemonic’ or ‘dominant’ norms are socially more desirable and powerful than alternative masculinities, femininities, or gender identities across a wide spectrum of **gender diversity**. In relation to armed violence, dominant masculinity norms are often linked to militarized status symbols,

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3 While many UN documents refer to ‘women, men, boys, and girls’, terms like ‘gender equality’ often remain undefined in UN discourses and international regulations, including in the agendas this Handbook addresses. See also True and Parisi (2013, p. 37).

4 Common definitions of sex exclude non-binary (intersex) categories, though this is changing. Some countries now offer non-binary categories of registration at birth. Sex is the category used for male/female data disaggregation.

5 The gender definition used in this Handbook combines several widely used definitions from OSAGI (2001), UNICEF (n.d.), and UN Women Training Centre (n.d.).

6 These terms are pluralized to emphasize that there are always multiple understandings of masculinity or femininity, even though certain notions may be dominant or privileged in a particular place and time.
such as the possession, display, or use of a weapon and the use of violence to resolve conflict (see Chapter 3).7

Different cultures use different terms to describe people who have same-sex relationships or exhibit non-binary gender identities. Among the most resonant at the international level are LGBT, which stands for ‘lesbian, gay, bisexual, and transgender’; LGBTI, for ‘lesbian, gay, bisexual, transgender, and intersex’; and LGBTQI, for ‘lesbian, gay, bisexual, transgender, queer, and intersex’. Because their sexual orientation or gender identity does not correspond with social and cultural norms in many contexts, LGBTQI persons face risks of becoming subject to specific kinds of armed violence.8

**Gender equality** refers to the equal rights, responsibilities, and opportunities of all persons irrespective of their sex or gender. To achieve gender equality, everybody — men, women, girls, boys, and persons with other gender identities — should be engaged and committed to taking into account the diversity of experiences of and between social groups, and the different needs and interests of people of all gender identities.9

**Gender mainstreaming** is a ‘set of specific, strategic approaches as well as technical and institutional processes adopted’ to achieve the goal of gender equality (UN Women, n.d.). Using gender analysis and other tools, gender mainstreaming assesses:

> the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making

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7 For analyses of masculinity, see the studies of Connell and Messerschmidt (2005); Kimmel, Hearn, and Connell (2005); and Myrthtinen, Khattab, and Naujoks (2017). Gender diversity acknowledges ‘that many peoples’ preferences and self-expression fall outside commonly understood gender norms’ (UN Women Training Centre, n.d.). Different terms are used to refer to gender-diverse persons and social groups, e.g. queer (Weber, 2014, p. 598), or non-binary or gender-fluid (Hessmann Dalaqua, Egeland, and Graff Hugo, 2019, p. 10).

8 UN Free & Equal (n.d.) provides a useful summary of most of these terms.

9 This definition is based on working definitions by the UN Women Training Centre (n.d.) and its expanded version by the United Nations Institute for Disarmament Research (UNIDIR), which references the UN Women definition (Hessmann Dalaqua, Egeland, and Graff Hugo, 2019, p. 10). It recognizes the fluidity of gender as a category, beyond the binary notion used for collecting sex- and age-disaggregated data. It underlines that gender is not merely a question about ‘women’ and that it does not suffice to simply ‘add women’ and expect them to function like men in male-dominated domains, such as security. Only when the diversity of experiences and the different forms of knowledge and needs can be taken into account will gender equality lead to effective and sustainable programming.
women’s as well as men’s concerns and experiences an integral dimension of the design implementation, monitoring and evaluation of policies and programmes in all political, economic, and societal spheres so that women and men benefit equally and inequality is not perpetuated. (UNGA, 1997b, p. 28)

This enables small arms programmes and policies to address all relevant forms of violence and to consider the different impacts of those programmes and policies on persons of all genders.\textsuperscript{10}

Core concepts related to small arms and armed violence

The Small Arms Survey uses the term ‘small arms and light weapons’ to cover both military-style small arms and light weapons as well as commercial firearms (handguns and long guns). Except where noted otherwise, it follows the definition used in the \textit{Report of the Panel of Governmental Experts on Small Arms} (UNGA, 1997a):

- **small arms**: revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles, and light machine guns; and
- **light weapons**: heavy machine guns, grenade launchers, portable anti-tank and anti-aircraft guns, recoilless rifles, portable anti-tank missile and rocket launchers, portable anti-aircraft missile launcher, mortars of less than 100 mm calibre.\textsuperscript{11}

The term ‘small arms’ is used in this Handbook to refer to small arms, light weapons, and their ammunition (as in ‘the small arms industry’), unless the context indicates otherwise, whereas the terms ‘light weapons’ and ‘ammunition’ refer specifically to those items. The term firearms (or guns) comprises small arms and heavy machine guns.

\textbf{Armed violence} is used in this Handbook to mean ‘the use or threatened use of weapons to inflict injury, death or psychosocial harm’ (OECD, 2011, p. ii). Crucially for small arms-related policies and programmes, this definition covers the spectrum of violence—from organized activities by a state or group in the

\textsuperscript{10} See also True and Parisi (2013, p. 37).

\textsuperscript{11} To this list, the Survey has added single-rail-launched rockets and 120 mm mortars, as long as they can be transported and operated as intended by a light vehicle (Small Arms Survey, n.d.a).
context of armed conflict or war to acts of violence where the conditions of armed conflict are absent, such as in criminal, gang, or inter-personal violence, including domestic violence and other forms of gender-based violence. Small arms control programming is one important way to address armed violence.

**Gender-based violence (GBV)** is any harmful act perpetrated against a person based on socially ascribed gender differences (UN Women Training Center, n.d.). GBV can be sexual (such as harassment, rape, forced prostitution, genital mutilation, sexual slavery, or ‘honour crimes’) or involve other forms of physical violence (such as beatings, assault, or human trafficking), emotional or psychological violence (such as humiliations or confinement), or socioeconomic violence (such as unequal access to services, opportunities, or rights).\(^{12}\) GBV includes violence against women and girls (VAWG), violence against men and boys, and violence against persons with other gender identities. It can be perpetrated in public or private spaces: intimate partner violence is a widespread form of GBV across societies at the global scale (Mc Evoy and Hideg, 2017, pp. 71–74).

GBV reflects and magnifies unequal gendered power relations; for example, VAWG has been acknowledged as:

> a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of full advancement of women.\(^{13}\)

Similarly, gender-based violence against men and boys has been used by male and some female perpetrators to subordinate, humiliate, and symbolically ‘emasculate’ or ‘feminize’ those considered ‘other’. This reinforces perpetrators’ power positions, which are often linked to heterosexual militarized masculinities.\(^{14}\) Small arms form part of these masculine norms and are often used to perpetrate or enable the commission of GBV (for example, Dziewanski, LeBrun, and Racovita, 2014, p. 14). For this reason, understanding the dynamics of GBV and its links to small arms proliferation and misuse in a given context is important for gender-responsive small arms programming.

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\(^{12}\) See Acheson (2019a, p. 6; 2019b, p. 10).

\(^{13}\) The definition quoted here, from the United Nations Declaration on the Elimination of Violence against Women (UNGA, 1993), is focused on violence against women, but applies equally to girls.

\(^{14}\) See IASC (2015).
Core concepts related to gender in small arms programming

This Handbook provides guidance for gender-responsive small arms policy-making and programming. Gender responsiveness means ensuring that relevant programmes and projects take into account specific gender dynamics—including dominant social and cultural expectations and roles of people based on their gender identities—in a given society, time, and place (see Chapter 3).¹⁵

Gender-responsive small arms control programming may be gender sensitive or gender transformative depending on whether it seeks to change underlying gender norms in order to achieve sustainable reductions in small arms violence—and to achieve gender equality.

**Gender-sensitive** programming considers the impact of gender inequalities on achieving programme goals. Gender sensitivity takes gender dynamics into account at all stages of programming, with a view to meeting the programme objectives, but does not necessarily seek to change or influence gender roles and relations.

**Gender-transformative** programming goes further by addressing underlying gender inequalities; promoting shared power, control, and decision-making; and supporting women’s empowerment towards more gender-equal relationships. This can entail critical reflection of individual attitudes, institutional practices, and broader social norms that are at the core of gender inequality.

Simultaneously, gender-transformative programming goes beyond women’s enhanced representation and participation, as it seeks to influence dominant gender norms that contribute to violence.¹⁶ This Handbook advocates for gender-transformative approaches for more effective and sustainable solutions to armed violence.

These approaches contrast with ‘gender-neutral’ or ‘gender-blind’ small arms programming, which ignores or fails to take gender into account, or fails to acknowledge context-specific gender dynamics. Such approaches may passively reproduce or actively exacerbate underlying harmful gender dynamics that underpin armed violence, so may actually be ‘gender negative’.

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¹⁵ This definition draws on UN Women (2018, Annexe 1, p. 44).
¹⁶ The brief definitions in this section are adapted from Eckman (2002); Racovita (2018, p. 5); UNFPA, Promundo, and MenEngage (2010, p. 14); UNICEF (n.d.); UN Women (2018, Annexe 1, p. 44); and UN Women Training Centre (n.d.).
What and Why

Tools for incorporating gender in small arms programming

**Gender analysis** is an analysis of the gender aspects of a given problem, and is the core tool to identify gender-responsive small arms programming components. Gender analysis asks questions about the differences between the positions of people of different genders relative to each other, and about their access to resources, opportunities, constraints, and power in a given context. Gender analysis identifies underlying gender norms and their relationship to weapons and armed violence. Gender analysis also examines how gender intersects with other identity markers, such as age, class, ethnic caste, religion, sexual orientation, rural/urban location, disability, or marital status—an approach known as **intersectionality** (see Chapter 3, Box 2).

Collecting **sex- and age-disaggregated data** is imperative for making small arms programming gender-responsive, effective, and sustainable. This is reflected in the outcome document of the Third Review Conference of the UN Programme of Action on Small Arms (UNGA, 2018a) and in the SDGs (UNGA, 2015). Obtaining disaggregated data is a core requirement for gender analysis and a precondition for gender-responsive small arms programming. Sex-disaggregated data collection and analysis on small arms-relevant indicators (starting from those on armed violence: 16.1.1, 16.1.2, and 16.1.3) is therefore a priority for programming. Whenever possible, data collection should also be disaggregated by other categories (as indicated by SDG Target 17.18) to account for other identity markers (UNGA, 2015).

This Handbook also refers to ‘meaningful’ and ‘full and effective’ representation and participation for women and girls in small arms programming. **Meaningful participation** is achieved when women and men hold equal power positions and have, and make use of, the same opportunities to contribute to processes and outcomes. If conducted from the outset of small arms programming, gender analysis makes unequal representation and participation visible, and can help improve the programming process to become more inclusive (UNSG, 2018). Meaningful participation moves past superficial efforts to ‘include women without genuinely extending them the opportunity to influence outcomes’ (UNSG, 2018, para. 29).

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17 Compiled from EIGE (2018, p. 4); Reaching Critical Will (n.d.); Save the Children (2014, p. 53); and UN Women Training Centre (n.d.).
18 See UNSD (2019) for the full list of indicators related to the SDGs.
19 Often focused on enhancing women’s decision-making roles, the importance of meaningful participation extends to all gender and age groups, as detailed in the MOSAIC modules 06.10 and 06.20 (UN, 2018a; 2018b).
Introduction

Those who experience small arms violence first-hand understand its negative impacts on individuals, communities, and societies very well. Yet holistic policy responses from the international community have been slow in the making. Historically, most of the relevant multilateral fora have been siloed in the domains of sustainable development; women, peace, and security; and small arms control.

Deliberate efforts by progressive governments and civil society have begun to integrate these domains around the edges. In particular, there is notable progress to incorporate gender perspectives into multiple areas of small arms control and other disarmament efforts. United Nations (UN) resolutions, conference outcome documents, and joint governmental statements provide a normative—and sometimes legal—basis for stopping arms transfers that perpetuate gender-based violence; call for sex- or gender-disaggregated data collection; ensure gender-sensitive arms control programmes; or advocate for women’s meaningful participation in all levels of disarmament, and for cohesion with other relevant UN agendas.

These recent developments build on years of civil society advocacy, research, and testimony. In turn, the small arms control community has taken note of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), and is pursuing tangible ways to build on the undeniable relationship between armed violence and sustainable development, in order to achieve mutual goals of peace and prosperity. These are undoubtedly steps in the right direction. But gaps and challenges remain—as well as pockets of political pushback against these developments.

This chapter provides an overview of how three multilateral frameworks are increasingly connected: the Women, Peace and Security (WPS) Agenda; the 2030 Agenda for Sustainable Development; and the global small arms control regime. It introduces the core principles, key mechanisms, and implementation platforms that form the basis of those frameworks. The chapter then identifies three areas of convergence between these frameworks: their common objectives; opportunities to leverage data collection; and how they advance gender perspectives in security policy. Following an overview of trends, the chapter illustrates gaps and challenges, as well as opportunities for further action. This chapter should not only have immediate relevance for diplomatic communities but also offer insights for other government officials, small arms control practitioners, and civil society groups working across these domains.
Understanding the normative and legal landscape

This section summarizes the normative and legal mechanisms the international community has developed to respond to the challenges of gender-based violence, socioeconomic underdevelopment, and small arms violence. Table 1 summarizes the various ways in which the main instruments within each agenda promote gender perspectives.

The Women, Peace and Security Agenda

Core principles and approach

The WPS Agenda is perhaps best understood as a set of approaches jointly rooted in the principle that ‘effective incorporation of gender perspectives and women’s rights can have a meaningful and positive impact on the lives of women, men, girls, and boys on the ground’ (PeaceWomen, n.d.a). While this is applicable to every facet of women’s lives, the WPS Agenda focuses on how women are differently affected by violence and conflict, and the role they can play in building and sustaining peace to enhance the security of all persons. By advocating for a gender perspective in peace and security, which includes looking at whether and how men and women are affected differently by a particular circumstance or problem, the unique needs of women can be addressed and their different capabilities highlighted (George and Shepherd, 2016).

The WPS Agenda has four pillars: participation (in peacebuilding and post-conflict resolution), prevention (of violence and derogation of rights), protection (from violence), and relief and recovery (creating the structural conditions necessary for sustainable peace) (PeaceWomen, n.d.a). The first three are referred to as the ‘three Ps’.

Key mechanisms

Although the importance of women’s experiences and capacities has been recognized for decades or more, its inclusion at the highest levels of international policymaking has been piecemeal (PeaceWomen, n.d.b). For many decades after the establishment of the UN, feminists’ efforts to shape its agenda had typically focused on development, human rights, and violence against women by working

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20 Important precursors to UNSCR 1325 include the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (UNGA, 1979) and the 1995 Beijing Declaration (UN Women, 1995).
within human rights bodies or specialized commissions, such as the Commissions on the Status of Women, Sustainable Development, and Social Development (Cohn, 2004, p. 3). Participation in the security sphere is something relatively new.

The adoption of UN Security Council Resolution (UNSCR) 1325, ‘Women, Peace and Security’, in 2000 is regarded as a milestone achievement in this regard (Otto, 2017). It was the first time the Security Council addressed the disproportionate impact of armed conflict on women and their targeting by combatants, and represents the culmination of years of advocacy. Key provisions include commitments to:

- increase participation and representation of women at all levels of decision-making;
- pay attention to specific protection needs of women and girls in conflict; and

By stressing the importance of women’s equal and full participation as active agents in peace and security, UNSCR 1325 moves beyond framing women solely as victims or a vulnerable group (PeaceWomen, n.d.a). UNSCR 1325 has been followed by eight other resolutions (UNSCRs 1820, 1888, 1889, 1960, 2106, 2122, 2242, and 2467), which together are considered the core of the WPS Agenda.

Implementation

National Action Plans (NAPs) are a primary vehicle for the implementation and localization of UNSCR commitments (Rahmanpanah and Trojanowska, 2016). These documents outline the domestic and foreign policy actions undertaken to meet the WPS objectives, and are envisioned as a critical way to ensure compliance with the provisions of the resolutions. The first NAPs were implemented around 2005. As of August 2019, 81 UN member states and 11 regions have established a NAP—although the scope of activities they describe, as well as their implementation, is uneven. For example, fewer than half include an allocated budget for implementation, and many demonstrate insufficient analysis and consideration of the connection between disarmament, gender equality, and violence (PeaceWomen, 2019).

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21 PeaceWomen, a programme of the Women’s International League for Peace and Freedom (WILPF), conducts regular monitoring and analysis of NAP implementation (PeaceWomen, 2019).
In considering implementation more broadly, there remains an imbalance among implementation of the ‘three Ps’. Most notably, the protection of women and girls continues to be overemphasized, at the expense of the prevention of violence and conflict (Mahmoud, 2018). Some feminist scholars have expressed concern that this pattern perpetuates the perception that women are vulnerable and needing protection from men rather than recognizing their agency (Mahmoud, 2018; Puechguirbal, 2015). Others stress that the WPS Agenda has been co-opted in a way that perpetuates militarism and violence, rather than effecting change and advancing peace as originally intended.\(^\text{22}\)

**The 2030 Agenda for Sustainable Development**

**Core principles and approach**

The 2030 Agenda is a broad and interdependent approach to sustainable socio-economic development that builds on earlier multilateral processes and agreements. The eight Millennium Development Goals (MDGs), agreed to in 2000, were the principal global framework seeking to eradicate extreme poverty by 2015 (Aryeetey et al., 2012, p. 2). Despite widespread political support for the MDGs and negotiated targets and timelines, progress towards their achievement was uneven. As it became apparent that targets and goals would not be met, the Post-2015 Development Agenda was initiated in 2012 to define the global development framework that would succeed the MDGs.\(^\text{23}\)

At the Rio+20 Conference in 2012, a non-binding UN resolution set out many of the basic principles that later became the foundation of the SDGs (UNGA, 2012). The 2030 Agenda and its goals represent a holistic approach to development by considering a wider range of factors than the MDGs did, as well as how they interact with one another. Significantly for this Handbook, ‘the 2030 Agenda clearly connects development with peace, security, and arms control’ (McDonald and De Martino, 2016, p. 1).

**Key mechanisms**

The 17 SDGs are the primary mechanisms of the 2030 Agenda; the UN General Assembly adopted them in resolution A/RES/70/1, ‘Transforming our world: the


\(^{23}\) Additional information about the post-2015 process, including key documents, can be found online (UNDESA, n.d.a).
2030 Agenda for Sustainable Development’ (UNGA, 2015) amid strong political support and commitment. Given the interdependent nature of the goals and the holistic approach, the whole agenda is relevant for improving and advancing small arms control and WPS. Two SDGs, however, contain elements of particular relevance to this Handbook.\(^2^4\)

**SDG 5** seeks to: ‘Achieve gender equality and empower all women and girls’. All of the SDG 5 targets are synergistic with the WPS Agenda, but Target 5.1 (‘End all forms of discrimination against women and girls everywhere’) and Target 5.2 (‘Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation’) represent a platform from which to approach improving women’s participation in disarmament and ending small arms-related gender-based violence (GBV).

**SDG 16** seeks to: ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’.

Each SDG has its own set of targets, of which there are 169 in total, measured by sets of indicators. The most relevant SDG 16 target is 16.4: ‘By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime’. It has two indicators: ‘Total value of inward and outward illicit financial flows (in current United States dollars)’ (16.4.1), and: ‘Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments’ (16.4.2). A subsequent section of this chapter describes how the small arms control regime can assist in meeting this target.\(^2^5\)

The annual High-level Political Forum on Sustainable Development (HLPF) serves as the central UN platform for follow-up; it is intended to ‘facilitate sharing of experiences, including successes, challenges and lessons learned’ and ‘provide political leadership, guidance and recommendations for follow-up’ (UNDESA, n.d.c).

**Implementation**

As mentioned, all targets have sets of indicators that are intended to both guide governments in their approach to SDG implementation and ensure a transparent

\(^2^4\) Details about the goals described in this section are taken from ‘Sustainable Development Goals’, available online (UNDESA, n.d.d).

\(^2^5\) SDGs 3, 4, 10, and 11 are not covered in depth in this Handbook, but also have relevant aspects.
and equitable platform to assess progress. The process of establishing these indicators was complex, involving input from many sectors, and included debate about fundamental questions, such as how to deal with indicators for which the most relevant kind of data was not readily available (Dunning, 2016). Ultimately, the UN Statistical Commission’s Interagency and Expert Group on SDG Indicators (IAEG-SDGs) agreed to the indicators and continues to oversee the process.

An important aspect of the HLPFs is the voluntary national reviews (VNRs), which member states submit to provide updates on their progress towards implementing the 2030 Agenda and SDGs. The 2018 SDG Report indicates that, in some countries, gains are being made towards reaching certain goals, while in other areas progress is poor. In many countries, data collection remains a fundamental challenge (UN, 2018c, p. 3).

**Small arms control regime**

**Core principles and approach**

The international small arms control regime is a patchwork of global and regional agreements that seek to prevent small arms proliferation, diversion, and misuse by addressing supply, demand, and transfers in the context of both legal and illegal markets. The mechanisms described below are broadly complementary, and are all rooted in a desire to reduce the human suffering caused by small arms and light weapons.

**Key mechanisms**

Multiple mechanisms comprise the international small arms control regime—although the word ‘regime’ here connotes an informal set of institutions and norms that guide behaviour rather than a formally interlocking set of legal instruments under a single umbrella. The core of the regime consists of four instruments:

- **The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects**—also referred to as the PoA or **UN Programme of Action on Small Arms**—of 2001 is the foundational normative agreement for all international small arms control efforts. Its politically binding global commitments provide a basis and mandate for states to further develop and implement practical measures to curb the illicit

26 See the Voluntary National Review Database (UNDESA, n.d.b).
trade in small arms at all levels (UNODA, n.d.). These include improving and strengthening national legislation, regulations, processes, and procedures concerned with small arms controls on imports and exports, marking, tracing, stockpile management, record-keeping, and reporting (UNGA, 2001b).

- **The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition**—commonly known as the Firearms Protocol—was adopted on 31 May 2001 and entered into force on 3 July 2005 (UNGA, 2005). It is one of three protocols of the UN Convention against Transnational Organized Crime, agreed in November 2000 (UNGA, 2001a). While it is the first legally binding global instrument to address small arms, the Protocol is more limited in scope compared to the PoA; however, it can be viewed as a law enforcement instrument that requires its states parties to criminalize illicit manufacturing and trade in firearms (UNGA, 2001a, art. 5).

- When the PoA was adopted, member states recommended the UN establish a Group of Governmental Experts (GGE) to study ‘the feasibility of developing an international instrument’ on identifying and tracing small arms (UNGA, 2001b, s. IV, para. 1(c), p. 17). The GGE’s report led to the adoption in 2005 of the International Tracing Instrument (ITI). Like the PoA, the ITI is a politically binding instrument that provides rules for cooperation on tracing. Its provisions focus on five areas of activity: marking, record-keeping, cooperation in tracing, implementation, and follow-up activities (UNGA, 2005).

- **The Arms Trade Treaty (ATT)** of 2013 is a multilateral instrument that regulates international transfers of conventional arms, including small arms (UNGA, 2013). It is considered a landmark treaty for its deep integration of human rights and humanitarian concerns in a global arms control agreement. The ATT obligates states parties to assess the potential negative human and humanitarian impacts of a prospective weapons transfer—and the potential for diversion to illicit markets—prior to authorization for export. They must consider the likelihood of transferred arms being used to commit or facilitate genocide, crimes against humanity, war crimes, and serious human rights and international humanitarian law violations, including GBV (UNGA, 2013, Arts. 6 and 7).

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27 Conventional arms include much larger systems, such as tanks, combat aircraft, and warships.
Additionally, there are multiple regional and sub-regional small arms control and transfer agreements in place, most notably in Africa, Latin America, and Europe.  

Two UNSCRs (2117 and 2220) have been adopted on small arms, in 2013 and 2015 respectively (UNSC, 2013b; 2015a). The Human Rights Council has also adopted resolutions on firearms (UNHRC, 2015; 2018) and arms transfers (UNHRC, 2016; 2019). In 2017, the High Commissioner for Human Rights issued a report on the topic of arms transfers and human rights protection (UNHRC, 2017). The UNGA First Committee passes multiple small arms-related resolutions annually, some of which now reflect the 2030 Agenda or gender considerations.

Implementation

Implementation of the four main mechanisms listed above varies, in terms of both actual adherence to commitments and the creation of relevant infrastructure to support implementation or mobilize resources. All four have regular meeting cycles, in which states parties or member states evaluate progress towards implementation and can—at least in theory—strengthen or build on the original instruments. The ATT has a secretariat; the PoA and ITI are considered together by a shared implementation support system. In some countries and regions, national small arms focal points and commissions provide additional support and oversight for implementation and coordination, although the PoA itself does not mandate these.

Reporting, often used as a mechanism to assess compliance and foster transparency, is mandatory for ATT states parties and voluntary under the PoA (UNGA, 2013, art. 13; UNGA, 2001b, para. 33). Reporting is mandatory under the ITI. States parties to the Firearms Protocol report on progress as part of their broader reporting under the Organized Crime Convention, and in 2012 states parties established an open-ended intergovernmental Working Group on Firearms to advise and assist implementation (UNODC, 2010).

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28 Examples include the Nairobi Protocol (2004); the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS, 2006); the SADC Protocol on Firearms, Ammunition and Related Materials (SADC, 2001); the European Union Common Position on Arms Export Control (Council of the EU, 2008); the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (OAS, 1997); and the African Union’s ‘Silencing the Guns’ initiative (AU, 2016), among others.
### Table 1 Incorporation of gender perspectives in major global instruments

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**2030 Agenda**

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**Small arms control regime**

|---------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------|--------------------------------------------------|

**Notes:**

- a. Refers to the other agendas covered in this chapter.
- b. References in the WPS resolutions tend to be specific to the impact of ‘armed conflict’ on women, without necessarily isolating arms themselves.
- c. Refers to differentiated impact of armed conflict and human rights violations.
- d. Exact language refers to enhancing ‘data collection and analysis of incidents, trends, and patterns of rape and other forms of sexual violence’ (art. 8).
- e. Exact language is in reference to ‘gender-sensitive research and data collection on the drivers of radicalization for women, and the impacts of counter-terrorism strategies on women’s human rights and women’s organizations’ (art. 12).
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### 2030 Agenda

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### Small arms control regime

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f. For this, and SCR 1325, reference is solely to ‘Women 2000: Gender Equality, Development and Peace for the Twenty-first Century (A/53/10/Rev.1)’, not to gender equality as a concept.
g. The WPS Agenda as a whole is a vehicle for gender analysis in security. Its resolutions address that in varying ways, and with varying levels of success. This does not always equal the promotion of feminist perspectives.
h. The Beijing documents describe, in many places, how gender norms and perspectives interplay with access, power, and security in all forms. They encourage analysis and data collection on the basis of gender or sex, although not necessarily in relation to armed violence or conflict.
i. While the Beijing documents predate the other agendas and their instruments, in multiple places they reinforce the relationships between development, the economy, conflict, violence, and military expenditure.
Key takeaways

- The three agendas are each comprised of multiple instruments, ranging from UN Security Council and other resolutions to politically binding action plans and legally binding instruments. All are rooted within the UN system and enjoy high levels of political support.
- Some instruments have well-developed platforms and institutions to support and measure implementation.
- For all three agendas, implementation is mixed—whether on politically or legally binding aspects of the regimes.

Bringing it all together: areas of convergence

The three frameworks described above share many areas of convergence and the potential for mutually supportive outcomes. Improving existing convergence is essential to developing more effective and coherent policies and programmes in response. None of the challenges these agendas strive to address occur in vacuums or silos; they are interconnected and complex. This section describes two areas of convergence that are particularly visible at the international level.

A human-centric view of security

At the basic normative level, these agendas all seek to improve human security and reduce suffering. In so doing, they each challenge the generally prevailing, narrow, state-centric view of security by emphasizing equality and promoting human development through holistic approaches—an approach that also broadly reflects a feminist view of peace and security.

The WPS Agenda is premised on an integrated approach to security, reflecting the needs of a specific constituency. A fundamental purpose of UNSCR 1325 was to embrace ‘for the first time a truly human security perspective overcoming the strictly “hard security” focus that had been its historic domain’ (Pillay, 2010).

The Declaration of the 2030 Agenda is likewise clear: ‘On behalf of the peoples we serve, we have adopted a historic decision on a comprehensive, far-reaching and people-centred set of universal and transformative Goals and targets’ (UNGA, 2015, para. 2). It further affirms ‘that no one will be left behind. […] [W]e wish to see the Goals and targets met for all nations and peoples and for all segments of society’ (UNGA, 2015, para. 4).
The small arms control regime agreements are also explicit on this point. The preamble of the PoA speaks about its aim of reducing the human suffering caused by the illicit trade in small arms in order to enhance respect for human dignity. It also notes the implications of this trade on ‘poverty and underdevelopment’ (UNGA, 2001b, preamble, paras. 3, 4, 5). The preamble of the ATT acknowledges that ‘development, peace and security and human rights are interlinked and mutually reinforcing’ (UNGA, 2013, preamble). Its core normative Articles 6 and 7 put human rights considerations squarely at the centre of arms transfer decision-making. Human rights are the basis of the Convention against Transnational Organized Crime and its Protocols.

The three agendas also strive for improved governance, transparency, and oversight. The VNRs aim to facilitate the sharing of experiences—including successes, challenges, and lessons learned—with a view to accelerating the implementation of the 2030 Agenda. The VNRs are designed to strengthen governments’ policies and institutions and to mobilize multi-stakeholder support and partnerships for implementation of the SDGs. Besides its humanitarian objectives, the lack of transparency in the arms trade, and related corruption, was a primary motivation behind the ATT. This is reflected in its Article 1 and reinforced by its reporting obligations.

**Leveraging data within and between agendas**

One of the immediately visible areas of convergence is the role that implementation of the small arms control instruments can play in helping states to achieve SDG Target 16.4, and Goal 16 more broadly. At the same time, application of SDG indicators on gender and violence reduction can contribute to WPS and small arms control.

All of the small arms control instruments described above have a role to play in achieving Target 16.4. Research organizations and non-governmental organizations (NGOs) have explored the potential of using data collected through the reporting requirements and practices of these instruments to verify progress towards Target 16.4 (Control Arms and Oxfam, 2017; McDonald and De Martino, 2016). Some entities encouraged the IAEG-SDG to look at information already being collected through these methods when articulating the Target’s indicator. Indicator 16.4.2 measures the ‘Proportion of seized, found or surrendered arms
whose illicit origin or context has been traced or established by a competent authority in line with international instruments’ (UNGA, 2017). While seizure information alone is insufficient to describe the illicit trade, if detailed it can prove useful. The reporting practices of arms control agreements described in this chapter can facilitate information collection for this indicator (McDonald et al., 2017, p. 3). Such ‘repurposing’ of data may also stimulate reporting rates and compliance and be a means of communicating progress towards implementing Target 16.4.

More than 40 SDG indicators call for sex-disaggregated data. Not all are directly relevant to arms control or WPS, and some of the datasets they draw from have only partial coverage and suffer from information gaps (Saferworld, 2017, p. 5). In principle, however, mainstreaming data disaggregation for indicators will lead to better understandings of the sex- and gender-differentiated impacts in all three areas—although one study indicated that, when sex-disaggregated data is collected, it is often still too broad to enable quality gender analysis (UNSD, 2015).

Indicators 5.2.1 and 5.2.2 seek to measure physical, sexual, or psychological violence against women and girls caused by either a current or former partner or another person. Given the role of firearms in intimate partner violence and violence against women in many contexts, information obtained from these indicators can inform small arms control programmes and policies, or improve their gender responsiveness in very practical ways. This is reinforced by indicators within Goal 16; for example, indicator 16.1.2 can provide data on who is dying in conflict, and how, because it seeks to measure by sex, age, and cause of death. Indicator 5.c.1—‘Proportion of countries with systems to track and make public allocations for gender equality and women’s empowerment’—can be a way to not only monitor but also encourage resourcing for WPS programming.

At the target level, some states—such as the UK—are formalizing the relationship between the 2030 Agenda and WPS by integrating relevant SDG targets into WPS tracking to improve data collection, and sharing this across ministries and departments within their NAPs (HM Government, 2018, pp. 25–26).

There are other points of convergence in the context of Goal 16. For example, SDG Target 16.7, ‘Ensure responsive, inclusive, participatory and representative decision-making at all levels’, correlates with the participation pillar of the WPS Agenda. Both of its indicators rest on evaluations that are sex-disaggregated.
Target 16.b, on the enforcement of non-discriminatory laws, reinforces the Convention to Eliminate all Forms of Discrimination Against Women (CEDAW).

The potential to use data collection and indicators across agendas is a valuable opportunity to reduce reporting fatigue and redundancy. Internally, it can be useful for national and local programming (as outlined in Chapter 3) and contribute to project monitoring, evaluation, and learning (as described in Chapter 4).

**Advancing gender perspectives in security and development**

One of the most multifaceted areas of convergence among these agendas is how they all connect gender perspectives and analysis with security and development. The parallels in the language of the instruments form a basis for further normative progress and set a foundation for tangible actions and activity.

The ATT seeks to address the risk of arms ‘being used to commit or facilitate serious acts of GBV or serious acts of violence against women and children’ among the criteria that exporting states parties need to consider as part of their risk assessments, stipulated in its Article 7.4. This is a direct link to SDG Target 5.2.

The ATT can also operationalize elements of the WPS Agenda, particularly the prevention pillar (Acheson and Butler, 2018, p. 693), and further reduce the unhelpful overemphasis on the protection of women and girls. UNSCR 1325 mentions disarmament, demobilization, and reintegration, but does not refer to ‘small arms’, the ‘arms trade’, or ‘weapons’. The two WPS resolutions adopted in the same year as the ATT reaffirmed the Treaty’s provisions, as did General Recommendation 30 of the CEDAW Committee (Acheson and Butler, 2018, pp. 693–94). UNSCR 2122 contained a first-ever operative paragraph urging women’s full participation in controlling illicit small arms (UNSC, 2013c, para. 14).

When adopted in 2001, the only gendered reference in the PoA was in the preamble, which cited the disproportionate impact of small arms on women in a paragraph that unhelpfully grouped them together with children and the elderly (UNGA, 2001b, preamble, para. 6). Owing, in part, to varying cultural and societal perspectives, the term ‘gender’ is sometimes difficult or not easily accepted; for example, during the ATT negotiations there was a preference for including violence against women rather than GBV. Over time, however, outcome documents of PoA conferences have begun to reflect a more nuanced understanding of the multiple ways in which women are impacted by, or use, small arms. In doing so,
they have mirrored developments in other fora, including the ATT and UN Security Council (IANSA, 2017).

The outcome document of the Third Review Conference (RevCon3) of the PoA in 2018 is a significant step forward in this regard. It builds on progress from Biennial Meetings of States in 2014 and 2016, as well as the Second Review Conference (RevCon2) in 2012. Specifically, it calls for gender mainstreaming in small arms control programmes, encouraging full use of gender-disaggregated data, and the full participation of women (IANSA, 2017, p. 2).

The 2030 Agenda has its own gender-sensitive goals and targets, as already described, but other aspects of it can be supported by arms control efforts. For example, SDG Target 11.7 on Sustainable Cities and Communities—which seeks to make urban spaces safe from physical and sexual harassment—can be advanced by reducing the tools of violence.

While the agendas are broadly synergistic, certain tensions have been noted. Some of the most vocal government proponents of gender equality, GBV prevention, and the WPS Agenda are also some of the largest arms producers, exporters, or importers, and have admittedly struggled with assessing the risk of GBV in their arms transfer decision-making processes (Acheson and Butler, 2018; Gerome, 2016, p. 19). While progressive parties have made inroads into security policy development processes, this has not fundamentally transformed how states approach conflict and security. For this reason, some feminists observe that:

\[\text{the way the UNSC resolutions on WPS have been interpreted, for example, risks promoting women’s participation foremost within the highly masculine militarised security structures that tend to generate rather than prevent or end armed conflict (Acheson, 2015, p.21).}\]

Despite the convergences described here, NAPs rarely consider small arms control; in 2019, only 24 NAPs (30 per cent) included references to disarmament, for example, or provided specific actions to reduce small arms stocks and control the illicit trade of small arms (PeaceWomen, 2019).

The absence of gender considerations in SDG 16 is also a missed opportunity to reinforce the role of women as equal stakeholders in peace talks and post-conflict recovery processes (Saferworld, 2017; IWDA, 2016). As described in the previous section, at least two Goal 16 targets can be interpreted and applied in a way that aligns with WPS, but this has not been made explicit in their formulations.
Key takeaways

- Data collected as part of implementing and reporting on small arms control can be leveraged to monitor progress on SDG Target 16.4, and data collected on gender can be leveraged to support small arms control and armed-violence reduction.
- The ATT and outcomes from recent PoA meetings are helping to advance gender perspectives in security and development at the global policy level.
- More can be done to integrate small arms control into WPS implementation, while also respecting and not co-opting the core values and aims of the WPS Agenda.

Current trends

For many years, the only voices inside UN small arms conference rooms advocating gender perspectives were those of civil society or UN agencies and entities mandated to focus on women’s empowerment or gender. Through side events, advocacy and research reports, and oral testimony in formal meetings, these organizations pushed for the legally binding GBV criteria in the ATT, for example.29 At the same time, local and national women’s groups have sought for years to address the relative gender blindness of the PoA (Acheson and Butler, 2018, p. 691).

This has changed significantly in recent years. The establishment of feminist foreign and development assistance policies by Sweden (2014) and Canada (2017), and the prioritization of gender by others—such as Ireland and Trinidad and Tobago—effectively created an informal and unofficial grouping of like-minded states that are now championing these issues in the context of disarmament and arms control fora. Some of this work is done on behalf of the newly formed Disarmament Contact Group of the International Gender Champions; other efforts are independent. More non-governmental actors are also engaging in these topics.30

The UN Secretary-General’s 2018 Agenda for Disarmament calls for ‘equal, full and effective participation of women in all decision-making processes relating to

29 The Make it Binding campaign was an initiative of the IANSA Women’s Network, the Women’s International League for Peace and Freedom, Amnesty International, and Religions for Peace in 2012 and 2013.

30 See, for example, recent publications by the Control Arms Coalition on guidance for ATT states parties on implementing Article 7.4 (Control Arms, n.d.); the GLASS project of the Small Arms Survey; and the research on women’s participation in disarmament being conducted by the UN Institute for Disarmament Research (UNIDIR, n.d.).
disarmament and international security’, as well as for gender parity in all disarmament bodies established by the UN Secretariat (UNODA, 2018, p. 67).

Within multilateral disarmament fora, there have been some tangible results. The high levels of support for acknowledging the importance of gender-responsive small arms control and women’s participation during the PoA’s RevCon3 culminated in strong language in the final outcome document (UNGA, 2018a). The 2018 UNGA First Committee on International Security and Disarmament adopted 17 resolutions ‘that include language on women’s equal representation, the gendered impact of different types of weapons, or the need for gender considerations more broadly. This is 25 per cent of all First Committee resolutions in 2018’ — an increase of 10 per cent from 2017 and 13 per cent from 2015. Six of these resolutions included language on gender for the first time ever; three others made their language on gender stronger (Geyer, 2018, p. 15). In addition, a biennial resolution led by Trinidad and Tobago was passed on ‘Women and disarmament, non-proliferation and arms control’ (UNGA, 2018b).

Gender and GBV were the focus of the ATT’s Fifth Conference of States Parties (CSP5) in August 2019, under the leadership of Latvia. At CSP5, states parties agreed to a set of recommendations relating to gender balance in representation and participation; improving understanding of the gendered impact of armed violence; and the Treaty’s GBV risk assessment provision. The recommendations include a number of practical steps that set a strong foundation for future work in this area—including through using existing ATT mechanisms, such as its working-group structure and Voluntary Trust Fund—but diligent follow-up and commitment are needed to ensure these actions are implemented.

The gains described here are impressive. Certainly, the convergence between some of the key principles of the WPS Agenda and small arms control have never been highlighted so prominently. The 2030 Agenda has likewise become well recognized within the small arms control community, and there have been multiple initiatives to act on that recognition. In such instances, gender considerations in the context of Goal 5 are usually prominent.

In fact, the 2030 Agenda was the focus of the Third Conference of States Parties to the ATT (CSP3) in 2017. Socioeconomic development had not been included as a criterion for arms-export risk assessment in the ATT in 2013, despite strong efforts by some governments and civil society (Basu Ray, 2012). The CSP3 included an expert panel on the subject and an exchange of views. States parties mandated the three ATT working groups to address linkages with the SDGs in their work in the
coming year and report back on this at the Fourth Conference of States Parties to the ATT (CSP4) in August 2018 (ATT Secretariat, 2018, para. 27). Issues of gender and GBV, and the connection to Goal 5, were part of this consideration (Control Arms, 2017).

Throughout the PoA’s RevCon3, member states wrestled with how and what to say about the relationship between the PoA and the 2030 Agenda. There were divergent views as to the relevance of the Agenda in its entirety versus specific goals and targets, such as Goal 5 and Target 16.4 (Kalliga, 2018a; 2018b). Those contesting the overall relevance of the 2030 Agenda highlighted that only Target 16.4 has an immediate connection to the PoA, and did not make the same case for Goal 5. The discussions did ultimately help member states unpack how and where they see convergence, facilitating a move beyond mere recognition of the existence of ‘synergy’, into an important dialogue about what that means in practice. The final outcome document recognized ‘important and extensive’ links (IANSA, 2018, p. 6) among the agendas—notably as outlined in Paragraph 13 of the Declaration section (UNGA, 2018a, p. 25) —while throughout the operative parts of the document there are references to specific goals and targets.

Interest within the small arms control community in contributing to the success of the 2030 Agenda reflects recognition of holistic responses to common challenges. It is necessary to keep this dialogue progressing, however, to further refine the practicalities of how this is done, by building on the normative connections.

Key takeaways

- There is heightened interest in and support for advancing gender perspectives in small arms control across governments, the UN, and NGOs. This is leading to improved recognition in conference documents and UN resolutions, both within and beyond small arms control.
- Convergence with the 2030 Agenda has been recognized formally within small arms control, but not without opposition.

Obstacles to future progress

As more actors begin to champion convergence between agendas, some are pushing back or voicing other views. Opposing views and dynamics complicated RevCon3, as mentioned briefly above. This section describes other challenges and gaps that require attention.
‘Add women and stir’

For all the heightened interest in advancing gender perspectives in small arms control, knowledge gaps remain that can potentially undermine achieving meaningful results. For example, key concepts are often conflated in such a way that ‘gender’ or a ‘gender perspective’ is equated with either increasing women’s participation or reinforcing the need to protect women. This is problematic in various ways. First, ‘gender’ encompasses more than just women, as outlined in Chapter 1. A true gender analysis, in this context, requires considering the impact of weapons and the causes of violence (among other things) from the perspective of everyone in a community or place, and in relation to the roles played and experiences had as a result of her, his, or their gender or sex. To achieve small arms programming that is ultimately gender transformative, or at least gender responsive, states will need to become open to engaging with this in a more substantive way—as well as employing more precision and clarity in documents and policies.

Second, the focus on increasing women’s participation—while important and a point around which almost all constituencies can rally (see Table 1)—is not an end in itself. If women’s participation is not full and meaningful, it will not have the intended effect of ultimately transforming the way security and development policy is formed. Care is also needed to avoid unintended effects of boosting women’s participation, notably the sidelining of other affected groups along lines of—for example—class, race, gender, or disability. Ensuring diversity at multiple levels and in multiple forms is a core concept of gender responsiveness (see the case study on South Africa, which describes the impact gender diversity had on decision- and policymaking roles on gun violence there). As discussed above, many states still view women as a vulnerable group in need of protection, rather than—like men—active interlocutors on all sides of the discussion about armed violence.

Not yet a two-way street

Another observation is that the convergence the small arms control community encourages is not fully reciprocated by those working exclusively in development or WPS. In fact, it appears that small arms control-related work in WPS-focused civil society networks is often the result of having a network member who also works on arms control. At the same time, cooperative work across agendas—in terms of not only recognizing but also operationalizing convergence—seems to
be stronger at the national and regional levels than at the multilateral level.\textsuperscript{31} This may be due to how governments deal with these agendas, both internally and when participating in multilateral fora, which are equally siloed.\textsuperscript{32} It does not appear that the knowledge and experiences of the WPS community are being fully integrated and taken on board by those working in small arms control, for example, or that some key implementation vehicles—such as NAPs—are being utilized to reach mutually reinforcing goals. Few small arms control groups are integrated into the review process of Goal 16 at the 2019 HLPF. There are some positive developments, however; small arms control and disarmament figured prominently on the agenda in the 2019 meeting of the Network of Women, Peace and Security focal points in Namibia, for example, and it is likely that this will continue to be prioritized (UN Women, 2019).

\textit{Local to global and back again}

A common challenge in all multilateral frameworks is the disconnect between local and global perspectives. The lived experiences of GBV, gender discrimination, or poverty are rarely heard in UN conference rooms. At the same time, decisions taken at the UN and other institutions require time and political commitment to be properly translated into national legislation, policy, and public awareness. ATT working group discussions clearly indicate a wide gap between the diplomatic community’s knowledge of the Treaty’s requirements, with respect to GBV, and that of licensing officials in capitals (Geyer, 2019); neither has there been significant input from WPS or gender experts (Pytlak, 2019). This is where civil society often plays a critical role—in disseminating information, reminding states of their commitments, and bridging gaps. Women-led grassroots civil society groups have used UNSCR 1325 in a variety of ways that help to operationalize it beyond and apart from the actions of governments, for example.\textsuperscript{33}

Yet it is not always possible for such organizations, working across the issues discussed here, to meaningfully influence UN discussions within security fora (Cohn, 2004). Resource constraints remain an obstacle to participation, and certain

\textsuperscript{31} Author interview with Kristina Mader, Senior Program and Research Officer at NGO Working Group on WPS, 1 March 2019.
\textsuperscript{32} Author interview with Josephine Roele, Policy, Advocacy and Communications Officer at Gender Action for Peace and Security, 26 February 2019.
\textsuperscript{33} The Global Network of Women Peacebuilders supports and highlights local and national actions that operationalize WPS commitments. See GNWP (n.d.) for examples.
meeting formats allow only limited opportunities for civil society to make state-
ments or contribute officially.

A related challenge is the gaps within government, between ministries and
departments, in which commitments made in multilateral fora are not necessarily
implemented, applied, or even understood by officials elsewhere. For example,
many ATT states experience challenges with making GBV risk assessments (Gerome,
2016, p. 17; Geyer, 2019), and some licensing officials have said they are not very
aware of the ATT’s requirements in general—much less those on GBV. Research
presented by the IANSA Women’s Network at RevCon3 showed that, based on
PoA national reports, only 50 per cent of states account for gender in their small
arms control processes; of these countries, only 18.8 per cent reported having
female members in national small arms commissions, while less than 10 per cent
collect disaggregated data (Renois, 2018). This demonstrates that the language of
UN resolutions and documentation is not yet being translated into practice.

**Key takeaways**

- Knowledge gaps remain, including around key concepts and approaches; as
  yet, there is neither equal nor meaningful gender diversity, nor understanding
  about gender diversity versus women’s participation.

- Awareness within the small arms control community about convergence with
  other agendas may not be mirrored by groups or networks working exclusively
  on WPS or development.

- A gap exists between agreements and statements made in UN fora and their
  application at national levels or by other government officials and departments.

- Local perspectives and lived experiences of GBV are not always well repre-
  sented or integrated into diplomatic or UN-based discussions.

**Conclusion**

This chapter has described the key mechanisms that comprise the WPS, 2030, and
global small arms control agendas, which jointly share a human-centric approach
to security. It has outlined in greater depth two areas of convergence: how to
leverage data collection within and between agendas, and opportunities to pro-
mote gender perspectives in development and security. The chapter spotlighted
how gender perspectives and the 2030 Agenda are being better integrated into
small arms control at the global level. This includes their recognition as areas of thematic focus within the ATT formal meeting structures; inclusion in negotiated documents, such as at the PoA’s Third Review Conference and the UN First Committee; and ongoing consideration via informal mechanisms, research, and training.

It also identified tensions and challenges. Knowledge gaps remain with respect to how well information discussed and shared in the UN context is being disseminated to other parts of government, as well as integrating survivor or local perspectives into multilateral discussion fora. The WPS and development community may be less engaged in arms control issues than the arms control community is in gender or the SDGs. There continues to be political opposition.

Yet, momentum to recognize and act on areas of convergence is strong. The Human Rights Council resolution on arms transfers, adopted in July 2019, calls on the UN High Commissioner for Human Rights ‘to prepare a report on the impact of the diversion of arms and unregulated or illicit arms transfers on the human rights of women and girls’ (UNHRC, 2019). A WPS resolution presented in the Security Council in April 2019 focused on conflict-related sexual violence and reinforced the ATT’s GBV-prevention commitments (UNSC, 2019). Goal 16 was among the SDGs reviewed during the 2019 HLPF in July 2019, prompting side events and new resource material on the linkages between agendas. The ATT’s focus on GBV is pushing states parties to more thoroughly examine their approaches to this part of risk assessment, as well as how to mainstream gender into all aspects of treaty implementation. The PoA meeting cycle presents ongoing opportunities to solidify and deepen recent gains. The Beijing Platform and UNSCR 1325 have significant upcoming anniversaries. In all these contexts, it will be important not to reverse recent gains, as well as to move towards transforming political commitments into programmes and policies, in order to build on convergences. The remaining chapters in this Handbook describe how to ensure these initiatives are gender responsive, practical, and effective.

—Author: Allison Pytlak
Introduction

In June 2000, a few months before South Africa’s parliament adopted the Firearms Control Act (FCA), police inspector Jeffery Sampson shot and killed his wife, lover, and two young children before turning the gun on himself. He was a registered gun owner (Kirsten, 2008, p. 2). More than 15 years later, in 2016, the national NGO Gun Free South Africa (GFSA) assisted a young woman, Lucille, to make a statement to the police describing her husband’s history of violent and abusive behaviour, making the case that he was not ‘fit and proper’ to be licensed to possess a firearm (South Africa, 2000b, s. 102). As a result, her husband was not issued a competency certificate, which is the first step to applying for a firearm licence. Lucille’s case is just one of many that illustrate how laws such as the FCA, if properly implemented and defended, have real-world impacts on the lives of women and men.

The FCA was passed into law at a time of enormous social and political change in South Africa. The collapse of the apartheid era led to the adoption of a wide range of progressive laws, including the new constitution (1996). A new parliament was sworn in with an unprecedented focus on addressing issues pertinent to women and their wellbeing in society, leading to the Choice on Termination of Pregnancy Act of 1996 and the Domestic Violence Act (DVA) of 1998, among others (South Africa, 1996; 1998).

This gender focus is also reflected in sections of the FCA: in the Application for Competency Certificate (ss. 9(2) (h) and (l)), which takes domestic violence incidents into account as grounds for refusal, and the Declaration of Persons as Unfit to Possess Firearm (ss. 102 and 103), which require the courts, the police, or both to remove guns from owners who misuse their firearms, including in domestic violence. These sections also give the registrar and the courts the power to declare a person unfit to possess a gun if convicted of any offence involving violence or sexual abuse—for which the accused is sentenced to imprisonment without the option of a fine—

34 Not her real name.
35 Email correspondence with Lucille in 2016. The FCA Regulations note that spousal interviews are required as part of the background check.
36 The full relevant text is as follows: ‘Section 9(2) (h): has not been convicted, whether in or outside South Africa, of an offence involving—(ii) physical or sexual abuse which occurred within a domestic relationship as defined in section 1 of the DVA, 1998; section 9(2) (l): has not been convicted of an offence in terms of the DVA, 1998 and sentenced to a period of imprisonment without the option of a fine’ (South Africa, 2000b).
and any offence involving physical or sexual abuse occurring in a domestic relationship, as defined in the DVA (South Africa, 2000b). The DVA recognizes that domestic violence includes intimate partner violence, and makes provision for women to report the presence of a firearm in domestic violence incidents, or when applying for a domestic violence protection order (interim or permanent) at the magistrates’ courts (South Africa, 1998, s. 4(1)).

Gender, violence, and guns

South Africa is among a small group of non-conflict-affected countries that suffer a great concentration of lethal violence against women and girls (Geneva Declaration Secretariat, 2015). This includes a female homicide rate of 9.7 per 100,000 population, with high levels of sexual and gender-based violence (GBV) (Small Arms Survey, n.d.d). The Crime Against Women in South Africa survey shows that 68.5 per cent of sexual offence victims are women (Stats SA, 2018, p. 19). The cost of GBV is estimated to be ZAR 28.4–48.2 billion, and this is deemed an underestimate, as it does not include the cost of support services or the burden of trauma from experiencing or witnessing violence (Gould et al., 2017, p. 9).

South Africa’s high levels of overall violence are influenced by high socio-economic inequality; social norms that support and legitimize the use of violence, in particular male-on-male violence; weak law enforcement; and wide exposure of children to violence, resulting in the ‘intergenerational cycling’ of violence (Jewkes et al., 2009).

The gendered nature of gun use and gun violence is complex and multi-faceted in South Africa, as are issues of patriarchy and gender inequality. Patriarchy and gun violence affect men and women in different ways. In South Africa, 81 per cent of legal gun owners are men, of whom 64 per cent are over the age of 50, with the majority of firearms licensed for self-defence purposes (Wits School of Governance, 2015, p. 70). Given the history of firearm ownership in South Africa, in which black South Africans were prohibited from legal firearm ownership, it can be assumed that legal gun ownership is concentrated among white men. Although the central registry keeps disaggregated gun-ownership data, including by race, this information is not publicly available.

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37 This was based on calculations for the 2012–13 financial year.
38 Although the central registry keeps disaggregated gun-ownership data, including by race, this information is not publicly available.
total homicides in the country—the majority are young black men, aged 15–29 years, who live in urban areas and are victimized by other young black men with illegal guns (Taylor, 2018, p. 12). Although it is difficult to estimate the number of illegal guns in circulation, the primary diversion point for legal guns is loss and theft of licensed firearms from civilians: on average, 24 guns a day. Police forces lose one gun a day (Taylor, 2018, p. 14).

Although women make up just 11 per cent of all gun-related murder victims (Matzopoulos et al., 2015, p. 305), firearms play a significant role in violence against women (VAW), most notably in the killing of intimate female partners (Abrahams, Jewkes, and Mathews, 2010, p. 586). This is not unique to South Africa; research shows that, in regions with high femicide rates, there are correspondingly high levels of tolerance for VAW and high rates of firearm-related lethal violence (Geneva Declaration Secretariat, 2015, p. 95). In cases of intimate partner femicide-suicide, perpetrators are more likely to be white; to be employed in the police, army, or private security industry; and to own a legal gun (Mathews et al., 2008, p. 553).

Both black and white South Africans share strongly patriarchal cultures—albeit with different inflections—which endorse their respective gun cultures and gender hierarchies, positioning women as subordinate. These norms convey the idea that men need to protect women from other men’s violence, supporting male gun ownership while making women potentially legitimate targets (Langa et al., 2018, pp. 5–6). Some researchers argue that South Africa’s high levels of violence are indicative of a crisis of masculinity in post-apartheid South Africa, with many young black men struggling to assert their masculinity ‘by securing jobs, marrying, fathering children or establishing their own households’ in an environment where women are perceived to be usurping roles previously held by men (Langa, 2014, pp. 166–67).

Although there is no disaggregated data on gun violence by sexual orientation and gender identity, hate violence claims the lives of those who identify as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) at a disproportionate rate. Four out of ten LGBTQI South Africans claim to know someone who has been murdered, with black respondents being twice as likely (49 per cent) as white respondents (26 per cent) to know of someone who was murdered because of their sexual orientation or gender identity (OUT LGBT Well-being, 2016, p. 12).
Law-making in South Africa post-1994: the early days

South Africa’s firearms legislation was part of the post-apartheid new democratic era, in which several hundred pieces of legislation were promulgated (South Africa, 2017). In this rich law-making period, South Africa took a dramatic turn, relying on substantial input from civil society organizations and the research and academic community as well as encouraging grassroots participation. Most bills were therefore subject to public scrutiny, including the Firearms Control Bill (South Africa, 2000a), which became the FCA.

Several years before the FCA was passed, the government signalled its intention to address the proliferation of firearms by setting up a number of committees, one of which was to review national firearms legislation (Kirsten, 2008).\(^{39}\) Appointed by the minister for safety and security in 1997, this committee’s brief was to ‘produce progressive policy proposals aimed at bringing about a drastic reduction in the number of legal firearms in circulation in South Africa’ (Minister for Safety and Security, 1997, p. 1). At the same time, the minister appointed a Committee of Inquiry into the Central Firearms Register.

As in other policy processes in South Africa at the time, civil society organizations and women played a leading role in these two committees; Sheena Duncan\(^{40}\) chaired the latter, while four of the six members of the policy committee represented civil society, of which GFSA was one.\(^{41}\) Those who shaped how the issue was framed had a significant impact on both the discourse and the policy solutions adopted; the involvement of women and civil society partners disrupted the traditional discourse, in which men dominated the policy arena based on the assumption they knew more about firearm use and efforts to control their use. The new voices resulted in a more collaborative approach, as well as an emphasis on the public good rather than individual rights.

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39 The National Crime Prevention Strategy, approved by cabinet in 1996, was South Africa’s road map to address crime; with an emphasis on social crime prevention, multi-sectoral engagement, and partnership building between the police and communities, it proposed a comprehensive firearms control strategy. See Secretariat for Safety and Security (1999).

40 President of the Black Sash, a well-known anti-apartheid human rights organization, as well as chairperson of GFSA.

41 Two representatives from the South African Police Service (SAPS); the other four included the South African Communist Party; the South African Gun Owners Association, the South African Institute for International Relations, and the author of this case study from GFSA.
A number of developments at the global, regional, and national levels influenced the direction of South Africa’s firearms legislation. At the global level, the UN Firearms Protocol, which was the first global instrument to apply a law-enforcement approach to control guns, was negotiated at the same time as the FCA. Within Africa, the Southern Africa Development Community’s (SADC) Firearms Protocol, promulgated in August 2001, further reinforced South Africa’s efforts to ensure the FCA was rigorously implemented, thereby bringing it in line with most of its neighbours in the Southern Africa region, which had more restrictive legislation—especially regarding civilian firearm possession. Unfortunately, neither the Firearms Protocol nor the SADC Protocol contained gender-specific provisions, and both processes were male-dominated.

Several national gun control movements also influenced the South African experience. The policy response to the targeting and killing of 14 female students in Montreal in 1989, committed with a legally acquired semi-automatic rifle, galvanized the Coalition for Gun Control—led by Wendy Cukier—to overhaul Canada’s national firearms legislation (Coalition for Gun Control, 2018; Sevunts, 2019). A cornerstone of this was new background check requirements in the licence application process, including spousal interviews, to reduce the risk of women being killed by a male partner (Canada, 1995, s. 5(2)). The UK and Australia responded similarly to two large-scale massacres in 1996. These changes did not occur in isolation; there had been years of lobbying—including from women’s groups—for policy change, with Rebecca Peters of the Gun Control Coalition playing a leading role in spearheading legislative reform in Australia (Kirsten, 2008). Similarly, the gun control movement in South Africa relied on an alliance of diverse, mainly women-led partners—including the children’s sector and community-based organizations—in its successful advocacy efforts to put in place an entirely new firearms control regime. So although the ‘internal stimulus’ that catalysed action was very specific to the local context at the time, in all instances, the ability of activist women leaders to respond to the specific moment created the momentum for a campaign to influence public policy (Kirsten, 2014).

When the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (PoA) was adopted in July of 2001, it placed small arms-related violence, and the need to reduce the supply, demand, and availability of illicit guns, at the centre of global policies on small arms and light weapons controls. As part of the PoA process, the UN also finally recognized that civil society has an important role to play in small arms and light weapons policy development, which opened the door to begin the conversation on the gendered nature and impacts of firearm-related violence. Almost 20 years later, at the Third Review Conference of the PoA in June 2018, gender was far more integrated into discussions (see Chapter 2).
Civilian Secretariat for Police (CSP) drives the policy process, adopting a human-centric view of security. It was the CSP that provided the baseline data on firearm-related crime in 2000—while the Firearms Control Bill was being debated in parliament—and it remains one of the most important records on firearm facts and figures, including gun deaths (Chetty, 2000).

There are typically two major steps in developing a new policy framework in South Africa: the Green Paper, a draft policy document in which government presents its thinking to the public and asks for input; and the White Paper, which is the final policy position—in effect, its statement of intent (Kirsten, 2008, pp. 201–02). Although neither of these processes was followed to the letter, in effect, the policy committee report—as well as the CSP baseline data—formed the basis for government’s final policy position on firearms control, fulfilling the function of a White Paper. The Bill, approved by cabinet, was gazetted in late 1999 and tabled in parliament in May 2000. During this time, the public was invited to make written submissions; the Portfolio Committee for Police (PCoP) received more than 3,000 submissions—a sign of significant interest in the matter. Some 93 oral submissions were made during the public hearings held in mid-2000. Although the hearings were dominated by the firearm-owning community—the overwhelming majority of whom are white men—significant and diverse inputs were made by members of the Gun Control Alliance (GCA), including public health professionals, researchers, the faith community, and young people living in communities affected by high levels of gun violence (Kirsten, 2008, pp. 127–50).

During the final stage, when the PCoP reviewed the Bill clause by clause, there was resistance across most political parties—including the African National Congress (ANC)—to the inclusion of language that would strengthen the protection of women in their homes, such as reluctance to legislate the issuing of an interim protection order as sufficient grounds for refusal of a gun certificate application. The GCA supported women in important positions in the ANC women’s caucus, as well as the sole member of parliament from a minority party in the PCoP, to champion these changes, providing them with examples of good global and regional practice—including the recently passed DVA—and using national data to show the risks women face in the home. This resulted in the inclusion of some measures to protect women, but not the entire set of proposals. Despite the

This is, in part, because the SAPS stopped providing data on weapon type for murder; since 2016, however, this data has been included in the annual crime report (see, for example, SAPS (2018)).
increased participation of women in policy and legislative processes, the shared patriarchal culture within the legislative arena was sufficiently strong to remove language on the need to protect women in their homes. The explicit norm asserted was the private domain should not be legislated.\[^{46}\]

**Effects on firearm-related deaths and firearm ownership**

The development of a small arms control policy and its implementation over nearly two decades in South Africa shows a discernible pattern of high levels of gun homicide during apartheid and the first years of democracy, followed by a steady decline over a ten-year period, in which the FCA was fully implemented. This seemingly robust trend began to reverse in 2011, closely linked to the waning of state accountability, good governance, effective administration, and capacity of the state to enforce the new law, thereby increasing gun availability (Matzopoulos et al., 2018; Taylor, 2018).

Looking at gendered impacts specifically, the implementation of the FCA contributed to a significant decrease in firearm-related intimate femicide between 1999 and 2009 (Abrahams et al., 2013). A ten-year retrospective study on femicide in South Africa shows that the number of women killed by their intimate partner dropped from four women per day in 1999 to three women per day in 2009, largely due to the decrease in the number of women shot and killed. In 1999, 1,147 women died from gunshot injuries; in 2009, this dropped by more than half to 462 (while deaths from stab and blunt injuries did not reduce significantly over the same period) (Abrahams et al., 2012, p. 3). This significant reduction in firearm-related femicide is consistent with an overall decrease in firearm-related deaths over the same period: gun deaths almost halved from 1998 (34 deaths per day) to 2009 (18 deaths per day) (Chetty, 2000, p. 20; Matzopoulos et al., 2015). Homicides also dropped significantly over a similar period: from a high of 71 murders per day in 1994 to a low of 44 murders per day in 2011 (CrimeStats SA, n.d.; Lamb, 2008).

Yet, since 2011, murders have increased every year; 56 per day were recorded in 2017–18, a rate of 35 per 100,000 population. This upward trend is reflected in firearm-related homicides, with an average of 23 gun deaths per day (SAPS, 2018).\[^{47}\]

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\[^{46}\] Interview with Pregs Govender, April 2019 (then a leading figure in the ANC women’s caucus).

\[^{47}\] The SAPS reported that 41.3 per cent of all murders (20,336) were gun-related in 2017–18 (SAPS, 2018). This ‘up–down–up’ of firearm-related homicides is confirmed by the CSP-commissioned report undertaken by the Wits Schools of Governance.
The steady increase in firearm-related violence can be linked to a breakdown in the national firearms control regime. Poor enforcement and compliance has created a vacuum leading to the increased availability of weapons; for example, 33 per cent of licensed firearm owners failed to renew their licence in 2015–16, though these firearms are still in their possession. The control regime has suffered from both fraud and corruption within the firearms management system, as well as poor stockpile management and under-resourcing (Taylor, 2018, pp. 30–34). In one of the most egregious examples of official failure to enforce the FCA that typifies the recent environment, an ex-police colonel responsible for managing the stockpiles earmarked for destruction stole 2,000 firearms and sold them to gang leaders in the Western Cape, resulting in the death of 89 children (de Wee, 2016; Jacobs, 2016).

Another representative case is Lucille, whose success story opened this study. Some 18 months after her (now estranged) husband was denied a gun certificate due to her testimony, he appealed the South African Police Service decision and was granted a licence.48 This was most likely a result of poor record-keeping and part of a much bigger criminal justice system failure, including delays in securing domestic protection orders, with local courts seldom ordering the police to remove guns (Vetten and Schneider, 2006).

Conclusion

The features of small arms violence and efforts to control it in South Africa are context-specific but hold lessons for other national efforts to address gun violence and GBV. In South Africa, policymakers and advocates took advantage of a ‘defining moment’—the collapse of the apartheid era—to push the envelope in the most progressive direction possible, particularly with regard to civilian firearm possession. This effort had to overcome organized opposition, flowing from the strong historical and cultural ties with firearm ownership, especially for white men. The change in political power meant, however, that this group was no longer privileged; white men needed to engage with the policymaking process with all the other interest groups on a more levelled playing field.

Over almost 20 years, the discernible pattern in firearm-related homicides is strongly linked to the robust initial enforcement of the FCA—and then a slacking

48 Email correspondence, October 2018.
off. The recent increase is a result of a breakdown in the firearms control management system, including poor enforcement, poor compliance by firearm owners, fraud and corruption, poor stockpile management, and under-resourcing and capacity of the police (Taylor, 2018). For other advocates of strong gun laws, the lesson is clear: policymaking is only the first step in the process. Sustained political engagement is needed to fully implement and enforce new laws, because they will continue to face opposition from special interest groups. A final lesson is a more positive one: women’s meaningful participation and leadership is becoming felt in an area that, until recently, was limited to male influence and power. Today, South Africa is closer to a situation in which all those affected can help shape policies that affect their own safety and security.

—Author: Adèle Kirsten
15 YEARS OF
THE UNITED NATIONS
SPECIAL RAPPORTEUR ON
VIOLENCE AGAINST
WOMEN, ITS CAUSES AND
CONSEQUENCES

The United Nations Special Rapporteur on Violence against Women,
Its Causes and Consequences
II. BACKGROUND AND SCOPE OF THE MANDATE

The progression in recognition of women’s human rights within the United Nations has been slow, beginning with addressing civil and political exclusions/restrictions during the early periods of the organization and moving on to women’s integration into development in the 1960s, then on to addressing sex discrimination in public and private arenas—within the family, employment, development, health, education and the State—in the late 1970s, as embodied in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Although women did gain a comprehensive bill of rights through CEDAW, the treaty did not explicitly name violence against women (VAW) until 1992 in its General Recommendation 19 on VAW, thereby reading gender-based violence into several of the treaty’s substantive provisions. This was largely motivated by the sustained global campaign of the 1980s led by the women’s movements on VAW, and was followed by the recognition of women’s rights as human rights at the 1993 World Conference on Human Rights, in Vienna. The gains for women at the Vienna conference also included a blueprint for strengthening and integrating women’s human rights within the United Nations, spurring developments towards the creation of the mandate.

The Vienna Declaration and Programme of Action noted that “the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.” Further, the document emphasized that the elimination of VAW in all areas of life, the public and the private, was central to the attainment of women’s human rights. Accordingly, the document outlined the steps necessary for the realization of these goals, including that the human rights of women should be “integrated into the mainstream of United Nations system-wide activity”—through the treaty monitoring bodies, through the effective use of existing procedures, and through the creation of new procedures to “strengthen implementation of the commitment to women’s equality and the human rights of women.” Towards this end, the recommendations for a new mechanism on VAW and an Optional Protocol to CEDAW

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5 Women’s movements from around the world held the Tribunal on Violations of Women’s Human Rights at the World Conference on Human Rights in Vienna in 1993, to claim moral and legal authority of human rights in seeking justice for women. This event was part of a larger worldwide campaign by women’s movements to draw attention to VAW and seek explicit recognition of women’s rights as human rights by the United Nations and within international human rights. “Women Testify: A Planning Guide for Popular Tribunals and Hearings”, Centre for Women’s Global Leadership (2005).
7 Ibid., Part II, para 38.
8 Ibid., Part II, para 37.
9 Ibid., Part II, para 40.
were endorsed, leading to the creation of the mandate and the appointment of the Special Rapporteur on Violence against Women (SRVAW) in 1994, and the adoption of the Optional Protocol to CEDAW in 1999 and its coming to force in 2000.

While the focus of this review is the work of the SRVAW since its creation, it is important to keep in mind the work of other international or regional mechanisms and agencies—notably, in addition to the CEDAW Committee, the Commission on the Status of Women (CSW), the General Assembly, the Secretary-General and the Security Council, United Nations agencies, and regional human rights mechanisms such as the Inter-American Commission on Human Rights, the African Commission on Human and People’s Rights, and the Council of Europe. Many of these entities have indeed addressed aspects of VAW and interrelated issues pertaining to women’s status in various reports, resolutions and other documents, often reflecting issues discussed by the SRVAW.

A. DEFINITION AND SCOPE OF VIOLENCE AGAINST WOMEN

CEDAW General Recommendation 19 on VAW views gender-based violence as a form of discrimination that constitutes a serious obstacle in the enjoyment of human rights and fundamental freedoms by women, and addresses intersections of gender-based violence with the different substantive areas covered by the articles of CEDAW.\(^\text{10}\) It defines gender-based violence as “violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” Accordingly, it calls upon State parties to address and report on VAW within the substantive framework of CEDAW.

The Declaration on the Elimination of Violence against Women (DEVAV) provides a more comprehensive framework on VAW in terms of definition, scope, obligations of the State, and the role of the United Nations.\(^\text{11}\) It defines VAW to mean “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” DEVAV further outlines the scope of private and public to include violence in the family, violence in the community, and violence perpetrated or condoned by the State, wherever it occurs.

In their reports, the Special Rapporteurs have further elaborated upon these forms of violence as follows:

- Violence in the family—such as domestic violence; battering; marital rape; incest; forced prostitution by the family; violence against domestic workers and the girl-child (non-spousal violence, violence related to exploitation); sex-selective abortion and infanticide; traditional

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\(^\text{10}\) CEDAW/C/1992/L.1/Add.15.

\(^\text{11}\) A/RES/48/104 (23 February 1994).
practices such as female genital mutilation; dowry-related violence; and religious/customary laws
» Violence in the community—such as rape/sexual assault; sexual harassment; violence within institutions; trafficking and forced prostitution; violence against women migrant workers; and pornography
» Violence perpetrated or condoned by the State—such as gender-based violence during armed conflict; custodial violence; violence against refugees and internally displaced persons (IDPs); and violence against women from indigenous and minority groups

Ertürk also suggested adding the “transnational arena”, which, due to globalization and increased transnational processes, has emerged as a fourth level where women are encountering new vulnerabilities.13

Different forms of violence continued to be addressed and elaborated upon in the documents adopted in the years that followed. For instance, the Beijing Platform for Action (PFA)—by including, among its 12 critical areas of concern, VAW, along with women and armed conflict, and the human rights of women—specified various forms of sexual assault on women that were not specifically mentioned in DEVAW. These include systematic rape and forced pregnancy during armed conflict, sexual slavery, forced sterilization and forced abortion, female infanticide, and prenatal sex selection.14 The review of the implementation of the PFA that took place at the 23rd special session of the General Assembly, in 2000, clearly demonstrated that VAW had become a priority issue on the agenda of many Member States. The outcome document of the special session on Beijing +5 went a step further in calling for the criminalization of VAW, punishable by law. Paragraph 69 (c) states that governments shall “treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination.” The document also calls for the taking of measures to address VAW resulting from prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism, and terrorism.15

DEVAW and other documents pay specific attention to the increased risk of violence against women on account of marginalized status, location or context. Resolutions on the mandate of the SRVAW have likewise addressed forms of VAW on various grounds, thereby reinforcing this approach.

IV. COMPLIANCE, IMPLEMENTATION AND ACCOUNTABILITY

The focus in the first decade of the mandate was on securing recognition for distinct forms of violence against women (VAW) and their causes, and outlining legal doctrines and State obligations in relation to them. These have been critical to granting visibility to the continuum of violence through the public and private spheres, highlighting the distinction and the commonalities between VAW in peacetime and during conflict, and to establishing linkages of VAW with power structures, including macroeconomic policies. The final report of Radhika Coomaraswamy, marking the end of her tenure as SRVAW in 2003, reflected on the strides made in terms of recognition and, to some extent, in relation to creating implementation tools, while noting the gaps that remain, particularly with reference to implementation. The first report of Yakin Ertürk, submitted in 2004 on assuming the SRVAW office, emphasized implementation and accountability as priority areas of the mandate, particularly in relation to non-State actors. The SRVAW has focused on clarifying emerging forms and contexts of violence, as well as tools and frameworks that facilitate implementation. This section looks at the mandate’s contribution in facilitating compliance and accountability through legal frameworks, definitions, and expansion of the due diligence standard in relation to VAW, as well as through the value of indicators, impact studies and research in informing State responses to VAW.

A. LEGAL FRAMEWORK

Introducing terminology to name wrongs that reflect women’s experiences of violence has helped push the boundaries of gender blindness and bias in international law. The focus during the first decade of the mandate was on distinct forms of VAW within the framework of international law. Drawing upon research studies, women’s experiences, documentary evidence and comparative legal approaches, the SRVAW set out to define the parameters of specific wrongs and propose legal frameworks and responses to address distinct forms of violence. As part of developing legal frameworks, the SRVAW has assessed prevalent legal responses, pointed out gaps, and proposed substantive, procedural and evidentiary changes to correct these.

Standards setting in law has been vital to defining offences and State responsibility in relation to respecting, protecting and fulfilling women’s human rights. The previous section of this report covered the key forms and contexts of violence in relation to which legal doctrines were elaborated by the SRVAW. Naming the various forms of violence within the family, the community, in armed conflict, and perpetrated by the State has accorded recognition to each form of violence, attaching international human rights standards and State obligations with regard

95 While the mandate paid greater attention in the first decade to recognition of forms, causes and consequences of VAW, it also contributed to implementation through the model framework for domestic violence law and recommendations to engender the Rome Statute.
thereto. As discussed in the previous section, standards setting with respect to domestic violence, sexual violence in armed conflict, trafficking and migration has been a very significant step towards facilitating State accountability in these areas. The naming of the State as a duty bearer for prevention and investigation of, protection from, and redress and compensation for wrongs committed by the State, its agents, and non-State actors through the principle of due diligence has been an important advancement in international law regarding women. Recommendations with respect to procedural and evidentiary norms, especially in the context of sexual assault, crimes against humanity and war crimes, have contributed significantly to standards setting with regard to addressing VAW.

The mandate’s identification of specific groups of women has helped grant recognition to women who face multiple risks/violations, as well as to greater barriers to justice due to marginalization arising from grounds such as status or location in systems of inequality in addition to gender. This has helped create recognition for the compounded effects of more than one form of discrimination, and has emphasized the need for solutions that respond to aggravated forms of discrimination. For instance, the SRVAWs have consistently stressed the recognition of the multilayered discrimination and higher risk of violence faced by migrant domestic workers, asylum-seekers facing persecution on account of gender, refugee women, migrant women and women living with HIV/AIDS, along with drawing attention to the additional barriers to justice due to illegal status, non-citizen status, poverty, displacement, unfamiliarity with local language and systems, or stigma. The intersectional framework allows for differentiated State responses and the need for measures that correspond to the additional risks and greater barriers to justice. The recommendations of the SRVAWs concerning State obligations are important in this regard.

B. DUE DILIGENCE

The due diligence standard has been crucial in developing State responsibility for violence perpetrated by private actors in the public and private arenas. It imposes upon the State the responsibility for illegal acts that are not directly committed by the State or its agents, but by private actors on account of State failure to take sufficient steps to prevent the illegal acts from occurring. Likewise, once an illegal act has occurred, the State’s inaction and failure to investigate, prosecute or punish the act perpetrated by a private actor amounts to neglect of the State obligation to be duly diligent. The due diligence standard has long been part of international law and was incorporated into General Recommendation 19 of CEDAW, and later DEVAW, to expand State accountability to include VAW by private actors (in addition to State actors) in the private or public sphere, thus placing upon the State the duty to prevent, investigate, punish and provide compensation for all acts of VAW wherever they occur.

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97 CEDAW General Recommendation 19 stipulates that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

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Declaration on the Elimination of Violence against Women, Article 4*

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

*A/RES/48/104
The extent to which a State is duly diligent is assessed through the steps it takes in relation to each level of accountability. As elaborated by the SRVAW in her report on due diligence, the obligation to prevent VAW includes specific recognition by way of ratification of relevant treaties and enactment of special legislation, going beyond penal responses so as to ensure positive action by the State, through policies, programmes, creation of special mechanisms such as ombudspersons/commissions, public education campaigns, sensitization of agencies engaged with operationalizing women’s rights programmes, or collection of data to assess the de facto status of the problem. Protection requires the State to establish or promote institutional arrangements that provide services vital to respond to VAW, such as counseling, shelter, health care, crisis support, restraining orders, and financial aid to victims of violence, ensuring their accessibility to women from marginalized groups. Punishment is measured in terms of action taken by various State agencies in relation to investigating and prosecuting cases of violence or abuse, observance of the rule of law, convictions and sentencing.

While the fulfillment of due diligence requires treating law as “part of a broader effort that encompasses public policies, public education, services and violence prevention”, the SRVAW has also emphasized that each of the interventions must in fact be effective and responsive. Responsiveness requires data collection to ensure that interventions are designed to respond to the context of violations, and monitoring of the interventions’ impact. For instance, a law does not fulfill the requirement of due diligence if it exempts domestic violence under certain conditions, or if it is gender-neutral. In relation to high levels of VAW, including murder and disappearance of a large number of young, single, migrant women, the SRVAW held that the negligence and indifference of the State authorities led to a majority of the cases being unsolved and no convictions, thereby leading to denial of protection and justice to women. Similarly, it has been held that the State failure to prosecute or punish a perpetrator of domestic violence for more than 15 years after the start of an investigation amounted to condoning the violence. With regard to obstacles faced in the search for justice for women who have been victims of violent crimes, the SRVAW referred to the decision of the Inter-American Court of Human Rights asking for public recognition of the State’s responsibility in the denial of justice and in ensuring that the perpetrators are brought to justice.

Combating VAW requires not only gender-competent responses, but the “adoption of multifaceted strategies” to effectively prevent and combat the “multiplicity of forms of violence against women.”

98 See the report on due diligence, E/CN.4/2006/61.
100 In E/CN.4/2006 61, para 40, the SRVAW cited Ukrainian legislation on domestic violence whereby a woman is liable to be arrested if she provokes violence through “victim behaviour”.
101 The gender-neutral terms of the law were critiqued by the SRVAW in the country mission report on the Netherlands, A/HRC/4/34/Add.4.
103 By the Inter-American Court of Human Rights in Maria da Penha Maia Fernandes v. Brazil, Case 12.051, 16 April 2002, as cited in A/61/122/Add.1, para 267.
women ... that ... frequently occurs at the intersection of different types of discrimination."\textsuperscript{105} In this regard, the SRVAW observed that the higher degree of violence against migrant women in Mexico and their increased vulnerability to violence was linked to the law that barred undocumented migrant women from accessing State authorities.\textsuperscript{106} Similarly, the SRVAW observed that the law excluding undocumented immigrant women from accessing State shelters for domestic violence in the Netherlands exposed them to arrest, created an obstacle to accessing justice, and made them vulnerable to a range of violations.\textsuperscript{107}

An important contribution of Ertürk in relation to the due diligence standard has been to emphasize the two neglected areas—the State duty to prevent VAW and to compensate its victims. The responsibility to “prevent” has the potential of involving the State in actively intervening in and transforming social and material structures that are at the root of VAW. In this context, the SRVAW has emphasized the value of altering the intrinsic nature of the State to make it less patriarchal. The SRVAW has explained that State action, symbolized through judicial or prosecutorial action, embodies “consequential effects in that condemnations of patriarchy can lead to changes in socio-cultural norms, as well as intrinsic effects in that prosecutors or judges can be considered to be the ‘mouthpieces’ of society, and strong statements condemning violence against women made on behalf of society through the judiciary or the prosecutorial services will make that society less patriarchal.”\textsuperscript{108} The SRVAW’s suggestions are echoed in feminist writings, which purport that in relation to assessing the effectiveness of prosecutorial action in terms of its ability to transform the intrinsic nature of the State, such State action not only must fulfill “consequential” values that enable punishment of batterers, increased safety of victims and prevention of domestic violence, but must also achieve “intrinsic” values, in terms of sending a symbolic message that domestic violence is a crime that the society will not tolerate.\textsuperscript{109} For a State action to realize such an intrinsic value, it must not be a one-off instance of condemnation, but in fact it must systematically engage with domestic violence and condemn it so as to characterize the State as having values that lessen patriarchy. State action, as a consequence, helps lessen the patriarchal nature of society—that is to say, it “realizes certain kinds of values that are independently relevant to the project of ending domestic violence.”\textsuperscript{110}

In addition, the SRVAW has emphasized the duty of the State to compensate the consequence of violence. Ertürk notes that this not only includes but goes beyond access to legal remedies and rehabilitative and support services, possibly involving “financial damages for any physical and psychological injuries suffered, for loss of employment and educational opportunities, for loss of social benefits, for harm to reputation and dignity as well as any legal, medical or social

\textsuperscript{105} E/CN.4/2006/61, para 16.
\textsuperscript{108} E/CN.4/2006/61, para 90.
\textsuperscript{110} Ibid.
costs incurred as a consequence of the violence.” She points out that the State must provide reparations to compensate financial and other forms of loss so as to fulfill the demands of restorative justice.

C. ACCOUNTABILITY FOR ACTIONS OF NON-STATE ACTORS

The due diligence standard has enabled the extension of the State accountability to prevent, protect and punish actions beyond those of State agents, thereby covering actions of private actors in the private sphere. However, conventional approaches to due diligence have been limited to extending accountability of the State to acts of violence by private actors within the family and the community. This approach has severely limited the State’s capacity to meet challenges posed by the influence exerted on women’s lives by non-State actors operating, as described by the SRVAW, from below and above the State. The SRVAW has indeed classified identity politics movements that trump cultural justifications to limit women’s rights as non-State actors operating “below the State”, and actors within the transnational arena whose actions often affect women adversely as those operating “above the State.” In light of the serious challenges to women’s rights posed by these two levels of non-State actors, the mandate has recommended widening the application of due diligence to include their actions within the ambit of the responsibility to prevent, protect and punish.

The two mandate holders have drawn attention to the impact of social and economic policies as well as the relationship of political economy to women’s human rights. In this context, the mandate holders have addressed transnational players through various reports that call for revisiting the conventional parameters of due diligence in light of “global restructuring” so as to include transnational actors and solutions within the ambit of due diligence.

Regarding powerful non-State actors, the mandate has expressed the need to go beyond responding to violations and develop the duty to prevent violations. The mandate has emphasized the need to ensure accountability for actions of independent but powerful sources of authority that have an impact on women’s rights as being particularly important in the context of the shrinking domain of State authority. In relation to addressing the influence of non-State ac-

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111 E/CN.4/2006/61, para 84.
112 This classification is proposed in the report on due diligence, E/CN.4/2006/61. It is nonetheless acknowledged that corporations are also organs of society and as such are subject to national laws and regulations. The classification of businesses as being “above the State” pertains more to influential transnational corporations than to national enterprises, and remains context-specific.
113 These concerns have been expressed through various reports: E/CN.4/1999/68/Add.4, E/CN.4/2000/68/Add.5 and E/CN.4/2006/61. The forthcoming report on political economy and violence against women, which will be presented to the Human Rights Council in 2009, will also address these concerns while examining the tension caused between women’s economic and social rights and the prevailing macro-economic policy environment, as well as the tension caused by the dichotomization of political/civil rights and economic/social rights, which characterizes the latter not as entitlements but as aspirations.
tors from below the State, the report on due diligence recommends developing the generalized obligation of the State to prevent violence. As part of this obligation, the SRVAW has stressed operationalizing, as per the Beijing Platform for Action, women’s empowerment by the State at the individual level and engaging in “cultural negotiation” at the community level. The latter has been defined as State support of women’s initiatives at the community level so as to challenge and demystify myths around misogynous cultural discourses within the community. The SRVAW has stressed the value of women’s voices in relation to hegemonic interpretations of culture and prescriptions of identity politics that undermine women’s autonomy and their human rights. Women’s leadership, the SRVAW has explained, will surface heterogeneity and competing interests within communities, and as a consequence will question hegemonic voices and representations of culture by identity politics movements. This approach seeks to question and rupture patriarchal monopoly of culture from below by addressing unequal power relations within the community. It is shaped by the perspective that the threat to women’s human rights comes from the monopoly over the interpretation and representation of culture by the powerful few rather than from culture per se. As a consequence, State engagement in women’s empowerment and cultural/societal transformations is central to challenging and changing hegemonic patriarchal structures and practices. The prevention approach is the more sustainable, focusing on change, whereas the State obligation to protect and punish remains relevant in combating violations.

Both mandate holders have also expressed concern about the protection gaps in relation to the influence of non-State actors operating in society, and often also extraterritorially on the lives of people, and in particular their gendered impact on women. Although the contexts of globalization and conflict and post-conflict situations are varied, they represent sectors of growing influence by a multiplicity of State and non-State actors in territories beyond their domicile, thereby escaping the net of accountability afforded by conventional legal frameworks and mechanisms in domestic arenas. The non-State actors with transnational influence have not only affected governance, market changes or movements of people, but have also challenged conventional notions of territorality, sovereignty and duty bearers with respect to human rights compliance by bringing into play a multiplicity of normative systems in each context.

The SRVAWs have discussed the issue of non-State responsibility with respect to transnational corporations in conjunction with their increased power over macroeconomic decision-making in the process of global restructuring, which has favored liberalization and privatization of States at the national level. In this regard, they have emphasized that economic changes are not an outcome of the market forces alone, nor do they function independently of social dynamics. Rather, they are shaped by political and social structures, such that the allocation of resources and distribution of income and opportunities are constituted to reinforce existing

power relations. The forthcoming and last annual report of the current SRVAW will note that the enjoyment of human rights by women is contingent on a material basis of society sustained by the prevailing power relations, pointing to the necessity of aligning the economy with human rights policies through State and self-regulatory mechanisms. The SRVAW has recommended gender impact studies, inclusion of gender as part of corporate responsibility, and the institutionalization of codes of conduct incorporating human rights within corporations or as part of social responsibility of corporations, rather than complete reliance upon State conditionality—for that is contingent upon not just a strong State, but one that is also committed to women’s human rights.

The need for accountability of transnational corporations and other business enterprises has been further elaborated upon by John Ruggie, the Special Representative to the Secretary-General on this theme. A survey of governments and Fortune Global 500 firms on their human rights and management practices conducted by the Special Representative shows that States rarely make trade and investment treaties conditional upon human rights, and that most criminal laws, despite their limitations, do not allow prosecution of legal persons or extraterritorial jurisdiction. Likewise, few corporations have human rights policies that go beyond labour rights, non-discrimination, freedom of association and forced/child labour restrictions, and these are rarely applicable beyond employees and a few others on the top of the value chain. In this context, the Special Representative recommended a policy framework that subjects business and corporate actors to the duty to respect human rights, and that emphasizes the State obligation to protect people from the actions of non-State actors and ensure access to remedies. The SRVAW’s recommendations regarding gender impact studies provide a gender focus into the Special Representative’s recommendations for impact assessment, and creates space for arguing for integration of gender concerns into business activities, as well as for the integration of human rights in all processes and programmes of corporations and the availability of redress mechanisms.

D. INDICATORS, DATA COLLECTION AND RESEARCH STUDIES

Laws, State policies and programmes regarding women are often not based on actual data or research studies, resulting in a disjuncture between State responses and the prevalent patterns of violations/violence. To assess State compliance in relation to violence in the family, Coomaraswamy sought information from governments inter alia on national plans and statistics on domestic violence, and noted that erroneous linkages were made by States among domestic violence, alcoholism and drugs, instead of linkages with patriarchal ideology.

119 These issues will be elaborated upon in the forthcoming annual report of the SRVAW on the theme of political economy and women’s rights, to be published in 2009.
122 A/HRC/4/35/Add.3.
123 A/HRC/8/5.
resulting in misdirected responses and resources. Reporting on the extent to which reproductive rights are violated through policies derived from imperatives extraneous to women’s needs, the SRVAW noted that “all too often, State policies derive from the perceived moral requirements of the community, or even the needs and priorities of the health profession, rather than a careful epidemiological and social assessment of women’s health needs.” Similarly, the effect of gender blindness undermines women’s human rights—such as in the absence of a gender focus in relation to HIV/AIDS prevention and control, or rehabilitation and reconstruction initiatives for refugees and internally displaced persons (IDPs). The relevance of indicators, sex-disaggregated data and gender impact studies is part of the obligation to comply with human rights standards, and is the basis for formulating State responses and monitoring the extent of State compliance.

Uninformed legislative activity or tokenistic responses cannot amount to compliance with the due diligence obligation of the State to prevent, investigate and punish. The recommendations of the SRVAW have repeatedly stressed research studies, sex-disaggregated data, linkages and coordination with non-governmental organizations (NGOs), and gender impact studies, to inform State action and to design responses that are evidence-based and correspond to women’s needs. In taking stock of the progress made by the mandate at the end of her tenure in 2003 as the SRVAW, Coomaraswamy pointed to the gap in implementation of the standards set for addressing VAW. While charting the future direction of the mandate at the start of her tenure as the SRVAW, Erütürk observed that the difficulty in measuring compliance by States arose due to failure by the States to undertake “gender analysis in order to accurately assess how, why, and under what circumstances specific forms of violence are perpetrated,” and further, due to the lack of “measurable and comparable indicators of gender justice ... and a complex set of disaggregated data that captures the interlinkages of multiple forms of discrimination that lead to violence against women in diverse contexts.” The SRVAW recommended “gender budgeting” and development of indicators to monitor VAW and State responses to it.

Acting upon these recommendations, the Commission on Human Rights (CHR) called upon the SRVAW to recommend proposals for indicators on VAW and on measures taken by the States to eliminate it, following which the SRVAW undertook extensive research on transnational indicators and based her annual report on that research. The General Assembly further requested that, building on the work of the SRVAW, the United Nations Statistical Commission propose possible indicators on VAW, and the Secretary-General’s study reiterated the importance of knowledge tools such as data on the nature, prevalence and incidence of all forms of violence as part of State responsibility to eliminate VAW.

125 E/CN.4/1999/68/Add.4, para 68.
127 Ibid., para 73 (h) and (i).
129 A/RES/61/143, para 18.
130 A/61/122/Add.1, para 185.
The annual report dedicated to indicators on VAW and State response\textsuperscript{131} views indicators as part of the State’s human rights obligations, as they ensure that interventions aimed at combating VAW are based on accurate empirical data, and as a consequence are effective and responsive to prevailing patterns of violence. Similarly, in country mission reports, the Special Rapporteurs consistently reminded States of the need to collect sex-disaggregated data, and to map and examine patterns of violence and their causes in order to understand the prevalence and specific forms of violations.

In her report on indicators, the SRVAW further notes that indicators help make data accessible for non-specialist decision makers, and enable interventions and their impact to be open to public scrutiny. The SRVAW clarifies, however, that although indicators are necessary, they cannot substitute for qualitative and quantitative research, which are necessary to complement indicators.

The research study titled “The Next Step: Developing Transnational Indicators on Violence Against Women” examines proposals, perspectives and debates on indicators, and sets out the value and objectives of transnational indicators, while acknowledging the limitations of indicators per se and the limitations of transnational indicators in particular, in view of the need for context-specific variations.\textsuperscript{132} The annual report of the SRVAW on this theme draws upon this study and points to gaps in knowledge in relation to forms of violence other than intimate-partner violence, as well as gaps in transnational studies on various responses to VAW (such as help-lines, shelter and advocacy).

The report calls for formulating common indicators on VAW, and proposes a set of indicators to measure VAW (outcome indicators) and State responses to it. These consist of institutional/structural indicators, which pertain to States’ international commitments, including ratification of CEDAW and plans of action on VAW; and process indicators, which pertain to access to justice and reporting, including victims’ protection, prevention and training. The report further recommends that the proposal be carried forward within the United Nations by an expert working group through technical manuals, pilots, and revisions based on the pilots, with concurrent steps and assistance on management of data systems at the national level.

\textsuperscript{131} A/HRC/7/6.
\textsuperscript{132} A/HRC/7/6/Add.5.
Conference of States Parties Process

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2. What will the 2020 Conference of States Parties focus on?
3. What is the role of the ATT Secretariat?
4. What kind of support can the ATT Secretariat provide, especially to new states parties?

Resources:

ANNEX B

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6. Assistance and support for ATT implementation

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1. Introduction

1.1 Who is this 'Welcome Pack' designed for?

The Welcome Pack was developed by the Working Group on Treaty Universalization. The Pack is designed to give a basic overview of the Arms Trade Treaty process and obligations to States that are new States Parties to the Treaty or that are interested in learning more about the Treaty.

1.2 What is the ATT?

The Arms Trade Treaty (ATT) is an international treaty that regulates the international trade in conventional arms by establishing the highest international standards governing arms transfers and seeks to prevent and eradicate illicit trade and diversion of conventional arms.

The object of the Treaty as outlined in Article 1 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.

“This marks the opening of a new chapter in our collective efforts to bring responsibility, accountability and transparency to the global arms trade.” —Ban Ki Moon

The ATT contributes to international and regional peace, security and stability, reducing human suffering, and promoting cooperation, transparency and responsible action.

1.3 Adoption and entry into force

The Treaty was adopted by a UN General Assembly Resolution on 02 April 2013 and entered into force on 24 December 2014, becoming the first global, legally binding treaty governing conventional arms transfers.

1.4 How many States have joined the ATT?

At this stage, more than 100 States have become States Parties to the Treaty and others have signed the Treaty but not yet ratified it.

Up to date information on the status of participation in the ATT, including a regional overview, is available on the ATT website at: [https://www.thearmstradetreaty.org/treaty-status.html?templateId=209883](https://www.thearmstradetreaty.org/treaty-status.html?templateId=209883)

1.5 What is the scope of the ATT?

The ATT regulates certain types of transfers of certain categories of arms.

1.5.1 What types of arms are covered by the ATT?

The ATT regulates the international trade in the following categories of conventional arms (see Article 2(1)):

1) Battle tanks;
2) Armoured combat vehicles;
3) Large-calibre artillery systems;

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4) Combat aircraft;
5) Attack helicopters;
6) Warships;
7) Missiles and missile launchers; and
8) Small arms and light weapons.

The ATT also applies to the export of ammunition/munitions fired, launched or delivered by the conventional arms listed above, as well as parts and components where the export is in a form that provides the capability to assemble the conventional arms listed above (see Articles 3 and 4).

1.5.2 What types of transfers are covered by the ATT?

The ATT regulates the following types of transactions (see Article 2(2)):

- export;
- import;
- transit and trans-shipment; and
- brokering.

The Treaty does 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 (see Article 2(3)).

In addition, the ATT recognizes the ‘legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations’ (paragraph 7, Principles of the ATT).

2. ATT process

2.1 Conferences of States Parties

2.1.2 When?

In accordance with Article 17(1) of the Treaty, each Conference of States Parties can decide when to hold the next Conference. In practice, the Rules of Procedure stipulate that the Conference shall meet annually unless decided otherwise by the Conference (see Rule 11 of the Rules of Procedure).

The ATT Conferences of States Parties have been held as follows:

- First Conference of States Parties to the ATT (CSP1): Cancun, Mexico, 24-27 August 2015
- Third Conference of States Parties to the ATT (CSP3): Geneva, Switzerland, 11-15 September 2017
- Fourth Conference of States Parties to the ATT (CSP4): Tokyo, Japan, 20-24 August 2018
- Fifth Conference of States Parties to the ATT (CSP5): Geneva, Switzerland, 26-30 August 2019

2.1.2 What?

The role of each Conference of States Parties is to:

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 (see Article 17(4)).
2.1.3 Who?

The Rules of Procedure stipulate that the plenary meetings of the Conference shall be public unless the Conference decides otherwise at the request of a State Party (see Rule 13 of the Rules of Procedure). Accordingly, States Parties, Signatory States, Observer States (States that are neither parties nor signatories to the Treaty), as well as representatives of the United Nations, its specialized agencies, international and regional intergovernmental organisations, civil society, including Non-Governmental Organisations (NGOs), and industry, may participate in Conferences of States Parties (see Rules 1-5 of the Rules of Procedure), unless and until it is decided otherwise.

However, only States Parties can be full participants in a Conference (meaning only States Parties have the right to adopt decisions and vote on decisions when necessary). Signatory States can participate in Conferences but cannot take part in the adoption of decisions. Observer States and representatives of the United Nations, international and regional organisations, civil society and industry may attend the Conference as observers, deliver statements at plenary meetings, receive official documents and submit their views in writing to the Conference.

2.2 Preparatory process

2.2.1 Informal preparatory meetings

During the intersessional period between each Conference of States Parties, informal preparatory meetings are held at the seat of the ATT Secretariat in Geneva to prepare for each forthcoming Conference. The number of preparatory meetings and their duration are not prescribed/set, but generally, two informal preparatory meetings lasting one day each are held in advance of each Conference of States Parties. The preparatory meetings are generally timed to coincide with the meetings of the ATT Working Groups (see section 2.3.2.2). Preparatory meetings are public.

2.2.2 Extraordinary meetings

Article 17 (5) contemplates that extraordinary meetings of the Conference may be convened during the intersessional period between Conferences, if a request for such a meeting is made by a State Party and two-thirds of the States Parties support the proposal. Extraordinary meetings take place at the seat of the Secretariat in Geneva unless otherwise decided (see Rule 14 of the Rules of Procedure).

2.3 ATT bodies

2.3.1 Officers of the Conference

2.3.1.1 President

States Parties to the Arms Trade Treaty (ATT) elect a President every year during the Conference of States Parties (CSP) to preside over the CSP the following year, including the preparatory process.

The following persons have served as Presidents to the CSPs:

— CSP1: Ambassador Jorge Lomónaco, Mexico
— CSP2: Ambassador Emmanuel E. Imohe, Nigeria
— CSP3: Ambassador Klaus Korhonen, Finland
— CSP4: Ambassador Nobushige Takamizawa, Japan
— CSP5: Ambassador Jānis Kārkliņš, Latvia

2.3.1.2 Vice Presidents

Under Rule 9 of the Rules of Procedure, during each session of the Conference of States Parties to the ATT a President and four vice- Presidents for the following session of the Conference are elected from among the representatives of participating States Parties.

The President and four vice-Presidents, informally referred to as ‘the Bureau’, begin their terms of office at the end of the Conference that elected them and serve until their successors are elected at the end of the next
ordinary session of the Conference. The President (assisted by the vice-Presidents) presides over any extraordinary meeting of the Conference held during their term.

2.3.1.3 Secretary of the Conference

Under Rule 10 of the Rules of Procedure, the Head of the ATT Secretariat is the Secretary of the Conference and acts in this capacity at all sessions of the Conference and its subsidiary bodies. The role of the Secretary is to make all the necessary arrangements in connection with the ordinary and extraordinary sessions and, generally, perform all other work that the Conference may require, in accordance with Article 18 paragraph 3 (d) of the Treaty.

The other roles and functions of the ATT Secretariat are described in section 6.1.1.

2.3.2 Subsidiary bodies

Rule 42 of the Rules of Procedure provides that the Conference of States Parties may establish subsidiary bodies, in accordance with Article 17(4) of the Treaty. The Conference determines the matters to be considered by any subsidiary body established under the Treaty including its mandate, officers, composition, size, duration and budgetary issues.

The current subsidiary bodies of the ATT are:

— The Management Committee
— Three Working Groups:
  o The Working Group on Effective Treaty Implementation
  o The Working Group on Transparency and Reporting
  o The Working Group on Treaty Universalization
— The VTF Selection Committee

The roles and functions of each of the bodies are described below.

2.3.2.1 Management Committee

The First Conference of States Parties to the ATT established a Management Committee as a subsidiary body, pursuant to Article 17(4) of the Treaty and Rule 42 of the Rules of Procedure. The role of the Management Committee is to provide oversight on financial matters and on other matters related to the ATT Secretariat to ensure maximum accountability, efficiency and transparency and the Secretariat’s operations.

The Management Committee comprises the President of the Conference of States Parties and a State Party representative designated by each UN regional group. A representative of the ATT Secretariat participates in meetings. A representative of Signatory States may be invited, when appropriate, by the Conference, to attend the meetings of the Management Committee as observers.

Members of the Management Committee (other than the President and representatives of the ATT Secretariat) serve for two years and are eligible to serve a further term.

The operations of the Management Committee are governed by the Terms of Reference for the Management Committee.

2.3.2.2 Working Groups

The following Working Groups were established by CSP2 in 2016 and became standing Working Groups by a decision of CSP3 in 2017:

— Working Group on Effective Treaty Implementation (WGETI)
— Working Group on Transparency and Reporting (WGTR)
— Working Group on Treaty Universalization (WGTU)

The President of Conference appoints a Chair or Co-Chairs to each Working Group, and the aim of each Working Group – in accordance with their respective Terms of Reference - is as follows: WGETI: exchanges information
and challenges on the practical implementation of the Treaty at the national level; WGTR: undertakes tasks defined by the Conference of States Parties in the general area indicated by its title (i.e. issues of transparency and reporting obligations under the Treaty); WGTU: generates and shares views and implementation measures on Treaty universalization.

On average, the Working Groups meet twice per year (coinciding with the informal preparatory meetings of each Conference of States Parties (see section 2.2.1)) for a total of three days. Each Working Group submits a report to every Conference of States Parties on the progress of their work.

2.3.2.3 Voluntary Trust Fund (VTF) Selection Committee

The Second Conference of States Parties to the ATT appointed a VTF Selection Committee as a subsidiary body, pursuant to Article 17(4) of the Treaty and Rule 42 of the Rules of Procedure, to oversee the administration of the Voluntary Trust Fund including the allocation of available funds to project proposals following the annual call for proposals (see section 6.2.1).

The Selection Committee consists of up to 15 members who serve for a period of two years (and are eligible to be reappointed for further terms). The operations of the VTF Selection Committee is governed by the VTF Terms of Reference. The VTF Selection Committee appoints one of its members to chair its deliberations, and the Chair of the VTF Selection Committee reports on the work and status of the VTF to each Conference of States Parties.

3. ATT obligations

3.1 What are the arms transfer control obligations under the Treaty?

3.1.1 National Control System

One of the central obligations under Article 5 of the Treaty is that States Parties must establish and maintain a national control system to regulate the export, import, transit, and trans-shipment of conventional arms, ammunition/munitions, and parts and components, as well as related brokering activities.

As part of its national control system, each State Party is required to establish and maintain a national control list of the arms and items that are covered by its control system. That is, a list of the arms, ammunition/munitions, parts and components and other items whose transfer is controlled and regulated by the State. States Parties are required to provide a copy of their national control lists to the ATT Secretariat, which makes it available to other States Parties, and they are encouraged to make their national control lists publicly available.

Each State Party must also designate one or more competent national authorities in order to have an effective and transparent national control system, and they must designate one or more national points of contact to act as a liaison and exchange information on matters related to the implementation of the Treaty.

The ATT Working Group on Effective Treaty Implementation has developed a Voluntary Basic Guide to Establishing a National Control System that provides detailed suggestions on how to establish a national control system in accordance with the Treaty requirements.


3.1.2 Regulating transfers

3.1.2.1 PROHIBITION OF CERTAIN TRANSFERS

The term ‘transfer’ is defined under Article 2(2) of the Treaty to include export, import, transit, trans-shipment, and brokering.

Under Article 6 of the Treaty, States Parties are prohibited from authorizing any transfer of arms, related ammunition/munitions, or parts and components if:
the proposed transfer would violate UN Security Council arms embargoes adopted under Chapter VII of the Charter;
— the proposed transfer would violate relevant international obligations under treaties to which a state is a party; or
— the state party 'has knowledge at the time of authorization' that the arms or items would be used to commit genocide, crimes against humanity, or certain war crimes.

If a transfer is not prohibited under Article 6, each state party must ensure the transfer is regulated in accordance with the other provisions of the Treaty, as discussed below.


3.1.2.2 EXPORT

Under Article 7, if the transfer involves an export of conventional arms, related ammunition/munitions, or parts and components, the exporting state is required to assess the risk or potential that the arms or items to be exported would contribute to or undermine peace and security or that they could be used to commit or facilitate:
— a serious violation of international humanitarian law;
— a serious violation of international human rights law;
— acts constituting offences under international agreements relating to terrorism; or
— acts constituting offences under international agreements relating to transnational organized crime.

The exporting State Party must also consider whether there are measures that could be undertaken to mitigate risks identified, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

An exporting state must refuse any request for authorization if its assessment concludes that there is an 'overriding' risk of any of the negative consequences listed in Article 7(1).

An exporting State must also take into account the risk of conventional arms, related ammunition/munitions, or parts and components, being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children (see Article 7(4)), and must assess the risk of diversion of the export (Article 11).


3.1.2.3 IMPORT

In addition to certain imports of conventional arms, related ammunition/munitions, or parts and components being prohibited under Article 6 (see section 3.1.2.1 above), each State Party that imports arms must 'take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms'.

While the ATT does not specify which measures are to be taken to regulate imports as part of a national control system, they could include a requirement to obtain authorization from the relevant authority in the form of a licence or permit to import arms, and/or end-user and delivery verification certificates.

The Treaty also stipulates that importing States must take measures to ensure information is provided to an exporting State, if requested to do so as part of a risk assessment an exporting State may be conducting, and that such measures may include end use or end user documentation.

3.1.2.4 TRANSIT AND TRANS-SHIPMENT

In addition to the transit and transshipment of conventional arms, related ammunition/munitions, or parts and components being prohibited in certain circumstances described under Article 6 (see section 3.1.2.1 above),
Article 9 requires states parties to take appropriate measures to regulate transit or trans-shipment of conventional arms under their jurisdiction ‘where necessary and feasible’ and ‘in accordance with relevant international law’.

While the ATT does not specify which measures are to be taken to regulate transit and transshipment as part of a national control system, they could include a requirement to obtain authorization from the relevant authority in the form of a licence or permit to transit or tranship arms, and/or a requirement that transport agents give prior notification to the transit State that weapons will be transiting its territory.

3.1.2.5 BROKERING

In addition to the brokering of conventional arms, related ammunition/munitions, or parts and components being prohibited in certain circumstances described under Article 6 (see section 3.1.2.1 above), Article 10 requires states parties to ‘take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction’ for conventional arms. The Treaty stipulates that such measures may include: requiring brokers to register or obtain written authorization before engaging in brokering.

3.1.2.6 DIVERSION

Article 11 of the ATT includes a range of commitments aimed at preventing, addressing, and promoting awareness of the diversion of conventional arms. Exporting States Parties must assess the risk of diversion of an export and consider the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

In addition, under Article 11, each State Party involved in a transfer has obligations to prevent and address the diversion of arms that are being transferred. The ATT does not require States Parties to prevent and address the diversion of ammunition/munitions, or parts and components, but States Parties may choose to do so. Cooperation and information sharing among States involved in a transfer are central elements of this provision, highlighting the reality that addressing the diversion of conventional arms is not something that States can achieve alone.

4. What are the reporting obligations under the Treaty?

4.1 Initial Reports

Under Article 13(1) of the ATT, States Parties are required to provide an Initial Report to the ATT Secretariat that describes the measures the state has taken to implement the Treaty, ‘including national laws, national control lists and other regulations and administrative measures’. They are also required to report on any new measures undertaken to implement the Treaty when such measures are taken.

Each State Party is required to submit its Initial Report ‘within the first year after entry into force of this Treaty for that State Party’. Accordingly, the deadline for submission of a State Party’s Initial Report is twelve months after the date the Treaty enters into force for it.

A template has been developed to assist States Parties submit their Initial Reports and Initial Reports can be submitted to the ATT Secretariat online.

4.2 Annual Reports

Under Article 13(3) of the ATT, States Parties are required to submit a report on an annual basis that includes information ‘concerning authorized or actual exports and imports of conventional arms covered under Article 2(1)’ that were made during the preceding calendar year (01 January to 31 December).

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2 For a state that ratified, accepted, approved or acceded to the Treaty after 24 December 2014, the Treaty enters into force for that state ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession in accordance with Article 22. The deadline for submission of its Initial Report is twelve months after that date.
The deadline for the submission of Annual Reports to the ATT Secretariat is 31 May each year. For example, the deadline for the submission of 2018 Annual Reports covering exports and imports made between 01 January - 31 December 2018 is 31 May 2019.

A template has been developed to assist States Parties submit their Annual Reports and Annual Reports can be submitted to the ATT Secretariat online.

4.3 Reports on Diversion

Under Articles 11(6) and 13(2), States Parties are encouraged to report on measures taken to address the diversion of transferred arms. There is currently no formal mechanism for reporting on measures taken to address diversion (for example, there is no reporting template for such reports) and States Parties are welcome to submit reports on diversion in whatever format they choose, and to use the information exchange platform available on the ATT website to exchange information and share experiences on diversion.

5. What are the financial obligations under the Treaty?

5.1 States Parties

States Parties pay assessed contributions that cover the following two aspects:

1. Contributions for the CSP and any subsidiary bodies it may establish: All States Parties, irrespective of attendance at meetings and Conferences of States Parties, are assessed a contribution towards each Conference, or any subsidiary bodies it may establish, including towards the cost of preparing and holding the Conference, or subsidiary body meeting as applicable (see Rule 5.1 of the ATT Financial Rules).

2. Contributions for the Secretariat: Each calendar year, States Parties are charged an assessed contribution for the ATT Secretariat’s costs in undertaking its core tasks, comprising: staff salaries, equipment, office overheads, financial administration, human resources administration, insurance, communications and IT, and any other items essential for the functioning of the Secretariat as decided by the Conference (see Rule 6.3 of the ATT Financial Rules).

5.2 Signatory States and Observer States

Signatory States and other observer States in attendance at each Conference of States Parties, or any subsidiary bodies it may establish, are levied an attendance fee towards the cost of preparing and holding the Conference, or subsidiary body meeting as applicable.

Invoices issued for the estimated Conference costs shall be calculated on the assumption that all signatory States, and other observer States that attended the Conference in the preceding year will attend the following Conference.

6. Assistance and support for ATT implementation

6.1 ATT Secretariat

6.1.1 What is the role of the ATT Secretariat?

The ATT Secretariat was established in accordance with Article 18 of the Treaty to support and assist States Parties in the effective implementation of the ATT.

The ATT Secretariat manages the reporting process under the Treaty; maintains a database of national points of contact; facilitates the matching of offers of and requests for assistance for Treaty implementation; facilitates the work of the Conference of States Parties; and performs other duties as decided by the Conferences of States Parties. Facilitating the work of the Conference of States Parties includes supporting the work of the CSP President, Vice Presidents, Management Committee, and the Co-chairs of the Working Groups established by the Conference of States Parties, during the preparatory phase leading up to each CSP.
In addition to its traditional responsibilities contemplated in Article 18(3) of the Treaty, the ATT Secretariat also administers the Voluntary Trust Fund, with the support of the VTF Selection Committee (see sections 2.3.2.3 AND 6.2.1) as well as the ATT sponsorship programme.

6.1.2 How to contact the ATT Secretariat

Address: 7bis avenue de la Paix, WMO Building, 2nd floor, 1211 Geneva
Phone: +41 (0)22 715 04 20
Email: info@thearmstradetreaty.org
Web: www.thearmstradetreaty.org

6.2 What financial assistance is available?

6.2.1 Voluntary Trust Fund

Article 16(3) of the Arms Trade Treaty (ATT) provides for the establishment of a Voluntary Trust Fund (VTF) to support national implementation of the Treaty and encourages all States Parties to contribute resources to the Fund.

The VTF was formally established in August 2016 by the Second Conference of States Parties to operate under its approved Terms of Reference. The VTF disburse funds to ATT implementation projects according to the provisions of its Terms of Reference and Administrative Rules.

The VTF is administered by the ATT Secretariat with support from the VTF Selection Committee (see section 2.3.2.3). A call for proposals is issued annually inviting States to apply for grants of up to USD 100,000 for ATT implementation projects; only States can apply for funds.

For more information, visit: https://www.thearmstradetreaty.org/voluntary.html

6.2.2 Sponsorship programme

The ATT Secretariat administers a sponsorship programme that facilitates the participation of States in ATT meetings. The primary objective of the ATT sponsorship programme is to maximize the scale and diversity of participation in ATT meetings to ensure representative and participatory discourse during the meetings and, ultimately, contribute to strengthening implementation and universalization of the Treaty. The ATT Secretariat invites applications for sponsorship in advance of each ATT meeting where sponsorship funds are available by circulating a call for applications to all persons on the ATT mailing list and by posting the information on the ATT website.

6.2.3 UNSCAR

The United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) is a flexible multi-donor, United Nations-managed fund supporting arms regulations, which supports the ratification/accession and implementation of relevant international instruments on arms regulations, including the ATT.

UNSCAR issues an annual call for proposals and is open to applications from UN partners, international/regional organizations, NGOs, research institutes. Governments wishing to receive assistance should work with an eligible applicant.

For more information, visit: https://www.un.org/disarmament/unscar/

6.2.4 EU ATT Outreach Project

The European Union has established a project and committed funds to support implementation of the ATT known as the ‘EU ATT Outreach Project’. The Project entails different components:

- Tailored national assistance programmes that can provide a long-term partnership to address multiple national implementation priorities through tailored assistance activities.
- Ad hoc activities to allow a flexible and quick response to individual requests for support.
- Regional seminars that provide a platform to share best practice models, involve civil society actors and foster regional cooperation.

Assistance is provided upon request by States made directly to the Project. More information is available here:

6.2.5 Bi-lateral assistance

Many donor countries offer financial and technical assistance for ATT implementation on a bi-lateral basis. States interested in receiving such assistance should contact donor countries directly.

6.3 What technical assistance is available?

States may seek assistance from existing States Parties to the Treaty with respect to technical aspects of Treaty implementation. There are also many international organisations, regional organisations, UN agencies, civil society organizations and think tanks that are engaged on ATT implementation and can offer assistance on a range of technical aspects of ATT implementation. The ATT Secretariat can offer advice on who and how to approach such actors.

In addition, numerous practical guides, research papers and other tools have been developed by the ATT Working Groups as well as international organisations, civil society organizations and think tanks that offer technical advice and guidance on how to implement the Treaty.

Further information on Treaty implementation including resources, tools and guidelines are available on the ATT website (https://www.thearmstradetreaty.org/) or can be obtained from the ATT Secretariat (info@thearmstradetreaty.org).

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I. Participants in the Conference

Rule 1 - States Parties

States Parties to the Arms Trade Treaty (hereinafter called “the Treaty”) shall be full participants in the Conference of States Parties (hereinafter called “the Conference”) and shall exercise all rights in accordance with such status.

Rule 2 - Signatory States

Signatory States to the Treaty shall be participants in the Conference without taking part in the adoption of decisions.

II. Observers in the Conference

Rule 3 – Observer States

States that are neither parties nor signatories to the Treaty may attend the Conference as observers, deliver statements at plenary meetings, receive official documents and submit their views in writing to the Conference.

Rule 4 - Representatives of the United Nations, its specialized agencies, international and regional intergovernmental organisations.

Representatives of the United Nations, its specialized agencies, international and regional intergovernmental organisations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, may attend the Conference as observers, deliver statements at plenary meetings, receive official documents and submit their views in writing to the Conference.

Rule 5 - Representatives of civil society, including Non-Governmental Organisations (NGOs), and industry.

1. International coalitions of NGOs and associations representing industry may attend the Conference as observers, deliver statements at plenary meetings, receive official documents and submit their views in writing to the Conference. Requests for participation shall be transmitted to the President of the Conference (hereinafter
called “The President”) through the Secretariat at least 20 days prior the beginning of the session.

2. Representatives of civil society, including NGOs, and industry, may attend the Conference as observers, deliver statements at plenary meetings, receive official documents and submit their views in writing to the Conference. Requests for participation shall be transmitted to the President through the Secretariat at least 20 days prior the beginning of the session.

III. Representation at the Conference

Rule 6 - Representation

1. States Parties, signatory States and observer States shall be represented at the Conference by one Head of Delegation, who may be accompanied by as many alternates and advisers as may be required. The Head of Delegation may designate an alternate representative or an adviser to act in his/her capacity.

2. The United Nations, its specialized agencies, international and regional intergovernmental organisations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, international coalitions of NGOs and associations representing industry, civil society, including NGOs, and industry, shall designate representatives to act on their behalf.

Rule 7 - Submission of delegation information

1. The composition of delegations of States Parties specifying the names of representatives, alternate representatives and advisers, shall be submitted to the Secretariat of the Conference via Note Verbale no less than ten days before the opening of the session of the Conference if the agenda of a session does not include a proposal for amending the Treaty. Any change in the composition of delegations shall be submitted without delay to the Secretariat.

2. The composition of delegations of signatory States, observer States, the United Nations and its specialized agencies, international and regional intergovernmental organisations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies specifying the names of representatives, alternate representatives and advisers, shall be submitted to the Secretariat of the Conference via Note Verbale no less than ten days before the opening of the session of the Conference. Any change in the composition of delegations shall be submitted without delay to the Secretariat.

3. Observers who requested to participate in accordance with Rule 5 shall submit to the Secretariat via formal letter a list of names and positions of their representatives no less than ten days before the opening of the Conference.

4. Any objection by a State Party against the representation of a delegation of a State Party, signatory State or observer at an ordinary session or extraordinary meeting shall be presented to the President within 48 hours of the opening of the session or extraordinary meeting of the Conference. The objection shall thereafter be referred to the Conference for a procedural decision.
5. Any representative, to whose participation a State Party has made objections, shall be seated provisionally and exercise the rights according to its status until the Conference has given its decision.

Rule 8 - Submission of Credentials

1. When a proposal for amending the Treaty is included in the agenda of a session, representatives of States Parties shall submit to the Secretariat of the Conference credentials with the composition of delegations, the names of the Heads of Delegation, as well as the names of alternate representatives and advisers. Credentials shall be submitted no less than ten days before the opening of the Conference and shall be issued either by the Head of State or Government or by the Minister of Foreign Affairs or any other authority acting on their behalf.

2. A Credentials Committee shall be appointed at the beginning of a Conference for which a proposal to amend the Treaty is included in the agenda of a session. The Credentials Committee shall consist of five members to be appointed by the Conference on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives of States Parties and report to the Conference without delay.

3. Any representative to whose participation a State Party has made objections shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the Conference has given its decision.

IV. Officers of the Conference

Rule 9 - President and elected officers

1. Before the end of each ordinary session, the Conference shall elect a President and four vice-Presidents for the following session of the Conference from among the representatives of participating States Parties.

2. The President and vice-Presidents shall commence their terms of office at the closure of the session in which they were elected and shall serve until their successors are elected at the end of the next ordinary session of the Conference. The President and vice-Presidents shall preside over any intervening extraordinary meeting of the Conference during their term.

3. The Conference may also elect such other officers as it deems necessary for the performance of its functions, including officers of any subsidiary body established pursuant to Article 17 paragraph 4 (f) of the Treaty from among the representatives of participating States Parties.

4. In addition to exercising the powers conferred upon him/her elsewhere by the present rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each such meeting, direct the discussions, ensure observance of the present rules, accord the right to speak, put questions to a vote and announce decisions. The President shall, subject to the present rules, have complete control of the proceedings and over the maintenance of order.
thereat. The President may also propose to the Conference the adjournment or the
closure of a debate, and the suspension or the adjournment of a meeting.

5. The President, in the exercise of his/her functions, remains under the authority of
the Conference and shall observe the present rules.

6. The President may designate one of the four elected vice-Presidents to act on
his/her behalf during the sessions. A vice-President acting as President shall have
the same powers and duties as the President.

7. Notwithstanding Rule 9.2, if the President is unable to continue his or her functions,
a new President shall be elected by the Conference for the remaining term of office
of the President.

V. Secretary of the Conference of the States Parties

Rule 10 - Secretary of the Conference of the States Parties

The Head of the Secretariat of the Treaty shall be the Secretary of the Conference
(hereinafter called “the Secretary”) and shall act in this capacity at all sessions of the
Conference and its subsidiary bodies. The Secretary shall be responsible for making all
the necessary arrangements in connection with the ordinary and extraordinary sessions
and, generally, perform all other work that the Conference may require, in accordance
with Article 18 paragraph 3 (d) of the Treaty. The Secretary may designate a member of
his/her staff to represent him/her at any such sessions.

VI. Sessions of the Conference of States Parties

Rule 11 - Date and venue of sessions

1. The Conference shall meet annually unless decided otherwise by the Conference.
   At each ordinary session, the Conference shall decide on the date and the duration
   of the next ordinary session.

2. The venue for each ordinary session shall be decided by the Conference at its
   preceding ordinary session, taking into consideration the importance of promoting
   the universalization of the Treaty. In the absence of a decision by States Parties on
   the venue of the next ordinary session of the Conference, it shall be held at the seat
   of the Secretariat.

3. A State Party wishing to host an ordinary session of the Conference shall submit an
   offer to the Secretariat no later than 45 days prior to the decision being taken to
   allow time for the Secretariat to prepare a financial report on the implications of
   hosting such an ordinary session of Conference. This report shall be submitted for
   the consideration of States Parties before the beginning of the session of the
   Conference where a decision will be taken on hosting the next ordinary session.

Rule 12 - Notification of sessions

The Secretariat shall notify all States Parties, signatory States and the Secretary-
General of the United Nations in his/her capacity as depositary of the Treaty, at least 90
days in advance of each ordinary session and at least 30 days in advance of each extraordinary meeting, specifying the dates and venue. The Secretariat shall make the above-mentioned information publicly available.

**Rule 13 - Public and private meetings**

The plenary meetings of the Conference shall be public unless the Conference decides otherwise at the request of a State Party. Public sessions shall be open to the attendance by States Parties, signatory States, and observers to the Conference pursuant to Rules 3, 4 and 5 of the present Rules.

**Rule 14 - Extraordinary meetings**

1. Extraordinary meetings of the Conference may be convened in accordance with Article 17 paragraph 5 of the Treaty.
2. A State Party requesting to convene an extraordinary meeting shall submit such a request to the Secretariat at least 45 days in advance of the proposed date. The requesting State Party may also suggest a venue for the extraordinary meeting. If, within 15 days of the request being circulated to them by the Secretariat, two-thirds of the States Parties support the proposal, the Secretariat shall convene the extraordinary meeting in accordance with Rule 12.

3. Extraordinary meetings shall take place at the seat of the Secretariat unless otherwise decided.

**VII. Agenda**

**Rule 15 - Preparation of the provisional agenda**

1. The provisional agenda for all ordinary sessions of the Conference shall be drawn up by the Secretariat in consultation with the President, on the basis of Article 17 paragraph 4 of the Treaty, and shall also include other items agreed upon by the Conference in previous sessions as well as items proposed by States Parties. Any item proposed for inclusion in the agenda by a State Party shall be accompanied by an explanatory memorandum containing, where relevant, references to basic documents. The provisional agenda shall be made publicly available by the Secretariat no later than 60 days in advance of the opening of the session.

2. The provisional agenda of an extraordinary meeting shall consist only of those items for which the States Parties have decided to convene the extraordinary meeting. States Parties requesting to hold such meetings shall indicate the purpose of the extraordinary meeting and shall include in the request an explanatory memorandum containing, where relevant, references to basic documents. The provisional agenda shall be made publicly available by the Secretariat no later than 30 days in advance of the opening of an extraordinary meeting.

**Rule 16 - Additional items**

Any item of an important and urgent character, proposed by a State Party and which has not been placed on the provisional agenda, shall be referred to the Secretariat, which shall report promptly thereon to the Conference. Such items may be placed on the agenda if the Conference so decides at the beginning of the session.
Rule 17 - Approval of the agenda

At each ordinary session, the provisional agenda and the additional items shall be submitted to the Conference for approval as soon as possible after the opening of the session.

VIII. Conduct of business

Rule 18 - Seating

The State Parties participating in the Conference shall be seated in English alphabetical order. Signatory States shall be seated in English alphabetical order after State Parties. Observer States shall be seated in English alphabetical order after States Parties and signatory States. Representatives of the United Nations, its specialised agencies, international and regional intergovernmental organisations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, shall be seated in English alphabetical order after representatives of observer States. International coalitions of NGOs and associations representing industry, civil society, including NGOs, and industry shall be seated following these.

Rule 19 - Quorum

1. The President may declare a meeting of the Conference open and permit the debate to proceed when at least one third of the States Parties are present.

2. The presence of half of the States Parties shall be required for any substantive decision to be taken.

3. When a proposal for amending the Treaty is included in the agenda, the presence of two thirds of the States Parties shall be required for any decision to be taken with regard to those amendments.

Rule 20 - Statements

1. No representative may address the Conference without having previously obtained the permission of the President. The President shall call upon speakers in the order in which they signify their desire to speak.

2. The Secretariat shall be in charge of drawing up a list of speakers. Unless otherwise decided by the President for each specific session, observers States shall be invited to speak only after the list of speakers of States Parties and signatory States has been exhausted and other observers may speak thereafter. When a statement is delivered on behalf of a group of States Parties and signatory States, this statement is pronounced in priority.

3. The debate shall be confined to the item before the Conference, and the President may call a speaker to order if his/her remarks are not relevant to the item under discussion. Speakers who continue to make remarks not relevant to the item under discussion shall have their speaking rights withdrawn for the duration of the debate.
4. The President may limit the time allowed to each speaker and the number of times each representative may speak on any question. When a limit has been set and a speaker exceeds the allotted time, the President shall call him/her to order without delay.

5. During the course of a debate, the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

**Rule 21 - Statements by the Secretariat**

The Secretary of the Conference or any member of the Secretariat designated for that purpose may, at any time, but subject to Rule 20, make either oral or written statements concerning any item under consideration.

**Rule 22 - Points of order**

During the discussion of any matter, States Parties or signatory States may at any time raise a point of order, which shall be immediately decided upon by the President in accordance with these rules. A State Party may appeal against the ruling of the President. The appeal shall be immediately put to the vote, and the President’s ruling shall stand unless overruled by a majority of the States Parties present and voting. A State Party or signatory State may not, in raising a point of order, speak on the substance of the matter under discussion.

**Rule 23 - Precedence**

Elected officers of subsidiary bodies may be accorded precedence for the purpose of presenting the conclusions arrived at by the body concerned.

**Rule 24 - Right of reply**

1. The President shall accord the right of reply to any State representative who requests it. Any other State representative may be granted the opportunity to make a reply.

2. A State representative may make no more than two statements under this rule at a given meeting on any item. The first shall be limited to five minutes and the second to three minutes; representatives shall in any event be as brief as possible.

**Rule 25 - Adjournment of debate**

States Parties may, at any time, request the adjournment of the debate on the item under discussion. In addition to the proposer of the motion, permission to speak on the motion shall be accorded only to two representatives in favour and to two opposing the adjournment, after which the motion shall be immediately put to a vote. The President may limit the time to be allowed to speakers under this rule.

**Rule 26 - Closure of debate**

States Parties may, at any time, request the closure of the debate on the item under discussion, whether or not any other representative has signified his/her wish to speak. Permission to speak on the motion shall be accorded only to two States Parties
opposing the closure, after which the motion shall be immediately put to a vote. The President may limit the time to be allowed to speakers under this rule.

**Rule 27 - Suspension or adjournment of a meeting**

States Parties may, at any time, request the suspension or the adjournment of a meeting. No discussion on such motions shall be permitted, and they shall be immediately put to a vote.

**Rule 28 - Order of motions**

The motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting: (a) to suspend the meeting; (b) to adjourn the meeting; (c) to adjourn the debate on the item under discussion; (d) to close the debate on the item under discussion.

**Rule 29 - Submission of proposals**

States Parties shall submit proposals in writing to the Secretary of the Conference, who shall circulate copies to all delegations. Unless the President decides otherwise, no substantive proposal shall be considered unless copies have been circulated 24 hours before the meeting.

**Rule 30 - Withdrawal of proposals and motions**

A proposal or a motion may be withdrawn by its sponsor at any time before a decision on it has been taken. A proposal or a motion thus withdrawn may be reintroduced by any representative.

**Rule 31 - Decisions on competence**

Any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal submitted to it shall be decided as a matter of procedure before the matter is discussed or a decision is taken on the proposal in question.

**Rule 32 - Reconsideration of proposals**

When a proposal has been adopted or rejected, it may not be reconsidered at the same session unless the Conference, by a two-thirds majority of the States Parties present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing reconsideration, after which the motion shall be immediately put to a vote.

**IX. Decision making**

**Rule 33 - Decisions on matters of substance**

1. The Conference shall make every effort to achieve consensus on matters of substance. In a last attempt to reach consensus, the President shall consider deferring action on that decision for a period up to 24 hours, provided that a decision can be reached before the end of the current session of the Conference.
2. If all efforts to reach consensus have been exhausted, the Conference shall take the decision by a two-thirds majority of the States Parties present and voting.

Rule 34 - Decisions on matters of procedure

1. The Conference shall make every effort to reach consensus on matters of procedure.

2. If all efforts to reach consensus have been exhausted, the Conference shall take the decision by a simple majority of the States Parties present and voting.

3. If the question arises as to whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall be put to a vote immediately, and the President's ruling shall stand unless overruled by a simple majority of the States Parties present and voting.

4. If a vote requiring a simple majority is evenly divided, the proposal shall be regarded as rejected.

Rule 35 – Decision making on matters with financial implications

1. 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.

2. Before the Conference takes a decision that the President deems to have significant financial implications, the Secretariat shall circulate a report on such implications, prepared in accordance with the financial rules adopted by the Conference, for the consideration of States Parties before the decision is submitted for adoption by the Conference.

3. The Conference shall make every effort to achieve consensus on matters with financial implications. In a last attempt to reach consensus, the President shall consider deferring action on that decision for a period up to 24 hours, provided that a decision can be reached before the end of the current session of the Conference.

4. If all efforts to reach consensus have been exhausted, the Conference shall take the decision by a two-thirds majority of the States Parties present and voting.

Rule 36 - Voting rights

1. Each State Party shall have one vote.

2. For the purpose of the present rules, the phrase “States Parties present and voting” means States Parties present and casting an affirmative or negative vote. States Parties that abstain from the vote shall be considered as not voting.
Rule 37 - Methods of voting

1. The normal method of voting shall be by show of hands. Any State Party may request a roll-call, which shall then be taken in the English alphabetical order of the names of the States Parties, beginning with the State Party whose name is drawn by lot by the President. The name of each State Party shall be called in all roll-calls, and its representative shall reply “yes”, “no” or “abstention”. The result of the vote shall be inserted in the record of the session.

2. The Conference may decide to vote on matters of substance by secret ballot. The decision on whether or not a vote is by secret ballot shall be taken by a simple majority of States Parties present and voting.

3. When possible, the Conference may vote by mechanical means. A non-recorded vote shall replace a vote by show of hands and a recorded vote shall replace a roll call.

Rule 38 - Conduct during voting

After the President has announced the commencement of a vote, the voting shall not be interrupted until the result has been announced, except on a point of order in connection with the actual conduct of the voting.

Rule 39 - Explanation of vote

Representatives of States Parties may make brief statements consisting solely of explanations of their votes before the voting has commenced or after the voting has been completed. The representative of a State Party sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended. The President may limit the time to be allowed for such explanations.

Rule 40 – Elections of Officers

1. Elections shall be held by secret ballot, unless the Conference decides otherwise, in an election where the number of candidates does not exceed the number of elective places to be filled.

2. If, when only one elective place is to be filled, no candidate obtains the majority required in the first ballot, a second ballot shall be taken, confined to the two candidates that have obtained the largest number of votes. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

3. In the case of a tie in the first ballot among the candidates obtaining the second largest number of votes, a special ballot shall be held among such candidates for the purpose of reducing their number to two; similarly, in the case of a tie among three or more candidates obtaining the largest number of votes, a special ballot shall be held; if a tie again results in the special ballot, the President shall eliminate one candidate by drawing lots and thereafter another ballot shall be held in accordance with paragraph 2.
4. When two or more elective places are to be filled at one time under the same conditions, those candidates, in a number not exceeding the number of such places, obtaining in the first ballot the majority required and the largest number of votes, shall be elected.

5. If the number of candidates obtaining such majority is less than the number of places to be filled, additional ballots shall be held to fill the remaining places, provided that, if only one place remains to be filled, the procedures in paragraph 2 shall be applied. The ballot shall be restricted to the unsuccessful candidates having obtained the largest number of votes in the previous ballot, but not exceeding twice the number of places remaining to be filled. However, in the case of a tie between a greater number of unsuccessful candidates a special ballot shall be held for the purpose of reducing the number of candidates to the required number; if a tie again results among more than the required number of candidates, the President shall reduce their number to that required by drawing lots.

6. If such a restricted ballot is inconclusive, the President shall decide among the candidates by drawing lots.

**Rule 41 - Intersessional decision-making**

1. If matters arise intersessionally relating to the administration of activities already decided by the Conference and where the postponement to the next ordinary session of the Conference of a decision on the matter could lead to negative financial consequences or losses of efficiency, the President may submit a decision for adoption via silence procedure.

2. The Conference, on the proposal of the President, may agree that a decision on a matter of procedure intended for adoption at the Conference of States Parties may be finalized through intersessional decision via silence procedure.

3. When a decision is submitted for adoption via silence procedure, the President will set a deadline of no less than 20 days for States Parties to consider it and will circulate all relevant information through the Secretariat. As soon as the deadline has expired, the President will inform States Parties if a decision has been adopted. If the silence procedure has been broken, the President will immediately inform States Parties and the matter shall be deferred for consideration by the Conference at its following ordinary session.

**X. Subsidiary bodies**

**Rule 42- Subsidiary bodies**

1. The Conference may establish subsidiary bodies, in accordance with Article 17 paragraph 4 (f) of the Treaty, including but not limited to, standing committees, subcommittees or working groups.

2. The Conference shall determine the matters to be considered by each subsidiary body, including its mandate, officers, composition, size, duration and budgetary issues and may authorize the President to make appropriate adjustments in the allocation of work. The Conference shall decide or authorize the subsidiary body to
decide whether its meetings are public or private. The subsidiary body may invite experts to attend private sessions.

3. The subsidiary bodies shall report back to the Conference, unless the Conference decides otherwise.

**Rule 43 - Applicability of the Rules of Procedure to subsidiary bodies**

These Rules of Procedure shall apply, where relevant, to subsidiary bodies of the Conference, unless the Conference decides otherwise.

**XI. Amendments to or suspension of the Rules of Procedure**

**Rule 44- Amendments to the Rules of Procedure**

1. Proposals to amend these present Rules of Procedure shall be submitted by States Parties in writing to the Secretariat, which shall circulate the proposal to all States Parties and signatory States not less than 90 days before the next meeting of the Conference at which amendments may be considered.

2. Amendments to the present Rules of Procedure shall be decided by States Parties by consensus.

**Rule 45 - Method of suspension of the Rules of Procedure**

Any of the present Rules of Procedure may be suspended for a defined period of time by a decision of the Conference taken in accordance with Rule 33.

**XII. Languages and records**

**Rule 46 – Official languages of the Conference**

Arabic, English, French, Spanish, Chinese and Russian shall be the official languages of the Conference.

**Rule 47 - Interpretation**

1. During formal meetings of the Conference, interpretation services shall be limited to those official languages of the Conference that are official languages of a State Party.

Signatory States or observer States contributing a participation fee towards the cost of the Conference, may request that interpretation services are provided for an additional official language of the Conference. This request shall be made no less than ten days before the beginning of the concerned meeting.

2. A representative may speak in a language other than an official language of the Conference if the delegation concerned provides interpretation from that language into an official language of the Conference. Interpretation into the other languages of the Conference by interpreters of the Secretariat may be based on the interpretation given in the first such language.
Rule 48 - Official documents of the Conference

All recommendations, decisions and other documents produced as per a decision of the Conference shall be distributed by the Secretariat to States Parties as official documents of the Conference and shall be made available electronically to signatory States and observers.

Rule 49 - Languages and official documents

1. Translation services of official documents of the Conference shall be limited to those official languages of the Conference that are official languages of a State Party.

2. Signatory States and observer States contributing a participation fee towards the cost of the Conference, may request that translation services for official documents shall be provided for an additional official language of the Conference. This request shall be addressed to the President through the Secretariat. For pre-session documents, the request shall be made no less than 30 days before the beginning of the ordinary session concerned and 20 days before the beginning of the extraordinary meeting concerned.

Rule 50 - Recordings of sessions

1. The Secretariat shall make and keep sound and video recordings of all formal plenary meetings of the Conference in accordance with the practice of the United Nations.

2. If the Conference so decides, sound and/or video recordings of formal sessions of subsidiary bodies shall also be made and kept by the Secretariat in accordance with the practice of the United Nations.
Arms Trade Treaty
First Conference of States Parties
Cancun, 24-27 August 2015

Financial Rules
for the Conferences of States Parties and the Secretariat

Definitions

For the purpose of these Financial Rules:

(a) “CSP” means the Conference of States Parties pursuant to Article 17 of the Arms Trade Treaty;
(b) “Secretariat” means the Secretariat of the Arms Trade Treaty;
(c) “Treaty” means the Arms Trade Treaty;
(d) “President” means the President of the Conference of States Parties to the Arms Trade Treaty;
(e) “Committee” means the Management Committee.

Application

Rule 1

In accordance with Article 17.3 of the Treaty, these financial rules shall govern the financial administration of the CSP, any subsidiary bodies it may establish, and the Secretariat.

Decision making

Rule 2

Unless otherwise stated in these rules, all decisions on matters with financial implications shall be taken in accordance with Rule 35 of the Rules of Procedure.

Financial Period

Rule 3

The financial period shall be a calendar year, and the annual budget shall include a twelve month outlook for the subsequent calendar year.
Management Committee

Rule 4

1. The Secretariat shall prepare and, following review by the Committee, submit the budget estimates, as well as providing the actual income figures for each financial period to all States Parties at least 90 days before the opening of the meeting of the Conference of States Parties at which the budget is to be adopted.

2. If the President deems a decision to be taken by the CSP would have significant financial implications, the President will request that a report be prepared by the Secretariat, which must be reviewed independently by the Committee and submitted to the CSP at least 24 hours prior to the taking of any decision.

3. The CSP shall, prior to the commencement of the financial period that the budget covers, consider the budget estimates provided pursuant to Rule 4.2 and any recommendations of the Committee and adopt an operational budget for the following financial period.

Contributions for the CSP and any subsidiary bodies it may establish

Rule 5

1. All States Parties, irrespective of attendance, shall be assessed a contribution towards each CSP, or any subsidiary bodies it may establish, including towards the cost of preparing and holding the CSP, or subsidiary body meeting as applicable. These contributions will be calculated on the basis of the UN scale of assessment, adjusted to take into account the difference between the UN membership and the number of States Parties and States referred to in Rule 5.2. The adjustment shall ensure that no one state’s contribution exceeds 22 per cent of the total. The adjustment shall also ensure that no state contributes less than US$100; this amount shall be subject to review by the CSP every three years.

2. All signatory States and other observer States in attendance at each CSP, or at any subsidiary bodies it may establish, shall be levied an attendance fee towards the cost of preparing and holding the CSP, or subsidiary body meeting as applicable. This attendance fee will be calculated on the basis the UN scale of assessment, adjusted to take into account the difference between the UN membership and the number of States Parties and other States referred to in this rule. The adjustment shall ensure that no one state’s contribution exceeds 22 per cent of the total. The adjustment shall also ensure that no state contributes less than US$100; this amount shall be subject to review by the CSP every three years.

   a. Invoices issued for the estimated CSP costs shall be calculated on the assumption that all signatory States, and other observer States which attended the CSP in the preceding year shall attend the following CSP. All States Parties shall be invoiced irrespective of attendance, in accordance with Rule 5.1.

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1 To cover the administrative cost of levying and collecting contributions
2 To cover the administrative cost of levying and collecting contributions
b. The Secretariat shall produce final costings on the basis of the actual CSP costs and actual number of states which participated within 3 months of the CSP being held. Consequent adjustments shall be made at the end of each calendar year, with any debits or credits due to states to be taken into account in the contributions to be made for the following calendar year.

3. The costs of preparing and holding a CSP, or a meeting of any subsidiary body it may establish, as referred to in Rule 5.1 shall comprise:

   a. The costs for the meeting venue; documentation; including translation; in-session interpretation; conference equipment and supplies; and IT support as necessary.

4. The costs for the Secretariat’s activities related to the organisation of the CSP, or any subsidiary bodies it may establish, shall be set by the Management Committee as 30 per cent of the Secretariat’s core costs.

   a. The Management Committee shall verify, and keep under review, the proportion of the Secretariat’s costs to be charged pursuant to Rule 5.4 above, and reflected in the budget estimates prepared by the Secretariat pursuant to Rule 4.2.

5. A separate sponsorship programme to support the participation of delegates from developing countries to attend the CSP or other meetings under the Treaty shall be financed by contributions made on a voluntary basis.

6. The Secretariat shall advise the President, who shall inform States Parties on the status of contributions received towards the cost of preparing and holding the CSP ninety days ahead of the scheduled opening of the CSP.

Contributions for the Secretariat

Rule 6

1. Each calendar year, States Parties shall be charged an assessed contribution for the Secretariat’s costs in undertaking its core tasks which include those contained in Article 18.3 of the Treaty. This assessed contribution shall not be used for work related to the organization of CSPs or any subsidiary bodies, which is provided for under Rule 5.4.

2. Assessed contributions made pursuant to Rule 6.1 will be calculated on the basis of the UN scale of assessment, adjusted to take into account the difference between the UN membership and the number of States Parties. The adjustment shall ensure that no one state’s contribution exceeds 22 per cent of the total. The adjustment shall also ensure that no state contributes less than US$100 \(^3\); this amount shall be subject to review by the CSP every three years.

3. The costs for the core tasks of the Secretariat referred to in Rule 6.1 shall comprise: staff salaries, equipment, office overheads, financial administration, human resources

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\(^3\) To cover the administrative cost of levying and collecting contributions
administration, insurance, communications and IT, and any other items essential for the functioning of the Secretariat as decided by the CSP.

4. Other duties to be undertaken by the Secretariat at the direction of the CSP shall be financed by contributions made on a voluntary basis.

Funds

Rule 7

1. There shall be a general fund for the purpose of accounting for expenditures of all assessed contributions.

2. Trust funds and special accounts funded wholly by voluntary contributions may be established and closed by the CSP.

Payment of contributions

Rule 8

1. In respect of contributions made pursuant to Rule 5 and/or Rule 6:

   a. Contributions for each calendar year are due and payable in full within 90 days of the receipt of the invoice from the Secretariat. States should be notified of the amount of their contributions for a given year by 15 October of the previous year;

   b. Each State shall, as far in advance as possible of the date due for the contribution, inform the Secretariat of the projected timing of that contribution; and in the case of any voluntary contribution, of the amount it intends to contribute;

   c. If contributions of any State have not been received by 1 March of the relevant year the Secretariat shall advise the President, who shall write to those States to impress upon them the importance of paying their respective arrears. The President’s consultations with such States shall be reported to the CSP at its next meeting;

   d. Any State Party whose contributions are in arrears for two or more years that has not entered into arrangements with the Secretariat in relation to the discharge of its financial obligations shall have its voting rights suspended, not be eligible to nominate a representative as an office-holder, nor become a member of any committee or subsidiary body of the CSP. The CSP may, nevertheless, permit such a member to vote or nominate a representative as an office-holder if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party.

2. Contributions made pursuant to Rule 6 from States that become States Parties to the Treaty after the beginning of a financial period shall be made pro rata temporis for the
balance of that financial period. Consequent adjustments shall be made at the end of each financial period for other States Parties.

3. The Secretariat shall acknowledge promptly the receipt of all pledges and contributions, and shall inform the States Parties by publishing up-to-date information on the status of pledges and payments of contributions.

4. The uncommitted balance of appropriations from previous financial periods shall be rolled-over to the next financial period, thereby reducing the States’ contributions for the next financial period.

Amendments

Rule 9

Any amendment to the present rules shall be adopted by the CSP in accordance with Rule 35 of the Rules of Procedure.

Audit Requirements

Rule 10

1. The CSP shall appoint an internationally recognized independent auditor with experience in the audit of international organizations. The independent auditor shall be appointed for a period of four years coinciding with a given financial period and, subsequent to satisfactory performance, may be reappointed by the CSP for one additional term of four years.

2. The audit shall be conducted in conformity with generally accepted common auditing standards and in accordance with any relevant instructions from the CSP.

3. The Auditor shall issue a report on the audit of the Secretariat’s annual financial report and the underlying records relating to the operation of the Secretariat and the activities of the CSP and subsidiary bodies.

4. The Auditor shall, as appropriate, make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Secretariat.

5. The Committee shall, after the adoption of the audit report, oversee the implementation of the audit observations and recommendations; and to the extent possible seek to ensure the correctness of the financial decisions and activities, prior to the succeeding reporting year.
Reporting and Transparency

Guiding Questions:

1. What are states’ reporting obligations under the Arms Trade Treaty?
2. What best practices exist regarding collecting information and reporting under the ATT?
3. What resources are available to states as they work to comply with their reporting obligations?
4. What is the value of transparency, and why is it central to the proper functioning of the ATT?

Resources:

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.
1:1 TRANSPARENCY IN THE ATT

Transparency is more than a term to throw into governance discussions as one in a list of buzzwords to check-off. Rather, transparency – understood here as ‘accessibility of information’ – is a critical, potentially life-saving, matter in the context of the international arms trade. The object and purpose of the Arms Trade Treaty (ATT) itself cannot be fulfilled in the absence of greater levels of openness among countries trading in arms.

THE ATT’S TRANSPARENCY REQUIREMENTS

There has been a longstanding conflict between the secrecy that perennially surrounds the international arms trade and the desire by some to shine a light upon it.

Transparency – in the form of public reporting and robust anti-corruption measures – was a key civil society priority from the onset of negotiations to develop an ATT. Public reporting (Article 13 of the ATT, see below) was at the heart of such a Treaty’s purpose in the eyes of many, with advocates arguing that it would be the mechanism through which the ATT will ‘become more than a set of obligations and actually affect States’ behavior.’ Including robust anti-corruption language as part of the ATT’s export risk assessment criteria was also a key emphasis for many in civil society and among progressive governments. However, although around 60 countries favoured including robust anti-corruption mechanisms in the ATT, those demands ultimately failed to galvanize enough support.

The final Treaty text explicitly references ‘transparency’ at two points – in Article 1: Object and Purpose and in Article 5: General Implementation. However, these explicit mentions are by no means the only requirements of States Parties in this area (see Figure 1.1). In its essence, the ATT itself is a transparency mechanism, and it has the potential to become a catalyst to greater openness in the sector. In effect, as Saferworld puts it, ‘there are few limits to the extent and nature of information sharing and cooperation among States Parties that could be established in support of ATT implementation.’

However, the ATT’s text shows an uneasy compromise on openness. Article 5 best encapsulates this duality. States Parties must be transparent in their national control list’ towards the Secretariat and each other, while only being ‘encouraged to make their control lists publicly available’ (5.4). Yet, immediately thereafter (Article 5.5), the text establishes the need (‘shall’) for an ‘effective and transparent national control system regulating the transfer of conventional arms’. Clearly it is not possible to have a transparent control system without a publicly available control list. This is an example of a tactic used by ATT drafters to include governments on different points of the spectrum between being secretive and open: the repeated use of ‘encouraged’ rather than the explicitly binding ‘shall’, which would have been more conducive to full public access to basic information surrounding the arms trade.

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7 The recommendation that States Parties make their control lists public is particularly ‘critical as it is unreasonable to expect defence industry and other concerned stakeholders to always comply with national laws regulating international arms transfers if they are not in a position to know the items to which those controls apply. States Parties should make their national control lists publicly available (on the Internet) and should seek to promote them among interested parties.’ Ibid. p.2.
Transparency commitments are integrated into many of the ATT’s substantive obligations. Article 8 (Import), particularly within 8.1 and 8.3, refers almost exclusively to transparency measures (See Figure 1.1). Based on potentially broad information sharing between the exporter and the importer, this article allows for the exporter to request any form of information (including end-user documentation) from the destination country to assist in its risk assessment. Conversely, the importer also can request any form of information concerning export authorizations. There is thus a wide array of two-way information sharing and communication possibilities in Article 8.

Likewise, most of the ‘measures to prevent’ diversion that States Parties ‘shall take’ under Article 11 refer to information sharing and transparency activities. The role of transparency in ensuring effective implementation of Article 11 obligations is considered in more detail in section two of this chapter. Article 12 (Record Keeping) establishes the preconditions for transparency – the basic information that States Parties might collect, organize and keep (for a minimum of ten years) – in order to be later shared. Yet, here again, as in Article 5, the strength of the wording of obligations for States Parties in the final Treaty text would be disappointing to advocates of full transparency. In 12.3, States Parties are simply ‘encouraged’ (later further softened by ‘as appropriate’) to include in their record keeping information that should constitute bare minimum data, such as the quantity, value and model/type of arms, as well as the details of all states involved in the transfer chain, including the end user.

Within the ATT, transparency has mostly been discussed in relation to reporting obligations. Article 13 determines as its main transparency mechanisms two mandatory instruments: an Initial Report on measures undertaken in order to implement the ATT, and Annual Reports on exports and imports carried out each year. Both ‘shall be made available, and distributed to States Parties by the Secretariat.’ This wording is highly relevant as the sentence’s punctuation has been referred to as the ‘transparency comma’, the absence of which would have indicated the drafter’s clear intention of having reports made available and distributed solely between States Parties and the Secretariat. The punctuation suggests a more progressive interpretation: ‘reports shall be made available’ separately put indicates making the reports open to public view, while the second part of the sentence determines that the ATT Secretariat must ensure distribution of all reports to all States Parties.8

Importantly, however, in another example of the tension between secrecy and openness in the ATT, Article 13.3 establishing mandatory Annual Reports concludes by noting that they ‘may exclude commercially sensitive or national security information’. The confluence of commercial and national-security sensitivity – and the lack of a requirement that countries choosing to withhold information indicate which of these loopholes is being used, and why – opens the door for potential abuse. The concept of national security can be distorted to keep non-sensitive military information from the public domain. Similarly, the notion of commercial sensitivity is often overseen, as the type of information the sharing of which would raise actual confidentiality concerns is extremely narrow – e.g., technical specifications and detailed pricing data – and is simply not relevant to the ATT’s transparency requirements. Companies often put in the public domain data vastly more specific than the minimum requirements in the Treaty, further undermining the validity of the commercial-sensitivity clause.

If in good faith and as an exception to its usual practice a country claims an exclusion, its report should make clear whether this is relating to national security or to commercial reasons, and provide justifications for the choice, such as clearly noting which companies, jurisdictions or sectors would be undermined by sharing the complete information. In addition to proving seriousness about transparency obligations, such practice would curb the use of this exemption in the future. Otherwise the repercussions of such a clause, if not interpreted strictly in good faith, could undermine any notion of transparency in the ATT.

Issues surrounding transparency in Article 16 (International Assistance) will be particularly relevant to the Voluntary Trust Fund (VTF) (16.3), which, to date, has shown a strong degree of openness in its development and early operation.9

Particularly noteworthy is the call within the VTF’s terms of reference that its Selection Committee ‘draw, as appropriate, on outside expertise, in particular from UN agencies and civil society’, as well as determining that ‘all recipients of funds shall submit a final report that should be made publicly available.’10

ARTICLE 1: OBJECT AND PURPOSE
Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

ARTICLE 7: EXPORT AND EXPORT ASSESSMENT
7.6 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 [...].

ARTICLE 5: GENERAL IMPLEMENTATION
5.5 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.

5.6 Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty.

ARTICLE 8: IMPORT
8.1 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.

8.3 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 11: DIVERSION

11.3 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).

11.5 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. […]

11.6 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

12.1 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).

ARTICLE 13: REPORTING

13.3 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.

13.5 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. […]

ARTICLE 15: INTERNATIONAL COOPERATION

15.2 States Parties are encouraged to facilitate international cooperation, including exchanging information. […]

15.7 States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.
The transparency ramifications of Articles 17 (Conference of States Parties – CSP) and 18 (Secretariat) are of utmost importance to the future of the ATT regime. According to Article 17.4, the CSP must ‘review the implementation of this Treaty [...] consider and adopt recommendations regarding the implementation and operation’, consider amendments, and consider ‘issues arising from the interpretation’ of the ATT.\(^{11}\) It could be argued that transparency should be a priority of every CSP, both in its process and plan of work.

Likewise, the ATT Secretariat can be a major force for greater transparency while fulfilling its mandate ‘to assist States Parties in the effective implementation of this Treaty’ (18.1). As its responsibilities include: (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, current practice is in line with the Treaty’s transparency requirements as a large number of official documents and reports are available on its website.

However, some information is sheltered within a restricted website for governments only. To be consistent with the ATT’s purpose of increasing transparency in the arms trade, the list of national points of contact should also be made public.

**SIMPLY SUBMITTING A REPORT DOES NOT, OF COURSE, MEAN BEING FULLY TRANSPARENT. DEEPER ANALYSIS OF THE CONTENTS OF EACH REPORT IS ESSENTIAL TO DETERMINE ACTUAL LEVELS OF TRANSPARENCY.**

TRANSPARENCY IN PROCESS AND PRACTICE SINCE THE ATT’S ENTRY INTO FORCE

Since the ATT came into force in December 2014, the debate surrounding transparency has continued to rage unabated. So far, the levels and quality of reporting are rather disappointing. In terms of Initial Reports, by 31 May 2017, more than a quarter of the States Parties expected to submit had not met their legal deadline. For Annual Reports covering arms exports and imports during 2016, less than half of the 75 expected reports had been received as of 31 May 2017. As reporting is a mandatory obligation under the ATT, this is a disappointing level of compliance.

At neither the first or second CSPs did States Parties reach agreement that public reporting should be mandatory, in spite of concerns that providing states with the explicit option of making reports confidential might mean a significant backward step concerning transparency in the arms trade.\(^{12}\) However, to date only a few states have requested their reports be kept secret, supporting the common interpretation that ATT Initial and Annual Reports should be made public.\(^{13}\)

Technical support exists to assist capacity-strapped States Parties that are struggling to meet their ATT reporting obligations. For example, the ATT Baseline Assessment Project (ATT-BAP) Reporting Guidance series of materials provides a comprehensive ‘how to’ guide.\(^{14}\) States Parties could consider negative consequences for those who consistently fail to meet this legally binding commitment, which might include refusing to grant export licences in the case of persistent non-compliers.\(^{15}\)

Simply submitting a report does not, of course, mean being fully transparent. Deeper analysis of the contents of each report is essential to determine actual levels of transparency. Are reports accurate and comprehensive? Each year’s ATT Annual Reports should be compared with independently obtained information on the reporting country’s arms trade. Chapter 2 highlights some of the discrepancies, gaps and inconsistencies across many if not all of the first batch of ATT Annual Reports.

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13. As of 13 June 2017, five countries had submitted confidential Initial Reports: Burkina Faso, Mauritius, Nigeria, Senegal and Togo. Nigeria has stated publicly that it intends to make its Initial Report public but has not yet done so. For Annual Reports, only Slovakia had kept its 2015 report private, while, as of 13 June 2017, Senegal was the only country to keep its 2016 report entirely private. Uruguay’s 2016 report had included a note that its import report may not be made publicly available. Uruguay has committed to making its full report publicly available but had not done so as of 13 June. View and download ATT Reports at ATT Secretariat (N.D.). ‘Reports.’ http://thearmstradetreaty.org/index.php/en/2017-01-18-12-27-42/reports
14. Available at www.armstrade.info/resources-2/
Some of these issues may be related to a lack of familiarity and consistency of practice concerning the reporting templates, which were endorsed for use by States Parties during CSP 2016. Without a standardized format for Annual Reports that is consistently utilised by states, there can be no effective comparison of transfer data and meaningful transparency will be compromised.16

The Working Group on Transparency and Reporting (WGTR), which was established after CSP 2016, is expected to continue coordinating states’ efforts to improve both the quantity and quality of reporting. See the Year in Review section for more information on the priorities identified for future work by the WGTR.17

As far as transparency in the diplomatic process of the ATT itself is concerned, concerns have been raised that public monitoring of CSP proceedings and the deliberations of States Parties might be challenged.18 Full participation of civil society representatives, as well as those of associations representing industry, has been enshrined in the ATT’s Rules of Procedure.19 The ATT was achieved through a partnership between governments and global civil society, and CSOs contribute a wealth of expertise that is vital as States Parties begin substantive work to implement their new obligations, and they are key partners and advocates of the ATT in coordinated universalization efforts. It is important that progress made in ensuring civil society participation in all ATT fora is not reversed or taken for granted.

To date, the ATT’s normative framework and early practice has produced something – like the deliberations and negotiations that created them – in the middle of the spectrum between total secrecy and absolute openness. ATT States Parties and civil society should continue to work together to build on fulfilling the ATT’s many transparency requirements in order to allow those monitoring the international arms trade to better see and use information essential to ensure weapons do not fall into the wrong hands.

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16 Ibid. p.6.
17 The expansion of this group’s mandate from the previous Informal Working Group on Reporting to address wider transparency issues is reflective of this issue’s central importance to the ATT’s impact and implementation in future years.
1:2. TRANSPARENCY AND ATT IMPLEMENTATION

Transparency is essential to the long-term success of the ATT. In the absence of a monitoring mechanism within the Treaty text, transparency is the means of verification and oversight, that must be a joint venture carried out by an informed press, civil society, academia, States Parties, the ATT Secretariat and the CSP, and be based on their interaction and communication. In order to be efficient, this monitoring mechanism needs to be implemented daily and openly.

In addition to its role in creating ‘an environment of accountability for arms transfer decisions,’ transparency is also critical in operationalizing the ATT’s practical requirements. The ultimate impact of the ATT hinges on day-to-day decisions by actors – including government officials – that will either transform the arms trade or keep business as usual.

Perhaps in no other areas is transparent implementation more important than regarding the ATT’s measures to combat and prevent diversion, and its international cooperation and anti-corruption commitments.

DIVERSION: SHINING A LIGHT

The diversion of arms thrives in, and depends on, secrecy. To tackle this, ATT States Parties must cooperate and share information, including with commercial actors and civil society, at every stage of the transfer chain. Doing so would help identify possible points of diversion and help develop effective measures to prevent its occurrence.

The importance of preventing diversion is highlighted in the ATT’s preamble, as well as in its object and purpose, where states commit to ‘Prevent and eradicate the illicit trade in conventional arms and prevent their diversion.’

Article 11 lays out the specific measures that each ATT State Party must take to tackle diversion. Many of these are based on collecting, analysing and sharing information. For example, exporters are compelled by Article 11.2 to ‘seek to prevent the diversion of the transfer of conventional arms […] 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.’ Without clear and timely information sharing between states involved at every stage of a transfer it is hard to see how exporters can effectively assess, or take action against, diversion risks.

Information relevant to diversion detection and prevention that States Parties should share includes that relating to ‘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.’

The quality, availability and timeliness of this information are crucial. For a variety of legal and procedural reasons, it may not always be possible to make detailed information publicly available. That said, ‘it should be possible to share generic information whereby the identity of implicated parties is concealed; and information should still be provided on a retrospective basis once any convictions are secured.’

Finally, as per Article 11.6, States Parties ‘are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms.’ Here again, the onus is on open information sharing so that all relevant countries are properly alerted to existing diversion risks.

A similar commitment re-appears under Reporting (13.2), with wording encouraging States Parties to share information regarding effective anti-diversion measures. Regarding Article 13.2, the ATT-
Article 15.4 (International Cooperation) also has diversion-related commitments, and States Parties appear intent on honouring them. While 13 per cent of respondents to the ATT-BAP survey stated they were not currently engaged in cooperative measures to prevent diversion, they all indicated intent to pursue such actions in future.30

Concerning reporting on diversion, some governments and civil society organizations have attempted to press for greater momentum. Prior to CSP 2015, Argentina shared a proposal on the topic for consideration that was not taken up.31 Under the auspices of the WGTR, in April 2017 Mexico introduced a paper proposing a more structured approach to collaboration and information exchange on diversion-related issues. This effort remains under consideration by the WGTR.32

Taking the ATT’s anti-diversion obligations seriously demands these efforts be urgently prioritized and concluded, as many of the serious human rights abuses perpetrated by armed actors around the world are fuelled by the proliferation of arms and ammunition into the illicit market (see Box 2). Diversion is often the critical link between the authorized trade in arms and the illicit market, and thus transparency around diversion patterns is crucial to preventing them.

Exporters recognize the importance of precluding arms ‘leakage’ but their efforts reported by 2016 may have still fallen short. The ATT Monitor has previously documented that 41 of the 44 States Parties that had submitted their ATT Initial Reports as of 31 May 2016 stated that they participate in information exchange with relevant parties to mitigate diversion risks. However, only 12 States Parties noted either that they already make information on their anti-diversion measures publicly available, or that they will do so once the ATT Secretariat is able to provide a mechanism to do so if circumstances require or upon request.33

Likewise, recipient States Parties must use information sharing to tackle diversion threats, as ‘details of 40 separate cases of illicit arms transfers in Africa over the past decade’ showed that ‘over one-third of the transfers identified implicate state authorities in their execution.’34 Recent reports have highlighted the extent to which arms, ammunition and parts and components are diverted and trafficked in the Horn of Africa and in Latin America and the Caribbean. While distinct in their drivers and impact, diversion in both regions is linked to a need for improvements to national stockpile security and management.35 It is clearly in the interest of governments in sub-regions severely impacted by diverted arms and ammunition to share relevant information about the sources and routes of diversion.

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30 Ibid.


35 Ibid. p. 22.

In all regions, it is not only exporters and importers that must implement safeguards as diversion can occur at any stage of a weapon's life cycle and at any point in the transfer chain, including at point of embarkation, in transit, at point of delivery or after delivery.37 Greater transparency would be particularly impactful on preventing transfer diversion and high-order national stockpile diversion (i.e. theft of large quantities of arms and ammunition), as contributing factors can include weak governmental structures, lack of accountability and oversight.38 Secrecy can be lethal when it allows arms diversion.39 However, in some cases even a small measure of increased information sharing and transparency may at times suffice to preclude diversion. Change may therefore be argued to be more a matter of political will than financial cost.40

Ultimately, the most transparent systems are the most effective systems in tackling diversion.41 Transparency is clearly central to most practical efforts to tackle diversion. As Small Arms Survey explains, ‘spotting the sometimes subtle signs of diversion requires training, detailed and up-to-date information on other countries’ military procurement and weapons inventories, and a wide array of regional and thematic expertise’.42

The ATT provides a crucial platform for states to build and share experience of arms diversion and effective action to address it.43 Helping to internationally harmonize practice will be essential. Lower levels of transparency in one jurisdiction make it a magnet for diversion, a first step in transitioning weapons from the legal market to providing tools of violence to organized crime, terrorists and armed groups not only in that territory but also across borders. Therefore, the more transparent international arms trade the ATT could help catalyse, the greater the benefit to human and national security.

INTERNATIONAL COOPERATION AND ANTI-CORRUPTION MEASURES

Article 15’s transparency commitments are somewhat summarized by its final clause (15.7): ‘States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty’. Although there are several national-jurisdiction and sovereignty caveats, in order to cooperate with one another countries are encouraged to consult, exchange or share information on the ATT’s implementation (15.2 and 15.3), diversion measures (15.4) and ‘investigations, prosecutions and judicial proceedings’ (15.5).

According to the initial ATT-BAP survey in 2014, only seven countries (12 per cent of total respondents) were not at that point in time, ‘currently involved in exchange of information on conventional arms transfers’, none answered in the negative when asked whether they intended ‘to pursue cooperation in exchange of information’.44 While it is clearly positive that States Parties intend to engage in more information exchange than is their current practice, they must now act on these good intentions, commit to substantially increasing the level and quality of cooperation, and go beyond bilateral or multilateral communications by making information public.45

Particularly noteworthy in its transparency implications is Article 15.6, one of the sole survivors of the drive to instil anti-corruption measures into the ATT text: ‘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’.46 The article ‘calls upon states to take action at the national level beyond the risk assessment, and to actively work with others at the international level to address corruption risks preventively’.47

42 Burkina Faso, Costa Rica, Finland, Ireland, Japan, Peru and a country that chose to keep its responses private. Another three – Kiribati, Palau and Trinidad and Tobago – answered ‘Don’t Know’. Available at www.armstrade.info/comparison-results/
43 Current practice in international assistance as indicated in ATT Initial Reports is discussed further in Chapter 1.
As in the case of diversion, more information sharing and openness is the only way to efficiently implement the ATT’s cooperation and anti-corruption obligations. A lack of transparency over information and practices that fosters corruption also has severe human-security consequences, wasting financial resources that might be expended on socio-economic and health priorities.

Corruption also kills by diverting funds from planned security and military programmes and operations, including equipment, training and salaries. For example, billions of US dollars of grant by senior Nigerian military and political officials – including US$2 billion for ‘fake arms contracts’ and ‘ghost soldiers’ – ‘helps explain Boko Haram’s success’, while in Iraq the purchase of US$68m (£52m) in fake bomb detectors in 2008 and 2009 resulted in a demoralized and weakened force and may have been partly responsible for Daesh taking Mosul in 2014. In order to curtail this sort of corruption, governments should publish as much information as possible on the ‘quantity, value, model/type’ they are encouraged to record and report under Articles 12 and 13 of the ATT, as there is a ‘need to understand what was procured, and how much was paid’.

Despite coming up short in relation to civil society demands during negotiations, the ATT does include some anti-corruption measures. Article 11.5 of the ATT establishes ‘a clear link between the diversion assessment and information about corruption or corrupt practices’. Also, under Article 7.1 States Parties are required not to authorize transfers if there is a risk that they could ‘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.’ As is clearly pointed out in the United Nations Convention against Transnational Organized Crime, to which 187 States are Party, these offences include both corruption and money laundering. Exporters should therefore scrutinize publicly available anti-corruption resources as part of their comprehensive risk assessments. A serious risk assessment would arguably preclude arms transfers to many countries on the ATT’s anti-corruption obligations alone.

Efforts to cleanse arms sales of corrupt practices are as necessary as ever. Among these, particularly impactful in bringing the issue to the forefront has been the book and documentary, The Shadow World, by former South African parliamentarian Andrew Feinstein. Tools such as the interactive online platform Project Indefensible, civil society networks and blogs, academia and think tank monitoring, and expert policy papers continue to provide the blueprint towards achieving the vision once hoped for an ideal ATT and beyond.

As the ATT’s monitoring and verification mechanism, its transparency measures must be implemented in earnest – and in a collaborative fashion among all stakeholders. Transparency is essential to many aspects of the Treaty’s implementation, particularly to combat and prevent diversion, and to ensure international cooperation and to give teeth to its anti-corruption measures. Without meaningful information sharing and openness it will not be possible to fulfill the ATT’s potential to curtail the ‘leakage’ of weapons into the illicit market, fight the opacity that nurtures corruption, and further human security.

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51 Ibid.
52 Transparency International (2013). ‘Transparency International welcomes historic adoption of UN Arms Trade Treaty (ATT)’.
54 Transparency International (N.D.). ‘Government Defence Anti-Corruption Index’. http://governmentdefenceindex.org/list/. As of May 2017, 30 countries, or 26 per cent of those assessed, were given the most serious risk rating for 2015 (an ‘F’ grade). These scores are not set in stone over time, as the methodology states the index ‘measures levels of corruption risk in national defence establishments, and scores each country from A (the best) to F (the worst).’
1:3. ALLAYING FEARS AND BUILDING CONFIDENCE: THE IMPLICATIONS OF GREATER TRANSPARENCY IN THE ARMS TRADE

There should be no need to go beyond the most important argument for greater transparency: less people would be killed, maimed and terrorized by armed violence and conflict if the arms trade becomes less secretive. Yet there are many other reasons, as explained below, to advocate for and accept greater levels of openness.

CONFIDENCE-BUILDING

Transparency in the arms trade reduces the grounds for suspicion and mistrust between countries. Building confidence through responsible action by States Parties is one of the stated purposes of the ATT, and transparency through public reporting is a necessary condition in order for confidence building to take place.

Such confidence building is the antidote to the ‘security dilemma’ or ‘spiral insecurity’, a famous theory of international relations that says that otherwise friendly neighbours may engage in an arms race, and possibly an actual conflict, simply by miscalculating intentions and responding with increased military expenditure.\(^{57}\) Concealing information that supposedly would benefit an enemy in a hypothetical conflict actually increases the probability of creating enemies and starting conflict. There is clearly a strong strategic rationale for greater transparency.

The proof that countries understand that transparency is inherently in the national self-interest is the prevalence and use – albeit decreasing in some cases – of voluntary reporting on a wide array of security-related matters regionally and globally, such as to the UN Register of Conventional Arms (UNROCA).

PRAGMATISM AND INCENTIVES

There are also very pragmatic reasons to become part of the ATT regime and, once inside, to insist on public reporting and openness. For one, it makes little sense to attempt to conceal information that is already known or easily available through other means. The stance of some governments on transparency appears to be based on the premise that if they do not share information, it will not be possible to access it. However, in practical terms, governments’ ability to hide much of the basic data required to meet the ATT’s transparency obligations has been probably forever undermined. Looking beyond the other national, regional and multilateral instruments in which information is shared by trading partners, information made public through open-source intelligence can provide a level of detail on a country’s military capacity that vastly surpasses the information regarding equipment levels that ATT reporting could provide.\(^{58}\) In fact, for a relatively small financial outlay, anyone can have access to not only generic type and units of conventional arms but also to information about technical details, preparedness, state of wear, distribution over territory, military doctrine, organization and size of the armed forces, and much more. The high cost of secrecy for governments – political capital wasted, loss in international confidence, uncomfortable pressure from civil society, unfavourable diplomatic and public perceptions – is by no means offset by any perceived ‘gains’, creating a lose-lose situation.

With much to gain and little (if anything) to lose by embracing transparency, the balance can be further tipped towards gain within a multilateral regime such as the ATT. The CSP could consider many different formulations of potential additional incentives towards greater transparency, including having greater access to assistance and implementation funds. Ultimately, as transparency is a means to demonstrate that a country is a trusted partner, reporting to the ATT could be taken into account by states considering export licences.\(^{59}\)

ALLAYING FEARS

Fears – however irrational – nonetheless persist. The need for, and expectation of, transparency may be construed in some countries as a barrier to entry to the ATT. Some have argued that increased transparency would hinder universalization, noting that some countries may simply not join the Treaty when confronted with a requirement to give up secrecy.\(^{60}\) Such an argument rests on the idea that the basic purposes and normative values of the ATT may be an impediment to its own universality. A similar argument has been put forward by some to suggest that criticism of ATT violators ‘could deter others joining’.\(^{61}\)

However, transparency should be seen as an opportunity to demonstrate responsible and accountable practice. The ATT’s transparency obligations should not be a disincentive to joining the Treaty, nor for countries within the regime to shy away from public reporting and robust information sharing. States signing onto the Treaty’s transparency requirements have much to gain from demonstrating, through robust and open reporting, that their actions and policies duly implement the Treaty.

Government fears around transparency have often been overstated.62 Being inside the ATT regime will allow countries to gather more information and experience than those outside, particularly in the more sensitive bilateral and informal information-sharing settings that may include information on diversion patterns, export denials and opportunities for cooperation and assistance. As Amnesty International has pointed out, ‘increased transparency also helps to reduce unfair criticism of governments when they act lawfully to supply or acquire the legitimate means of defence and law enforcement.’63

No government is, can or should be 100 per cent transparent. However, ‘the all-encompassing secrecy that often characterizes arms deals hides corruption, conflicts of interest, poor decision-making and inappropriate national security choices’.64 In relative terms, the ATT’s transparency obligations are quite minimalist, so reticence in joining the instrument on the basis of information-protection concerns is unfounded.65

Many countries are already bound by, or have participated in, instruments that match or surpass the ATT in their transparency demands. Though voluntary, and suffering from a severe decline in reporting rates in recent years, UNROCA has a similar level of information demands for weapons type as the ATT.66 Between 2000 and 2006, the Register received reports from an average of almost 45 countries annually.67 The legally binding Inter-American Convention on Transparency in Conventional Weapons Acquisitions of the Organization of American States (OAS) (adopted in 1999) has mandatory reporting that must include export, import and national acquisition (domestic production), and must be shared within 90 days of any acquisition of conventional arms.68

Encompassing 41 countries – including most European countries as well as Argentina, Australia, Canada, Mexico, Turkey and South Africa – the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies has a much broader equipment scope than the ATT and members must report every six months on transfers and denials to countries outside the agreement.69 Legally binding instruments covering only small arms and light weapons (SALW) likewise include important transparency obligations, such as determining dialogue with manufacturers and suppliers and keeping records indefinitely in the case of the ECOWAS Convention.70

63 Ibid, p.2
66 Particularly since adding the voluntary category of small arms and light weapons in 2003.
70 For transparency and information-sharing guidelines for arms, which will include any matters which individual Participating States wish to bring to the attention of others’, see Wassenaar Arrangement Secretariat (2017). ‘Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies’. www.wassenaar.org/wp-content/uploads/2015/06/WA-DOC-17-PUB-001-Public-Docs-Vol-I-Founding-Documents.pdf
If reporting templates and streamlining are properly developed and implemented, the ATT’s reporting need not be a significant extra effort for a State Party – and international cooperation and assistance mechanisms and funds, in addition to support from civil society, are readily available. Reporting activity can strengthen governments by increasing interdepartmental cooperation, coordination and knowledge, thereby creating better prepared professionals and agencies that are also better able to implement the Treaty at large and other germane public policies.

Transparency tends to increase over time. Understandably, a State with a history of sensitivity to information sharing will not become much more transparent overnight, needing legislative and cultural evolutions in order to do so. In many regional or UN instruments, initial resistance to information sharing was overcome by practice. For example, when devised the OAS Transparency Convention did not intend to make reports public, but once countries realized openness was not as scary as feared, publicity became the norm and reports were made available on the organization’s website. A similar process has taken place in the development of the annual report produced by the EU.71

Other than the ‘minimum standards’ explicitly determined by the ATT’s text that are a legal requirement for all States Parties, countries with limited practical transparency experience could, in a step-by-step approach, progressively broaden the information that they are prepared to make public, while States Parties ready for higher levels than the floor defined by the Treaty can report on transfers of ammunition, parts and components, technology and manufacturing equipment – in addition to transfer denials and other items deemed more sensitive.72

**BEST PRACTICES AND EXAMPLES TO EMULATE**

Good practices in the field of arms export and transfer controls long pre-date the ATT, although only in a small number of countries. Prior to the Treaty’s adoption, 35 countries and territories published an annual report on their arms-trade activity, with three doing so monthly, two quarterly and another three twice a year.73 The United States, the first country to publish a national report on its arms exports, has done so since 1961. In Sweden, the public presentation and debate in parliament around the annual report of arms exports has taken place since 1985. Relative openness has come not only from wealthy countries but also from the likes of Serbia, which published annual reports prior to ATT negotiations74 and has scored well in its transparency for small arms transfers, with the Small Arms Survey ranking it fourth in the world for 2016 among major exporters.75

More recent developments, either emboldened by the ATT discussions or spurred by domestic circumstances, are also noteworthy.76 From 2014, a report regarding export licenses granted in the first half of each year will be published in the second half of that year by Germany, which ‘informs Parliament about licensing decisions taken by (its) specialized Cabinet Committee, shortly after these decisions have been taken’. Portugal’s national report includes information on transit and brokering. Spain ensures control by parliament by sending it the relevant information about arms transfers every semester. Sweden translates its national report into English to facilitate international scrutiny.77

The ATT’s first round of Annual Reports also witnessed the emergence of good practice examples. For example, Austria, Portugal and Slovenia reported on the value and number of exported heavy conventional arms, while these three as well as Bosnia and Herzegovina, Japan and Montenegro voluntarily reported on the number and value of exported SALW (see Chapter 2 for more details). Transparency champions should seek to raise reporting standards in future rounds of annual reporting and continue to lead by example.78

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76 See ATT-BAP (N.D.). www.armstrade.info/comparison-results
77 Ibid. National reports submitted by each country.
Good practices are still far from the norm, and best practices are not perfect ones. Regarding the small-arms trade, even the countries considered the most transparent in the 2016 Transparency Barometer – Germany and United Kingdom – received ‘only’ 19.75 out of a possible 25 points. The average score was below the halfway mark (11.16) but more than one-third of the countries improved their scores, with South Africa (+7.75 points) and Bosnia and Herzegovina (+4.25) improving most. In other words, even the most transparent governments can improve their practices.

CONCLUSION

Transparency is embedded throughout the ATT. Indeed there is hardly an obligation that does not relate to information sharing. Without meaningful information sharing, it will not be possible for the ATT to live up to its own lofty object and purpose.

In addition to the growing pains within the ATT regime concerning openness, the current global transparency picture is troubling. However, efforts to increase transparency in the international arms trade could assist to protect gains from recent decades in open-government practice. To do so, placing a spotlight on the arms trade cannot be considered in isolation from the larger security, political and economic picture, nor can it be detached from the sectors of the economy that support it.

Finally, greater transparency and accountability should also be pursued at the national level, regardless of whether the country is an ATT State Party or not, or of how responsible its arms transfer practices are. National efforts to establish transparency mechanisms can include the production of an annual public report to be debated in parliament, the establishment of a dedicated parliamentary committee to oversee the policy and practice of arms-transfer control, and the development of an interdepartmental structure to coordinate government policy and practice.

As demonstrated above, there are many reasons to seek greater openness, including confidence-building among countries, bolstering national security by pre-empting conflict, shedding the high costs of secrecy in terms of wasted political capital and reputation losses in the international community, gaining access to incentives, and proving responsible implementation of the ATT. In seeking greater openness, governments should emulate the examples of best practice, while transparency champions should intensify their efforts to continuously raise standards, recognizing that even the most transparent governments can, and should, seek to improve their practices.

THE ARMS TRADE TREATY

REPORTING TEMPLATE

ANNUAL REPORT IN ACCORDANCE WITH ARTICLE 13(3) - EXPORTS AND IMPORTS OF CONVENTIONAL ARMS COVERED UNDER ARTICLE 2 (1)

This provisional template is intended for use by States Parties to the Arms Trade Treaty when preparing their annual report in accordance with the Treaty’s Article 13(3).

The template has two main tables, one for exports and the other for imports. The tables are similar in construction, making it possible to have a common set of explanatory notes for both.

Article 5(3) of the Treaty states that “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”. Against this background, Annex 1 reproduces the UN Registry Definitions of Categories I-VII at the time of the ATT’s entry into force. For category VIII (small arms and light weapons), the UN Registry template for voluntary reporting of this category at the time of the ATT’s entry into force has been employed as an approximation.

Annex 2 allows reporting States Parties to, if they so wish, include more specific information on national definitions of reported categories.

Annex 3 comprises two templates for nil reports, one for exports and one for imports. They may be used in place of a report in table format if a States Party has no transactions to report.

The title page of the template contains information on the submitting country and authority, but also a ‘table of contents’ in tick-box form, to indicate which of the different available forms have been included in the national submission. There is also a (voluntary) section where the reporting Government may indicate whether any commercially sensitive and/or national security-related data has been withheld in accordance with Article 13.3 of the Treaty.

On the title page of each of the four reporting forms (exports, imports, nil exports, nil imports) a State Party has the option of indicating that the form is for distribution only to other States Parties to the Treaty. This makes it possible to restrict access to some forms but not others, which provides an additional measure of flexibility to the reporting States Party.
GOVERNMENT OF ____________________  GERMANY ____________________

ANNUAL REPORT ON EXPORTS AND IMPORTS OF CONVENTIONAL ARMS, IN ACCORDANCE WITH ARTICLE 13(3) OF THE ARMS TRADE TREATY

REPORT FOR THE CALENDAR YEAR 2017

National Point of Contact for this Report:

<table>
<thead>
<tr>
<th>Name</th>
<th>Division 414 (Export Control Division)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation</td>
<td>Federal Foreign Office</td>
</tr>
<tr>
<td>Fixed Phone</td>
<td>+49 30 5000 2274</td>
</tr>
<tr>
<td>Mobile Phone</td>
<td></td>
</tr>
<tr>
<td>Fax</td>
<td>+49 30 5000 52274</td>
</tr>
<tr>
<td>E-mail</td>
<td><a href="mailto:414-2@diplo.de">414-2@diplo.de</a></td>
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</table>

Date of Submission: 31 May 2018

Contents of report (check as appropriate)

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<tr>
<td>ii)</td>
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<td>☒</td>
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<tr>
<td>iii)</td>
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<tr>
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<td>☒</td>
<td>☐</td>
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<td>v)</td>
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Scope of report (voluntary information)

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## EXPORTS OF CONVENTIONAL ARMS

- SHADED COLUMNS AND ROWS REPRESENT VOLUNTARY INFORMATION -

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<th>Cutoff date</th>
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In this report, the following definition of the term exports was used (check as appropriate):

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<tr>
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<td>No</td>
</tr>
<tr>
<td>Other (please provide a brief description below)</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

This Annual Report on exports is available only to States Parties

<table>
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<th>Category of arms</th>
<th>Authorised or actual exports</th>
<th>Extent of exports</th>
<th>Final importing State</th>
<th>State of origin (if not exporter)</th>
<th>Remarks</th>
</tr>
</thead>
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<td>[I-VIII]</td>
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<td>Act.</td>
<td>Number of items</td>
<td>Value</td>
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<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

A. I-VII UN Registry Categories (national definitions shall not cover less than the definitions provided in Annex 1)

1. Battle tanks

   |  |  | 21 | 18 | 12 | Indonesia | Singapore | Qatar |  |  |

<p>| | | | | | | | | | |
|  |  |  |  |  | | | | | |</p>
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<th>Authorised or actual exports[^{5}]</th>
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<th>Final importing State[^{9}]</th>
<th>State of origin (if not exporter)[^{10}]</th>
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<td>III. Large-calibre artillery systems</td>
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<td>☒</td>
<td>13</td>
<td>13</td>
<td>Croatia, Lithuania</td>
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<td>IV. Combat Aircraft</td>
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<td>☐</td>
<td></td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>b) unmanned</td>
<td>☐</td>
<td>☐</td>
<td></td>
<td>☐</td>
<td></td>
</tr>
<tr>
<td>V. Attack helicopters</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) manned</td>
<td>☐</td>
<td>☒</td>
<td>1</td>
<td></td>
<td>Belgium</td>
</tr>
<tr>
<td>b) unmanned</td>
<td>☐</td>
<td>☐</td>
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<td></td>
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<td>VI. Warships</td>
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<td>☒</td>
<td>1</td>
<td>2</td>
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<td>VII. Missiles &amp; missile launchers</td>
<td>☐</td>
<td>☒</td>
<td>2</td>
<td>16 149</td>
<td>Algeria, Great Britain, Korea, Republic</td>
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<td>a) Missiles etc</td>
<td>☐</td>
<td>☒</td>
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</tr>
<tr>
<td>b) MANPADS</td>
<td>☐</td>
<td>☐</td>
<td>6</td>
<td></td>
<td>Austria</td>
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**B. VIII. Small Arms and Light Weapons\[^{14, 15}\]**

<table>
<thead>
<tr>
<th>Small Arms (aggregated)[^{16}]</th>
<th>☐</th>
<th>☐</th>
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<tbody>
<tr>
<td>1. Revolvers and self-loading pistols</td>
<td>☐</td>
<td>☐</td>
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<tr>
<td>2. Rifles and carbines</td>
<td>☒</td>
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</tr>
<tr>
<td>3. Sub-machine guns</td>
<td>☒</td>
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</table>

<table>
<thead>
<tr>
<th>Description</th>
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<td>Sub-machine guns</td>
<td>30 pcs 156 pcs 350 pcs 24 pcs 10 pcs 5660 pcs 15 pcs 5 pcs</td>
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<tr>
<td>Category of arms(4) [1-VIII]</td>
<td>Authorised or actual exports(5)</td>
</tr>
<tr>
<td>------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td></td>
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<tr>
<td>4. Assault rifles</td>
<td>☒</td>
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</tbody>
</table>

<p>| 4. Assault rifles             | ☒     |     | 5 pcs              | Austria          |                         |
|                              |       |     | 2 pcs              | Belgium          |                         |
|                              |       |     | 18 pcs             | Brazil           |                         |
|                              |       |     | 13 pcs             | Canada           |                         |
|                              |       |     | 302 pcs            | Czech Republic   |                         |
|                              |       |     | 2 pcs              | Finland          |                         |
|                              |       |     | 8436 pcs           | France           |                         |
|                              |       |     | 5 pcs              | Hungary          |                         |
|                              |       |     | 450 pcs            | Hungary          |                         |</p>
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<tr>
<th></th>
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<td>1</td>
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<td>5. Light machine guns</td>
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Light Weapons (aggregated)[^17] □ □ ❌
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<th>State of origin (if not exporter)¹⁰</th>
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<td>mounted grenade launchers</td>
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</tr>
<tr>
<td>3. Portable anti-tank guns</td>
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<tr>
<td>4. Recoilless rifles</td>
<td></td>
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<tr>
<td>5. Portable anti-tank missile launchers and rocket systems</td>
<td></td>
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<tr>
<td>6. Mortars of calibres less than 75 mm</td>
<td></td>
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<td>7. Others</td>
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</table>

C. Voluntary National Categories¹⁸ (please define in Annex 2)
<table>
<thead>
<tr>
<th>Category of arms[^4]  [1-VIII]</th>
<th>Authorised or actual exports[^5]</th>
<th>Extent of exports[^6] (choose one or both)</th>
<th>Final importing State[^9]</th>
<th>State of origin (if not exporter)[^10]</th>
<th>Remarks[^11]</th>
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<tr>
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<td>Auth.</td>
<td>Act.</td>
<td>Number of items[^7]</td>
<td>Value[^8]</td>
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<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
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</table>
IMPORTS OF CONVENTIONAL ARMS

- SHADED COLUMNS AND ROWS REPRESENT VOLUNTARY INFORMATION -

| Reporting country | Calendar Year | Cutoff date | Germany | 2017 | 31.12.2017 |

In this report, the following definition of the term imports was used³ (check as appropriate):

| Physical transfer of items across a national border | Yes ☒ | No ☐ |
| Transfer of title | Yes ☐ | No ☒ |
| Transfer of control | Yes ☐ | No ☒ |
| Other (please provide a brief description below) | Yes ☐ | No ☒ |

This Annual Report on imports is available only to States Parties

<table>
<thead>
<tr>
<th>Category of arms⁴ [I-VIII]</th>
<th>Authorised or actual imports⁵</th>
<th>Extent of imports⁶ (choose one or both)</th>
<th>Exporting State⁹</th>
<th>State of origin (if not exporter)¹⁰</th>
<th>Remarks¹¹</th>
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<tr>
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<td>Auth.</td>
<td>Act.</td>
<td>Number of items⁷</td>
<td>Value⁸</td>
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</tr>
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<td>A. I-VII UN Registry Categories¹² (national definitions shall not cover less than the definitions provided in Annex 1)¹³</td>
<td></td>
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</tr>
<tr>
<td>1. Battle tanks</td>
<td>☐</td>
<td>☐</td>
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</tbody>
</table>


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</thead>
<tbody>
<tr>
<td>II. Armoured combat vehicles</td>
<td>☑</td>
<td>☐</td>
<td>☑ 2 pcs</td>
<td>☐ Austria</td>
<td></td>
</tr>
<tr>
<td>III. Large-calibre artillery systems</td>
<td>☐</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV. Combat aircraft</td>
<td>☐ a) manned</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>☐ b) unmanned</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>V. Attack helicopters</td>
<td>☐ a) manned</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>☐ b) unmanned</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VI. Warships</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VII. Missiles &amp; missile launchers</td>
<td>☑ a) Missiles etc</td>
<td>☐</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>☐ b) MANPADS</td>
<td>☐</td>
<td></td>
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</tr>
</tbody>
</table>

**B. VIII. Small Arms and Light Weapons[^14, 15]**

| Small Arms (aggregated)[^16] | | | |
|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| 1. Revolvers and self-loading pistols | ☐ | ☐ | | | |
| 2. Rifles and carbines | ☑ | ☐ | ☑ 2 pcs | ☑ 2 pcs | ☑ 5 pcs | ☑ 5 pcs | Austria | Czech Republic | Great Britain | Switzerland | Temporary |
| 3. Sub-machine guns | ☑ | ☐ | ☑ 4 pcs | ☑ 25 pcs | ☑ 14 pcs | ☑ 1 pc | ☑ 3 pcs | Belgium | Israel | Italy | Norway | United States | Temporary |
| 4. Assault rifles | ☑ | ☐ | ☑ 757 pcs | | | | | | | | Austria | Temporary |
## Category of arms[^1-VIII]

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>3 pcs 11 pcs 187 pcs 1 pc 5 pcs 3 pcs</td>
<td>Austria Belgium Belgium Czech Republic Italy Netherlands</td>
<td>Temporary</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>3 pcs 6pcs 1 pc 1 pc 1 pc 2 pcs 56 pcs 35 pcs 3 pcs</td>
<td>Austria Belgium Belgium France Norway Serbia United States United States Qatar</td>
<td>Temporary</td>
<td>Temporary</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>25 pcs</td>
<td>Belgium</td>
<td></td>
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</tr>
<tr>
<td>4</td>
<td></td>
<td>201 pcs</td>
<td>Austria</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>10 pcs 4 pcs</td>
<td>Denmark Italy</td>
<td>For destruction</td>
<td>Temporary</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>2 pcs</td>
<td>Belgium United States</td>
<td></td>
<td>Temporary</td>
</tr>
</tbody>
</table>

[^1-VIII]: Categories of arms

[^4]: Authorised or actual imports

[^5]: Extent of imports

[^6]: Exporting State

[^7]: Number of items

[^8]: Value

[^9]: State of origin (if not exporter)

[^10]: Remarks

[^11]: Comments on the transfer
<table>
<thead>
<tr>
<th>Category of arms</th>
<th>Authorised or actual imports</th>
<th>Extent of imports (choose one or both)</th>
<th>Exporting State</th>
<th>State of origin (if not exporter)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1, 2, 3, 4, 5, 6, 7</td>
<td>8, 9</td>
<td>10</td>
<td>11</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7. Others

C. Voluntary National Categories (please define in Annex 2)
EXPLANATORY NOTES

1) States Parties that do not have any exports and/or imports to report should file a "nil report" clearly stating that no exports/imports have taken place in any of the categories during the reporting period. Templates for such nil reports are included in Annex 3.

2) Date for collected statistics (for instance 30 June or 31 December).

3) Based on UN Registry practice. An international arms transfer could mean, in addition to the physical movement of equipment to or from national territory, the transfer of title to- and control over the equipment. Other criteria are also possible. States Parties should here provide a description of the national criteria used to determine, for control purposes, exactly when an arms transfer takes place.

4) As outlined in Articles 2 (1) (a)-(h) and 5(3). For more precise definitions of the categories, see Annex 1.

5) Article 13(3) allows reporting of either authorised or actual exports / imports. The choice can be made at the national level for a report as a whole or category by category. Please indicate by ticking the appropriate box for each category reported whether the value represents authorisations (Auth.) or actual exports (Act.). It is highly desirable that national choices in this respect, once made, should remain stable over time for reasons of consistency and continuity. A State Party wishing to report both quantity and value may of course do so, but then needs to submit two tables, one for authorised exports / imports and the other for actual exports / imports.

6) The size of exports / imports may be indicated either as quantity or as value. The choice can be made at the national level for each category of arms, but, once made, should remain stable over time for reasons of consistency and continuity. A State Party wishing to report both quantity and value may of course do so.

7) Standard UN Registry reporting variable. Please indicate unit, if not ‘pieces’

8) Optional alternative. Please indicate unit (for example national currency)

9) In line with UN Registry practice

10) In line with UN Registry practice. NB: This is a shaded column, voluntary in terms of the obligations of the ATT

11) In line with UN Registry practice. In the first "Remarks" column, States Parties may, if they so wish, describe the item transferred by entering the designation, type, model or any other information considered relevant. The second column may be used to explain or clarify the nature of the transfer - for instance if it is temporary (e.g. for exhibitions or repairs), or if it is industrial in nature (perhaps intended for integration into a larger system). NB: These are shaded columns, voluntary in terms of the obligations of the ATT
12) As outlined in Article 2 (1) (a)-(g), See Annex 1 for the UN Registry’s more precise definitions of the categories I-VII, including subcategories.

13) See Article 5(3)

14) As outlined in Article 2 (1) (h), with sub-categories taken from the UN Registry template for voluntary reporting of Small Arms and Light Weapons. This choice has been made provisionally, pending later agreement between States Parties on the desirability of using this or another UN definition of SALW sub-categories (for instance from the UN Firearms Protocol or the International Tracing Instrument - ITI). NB: The SALW sub-categories in this report are shaded, representing voluntary information in terms of the obligations of the ATT

15) “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” (Article 5(3))

16) In line with UN Registry practice, States Parties may choose between reporting small arms by sub-type or as an aggregate.

17) In line with UN Registry practice, States Parties may choose between reporting light weapons by sub-type or as an aggregate.

18) Article 5(3) encourages States Parties to apply the provisions of the Treaty to the broadest range of conventional weapons. Any such additional categories are voluntary and categories used may vary between States Parties. If provided at all, extra categories should be more precisely defined in Annex 2.
ANNEX 1

UN Registry Definitions of Categories I-VII

I. 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 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre.

II. 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 12.5 millimetres calibre or a missile launcher.

III. Large-calibre artillery systems

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

IV. Combat aircraft

a) Manned 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 these aircraft which perform specialized electronic warfare, suppression of air defence or reconnaissance missions;

b) Unmanned 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.

The term “combat aircraft” does not include primary trainer aircraft, unless designed, equipped or modified as described above.

V. Attack helicopters

a) Manned 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 and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions;

b) Unmanned 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 and equipped with an integrated fire control and aiming system for these weapons.

1 Excerpted from the 2014 UN Registry reporting template
VI. Warships

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

VII. Missiles and missile launchers²

a) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. For the purpose of the Register, this sub-category includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.

b) Man-Portable Air-Defence Systems (MANPADS)³.

² Multiple-launch rocket systems are covered by the definition of category III.
³ MANPADS should be reported if the MANPAD system is supplied as a complete unit, i.e. the missile and launcher/Grip Stock form an integral unit. In addition, individual launching mechanisms or grip-stocks should also be reported. Individual missiles, not supplied with a launching mechanism or grip stock need not be reported.
### ANNEX 2

**Reporting country:** Germany  
**Calendar Year:** 2017

**Specific (diverging or more detailed) national definitions of categories I-VIII**  
(or simple reference to initial report, if this information was provided there)

<table>
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<th>No</th>
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<tbody>
<tr>
<td>I.</td>
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<td>II.</td>
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<td>III.</td>
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<tr>
<td>IV.</td>
<td></td>
</tr>
<tr>
<td>V.</td>
<td></td>
</tr>
<tr>
<td>VI.</td>
<td></td>
</tr>
<tr>
<td>VII.</td>
<td></td>
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<tr>
<td>VIII.</td>
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**Definitions of voluntary national categories - Section C of table(s)**  
(or simple reference to initial report, if this information was provided there)

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ANNEX 3 A

NIL REPORT
Exports of Conventional Arms

<table>
<thead>
<tr>
<th>Reporting country:</th>
<th>Calendar Year:</th>
</tr>
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</table>

The Government of __________________________________________,

with reference to Article 13 (3) of the Arms Trade Treaty, hereby submits a ‘nil report’ for exports from territory under our jurisdiction. This report serves to confirm that

- no actual exports of conventional arms listed in Article 2 (1) of the Arms Trade Treaty have taken place from territory under our jurisdiction during the reporting period indicated above.
- no export authorizations have been issued for conventional arms listed in Article 2 (1) of the Arms Trade Treaty during the reporting period indicated above.

This nil report on exports is available only to States Parties
ANNEX 3 B

NIL REPORT
Imports of Conventional Arms

<table>
<thead>
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<th>Calendar Year:</th>
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The Government of ________________________________,

with reference to Article 13 (3) of the Arms Trade Treaty, hereby submits a ‘nil report’ for imports from territory under our jurisdiction. This report serves to confirm that

- □ no actual imports of conventional arms listed in Article 2 (1) of the Arms Trade Treaty have taken place to territory under our jurisdiction during the reporting period indicated above.
- □ no import authorizations have been issued for conventional arms listed in Article 2 (1) of the Arms Trade Treaty during the reporting period indicated above.

This nil report on imports is available only to States Parties