



# **Negotiating an Arms Trade Treaty**

## **A Toolkit for African States**



**Guy Lamb**

With contributions from

**Gugu Dube, Marina Reyskens, Lauren Tracey  
and Ben Coetzee**

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# Negotiating an Arms Trade Treaty

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Lauren Tracey and Ben Coetzee

Institute for Security Studies  
South Africa  
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# About the Institute for Security Studies

The Institute for Security Studies (ISS) was established in South Africa in 1991 as the Institute for Defence Policy and was renamed in 1996 as the ISS. Over the past two decades the Institute has become one of Africa's largest independent bodies focusing on research, policy advice, provision of capacity-building and support on issues relating to human security. The ISS has offices in South Africa, Ethiopia, Kenya and Senegal. It is supported by a number of international partners, including the governments of Sweden, Norway, Germany, the Netherlands, Switzerland, Denmark, Finland, Spain, the United Kingdom and foundations such as the Open Society Institute and Humanity United. The Institute works with a large number of national and regional stakeholders across Africa.

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

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# List of abbreviations

ATT	Arms Trade Treaty
AU	African Union
BTWC	Biological and Toxin Weapons Convention
CBM	Confidence-Building Measure
CFSP	Common Foreign and Security Policy
CWC	Chemical Weapons Convention
DRC	Democratic Republic of Congo
DVC	Delivery Verification Certificate
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EU	European Union
EUC	End-user Certificate
GGE	Group of Governmental Experts
GICHD	Geneva International Centre for Humanitarian Demining
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law

List of abbreviations

IHRL	International human rights law
ISS	Institute for Security Studies
ISU	Implementation Support Unit
MANPADS	Man-portable air-defence system
NGF	Non-Governmental Forces
OPANAL	Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
OPCW	Organization for the Prohibition of Chemical Weapons
SADC	Southern African Development Community
SALW	Small Arms and Light Weapons
SIPRI	Stockholm International Peace Research Institute
UN	United Nations
UNDDA	United Nations Department of Disarmament Affairs
UNODA	United Nations Office for Disarmament Affairs
UNPoA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
UNTOC	United Nations Convention against Transnational Organized Crime
UNRCA	United Nations Register of Conventional Arms

# About this toolkit

The main objective of this toolkit is to serve as a reference guide for representatives of African States who will be negotiating the provisions of an Arms Trade Treaty (ATT) at the United Nations (UN) headquarters in New York in July 2012. The concept of a toolkit emerged in 2010 following a series of consultations with African government officials and civil society activists who expressed a keen interest in the development of such a document.

In compiling this publication, the authors have sought to provide impartial descriptions and explanations of relevant conventional arms control issues, as well as an objective analysis of the various viewpoints on the key aspects of a future ATT that are applicable to Africa. Above all, the drafting of the toolkit was motivated by the authors' aspiration that the July 2012 ATT negotiations would result in an effective and comprehensive Treaty.

The toolkit uses the ATT Preparatory Committee meeting Chair's non-paper, which is included in the "Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty" (7 March 2012), as its primary frame of reference. This report is incorporated into this toolkit as Annex 1. The reason is that the non-paper was arguably an attempt by the ATT Preparatory Committee meeting Chair to distil common areas of discussion in order to form a basis for the actual ATT negotiations. However, the toolkit also makes use of a variety of sources of information such as treaties and protocols; UN publications and documents; official national and intergovernmental documents; publications by academic institutions and think tanks; and advocacy material produced by international organizations and civil society groups. The Provisional

Rules of Procedure (7 March 2012) of the ATT negotiation conference are included as Annex 2.

The toolkit exclusively focuses on the three core components of a future ATT, namely scope, criteria and implementation. Considerable detail is provided on each of these content areas in relatively straightforward terms in order for the toolkit to be an accessible and useful resource for African State negotiators. However, in so doing some of the more intricate details and explanations may have been excluded. In addition, the authors recognise that there is considerable national diversity in the manner in which States have sought to regulate transfers of conventional arms, but owing to space constraints it was not possible to make reference to all these variations.

Each component of the toolkit includes a section on considerations for African States, which primarily makes reference to African obligations and commitments to regional and subregional small arms, light weapons and ammunition control instruments. In some sections African States are presented with information and analysis of historical and current arms control challenges and dynamics that may be useful for negotiation purposes.

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

# Scope



# Categories of conventional arms

## United Nations Register of Conventional Arms: the seven categories

Throughout the four ATT Preparatory Committee meetings there has been considerable debate among UN Member States concerning the role of the seven obligatory categories of arms of the United Nations Register of Conventional Arms (UNRCA) in a future ATT. Some States have advocated that the Treaty should only include the seven categories in the Treaty, while others have argued for a more comprehensive conventional arms list.

The seven UNRCA categories are defined as follows:<sup>1</sup>



### ***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**

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.



### **V. Attack helicopters**

Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons 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.



### **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 launchers**

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



The UNRCA is a voluntary arms transfer reporting instrument that was established in 1991. The rationale is that: 'If States behave in a predictable and transparent way, including being open about arms transfers, this could build confidence among them and help prevent conflict ... Transparency in armaments can help determine if excessive or destabilizing accumulations of arms is taking place. Being open about armaments may encourage restraint in the transfer or production of arms, and can contribute to preventive diplomacy.'<sup>2</sup> To date, more than 170 States have submitted reports to the UNRCA.<sup>3</sup>

The ATT Preparatory Committee meeting Chair's non-paper describes the seven UNRCA categories in broader terms as follows:<sup>4</sup>

1. For the purposes of this Treaty, conventional arms shall include any items that fall within the following categories:
  - (a) Tanks
  - (b) Military vehicles
  - (c) Artillery systems
  - (d) Military aircraft (manned or unmanned)
  - (e) Military helicopters (manned or unmanned)
  - (f) Naval vessels (surface and submarine vessels armed or equipped for military use)
  - (g) Missiles and missile systems (guided or unguided)
  - (h) Small arms
  - (i) Light weapons
  - (j) Ammunition for use with weapons referred to in Paragraphs (a) to (i)
  - (k) Parts or components specially and exclusively designed for any of the categories set out in Paragraphs (a) to (j)
  - (l) Technology and equipment specially and exclusively designed and used to develop, manufacture or maintain any of the items in the categories set out in Paragraphs (a) to (k).

In the context of negotiating an ATT, the implications of such broader descriptions of the seven UNRCA categories are that a wider range of conventional arms (beyond the weight and calibre thresholds of the current UNRCA categories) could potentially be included in the Treaty. Such broad descriptions in the Chair's non-paper are arguably the result of statements by some States during the Preparatory Committee meetings for the ATT to take cognisance of more recent technological advances in conventional weapons technology. There have also been concerns that the categories in the UNRCA are outdated, and if included verbatim, may allow for loopholes in the regulation of the international arms trade.

In addition to this, arms control analysts and activists have indicated that the UNRCA categories do not include other varieties of the following:<sup>5</sup>

- Tank transporters; recovery vehicles; amphibious and deep-water fording vehicles; armoured bridge-launching vehicles
- Military vehicles such as light armoured tactical vehicles
- Military aircraft and helicopters for reconnaissance and/or have been adapted to carry weapons and munitions
- Naval vessels or submarines with a surface displacement of between 150 and 500 metric tons
- Surface effect vessels
- Cannons and anti-aircraft weapons with a calibre of less than 75 millimetres, and
- Ammunition, bombs and short-range missiles, other than those included as a key component part of a listed conventional arm.

The difference between the description of the categories in the UNRCA and the Chair's non-paper has the potential to result in confusion during the ATT negotiations. Hence it is imperative that UN Member States achieve consensus on the descriptions (and possibly even definitions) of these seven categories in the early stages of the 2012 ATT conference.

## Small arms and light weapons (7+1)

Throughout the ATT Preparatory Committee meeting a large majority of States (136) have expressed strong support for the inclusion of small arms and light weapons (SALW) in the scope of the ATT. Only two African States have expressed an objection to SALW inclusion, while more than 50 African States have expressed their support for such inclusion.<sup>6</sup>

There has also been significant commitment from UN Member States to report on SALW transfers within the context of the UNRCA over

the past decade, as in 2003 the UN General Assembly resolved that the Register should allow for Member States to voluntarily report on their SALW transfers (as background information to their reports). Since 2003, 80 UN Member States have reported on SALW imports and exports. SALW have been defined as follows:<sup>7</sup>



### **Small arms**

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



### **Light weapons**

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 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.

In the preliminary ATT deliberations and discussions relating to scope, the term '7+1' has been used to refer to the inclusion of the seven UNRCA categories as well as SALW in the scope of an ATT.

## **Ammunition (7+1+1)**

There has been considerable support for the inclusion of ammunition in the scope of an ATT. This would entail ammunition for both SALW and major conventional weapons. During Preparatory Committee meetings more

than 120 States (of which more than 50 were African States) have indicated a preference for inclusion. Twelve States have indicated an objection to the inclusion of ammunition.<sup>8</sup> Ammunition can be defined as follows:

### **Ammunition**

According to the International (UN) Ammunition Technical Guideline (2011), ammunition for conventional arms is ‘a complete device (e.g. missile, shell, mine, demolition store etc.) charged with explosives, propellants, pyrotechnics, initiating composition ... for use in connection with offence, or defence or training, non-operational purposes, including those parts of weapons systems containing explosives’.<sup>9</sup> The terms ‘ammunition’ and ‘munitions’ tend to be used interchangeably.



Ammunition typically includes cartridges (rounds for small arms); shells and missiles for light weapons; anti-personnel anti-tank grenades; landmines; and mobile containers with missiles or shells for single action anti-aircraft and anti-tank systems.

In the preliminary ATT deliberations and discussions relating to scope, the term ‘7+1+1’ has been used to refer to the inclusion of the seven UNRCA categories as well as SALW and ammunition in the scope of an ATT.

### **Parts/components, technology and equipment**

The 2008 report of the group of governmental experts (GGE) on the feasibility of an ATT highlighted the globalized nature of the arms trade, with it becoming progressively common practice for weapon systems and related components to be manufactured in cooperation, under joint ventures and licensing, with most arms-producing States ‘increasingly relying on technology transfers and upgrades from external sources, rather than from their own indigenous production’.<sup>10</sup> The dominant trend is for States, where appropriate, not to import ‘off-the-shelf’ arms, but rather to negotiate that their domestic industry assemble parts of or the entire system using external technology under license from the exporting State. In essence, technology

transfer entails the sale of the 'know-how or knowledge that could be used to independently develop or design military equipment or components and/or weapon systems' by an exporting State to an importing State.<sup>11</sup>

Arms-related technology transfers have the potential to empower recipient States, where appropriate domestic capacity exists, to eventually manufacture the imported arms that were linked to the technology transfer independently. There have been instances where some recipient States have exported such arms to States and non-State actors that pose a threat to international peace and security. There have also been cases where States that previously benefited from technology transfers have had UN Security Council arms embargoes imposed on them, and have subsequently used this transferred knowledge, expertise and capacity to manufacture arms domestically. In addition, the GGE report on the feasibility of an ATT observed that the trade in illegal arms market 'frequently come from unlicensed production'.<sup>12</sup>

The globalization and increased sophistication of the weapons manufacturing sector has resulted in many types of completed weapon systems being comprised of components and parts manufactured within a variety of States. This arrangement has economic and financial benefits, but also has serious implications for international arms control processes. The reason for this is that core weapon parts and components, outside of an arms manufacturing and transfer agreement, could be used by unscrupulous parties to assemble and transfer arms in non-compliance with the provisions of a future ATT. There has also been evidence suggesting that some arms manufacturers have in the past purposefully exported arms in component form to avoid the imposition of more rigorous national arms export controls.

Consequently, the ATT Preparatory Committee meeting Chair's non-paper recommends the inclusion of parts or components, as well as technology and equipment specially and exclusively designed and used to develop, manufacture or maintain tanks; military vehicles; artillery systems; military aircraft (manned or unmanned); military helicopters (manned or unmanned); naval vessels (surface and submarine vessels armed or equipped for military use); and missiles and missile systems

(guided or unguided). Seventy-three States have expressed strong support for the inclusion of other conventional arms, including parts, components and related equipment, while nine States, two of which are in Africa, have objected to their inclusion.<sup>13</sup>

## **Less lethal arms and ammunition**

Some States and civil society organizations have suggested that less lethal types of arms and ammunition (in addition to a range of other security-related equipment) be included in the scope of a future ATT. Such arms and ammunition are typically used for policing, domestic security and riot control purposes. The main types of such arms and ammunition include electric shock equipment; kinetic impact weapons (launched projectiles); launchers for chemical irritants; and kinetic impact munitions.<sup>14</sup>

### ***Electric shock equipment***

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

### ***Kinetic impact weapons***

Launched kinetic impact weapons are similar to conventional ammunition but are considered less lethal as they are designed to cause blunt trauma on impact. Such devices can be hand-thrown or weapon-launched and can include rubber, plastic, wooden, foam/sponge rounds, rubber belts and beanbag rounds. These are fired through a number of different types of launchers and vary between 'direct fire' impact rounds and 'indirect fire' (often known as 'skip fire') rounds. 'Direct fire'

rounds have been designed to be fired directly at individuals. 'Indirect or skip fire' rounds are designed to be fired at the ground in front of an individual – they then rebound into him or her.<sup>15</sup>

### ***Launchers for chemical irritants, kinetic impact and other munitions***

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



# Types of international transactions or activities

## Four general types of international transactions or activities

The GGE on the ATT (2008) suggested that the following transactions or activities be included in the scope of an ATT: ‘exports, imports, transfers, re-exports, transit, trans-shipment, licensing, transportation, technology transfer and manufacturing and foreign licensed production, as well as countering illegal re-exports, unlicensed production and transfers, illicit arms brokering, and transfers of arms to non-State actors’.<sup>16</sup>

During the ATT Preparatory Committee meetings there appears to have been significant support for an ATT to cover the following four consolidated transactions or activities, which are defined in Annex A of the Chair’s non-paper from the ATT Preparatory Committee meetings:

- **International arms transfers:** International arms transfers (including import, export, re-export, temporary transfer, transshipment transit, transport, leases, loans, and gifts of conventional arms); the transfer of title or control over the equipment as well as the physical movement of the equipment into or from a national territory;
- **Brokering:** The facilitation by an intermediary who brings together relevant parties and arranges or facilitates a potential transaction of conventional arms in return for some form of benefit, whether financial or otherwise;
- **Manufacture under foreign license:** An agreement whereby a person or entity in the exporting State grants a person or entity in the importing State an authorization to manufacture conventional arms which involves technology transfer or the use of technology or conventional arms previously supplied by the exporting State;

- **Technology transfer:** The export, by tangible or intangible means, of information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of conventional arms.<sup>17</sup>

Nonetheless, there is no clear consensus among States on whether the obligations under a future ATT will be consistent for all types of transactions and activities. This is especially relevant with regards to arms transfer criteria.

## Arms transfer focus

As indicated above, arms transfers are composed of a number of key sub-activities or sub-transactions, six of which are defined in broad, generic terms below.

- **Import:** To bring or transfer registration/ownership of conventional arms from a place outside of the territory of that State;
- **Export:** To send or take or transfer registration/ownership of conventional arms from a State to any place outside of the territory of that State;
- **Re-export:** To send previously imported conventional arms (in the same condition) to another State or territory other than that from which they were originally imported;
- **Temporary transfer:** To bring or send conventional arms from one State to another place that will then be returned to the State of origin. Such transfers typically used for demonstration, short-term loan and military/peacekeeping exercises;
- **Transit:** Conventional arms that have been dispatched from the place of export by the exporting State but have not yet been received by the importing State. Arms-in-transit entail arms entering and leaving an intermediary State prior to entering the territory of the recipient State. Arms in transit typically take place under the supervision of the customs authority;
- **Transshipment:** Transshipment entails the transfer of conventional arms from the exporting State to the importing State via other

destinations, and involves a change or changes in the type(s) of transport during the transfer process. Transshipment usually takes place in transport hubs and/or designated customs areas.<sup>18</sup>

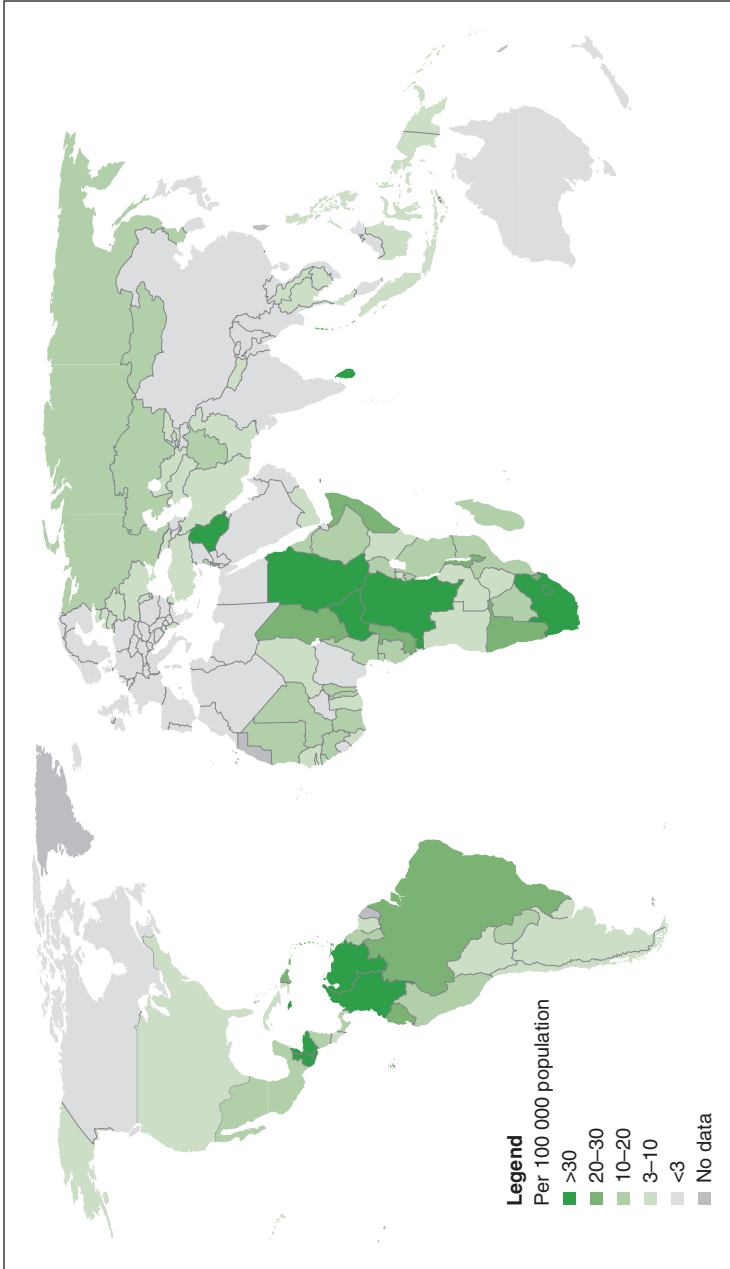
# Considerations for African States

Below are some considerations that may be useful for African States to take into account during the ATT negotiations relating to scope. It is important to note that discussions among African government experts in Lomé, Togo, in September 2011 resulted in the compilation of a 'Draft African Union Common Position on an Arms Trade Treaty'. This document closely replicates the scope categories of the ATT Preparatory Committee meeting Chair's non-paper, both in terms of the types of arms and transactions/activities to be potentially addressed by an ATT.

## Burden of armed violence

According to the *Global burden of armed violence 2011* report,<sup>19</sup> an estimated 526 000 people died as a result of lethal violence between 2004 and 2009, with 28 African States being ranked in the top 58 countries experiencing lethal violence during that period. Map 1 presents a clear indication of the problem of lethal violence in Africa relative to North America, Europe, Asia and Oceania. In many of these African countries, SALW (and the appropriate ammunition) were among the main instruments of violence. In most cases, with possibly the exception of South Africa (which has a significant domestic arms industry), the SALW and ammunition would have originally been transferred from foreign territories to these African States either legally or illegally. It is worth noting that almost all of the States that have expressed an objection to the inclusion of SALW and ammunition in the ATT do not appear on the list of the top 58 countries experiencing lethal violence.

**Map 1** Average annual violent death rates per 100 000, 2004–2009



Source *Global burden of armed violence 2011: lethal encounters*, <http://www.genevadeclaration.org/file-admin/docs/GBAV2/GBAV2011-Ex-summary-ENG.pdf> (accessed 13 June 2012).

## Arms transfers to Africa and within Africa

As Table 1 indicates, African States have been recipients of most categories of arms that appear in the UNRCA. In addition, the voluntary reports on SALW by some States reveal that SALW is a substantial component of global arms transfers to African States. Added to this, much of the trade in SALW is unreported.

**Table 1** Major conventional arms reported exports to African States, 2005–2010

Exporter	Destination	Type of conventional arms
Austria	Algeria	Small arms
	Egypt	Small arms
	Kenya	Small arms
	Mauritius	Small arms
	Morocco	Small arms
	Namibia	Small arms
	South Africa	Small arms
	Tunisia	Small arms
	Tanzania	Small arms
	Zambia	Small arms
Belarus*	Djibouti	Attack helicopters
	Eritrea	Large calibre artillery
	Nigeria	Attack helicopters
	Sudan	Combat aircraft; armoured combat vehicles
	Uganda	Attack helicopters; battle tanks
Bulgaria	Algeria	Small arms
	Botswana	Light weapons
	Chad	Large calibre artillery
	Equatorial Guinea	Light weapons
	Egypt	Small arms; light weapons
* Does not report on SALW to the UNRCA.		

Exporter	Destination	Type of conventional arms
Bulgaria	Eritrea	Large calibre artillery; battle tanks; armoured combat vehicles
	Ethiopia	Light weapons
	Mali	Armoured combat vehicles; attack helicopters
	Nigeria	Light weapons; small arms
	Republic of Congo	Light weapons
	South Africa	Small arms; light weapons
	Uganda	Large calibre artillery; small arms; light weapons
Canada	Egypt	Small arms
	Nigeria	Armoured combat vehicles
	Sudan	Armoured combat vehicles
China*	Chad	Armoured combat vehicles
	Democratic Republic of Congo	Armoured combat vehicles
	Gabon	Armoured combat vehicles
	Ghana	Armoured combat vehicles; combat aircraft
	Kenya	Armoured combat vehicles
	Namibia	Armoured combat vehicles; combat aircraft
	Niger	Large calibre artillery
	Nigeria	Combat aircraft
	Republic of Congo	Armoured combat vehicles
	Rwanda	Armoured combat vehicles; large calibre artillery
	Tanzania	Combat aircraft; armoured combat vehicles
	Zimbabwe	Combat aircraft
Czech Republic	Equatorial Guinea	Armoured combat vehicles
	Mali	Combat aircraft
	Sudan	Armoured combat vehicles
* Does not report on SALW to the UNRCA.		

Exporter	Destination	Type of conventional arms
France	Cameroon	Armoured combat vehicles
	Chad	Armoured combat vehicles; light machine guns
	Gabon	Small arms
	Mali	Small arms
	Senegal	Small arms
	South Africa	Small arms
	Tunisia	Small arms and light weapons
Germany	Central African Republic	Small arms
	Chad	Small arms
	Egypt	Small arms
	Morocco	Combat aircraft
	South Africa	Warships; small arms
	Republic of Congo	Small arms
	Swaziland	Small arms
Italy	Algeria	Small arms
	Botswana	Small arms
	Burkina Faso	Small arms
	Cameroon	Small arms
	Cape Verde	Small arms
	Chad	Small arms
	Egypt	Small arms
	Ethiopia	Small arms
	Kenya	Small arms
	Libya	Small arms
	Mauritius	Small arms
	Morocco	Small arms
	Namibia	Small arms
	Niger	Small arms
	Nigeria	Large calibre artillery
Senegal	Small arms	
* Does not report on SALW to the UNRCA.		



Exporter	Destination	Type of conventional arms
Italy	South Africa	Small arms
	Tunisia	Small arms
	Tanzania	Small arms
	Zambia	Small arms
Netherlands	Egypt	Large calibre artillery; armoured combat vehicles
	Kenya	Small arms
	South Africa	Small arms
	Tanzania	Small arms
Poland	Chad	Small arms
Romania	Benin	Small arms
	Burkina Faso	Large calibre artillery; small arms; light weapons
	Liberia	Small arms
	Rwanda	Small arms
Russian Federation*	Algeria	Armoured combat vehicles; combat aircraft; battle tanks; missiles and missile launchers
	Burkina Faso	Attack helicopters
	Egypt	Missiles and missile launchers
	Ethiopia	Attack helicopters
	Libya	Armoured combat vehicles
	Niger	Attack helicopters
	Senegal	Attack helicopters
	Sudan	Attack helicopters; armoured combat vehicles
	Uganda	Battle tanks
Serbia	Algeria	Small arms and light weapons
	Burkina Faso	Small arms
	Cameroon	Small arms and light weapons
	Central African Republic	Light weapons
	Egypt	Small arms and light weapons
	Equatorial Guinea	Small arms and light weapons
* Does not report on SALW to the UNRCA.		

Exporter	Destination	Type of conventional arms
Serbia	Ghana	Small arms
	Kenya	Light weapons
	Libya	Small arms
	Mozambique	Small arms
	Namibia	Small arms
	Republic of Congo	Small arms
	Rwanda	Small arms
	South Africa	Small arms
	Uganda	Small arms
South Africa*	Algeria	Armoured combat vehicles
	Angola	Armoured combat vehicles
	Burkina Faso	Armoured combat vehicles
	Burundi	Armoured combat vehicles
	Chad	Armoured combat vehicles
	Gabon	Combat aircraft
	Ghana	Armoured combat vehicles
	Malawi	Armoured combat vehicles
	Nigeria	Armoured combat vehicles
	Rwanda	Armoured combat vehicles
	Senegal	Armoured combat vehicles
	Sudan	Armoured combat vehicles
	Tanzania	Armoured combat vehicles
	Uganda	Armoured combat vehicles
Zambia	Armoured combat vehicles	
Switzerland	Egypt	Small arms and light weapons
	Ghana	Small arms
	South Africa	Small arms and light weapons
Turkey	Burkina Faso	Small arms
	Egypt	Small arms
	Ethiopia	Small arms
	Ghana	Small arms
	Kenya	Small arms
* Does not report on SALW to the UNRCA.		

Exporter	Destination	Type of conventional arms
Turkey	Morocco	Small arms
	Namibia	Small arms
	Nigeria	Armoured combat vehicles
	São Tomé and Príncipe	Small arms
	Senegal	Small arms
	South Africa	Small arms
	Tanzania	Small arms
	Uganda	Small arms
	Zambia	Small arms
Ukraine	Algeria	Battle tanks; large calibre artillery
	Chad	Armoured combat vehicles; combat aircraft; attack helicopters; small arms
	Democratic Republic of Congo	Battle tanks; armoured combat vehicles; large calibre artillery; attack helicopters; small arms; light weapons
	Egypt	Combat aircraft
	Equatorial Guinea	Combat aircraft; attack helicopters
	Kenya	Battle tanks; large calibre artillery; small arms; light weapons
	Nigeria	Attack helicopters; Armoured combat vehicles
	Republic of Congo	Combat aircraft; attack helicopters
	South Africa	Combat aircraft
	Sudan	Battle tanks; armoured combat vehicles
	Uganda	Combat aircraft; armoured combat vehicles; small arms
United Kingdom	Algeria	Attack helicopters
	Botswana	Small arms
	Cameroon	Attack helicopters
	Djibouti	Small arms and light weapons
	Egypt	Light weapons
	Ghana	Attack helicopters; small arms
	Kenya	Small arms
* Does not report on SALW to the UNRCA.		

Exporter	Destination	Type of conventional arms
United Kingdom	Lesotho	Small arms and light weapons
	Liberia	Missiles and missile launchers
	Libya	Small arms
	Malawi	Small arms
	Mauritius	Small arms
	Morocco	Large calibre artillery; small arms
	Mozambique	Small arms; light weapons
	Namibia	Small arms
	Seychelles	Small arms; light weapons
	South Africa	Attack helicopters; battle tanks; combat aircraft; missiles and missile launchers; small arms; light weapons
	Swaziland	Light weapons
	Tanzania	Small arms
	Tunisia	Large calibre artillery; small arms
	Zambia	Attack helicopters; small arms
United States*	Egypt	Large calibre artillery; battle tanks; war-ships; armoured combat vehicles
	Morocco	Armoured combat vehicles; combat aircraft
	Nigeria	Armoured combat vehicles
	South Africa	Large calibre artillery; attack helicopters
	Tunisia	Armoured combat vehicles

\* Does not report on SALW to the UNRCA.

**Source** United Nations Register of Conventional Arms, <http://www.un-register.org/HeavyWeapons/Index.aspx?Col=ZA&year=0> (accessed 13 June 2012).

In terms of the illegal conventional arms trade, there is strong evidence that the transfers of such illegal arms into and throughout Africa have predominantly comprised SALW and ammunition. In addition, these arms were typically transferred to territories characterised by violent inter- or intra-state conflict and in many cases the transfers were in violation of UN Security Council arms embargoes.

Arms brokering activities have been central to the illicit arms trade in Africa. Historically foreign and African businessmen have facilitated

the supply of arms to genocide forces in Central Africa, rebel groups in Southern and Western Africa, and a number of repressive regimes. In recent years, arms brokers have been implicated in the violation of UN Security Council arms embargos against Somalia, Côte d'Ivoire, as well as rebel groups and militias in the eastern Democratic Republic of Congo (DRC) and the Darfur region of Sudan.<sup>20</sup>

## Use of non-lethal arms and ammunition

There are legitimate and appropriate uses for non-lethal arms and ammunition by police, security and military forces, particularly in response to group violence such as rioting and looting. However, such arms and ammunition can be easily misused and violations of international human rights and humanitarian law can result. In addition, launched projectiles are often inaccurate and there is a high probability that uninvolved bystanders can be injured and killed when such ammunition is discharged. Even when used according to the manufacturer's guidelines, there have been numerous cases where launched projectiles have caused severe injuries and death.

There have been a significant number of cases in recent years of governments in Africa, and elsewhere, using non-lethal arms and ammunition in violation of international human rights law, such as to facilitate arbitrary arrests and detention, and violate the right to freedom of expression and assembly. There have also been cases (during periods of armed conflict) where state stockpiles of non-lethal arms and ammunition have been captured and used by rebel and militia groups.

## African subregional commitments

For more than 40 African states there are existing obligations based on legally binding regional conventions and protocols to regulate and monitor the trade in SALW and ammunition in their national territories. The specific regional requirements are set out below.

African SALW protocol/convention	Relevant articles
<p><b>Economic Community of West Africa States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials<sup>21</sup></b></p> <p>This Convention is legally binding for the following States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo</p>	<p><b>Article 3</b></p> <ol style="list-style-type: none"> <li>1. Member States shall ban the transfer of small arms and light weapons and their manufacturing materials into their national territory or from/through their national territory.</li> <li>2. Member States shall ban, without exception, transfers of small arms and light weapons to non-State actors that are not explicitly authorised by the importing Member.</li> </ol> <p><b>Article 4</b></p> <ol style="list-style-type: none"> <li>1. A Member State can request exemption from the provisions of Article 3.1 in order to meet legitimate national defence and security needs, or to participate in peace support or other operations in accordance with the decisions of the United Nations, African Union, ECOWAS, or other regional or sub-regional body of which it is a member.</li> <li>2. For the purpose of Paragraph 1 of this article, Member States shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons.</li> <li>3. Each Member State shall take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation of the documents can be verified and validated.</li> </ol>
<p><b>Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa<sup>22</sup></b></p> <p>This Protocol is legally binding for the following States: Burundi, Central Africa Republic, Democratic Republic of Congo (DRC), Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda</p>	<p><b>Article 3</b></p> <p>(c) States Parties undertake to incorporate in their national laws:</p> <p>(v) Provisions promoting legal uniformity and minimum standards regarding the manufacture, control, possession, import, export, re-export, transit, transport and transfer of small arms and light weapons.</p> <p><b>Article 10</b></p> <p>(a) Each State Party shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons.</p>

African SALW protocol/convention	Relevant articles
<p><b>Southern African Development Community (SADC) Protocol on Control of Firearms, Ammunition and Other Related Materials<sup>23</sup></b></p> <p>This Protocol is legally binding for the following States: Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p>	<p><b>Article 5</b></p> <p>3. State Parties further undertake to incorporate the following elements in their national laws as a matter of priority:</p> <ul style="list-style-type: none"> <li>(c) The co-ordination of procedures for the import, export and transit of firearm shipments;</li> <li>(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.</li> </ul>
<p><b>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<sup>24</sup></b></p> <p>This Convention is yet to enter into force, but has the support of the Member States of the Economic Community of Central African States: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, DRC, Equatorial Guinea, Gabon and São Tomé and Príncipe</p>	<p><b>Article 3</b></p> <ol style="list-style-type: none"> <li>1. States Parties shall authorize the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from other States.</li> <li>2. The only grounds for authorizing the transfers are that they are necessary in order to: <ul style="list-style-type: none"> <li>(a) Maintain law and order, or for defence or national security purposes;</li> <li>(b) Participate in peacekeeping operations conducted under the aegis of the United Nations, the African Union, the Economic Community of Central African States or other regional or subregional organizations of which the State Party concerned is a member.</li> </ul> </li> </ol>

All four African instruments make extensive reference to the need to carefully regulate brokers and brokering activities.





# Criteria



# International, regional and subregional obligations of States

During the deliberations in preparation for negotiating an ATT there has been widespread support among States that, as a minimum, States Parties to an ATT should not authorize conventional arms transfers from, to or through territories under its jurisdiction if the transfers violate:

- Measures adopted by the Security Council acting under Chapter VII of the Charter of the UN, in particular arms embargoes
- Relevant international, regional or subregional obligations or commitments regarding the control and regulation of international transfers of conventional arms.

The above commitment has been included in the ATT Preparatory Committee meeting Chair's non-paper as a key component in the section on criteria. Below is a description and analysis of arms embargoes in relation to the UN Security Council, as well as to regional and subregional organisations.

## UN Security Council arms embargoes<sup>25</sup>

### *Overview of UN Security Council arms embargoes*

An arms embargo is a type of sanction that seeks to prevent the transfer of arms and military-related material to a specific State or non-State actor. The UN Security Council imposes arms embargoes against States or non-State actors that are considered to pose a significant threat to international peace and security. Arms embargoes are based on the assumption that the transfer of arms and military-related material into the identified territories will have a destabilizing effect. An arms embargo can either be adopted independently or in conjunction with

broader sanctions, such as travel bans, asset freezes and natural resource embargoes.

The UN Security Council is the only international body with the authority and power to declare and enforce arms embargoes that are mandatory for all UN Member States (in terms of Article 25 in Chapter 5 of the UN Charter). The reason is that all UN members have pledged in Article 2(5) of the UN Charter to 'refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action'.<sup>26</sup> This creates a legal obligation on Member States to establish legislative and administrative controls with respect to arms transfers between their borders in order to be in a position to enforce UN arms embargoes. Article 41 of the UN Charter specifically allows for embargoes to be enforced by UN Security Council decisions to combat both international aggression and government action that is a threat to international peace. The UN General Assembly also has the authority to establish arms embargoes, but such instruments are non-mandatory.

### ***Enforcement of UN Security Council arms embargoes***

Each UN Security Council arms embargo is administered and managed by a specific sanctions committee which is created by, and directly subordinate to, the UN Security Council. The work of all the sanctions committees is supported by a single secretariat which is located in the UN Department of Political and Security Council Affairs in New York. The actual implementation of each arms embargo is not enforced by means of the actions of the UN (the organization), but rather UN Member States are required to take appropriate measures to ensure the implementation of the arms embargo in line with the relevant UN Security Council resolution.

Following the imposition of each arms embargo, the UN secretariat requests, on an ad hoc basis, information from Member States about the measures they have pursued to implement the embargo. Where there have been systematic violations of mandatory arms embargoes, the UN Security Council often establishes independent panels or groups of experts to investigate embargo violations and make recommendations to

the relevant sanctions committee on how to strengthen the specific arms embargo regime.

### **Exemptions to UN Security Council arms embargoes**

In a number of cases, elements of UN Security Council arms embargoes have been amended to allow States to provide training, military equipment and arms to post-conflict governments. However, those States that seek to provide such support and arms transfers are typically required to formally request an exemption to the arms embargo from the relevant UN Security Council sanctions committee. Requests for exemptions are usually made in writing via the State's Permanent Mission to the UN. In some cases written notification to the relevant sanctions committee of intended arms transfers is the only requirement. For example, numerous exemptions have been made to the arms embargoes relating to Côte d'Ivoire, the DRC, Liberia and Somalia.

### **Current UN Security Council arms embargoes**

As of 1 June 2012, the following UN Security Council arms embargoes were in place:

**Table 2** UN Security Council arms embargoes in place, 1 June 2012

<b>Embargo target</b>	<b>Entry into force</b>	<b>Establishing UN Security Council Resolution</b>
Al-Qaeda and associated individuals and entities	16 January 2002	1390
Taliban	16 January 2002	1390
Côte d'Ivoire	15 November 2004	1572
DRC (non-governmental forces – NGF)	28 July 2003	1493
Eritrea	23 December 2009	1907
Iraq (NGF since 2004)	6 August 1990	661
Iran	23 December 2006	1737
Lebanon (NGF)	11 August 2006	1701
Liberia (NGF since 2009)	19 November 1992	788

Embargo target	Entry into force	Establishing UN Security Council Resolution
Libya	26 February 2011	1970
North Korea (DPRK)	14 October 2006	1718
Somalia	23 January 1992	733
Sudan (Darfur region)	30 July 2004	1556

Source SIPRI, Arms embargo database, <http://www.sipri.org/databases/embargoes> (accessed 14 June 2012).

## Regional or subregional arms control obligations

States, by virtue of their membership of regional and subregional organisations, may be obliged to adhere to conventional arms transfer control requirements and/or decisions by these regional and subregional organisations. Some of these organisations may impose arms embargoes on an ad hoc basis, while others stipulate restrictions and prohibitions on the transfer of certain types of conventional arms.

### *Regional subregional arms embargoes*

The European Union (EU) is the only continental organisation that has instituted arms embargoes against other States or non-State actors through Common Positions adopted unanimously by the EU Council in the context of the framework of the EU Common Foreign and Security Policy (CFSP).<sup>27</sup>

The African Union (AU) does not have an extensive history of imposing arms embargoes against African States, but on occasion supports the implementation of UN arms embargoes through official statements and communiqués. The only exception has been the case of Togo in 2005, where the AU instituted an arms embargo against this State following the declaration of an ECOWAS arms embargo. AU arms embargoes are also non-mandatory.

ECOWAS (as indicated above) is the only African subregional organisation to have initiated specific arms embargoes against African States, with the main cases being Togo (2005) and Guinea (2009). In most other

subregional organisations in Africa it is stipulated in the relevant security instruments that Member States should adhere to the obligations and requirements of UN Security Council arms embargoes.

There has been an occasion where a consortium of African States independently devised and implemented an arms embargo. In August 1996 the DRC, Eritrea, Ethiopia, Kenya, Rwanda, Tanzania, Uganda and Zambia instituted an arms embargo against Burundi, which was in a state of civil war at the time.

### **Other conventional arms control obligations**

ECOWAS is the only African subregional organization that, through its legally binding SALW instrument, requires Member States to:

Ban the transfer of small arms and light weapons and their manufacturing materials into their national territory or from/through their national territory ... [and that] Member States shall ban, without exception, transfers of small arms and light weapons to Non-State Actors that are not explicitly authorised by the importing Member.<sup>28</sup>

Member States can request exemptions from this SALW ban on the grounds of 'legitimate national defence and security needs', or to participate in operations in line with the decisions of the UN, AU, ECOWAS, or other regional or subregional bodies.<sup>29</sup>

Similarly, the Economic Community of Central African States (ECCAS) SALW convention (which is yet to enter into force) stipulates that the only purposes for which SALW transfers should be authorised are to 'maintain law and order, or for defence or national security purposes; [and] participate in peacekeeping operations'. In addition, the Convention stipulates that arms transfers to non-State armed groups should be prohibited.<sup>30</sup>

# Arms transfers: risks for peace and security

The principal purpose of the UN Charter is:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.<sup>31</sup>

There has been widespread acknowledgment by States that, under certain circumstances, arms transfers would have the significant potential to undermine international peace and security. Consequently, many arms-exporting States have established arms export criteria in addition to the mandatory requirement to enforce UN Security Council arms embargoes. The ATT Preparatory Committee meeting Chair's non-paper, based on inputs from a variety of States, has presented the following arms transfer criteria for consideration by States:<sup>32</sup>

A State Party shall not authorize a transfer of conventional arms if there is a substantial risk that those conventional arms would:

1. Be used in a manner that would seriously undermine peace and security or provoke, prolong or aggravate internal, regional, subregional or international instability;
2. Be used to commit or facilitate serious violations of international humanitarian law;



3. Be used to commit or facilitate serious violations of international human rights law;
4. Be used to commit or facilitate serious violations of international criminal law, including genocide, crimes against humanity and war crimes;
5. Seriously impair poverty reduction and socio-economic development or seriously hamper the sustainable development of the recipient State;
6. Be diverted to unauthorized end-users for use in a manner inconsistent with the principles, goals and objectives of the Treaty, taking into account the risk of corruption;
7. Be used in the commission of transnational organized crime as defined in the United Nations Convention against Transnational Organized Crime;
8. Be used to support, encourage or perpetrate terrorist acts.

Below is further information and analysis relating to some of the above criteria components.

## **Violations of international humanitarian law** <sup>33</sup>

International humanitarian law (IHL) is a set of rules with the objective of limiting the negative effects of armed conflict. IHL is a component of international law, which is the body of rules governing relations between States derived from treaties or conventions; customary rules, which consist of State practice considered by States as legally binding; and in general principles.

IHL seeks to protect individuals who are not, or are no longer participating in, the hostilities; and constrain the means and methods of warfare. IHL is often referred to as the law of armed conflict and is primarily prescribed by the four Geneva Conventions of 1949; the Additional Protocols of 1977 relating to the protection of victims of armed conflict;

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

- The Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction
- The Conventional Weapons Convention and its five protocols
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention)
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction
- The Rome Statute of the International Criminal Court
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- The Convention on Cluster Munitions

IHL exclusively applies to conditions of armed conflict. It does not relate to internal tensions or disturbances, such as isolated acts of violence (such as riots). It only comes into effect from the point at which an international or internal armed conflict is initiated and then is uniformly applied to all conflicting parties irrespective of which parties were responsible for igniting the armed conflict. IHL seeks to protect those who do not take part in the actual armed conflict, such as civilians and medical and religious military personnel. It also provides for protection of those individuals who have ceased to participate in the conflict, such as wounded, shipwrecked and sick combatants, and prisoners of war.

IHL also seeks to prohibit those means and methods of warfare which fail to discriminate between those taking part in the fighting and those, such as civilians, who are not; cause excessive injury or unnecessary suffering; and cause severe or long-term damage to the environment.

Grave breaches (or violations) of IHL, in terms of the Geneva Conventions (1949) and Additional Protocol I (1977), are as follows:<sup>34</sup>

- Wilful killing
- Torture or inhumane treatment, including biological experiments
- Wilfully causing great suffering or serious injury to body or health
- Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly
- Compelling a prisoner of war to serve in the forces of the hostile Power
- Wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in the Convention
- Compelling a protected person to serve in the forces of the hostile Power
- Wilfully depriving a protected person of the rights of fair and regular trial prescribed in the Convention
- Unlawful deportation or transfer or unlawful confinement of a protected person
- Taking of hostages
- Making the civilian population or individual civilians the object of attack
- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects
- Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects
- Making non-defended localities and demilitarized zones the object of attack
- Making a person the object of an attack in the knowledge that he/she is *hors de combat*
- The perfidious use of the distinctive emblem of the red cross, red crescent or other protective signs
- The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or

transfer of all parts of the population of the occupied territory within or outside this territory

- Unjustifiable delay in the repatriation of prisoners of war or civilians
- Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial domination
- Making the clearly recognized historical monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within a framework of a competent international organization, the object of attack, causing as a result the extensive destruction thereof, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives or used by the adverse Party in support of its military effort
- War crimes

## Violations of international human rights law

IHRL is the component of international law that seeks to promote and protect human rights globally. It is principally derived from human rights treaties, conventions and agreements between States, and customary international law. IHR is closely related to but distinct from IHL due to the similarity in substantive norms, but is regulated by different legal frameworks and relates to the relationship between States and individuals in non-war circumstances.

International human rights law also applies during times of armed conflict and is not displaced by the application of IHL. The two bodies of law operate concurrently and at times IHL can be directly applied in situations of armed conflict.<sup>35</sup> The International Court of Justice has affirmed that human rights law, including economic, social and cultural rights, continues to apply in situations to which IHL is applicable.<sup>36</sup> The Human Rights Committee has also affirmed that in situations of armed conflict, 'both spheres of law are complementary, not mutually

exclusive'.<sup>37</sup> Decisions concerning transfers of conventional arms, particularly to States involved in armed conflict, must therefore include not only consideration of the recipient's respect for IHL but must also consider whether there is a substantial risk that a transfer will be used to violate human rights.

IHRL establishes obligations on States to respect, protect and fulfil human rights. The obligation to respect means that States must refrain from undermining or restricting the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.<sup>38</sup>

In addition to their primary obligations to realize and promote human rights pursuant to their treaty law obligations, States are responsible for the actions of their agents (such as police officers and soldiers).<sup>39</sup> They also have a responsibility to protect persons from conduct involving abuses by private actors, including companies, whether or not those actors are acting under the control of the state. Such protection involves the exercise of due diligence, including taking measures to prevent human rights abuses by private actors that impair the enjoyment of human rights of anyone within its territory or subject to its jurisdiction.

The cornerstone of international human rights law is the Universal Declaration of Human Rights (UDHR), which was adopted by UN General Assembly in 1948. This document outlines the basic civil, political, economic, social and cultural rights that should be enjoyed by all human beings. It is now widely accepted as the fundamental norms of human rights that States should respect and protect.

There are nine core international human rights treaties. Some of the treaties are supplemented by optional protocols dealing with specific concerns:

- The International Convention on the Elimination of All Forms of Racial Discrimination
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights

- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- The International Convention for the Protection of All Persons from Enforced Disappearance
- The Convention on the Rights of Persons with Disabilities

International human rights law derives from at least two major sources: customary international law, as evidenced by general practice; and treaty law. In many cases there is considerable overlap between the customary international law obligations of a State in relation to human rights and its obligations under a treaty which it has accepted. Customary rights include the prohibition against torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions,<sup>40</sup> disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

## **Violations of international criminal law**

International criminal law (ICL) is a body of international law that seeks to prohibit and prosecute the perpetration of serious atrocities. The core areas of ICL focus are genocide, war crimes, crimes against humanity and war of aggression. Currently, the predominant ICL instrument is the Rome Statute of the International Criminal Court, a treaty that established the International Criminal Court in 1998 (and entered into force in 2002).

The Rome Statute establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted

commission of a crime, including by providing the means for its commission.<sup>41</sup> Providing the weapons used to commit one of the crimes for which the ICC has jurisdiction may give rise to individual criminal responsibility.

### Genocide

In terms of Article 6 of the Rome Statute<sup>42</sup> ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group

### Crimes against humanity

In terms of Article 7 of the Rome Statute,<sup>43</sup> ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

Act	Further details
Murder	
Extermination	Includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population
Enslavement	Means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children
Deportation or forcible transfer of population	Means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law

Act	Further details
Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law	
Torture	Means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions
Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity	'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law
Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court	'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity
Enforced disappearance of persons	Means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time
The crime of apartheid	Means inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime
Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health	

## War crimes

In terms of Article 8 of the Rome Statute,<sup>44</sup> 'war crimes' mean:



- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
- Wilful killing
  - Torture or inhuman treatment, including biological experiments
  - Wilfully causing great suffering, or serious injury to body or health
  - Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
  - Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power
  - Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial
  - Unlawful deportation or transfer or unlawful confinement; and
  - Taking of hostages
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities
  - Intentionally directing attacks against civilian objects, that is, objects which are not military objectives
  - Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the UN, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict
  - Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly

excessive in relation to the concrete and direct overall military advantage anticipated

- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives
- Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion
- Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the UN, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury
- The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory
- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives
- Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons
- Killing or wounding treacherously individuals belonging to the hostile nation or army
- Declaring that no quarter will be given
- Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war
- Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party

- Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war
- Pillaging a town or place, even when taken by assault
- Employing poison or poisoned weapons
- Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices
- Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions
- Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment
- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions
- Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law
- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions

- Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities
- (c) In the case of an armed conflict not of an international character, serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
  - Committing outrages upon personal dignity, in particular humiliating and degrading treatment
  - Taking of hostages
  - The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities
  - Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law
  - Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the UN, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict

- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives
- Pillaging a town or place, even when taken by assault
- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions
- Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities
- Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand
- Killing or wounding treacherously a combatant adversary
- Declaring that no quarter will be given
- Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons
- Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict

## Poverty reduction and socioeconomic development

Excessive government spending on arms imports has the potential to be counter-developmental. This dynamic typically occurs when, in the context of scarce financial resources, security and military considerations are prioritised by government over essential public services such as education, housing and health. There is also sound evidence to suggest

that poverty reduction efforts and socioeconomic progress can be undermined when arms transfers are used in armed violence, crime and severe human rights violations.<sup>45</sup>

Consequently, the UN Guidelines for International Arms Transfers (1996) prescribe that States should consider the promotion of social and economic development in the context of arms transfer decision-making. A number of arms-producing and/or exporting States, as well as some regional/subregional organisations, have also included socioeconomic considerations in their domestic arms transfer guiding principles or criteria.

## Risk of corruption

Owing to the sensitive nature of the international conventional arms trade, many arms transactions are pursued in a non-transparent fashion. Such a secretive environment has tended to heighten the potential for corruption and corrupt practices, especially where arms transfer controls are weak or underdeveloped. This in turn can contribute to the diversion of legal arms transfers into the illegal sector.

History is replete with cases where arms have either been legitimately transferred to a recipient State, which has subsequently transferred the arms to another State or non-State actor illegally (usually in contravention of the terms of the end-user certificate). Dishonest arms brokers have often been central to such transactions, where they have actively engaged in corrupt practices (often involving fraudulent documentation) to facilitate illicit arms transactions.

States are obligated to address corruption and corrupt practices through a variety of international conventions and treaties, such as the United Nations Convention against Corruption (2003). This instrument requires States to establish criminal and other offences relating to corruption and to investigate and prosecute corrupt activities. However, not all States have converted these international anti-corruption commitments into domestic legislation and practice.

## Transnational organized crime

The United Nations Convention against Transnational Organized Crime (UNTOC) of 2000<sup>46</sup> is the principal international instrument that seeks to frame State responses to transnational organized crime. It is augmented by three additional protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

The UNTOC does not contain a specific definition of ‘transnational organized crime’ and does not provide an inventory of the types of transnational organized crimes. It does however contain a definition of an ‘organized criminal group’, which is ‘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 or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit’.<sup>47</sup> The lack of specific definition arguably allows for the Convention to cover the evolving and changing nature of transnational organized crime.<sup>48</sup>

‘Transnational’ is also generally conceived within the Convention, with it essentially including offences perpetrated in more than one State, where the crimes could be planned or directed in a State, but are actually committed in other States and/or have a significant impact on other States. In short, the UNTOC seeks to respond to profit-motivated serious criminal activities, which have global implications.<sup>49</sup>

Arguably, the main types of transnational crimes may include (but are not limited to):

- Arms trafficking
- Drug trafficking
- Human trafficking
- Illegal immigration
- Trafficking in natural resources, wildlife (and wildlife products) and endangered species

- Illicit financial flows
- Cybercrime
- Piracy

## Terrorist acts

UN Member States recognize that terrorist acts are ‘activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism’.<sup>50</sup> However, UN Member States are yet to agree on a definition of ‘terrorism’.

Consequently, 18 universal instruments to combat international terrorist acts have been established within the UN system. In 2006 UN Member States agreed to an international counter-terrorism strategy. The strategy forms a basis for a plan of action to address the conditions conducive to the spread of terrorist activities; to prevent and combat terrorist activities; to take measures to build state capacity to fight terrorism; to strengthen the role of the UN in combating terrorism; and to ensure the respect of human rights while countering terrorist activities.<sup>51</sup>



# Considerations for African States

## African States: obligations

All UN Member States, in their various actions (including conventional arms transfers), are obligated to adhere to the provisions of the majority of instruments relating to:

- International humanitarian law
- International human rights
- International criminal law
- Transnational organised crime
- Corruption
- Terrorism

For African States, there are additional relevant obligations in terms of AU instruments. Some examples are as follows:

- The African Charter on Human and Peoples' Rights (and related protocols)
- The OAU Convention on the Prevention and Combating of Terrorism
- The African Union Convention on Preventing and Combating Corruption

## Subregional commitments

As indicated above, all African SALW subregional instruments require Member States to respect and implement UN Security Council arms embargoes. Some of the instruments also oblige Member States to assess arms transfers in relation to a set of detailed criteria. For example:

African SALW protocol/convention	Relevant articles
<p><b>ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials</b><sup>52</sup></p> <p>This Convention is legally binding for the following States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo</p>	<p><b>Article 3</b></p> <ol style="list-style-type: none"> <li>1. Member States shall ban the transfer of small arms and light weapons and their manufacturing materials into their national territory or from/through their national territory.</li> <li>2. Member States shall ban, without exception, transfers of small arms and light weapons to Non-State Actors that are not explicitly authorised by the importing Member.</li> </ol>
	<p><b>Article 4</b></p> <ol style="list-style-type: none"> <li>1. A Member State can request exemption from the provisions of Article 3.1 in order to meet legitimate national defence and security needs, or to participate in peace support or other operations in accordance with the decisions of the United Nations, African Union, ECOWAS, or other regional or subregional body of which it is a member.</li> </ol>
	<p><b>Article 6</b></p> <ol style="list-style-type: none"> <li>1. A transfer shall not be authorized if: <ol style="list-style-type: none"> <li>(a) Authorisation on export, import, transit, transshipment or brokering considered as donation has not been provided by all States directly concerned with the transfer;</li> <li>(b) All the required information has not been supplied to the ECOWAS Executive Secretary;</li> <li>(c) The arms have not been marked according to requirements under this Convention.</li> </ol> </li> <li>2. A transfer shall not be authorized if its authorisation violates obligations of the requesting States as well as those of Member States, under international law including: <ol style="list-style-type: none"> <li>(a) Obligations under the Charter of the United Nations – including: <ol style="list-style-type: none"> <li>(i) Binding resolutions of the United Nations Security Council such as those imposing arms embargoes;</li> <li>(ii) The prohibition on the use or threat of use of force;</li> <li>(iii) The prohibition on intervention in the internal affairs of another State.</li> </ol> </li> <li>(b) Universally accepted principles of international humanitarian law.</li> <li>(c) Any other treaty or decision by which the Member States are bound, including:</li> </ol> </li> </ol>

African SALW protocol/convention	Relevant articles
	<ul style="list-style-type: none"> <li>(i) Binding decisions, including embargoes, adopted by relevant international, multilateral, regional and sub-regional bodies, such as the African Union Peace and Security Council, to which a State is party;</li> <li>(ii) Prohibitions of arms transfers that arise in particular treaties which a State is party to, such as Ottawa Convention on Antipersonnel Mines, the 1980 Convention on Certain Conventional Weapons and its Protocols.</li> </ul> <p>3. A transfer shall not be authorized if the arms are destined to be used:</p> <ul style="list-style-type: none"> <li>(a) For the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purpose of oppression;</li> <li>(b) For the commission of serious violations of international humanitarian law, genocide or crimes against humanity;</li> <li>(c) To worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts, or aggravating existing tensions;</li> <li>(d) To carry out terrorist acts or support or encourage terrorism;</li> <li>(e) Other than for the legitimate defence and security needs of the beneficiary country.</li> </ul> <p>4. A transfer shall not be authorized if it is destined to:</p> <ul style="list-style-type: none"> <li>(a) Be used for or to facilitate the commission of violent or organized crime;</li> <li>(b) Adversely affect regional security; endanger peace, contribute to destabilizing or uncontrolled accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability;</li> <li>(c) Hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer;</li> <li>(d) Involve corrupt practices at any stage from the supplier, through any middlemen or brokers, to the recipient.</li> </ul> <p>5. A transfer shall not be authorized if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade.</p>

African SALW protocol/convention	Relevant articles
	<p>6. The Executive Secretary and all Member States shall provide elements of proof to apply the criteria enunciated in Paragraphs 1, 2, 3, 4 and 5 of the present article and to indicate the refusal of exemption request made by a Member State.</p>
<p><b>Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa</b><sup>53</sup></p> <p>This Protocol is legally binding for the following States: Burundi, Central Africa Republic, DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda</p>	<p><b>Article 3</b></p> <p>(b) States Parties that have not yet done so shall adopt the necessary legislative or 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 and/or regional organizations.</p> <p><b>Best Practice Guidelines for the implementation of the Nairobi Protocol</b><sup>54</sup></p> <p><b>2.2.3 Arms transfer criteria</b></p> <p>State Parties to the Nairobi Protocol should adopt the following criteria for international arms transfers (export, transit and brokered transactions):</p> <p>(a) State Parties shall not authorize transfers which would violate their direct obligations under international law, including: Obligations under the Charter of the United Nations, including:</p> <ul style="list-style-type: none"> <li>(i) Decisions of the Security Council such as those imposing arms embargoes;</li> <li>(ii) The prohibition on the use or threat of force;</li> <li>(iii) The prohibition on intervention in the internal affairs of another State;</li> <li>(iv) Any other treaty or legal obligations, to which a State is bound, including binding decisions, including embargoes, adopted by relevant international, regional and subregional bodies, such as the African Union Peace and Security Council;</li> <li>(v) Prohibitions on arms transfers, that arise in particular treaties which a State is party to, such as: 1980 Convention on the Use of Certain Conventional Weapons, Which May Be Considered Excessively Injurious, including its protocols;</li> <li>(vi) Universally accepted principles of international humanitarian law: Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;</li> </ul>

African SALW protocol/convention	Relevant articles
	<ul style="list-style-type: none"> <li>(vii) Prohibition on weapons that are incapable of distinguishing between combatants and civilians.</li> <li>(b) State Parties shall not authorize transfers which are likely to be used: <ul style="list-style-type: none"> <li>(i) For the violation or suppression of human and peoples' rights and freedoms, or for the purpose of oppression;</li> <li>(ii) For the commission of serious violations of international humanitarian law;</li> <li>(iii) In acts of aggression against another State or population, threatening the national security or territorial integrity of another State, or threatening compliance with international law, governing the conduct of armed conflict;</li> <li>(iv) To worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts, or aggravating existing tensions;</li> <li>(v) To carry out terrorist acts or support or encourage terrorism;</li> <li>(vi) Other than for the legitimate defence and security needs of the recipient country.</li> </ul> </li> <li>(c) State Parties shall take into account other factors, before authorizing an arms transfer. States should not authorize the transfer if it is likely to: <ul style="list-style-type: none"> <li>(i) Be used for or to facilitate the commission of violent crimes;</li> <li>(ii) In the commission of serious violations of international humanitarian law, applicable in international or non-international armed conflict;</li> <li>(iii) In the commission of genocide or crimes against humanity;</li> <li>(iv) In acts of aggression against another State or population, threatening the national security or territorial integrity of another State;</li> <li>(v) Adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability;</li> <li>(vi) Adversely affect sustainable development, through the excessive or unjustifiable diversion of resources from social expenditure, to military expenditure;</li> </ul> </li> </ul>

African SALW protocol/convention	Relevant articles
	<ul style="list-style-type: none"> <li>(vii) Involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient;</li> <li>(viii) Contravene other international, regional or subregional commitments or decisions made, or agreements on non-proliferation, arms control and disarmament.               <ul style="list-style-type: none"> <li>• States shall take into account the recipient’s record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament.</li> <li>• States Parties shall not authorize transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user, other than the stated final end-user.</li> </ul> </li> <li>(d) States should take into account the recipient’s:               <ul style="list-style-type: none"> <li>(i) Record on compliance with end-use undertakings and diversion;</li> <li>(ii) Stockpile management and security procedures;</li> <li>(iii) Ability and willingness to protect SALW against unauthorized transfers, loss, theft and diversion.</li> </ul> </li> <li>(e) State Parties shall not authorize transfers if the arms have not been marked according to requirements under the Nairobi Protocol.</li> </ul>
<p><b>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<sup>55</sup></b></p> <p>This Convention is yet to enter into force, but has the support of the Member States of the Economic Community of Central African States: Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, DRC, Equatorial Guinea, Gabon and São Tomé and Príncipe</p>	<p><b>Article 3</b></p> <p>2. The only grounds for authorizing the transfers are that they are necessary in order to:</p> <ul style="list-style-type: none"> <li>(a) Maintain law and order, or for defence or national security purposes;</li> <li>(b) Participate in peacekeeping operations conducted under the aegis of the United Nations, the African Union, the Economic Community of Central African States or other regional or subregional organizations of which the State Party concerned is a member.</li> </ul> <p><b>Article 5</b></p> <p>5. Notwithstanding the provisions of Article 3 and the national laws and regulations in force the States Parties agree that a transfer authorization shall be denied by the competent national body if:</p>

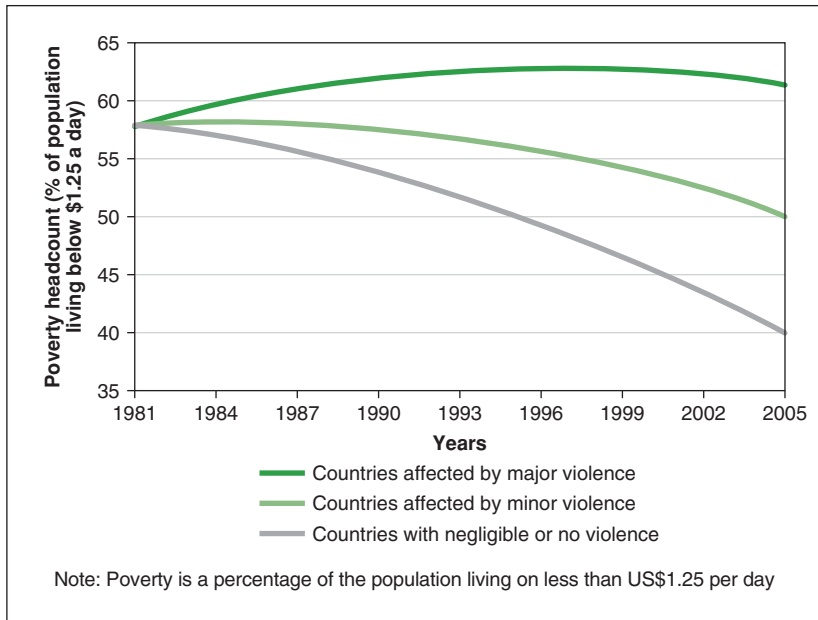
African SALW protocol/convention	Relevant articles
	<ul style="list-style-type: none"> <li>(a) There is a possibility that the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might be diverted, in the importing or transit State, to unauthorized use or users or to illicit trade, or even re-exported;</li> <li>(b) The small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly are to be or might be used to commit violations of international humanitarian law or international human rights law or international genocide or crimes against humanity; or for terrorist purposes;</li> <li>(c) The transfer of the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might violate an international arms embargo;</li> <li>(d) The applicant has, on the occasion of a prior transfer, violated the letter and spirit of national texts in force that regulate transfers and the provisions of this Convention.</li> </ul>

## Impact of lethal violence on development

According to the highly reputable *World development report 2011*<sup>56</sup> there is strong evidence that poverty reduction efforts in countries that are affected by high levels of violence (both conflict and criminal), including SALW violence, are seriously undermined. This is a key issue for Africans as the UN Development Programme's Human Development Index for 2011 categorises 75 per cent of all African States as being under conditions of low human development.

Data presented in this report also indicate that violence has anti-developmental spill-over effects on neighbouring countries. Hence violence ultimately affects the abilities of those States to meet their obligations towards the Millennium Development Goals.

**Figure 1** Widening gap in poverty between countries affected by violence and those not experiencing violence



Source *World development report 2011*, World Bank, 2012, 60, <http://wdr2011.worldbank.org/> (accessed 14 June 2012)

## Other considerations

According to the ‘Draft AU Common Position on an Arms Trade Treaty’, the authorization of conventional arms transfers should be assessed using the following parameters:<sup>57</sup>

- (a) Risk of non-respect of international and regional legally binding obligations such as UN Security Council arms embargoes and sanctions, in provisions of African Regional Economic Communities’ conventions and treaties, in customary international law, and other conventions and treaties to which States involved in the transaction are party;
- (b) Risk for the transfer to adversely impact on national, regional and international stability, peace and security, and to provoke or



- fuel armed and sexual violence against women and children, and armed conflict;
- (c) Risk of non-respect for international law and use of the transfer to perpetrate terrorist acts;
  - (d) Risk of the transfer to contribute to serious violations of human rights and international humanitarian law, including the perpetration of genocide, war crimes (including sexual violence in situations of armed conflict), crimes against humanity and violations of non-derogable rights; and
  - (e) Risk for the arms transferred to be diverted to unauthorized end-users, including unauthorized non-State armed groups and unauthorized non-State actors, and to illicit markets.

In applying these criteria, the following should be considered:

- (a) The international obligations of States Parties and their commitments to enforce United Nations or other arms embargoes;
- (b) The international obligations of States, particularly under international, regional and subregional arms control and disarmament instruments;
- (c) The likelihood of the use of the transfer to pursue an act of aggression against another State;
- (d) The existence of a claim against the territory of a neighbouring State which the recipient has attempted or threatened to pursue by means of force in the past;
- (e) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient State, including its legitimate security and defence needs;
- (f) The recipient State's support or encouragement of terrorism and transnational organized crime in accordance with UN Security Council resolutions;
- (g) The recipient State's compliance with its international obligations, in particular on the non-use of force;
- (h) The recipient State's commitment to avoiding the proliferation of armaments and other areas of arms control and disarmament;

- (i) Whether the transfer would exacerbate gender-based violence in violation of UN Resolutions 1325, 1820, 1889;
- (j) Whether a recipient State which is or has been engaged in an armed conflict has committed serious violations of international humanitarian law;
- (k) Whether a recipient State which is or has been engaged in an armed conflict has taken all feasible measures to prevent violations of international humanitarian law;
- (l) Whether the recipient State has made commitments to apply the rules of international humanitarian law and has taken appropriate measures for their implementation;
- (m) Whether the recipient State disseminates international humanitarian law, in particular to its armed forces and security forces, and has integrated international humanitarian law into its military doctrine, manuals and instructions;
- (n) Whether the recipient State has taken relevant measures to prevent the recruitment of children into the armed forces or armed groups, and their participation in hostilities;
- (o) Whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
- (p) The legitimate defense and domestic security interests of the recipient State, including any involvement in United Nations or other peacekeeping activities; and
- (q) The risk of the arms being re-transferred or diverted to terrorist organizations and unauthorized non-State armed groups or unauthorized non-State actors.

# **Implementation**

**National authority and systems**



# National authority and systems

Most States have developed national authorities and systems to oversee and control the import, export, re-export, transit and transshipment of arms. There has been some variation in the characteristics of such systems, however, a number of common approaches have emerged over the years. The main components of such systems relate to the authorization and notification of arms transfers.

# Authorisation systems

## Competent authority

In order for arms transfers to be effectively controlled at a national level it is imperative that a competent arms control authority be instituted and maintained. Such an entity is typically made up of a political authority and a national authority, and both should be established in terms of relevant conventional arms control legislation and policy. Such a competent authority should ensure that arms transfer decision-making is transparent and predictable.

In essence the role of the political authority is to authorise or deny arms transfer license applications, as well as establish measures to prevent corruption and bribery in connection with the transfer of arms. In most States, political authority and oversight of arms transfers is vested in the executive arm of the State, and often involves a specific government ministry, department, agency or office. This is typically the defence or foreign affairs department/ministry, or the office of the head of state.

A key function of such a political authority is to ensure adequate coordination between the relevant government bodies. Hence, in many of those States that frequently export arms, the political authority is often composed of a body made up of representatives from those government departments, ministries and agencies with a vested interest in the arms trade.

Arms transfer authorisation accountability arrangements vary from State to State. In some democracies, for example, the political authority is often required to report, motivate and justify arms transfer authorisation decisions to the legislature. In a small number of States the legislature has the legal authority to veto prospective arms transfer authorisation decisions. In most democracies data on arms transfers is typically made

available for public scrutiny on a regular basis. In non-democracies, the arms transfer control entity is usually accountable to the head of state. In such cases transparency is limited, with there being public disclosure of data on arms transfers only in exceptional circumstances.

The national authority typically fulfils the arms transfer control implementation function, not only in terms of decisions of the political authority, but also in relation to relevant regional and international arms transfer control obligations. National authorities are usually located within an appropriate government ministry, such as defence, or are a separate government entity. In addition, the national authority is supposed to be staffed with personnel that have the necessary arms control expertise. More specifically, the function of national authorities should be to:

- Establish and maintain a system to administer arms transfer controls, such authorisation requests (mainly through registration and licensing) and end-user certificates
- 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 holding operating and transfer licenses are acting in compliance with national laws and regulations
- Conduct outreach activities to inform brokers and transport businesses of any national arms transfer control obligations

## Control list

Conventional arms control lists are often compiled to establish more precise regulation of arms transfers, particularly dual-use goods and technology. These lists usually specify the type of armaments, ammunition, military equipment and dual-use equipment (and related components) that are required to be controlled. Control lists are usually utilized by exporting States.

Where States have been members of multi-state arms control arrangements, which encompass a control list element, there has been noticeable commonality in the use and content of such lists at the national level. A key example is the Wassenaar Arrangement,<sup>58</sup> which includes most major arms-exporting states. However, there is significant variation among states that are not part of such arrangements. Outside the Wassenaar Arrangement, controls over dual-use goods are inconsistent or sometimes absent.

## Verification and validation of arms transfers

Arms transfers can be verified and validated through a variety of administrative tools and processes which are considered in detail below.

### Licensing

The principal arms transfer authorization instrument is a license or permit, which is an official document that authorises a specific type of arms transfer. The terms 'license' and 'permit' are used interchangeably, with the choice of term varying between States. There are typically six types of licenses, namely for manufacturing, marketing, export, import, brokering, transit and transshipment. Some States have instituted license varieties within each license type.

Often the validity of an arms transfer license is linked to supporting documentation such as invoices, official letters and company brochures from the arms supplier, a waybill, a manifest, a bill of lading, and cargo control documents. For example, in the case of arms exports, an end-user certificate (in addition to other relevant documents) is often required to accompany an arms transfer license.

However, there is disparity in the manner in which arms imports are licensed, and no best practice standards or guidelines on import licensing currently exist. SIPRI has identified four broad approaches, which are as follows:<sup>59</sup>

- All imports require a license
- Only certain categories of arms (such as SALW) require a license (as the armed forces in these particular States are the only entities



legally permitted to possess major conventional weapons an official import license is considered unwarranted)

- Only imports by non-state entities and persons require a license
- Only imports at the point of entry require a license (by customs authorities)

In some instances, States make use of import certificates rather than import licenses. There however have also been considerable variations in the way States have licensed/controlled arms imports that will be re-exported at a later stage.

### ***Inspectorates***

In general, the role of an inspectorate is to ensure that the trade in conventional arms, as well as internal arms control functions and processes, is conducted in compliance with arms control policy and legislation. A key responsibility of the inspectorate is to determine compliance (at times through physical inspections) with respect to arms transfer licenses. Inspectorates have been established in most arms exporting States, but differences exist in the degree of autonomy, as well as powers and functions of investigation.

# Notification systems

The two key instruments used in arms transfer (import) notification systems are end-user certificates and delivery verification certificates.

## End-user certificates

An end-user certificate (EUC) is a written undertaking by an importer of arms that the imported arms are for its exclusive use. The importer is usually required to certify that the arms will not be transferred or re-exported without the prior written permission of the original exporter. There is no standard template for an EUC, but such an official document should, at the minimum, include information on the arms being transferred, the destination country, the end-user, and commitments regarding the intended end-use.<sup>60</sup>

Different types of EUC exist in practice. For example, in State-to-State transactions, a government-issued EUC is typically a requirement. In the case of exports to non-State entities (such as commercial companies), a privately issued EUC (often referred to as an end-user statement) issued by the non-State entity is common practice.<sup>61</sup>

Guidance on the design of EUCs have been provided by the Wassenaar Arrangement, the EU Code of Conduct and the Organization for Security and Co-operation in Europe (OSCE), but a critical problem is that many arms-exporting States issue EUCs that do not contain many of the core elements that appear in the guidance mentioned above.<sup>62</sup> In addition, currently there is no comprehensive, international end-user verification and monitoring process in place. Consequently this task is often the sole preserve of the exporting State. Nonetheless, verification monitoring is not widely pursued by States, with the US 'Blue Lantern' programme being one of the most advanced EUC verification systems.

For arms-exporting States, it is imperative that an EUC authentication process be undertaken in relation to arms transfers. The reason is that there have been a number of instances where misappropriated or fraudulent EUCs have been used to facilitate illicit arms transactions.

## **Delivery verification certificate**

A delivery verification certificate (DVC) is an official document or statement that is issued by arms-importing States, usually the arms control entity or the customs authority, to confirm that the authorized arms transfer has been received by, and is in the possession of, the intended end-user. A DVC usually requires key information about the arms transfer, such as the type, specifications, quantity and value. A DVC should be accompanied by supporting documentation which should closely correspond to the information on the certificate. DVCs are widely produced by importing States, however, there are marked differences in the information that is provided in such documents, as well as the security features.

# Considerations for African States

## Variations in arms control authorities and processes

There is considerable variation in national arms transfer control mechanisms in Africa. Controls over the export of conventional arms are relatively well developed within some of the limited number of arms-producing States. However, for those States that do not manufacture arms, there is significant inconsistency in the controls (and authorities) relating to arms import, re-export, transshipment and transit. Some African States have developed targeted policy and legislation, while others have incorporated arms transfer control requirements into defence and security legislation. A key problem, however, is that in a significant number of States, conventional arms control legislative provisions are outdated and subsequently are possibly inadequate to respond to the increasingly complex nature of the global arms trade.

Owing to the extensive global focus on the control of SALW over the past decade, combined with the considerable legitimate trade, as well as the proliferation of illicit SALW and ammunition throughout Africa, many African States have established dedicated SALW controls, including SALW transfer controls. The 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, along with subregional SALW control instruments, has led to the emergence of national coordinating mechanisms on these types of weapons. These coordinating mechanisms are often constituted of representatives from various government departments and entities. However, they typically do not have responsibility for decisions regarding the transfer of major conventional arms.

## Subregional commitments

All of the African subregional SALW and ammunition subregional instruments require Member States to institute national SALW arms transfer control systems and processes. The specific obligations are as follows:

African SALW protocol/convention	Relevant articles
<p><b>ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials</b><sup>63</sup></p> <p>This Convention is legally binding for the following States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo</p>	<p><b>Article 4</b></p> <ol style="list-style-type: none"> <li>2. ... Member States shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons.</li> <li>3. Each Member State shall take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation of the documents can be verified and validated.</li> </ol> <p><b>Article 5</b></p> <ol style="list-style-type: none"> <li>1. The request for exemption for an arms transfer is transmitted for examination to the ECOWAS Executive Secretariat and must contain information on:             <ol style="list-style-type: none"> <li>(a) Details of the arms to be transferred—the quantity, exact type and kind of arms using ECOWAS classification system, including all serial numbers and other marks;</li> <li>(b) Details of the supplier – full details (name of company and representative, address, and full contact details) of all companies and individuals involved, including brokers where relevant;</li> <li>(c) Details of the supply process – the number and period of shipments, the routes including transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling, details of the storage and management of the weapons whilst being transferred, the time period covered by the activity for which the exemption is requested;</li> <li>(d) Details of the final end-user – name of individual/company/institution and representative responsible, confirmation from relevant national authority that the end user is authorized to import weapons;</li> <li>(e) Details of the end-use.</li> </ol> </li> </ol>

African SALW protocol/convention	Relevant articles
<p><b>Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa<sup>64</sup></b></p> <p>This Protocol is legally binding for the following states: Burundi, the Central African Republic, the DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda</p>	<p><b>Article 10</b></p> <p>(a) Each State Party shall establish and maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of small arms and light weapons.</p> <p>(b) Before issuing export licenses or authorizations for shipments of small arms and light weapons, each State Party shall verify:</p> <p>(i) That the importing states have issued import licenses or authorisations; and</p> <p>(ii) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked states, the states have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.</p> <p>(c) The export and import license or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the small arms and light weapons and, whenever there is transit, the countries of transit. The information contained in the import license must be provided in advance to the transit states.</p> <p>(d) The importing State Party shall inform the exporting State Party of the receipt of the dispatched shipment of small arms and light weapons.</p> <p>(e) Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.</p> <p>(f) States Parties may adopt simplified procedures for the temporary import and export and the transit of small arms and light weapons for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.</p>
<p><b>SADC Protocol on Control of Fire Arms, Ammunition and Other Related Materials<sup>65</sup></b></p> <p>This Protocol is legally binding for the following States: Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia,</p>	<p><b>Article 5</b></p> <p>3. States Parties further undertake to incorporate the following elements in their national laws as a matter of priority:</p> <p>(c) The coordination of procedures for the import, export and transit of firearm shipments;</p>

African SALW protocol/convention	Relevant articles
<p>Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p>	<p>(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.</p>
<p><b>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<sup>66</sup></b></p> <p>This Convention is yet to enter into force, but has the support of the Member States of the Economic Community of Central African States: Angola, Burundi, Cameroon, the Central African Republic, Chad, Congo, the DRC, Equatorial Guinea, Gabon and São Tomé and Príncipe</p>	<p><b>Article 5</b></p> <ol style="list-style-type: none"> <li>1. States Parties shall set up, and maintain at the national level, a system for authorizing the transfer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly to, through and from their respective territories.</li> <li>2. States Parties shall each designate a national body to be responsible for handling issues relating to the issuance of transfer authorizations both to public institutions and to qualified private actors, in accordance with the national laws and regulations in force.</li> <li>3. States Parties shall require that any request for a transfer authorization from a public institution or a private individual be addressed by the applicant to the competent national body and that it contain, at the very least, the following information: <ol style="list-style-type: none"> <li>(a) Quantity, nature and type of weapon, including all the information concerning markings, in accordance with this Convention;</li> <li>(b) Name, address and contact details of the supplier and his representative;</li> <li>(c) Name, address and contact details of the companies and individuals involved in the transaction, including brokers;</li> <li>(d) Number and time frame of shipments, routes, transit locations, type of transport used, companies involved in importing, forwarding agents and relevant information about storage conditions;</li> <li>(e) End-user certificate;</li> <li>(f) Description of the end use of the small arms and light weapons, ammunition and all parts and components that can be used for their manufacture, repair and assembly;</li> <li>(g) Designation of where they are to be loaded and unloaded.</li> </ol> </li> <li>4. When issuing a transfer authorization States Parties shall include, at the very least, the following information:</li> </ol>

African SALW protocol/convention	Relevant articles
	<p>(a) Place and date of authorization;                      (b) Date the authorization expires;                      (c) Exporting, importing, trans-shipment or transit country;                      (d) Name and full and up-to-date details of end-user and broker;                      (e) Quantity, nature and type of weapons concerned;                      (f) Name and full and up-to-date details of the end-user and signature of applicant;                      (g) Practical means of transport, complete details regarding the carrier and time frame for transport;                      (h) Name and full and up-to-date details and signature of the authority issuing the authorization.</p> <p><b>Article 6</b></p> <p>1. The States Parties shall draw up an end-user certificate and the administrative procedures and supporting documents needed for such certificates. A certificate shall be issued for each import shipment and shall be contingent upon the applicant's having obtained an import authorization issued by the competent authorities.</p> <p>2. The States Parties shall harmonize the contents of the end-user certificates at the subregional level.</p>



# **Implementation**

**Record-keeping, reporting  
and transparency**



# Record-keeping

The establishment and maintenance of systematic and accurate arms transfer record-keeping at the national level is essential to ensuring the robustness and integrity of controls over legal international arms transfers. In this regard, such record-keeping is beneficial to States for the following reasons (among others):

- It allows for the accurate monitoring of legal conventional arms transfers into and out of a State's territory.
- It allows for the monitoring of adherence to international, regional and subregional conventional arms control obligations.
- It provides the information for relevant subregional, regional and international arms control reporting obligations.
- It allows recipient States to provide accurate import verification documentation (such as EUCs and DVCs) to exporting States.
- It provides exporting States with the necessary information and documentation to monitor adherence to the obligations of EUCs.
- It provides the relevant information to inform decisions regarding the authorisation or denial in terms of transit, transshipment and re-export of arms.
- It provides the information basis to distinguish between legal and illegal arms transfers, and can be the basis on which legal action can be pursued against individuals responsible for illegal arms transfers and/or diverting legal arms transfer into the illegal sector.
- It provides the information basis for international cooperation on arms transfer controls between States.
- It can promote consistency and predictability in arms transfer authorisations and denials (in the event that decision-making by

arms transfer control authorities is informed by historical decisions and precedents).

Consequently, the ATT Preparatory Committee meeting Chair's non-paper,<sup>67</sup> which sought to articulate the major views of States on a future ATT during the Preparatory Committee meetings, recommends that States maintain records of:

- All arms authorizations, transfers and denials. Such records may contain information, inter alia, on quantity, model or type, arms transfers authorized and refused, arms actually transferred, and details of transit State(s), recipient State(s) and end-users.
- All arms imports and shipments of arms that transit their territory. Such records may contain information, inter alia, on quantity, model or type, arms actually transferred, and details of transit State(s), exporting State(s) and end-users.

In addition, the ATT Preparatory Committee meeting Chair's non-paper recommends that records shall be kept for a minimum of ten years. However, some States and civil society organisations have suggested that the minimum period for which records are held should be extended beyond ten years for the following reasons (among others):

- Most categories of conventional arms are highly durable and can remain functional for decades (if appropriately maintained or be refurbished), and therefore can be re-exported more than ten years after the initial transfer.
- Some EUC requirements may have an indefinite validity.
- Historical records (beyond the ten-year period) may be required to initiate legal proceedings against brokers allegedly involved in illicit arms trafficking and/or corruption.
- The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA) recommends that accurate and comprehensive records of small arms and light weapons transfers 'are kept for as long as possible'.

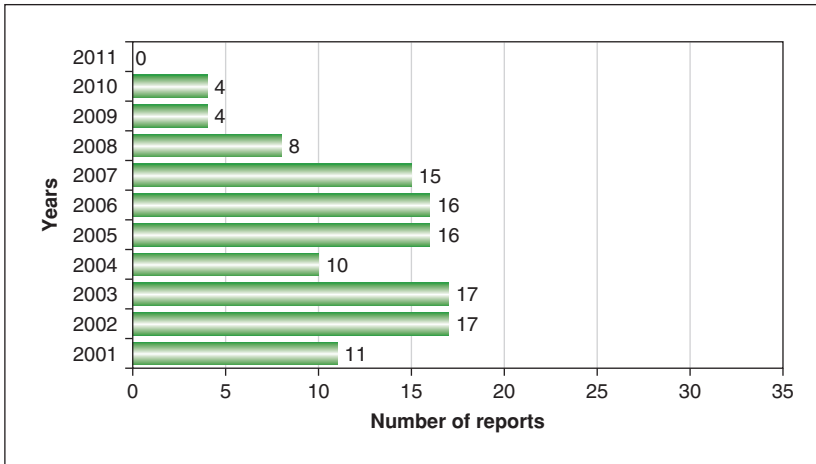
# Reporting

State reporting (and other transparency mechanisms) on conventional arms transfers is vital for determining the extent to which the provisions of a future ATT are being implemented. Based on the experience of the UNRCA, reporting on conventional arms transfers has the potential to ‘prevent the excessive and destabilizing accumulation of conventional arms, and to provide restraint on arms transfers and military holdings’.<sup>68</sup> In addition, arms transfer reporting can become an effective confidence-building measure between States.<sup>69</sup> According to the UN Secretary-General, ‘confidence-building measures focusing on information exchange seek to enhance the mutual understanding of national military capabilities and activities and to facilitate regular communication to avoid surprise or unsought military confrontations’.<sup>70</sup>

The critical role of reporting and arms transfer transparency is also recognised in the UNPoA, which seeks to ‘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’.

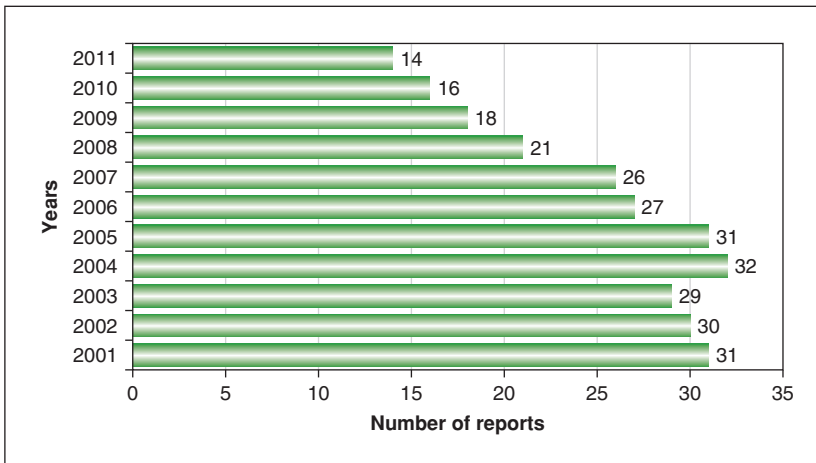
Consequently, the ATT Preparatory Committee meeting Chair’s non-paper recommends that States submit annual reports on arms transfers and transfer denials to the envisaged Implementation Support Unit. Similar reporting requirements are provided in the Convention on Cluster Munitions and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. However, reporting by States to the UNRCA has been mixed. Below are graphical representations of UN Member State reporting to this Register (by geographical grouping).

**Figure 2a** UN Member States reporting to the Register – African Group of States (53 states)



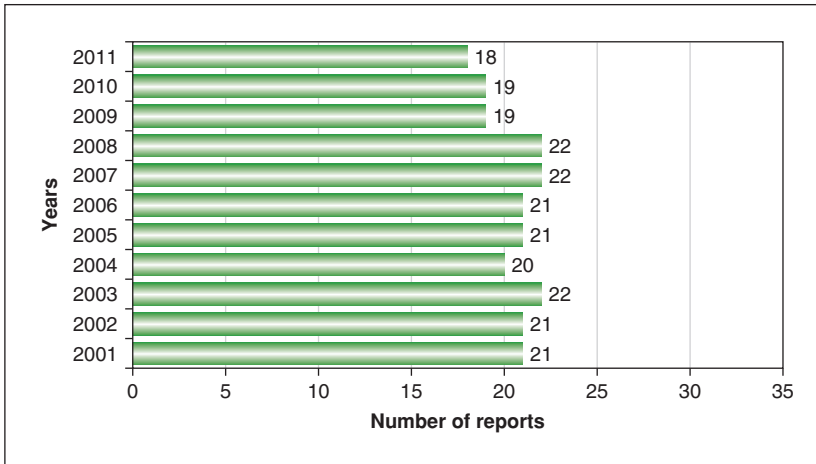
**Source** United Nations Office for Disarmament Affairs, *Transparency in armaments: reporting to the United Nations Register of Conventional Arms*, New York: UNODA, 2011, <http://www.un.org/disarmament/convarms/Register/DOCS/20110201-RegisterFactsheet.pdf> (accessed 14 June 2012).

**Figure 2b** UN Member States reporting to the Register – Asia and Pacific Group of States (53 states)



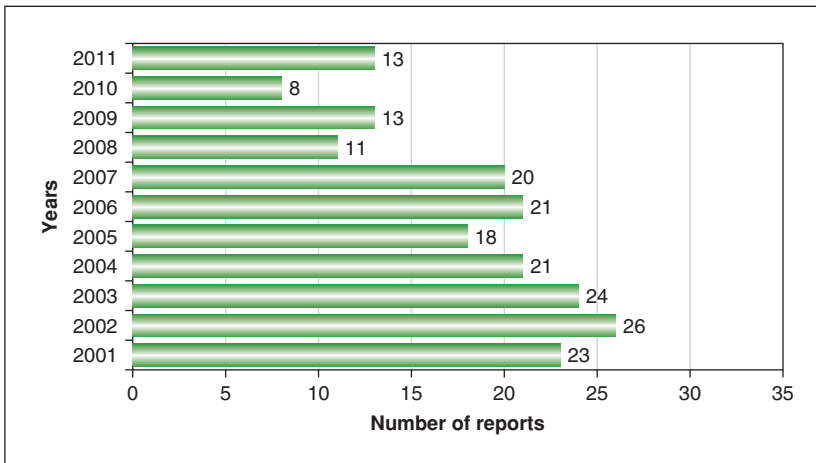
**Source** United Nations Office for Disarmament Affairs, *Transparency in armaments: reporting to the United Nations Register of Conventional Arms*, New York: UNODA, 2011, <http://www.un.org/disarmament/convarms/Register/DOCS/20110201-RegisterFactsheet.pdf> (accessed 14 June 2012).

**Figure 2c** UN Member States reporting to the Register – Eastern European Group of States (23 states)



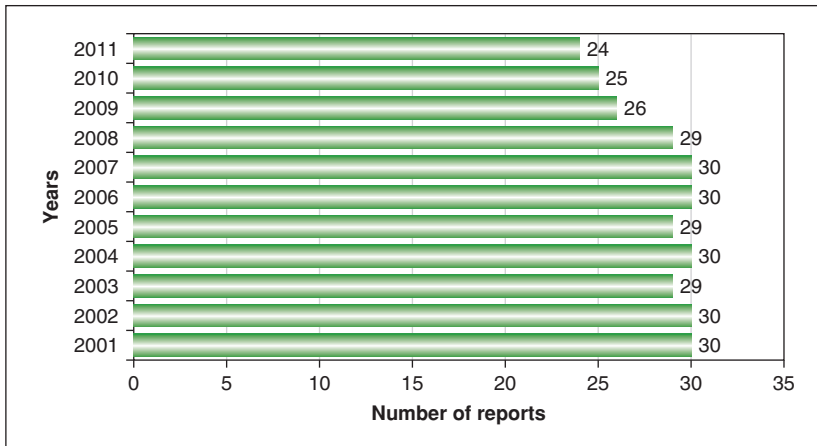
**Source** United Nations Office for Disarmament Affairs, *Transparency in armaments: reporting to the United Nations Register of Conventional Arms*, New York: UNODA, 2011, <http://www.un.org/disarmament/convarms/Register/DOCS/20110201-RegisterFactsheet.pdf> (accessed 14 June 2012).

**Figure 2d** UN Member States reporting to the Register – Group of Latin American and Caribbean States (33 states)



**Source** United Nations Office for Disarmament Affairs, *Transparency in armaments: reporting to the United Nations Register of Conventional Arms*, New York: UNODA, 2011, <http://www.un.org/disarmament/convarms/Register/DOCS/20110201-RegisterFactsheet.pdf> (accessed 14 June 2012).

**Figure 2e** UN Member States reporting to the Register—  
Group of Western European and Other States (30 states)



**Source** United Nations Office for Disarmament Affairs, *Transparency in armaments: reporting to the United Nations Register of Conventional Arms*, New York: UNODA, 2011, <http://www.un.org/disarmament/convarms/Register/DOCS/20110201-RegisterFactsheet.pdf> (accessed 14 June 2012).



# Considerations for African States

## Subregional commitments

African States have arms transfer record-keeping obligations in terms of certain SALW subregional agreements, which are outlined below.

African SALW protocol/convention	Relevant articles
<p><b>ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials</b><sup>71</sup></p> <p>This Convention is legally binding for the following States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo</p>	<p><b>Article 5</b></p> <p>4. The ECOWAS Executive Secretary shall forward to the Member States information on exemptions and refusals granted within 90 days. The Executive Secretary shall also compile and publish a comprehensive annual report detailing all international arms transfers granted exemptions, and a list of refusals.</p>
<p><b>Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa</b><sup>72</sup></p> <p>This Protocol is legally binding for the following States: Burundi, the Central African Republic, the DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda</p>	<p><b>Article 4</b></p> <p>(c) [States Parties shall] establish and improve national databases, communication systems and acquire equipment for monitoring and controlling small arms and light weapons movements across borders.</p>
<p><b>SADC Protocol on Control of Firearms, Ammunition and Other Related Materials</b><sup>73</sup></p> <p>This Protocol is legally binding for the following States: Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p>	<p><b>Article 6</b></p> <p>(b) [State Parties undertake to] establish and improve national databases, communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders.</p> <p><b>Article 16</b></p> <p>(b) [State Parties undertake to] establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers.</p>

African SALW protocol/convention	Relevant articles
<p><b>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</b><sup>74</sup></p> <p>This Convention is yet to enter into force, but has the support of the Member States of the Economic Community of Central African States: Angola, Burundi, Cameroon, the Central African Republic, Chad, Congo, DRC, Equatorial Guinea, Gabon and São Tomé and Príncipe</p>	<p><b>Article 20</b></p> <ol style="list-style-type: none"> <li>1. The States Parties shall establish and maintain, at the national level, a centralized electronic database on small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.</li> <li>2. The data shall be kept in the national databases for a minimum of 30 years, including marking procedures and all other relevant and related data.</li> <li>3. All the data in the national electronic databases must also be kept by each State Party in paper form in a centralized national register.</li> <li>4. The following information shall be registered in the database:             <ol style="list-style-type: none"> <li>(a) Type or model, calibre and quantity of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly, found in the national territory of each State Party, including those manufactured locally;</li> <li>(b) The content of the marking as indicated in the present Convention;</li> <li>(c) The names and addresses of the former and current owners of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly and, if applicable, subsequent owners;</li> <li>(d) The date of registration of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly;</li> <li>(e) The name and address of the shipper, any intermediary, the consignee and the user indicated on the end-user certificate;</li> <li>(f) The origin, points of departure, transit, if applicable, entry and destination, as well as the customs notations and the dates of departure, transit and delivery to the end-user;</li> </ol> </li> </ol>

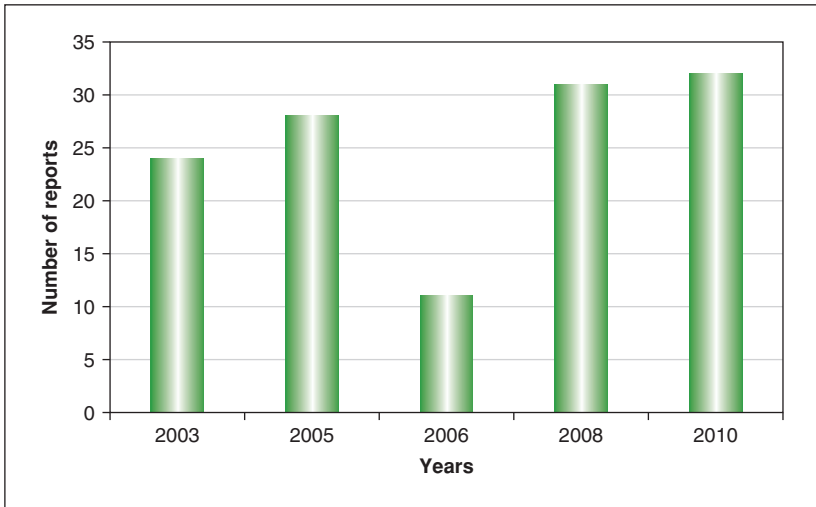
African SALW protocol/convention	Relevant articles
	<ul style="list-style-type: none"> <li>(g) Full details concerning export, transit and import licenses (quantities and batches corresponding to the same license as well as the validity of the license);</li> <li>(h) Full details concerning method(s) of shipment and shipper(s); the monitoring agency or agencies (on departure, at the point of transit if applicable and on arrival);</li> <li>(i) Description of the nature of the transaction (commercial or non-commercial, private or public, conversion, repair); and, where applicable, complete information concerning the insurer and/or the financial institution involved in the operation;</li> <li>(j) Information concerning civilian owners of small arms, in particular: name, address, marking of the weapon, licenses;</li> <li>(k) The name and complete and up-to-date addresses of every home producer or industrial manufacturer, every distributor and every repairer of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.</li> </ul>

## Reporting by African States on conventional arms control

As reflected above, the submission of reports by African States to UNRCA since 2001 has been variable. In fact, the number of African States participating in the Register has declined from 17 States reporting in 2002 to four in 2010. Most reports by African States in fact indicate “nil” conventional arms transfers.

However, reporting by African States on the implementation of the UNPoA has been more substantive, especially when the reports in question corresponded with meetings of States on the UNPoA. Below is a graphical representation of African UNPoA reporting.

**Figure 3** Number of UNPoA reports submitted by African States, 2003–2010



**Source** United Nations Office for Disarmament Affairs, National reports on the programme of action, <http://www.poa-iss.org/poa/NationalReportList.aspx> (accessed 14 June 2012).

# Implementation

Enforcement



# Enforcement and considerations for African States

With a few exceptions, most UN Member States have legislation, policy and enforcement measures in place not only to regulate conventional arms transfers, but also to take punitive action against those individuals, organisations and commercial entities that transgress such legal requirements and measures. In addition, the majority of States have measures in place that seek to counter those illicit activities that are related to the illegal arms transfers, or the diversion of legal arms transfers into the illegal sector. Examples of such activities include organised crime, corruption, money laundering and terrorism.

A future ATT is likely to require UN Member States to make some form of adjustment to their domestic arms control regimes in order for them to fulfil their obligations under the Treaty. Such potential changes or amendments would chiefly relate to the following:

<p><b>Legislation and policy (including penalties)</b></p>	<p>The establishment or amendment of legislation and policy that takes into account of the following elements of a future ATT:</p> <ul style="list-style-type: none"> <li>• Scope</li> <li>• Criteria</li> <li>• National authorities and systems (authorization and notification)</li> <li>• Record-keeping, reporting and transparency</li> <li>• Penalties and punitive processes and measures for infringements of policy and legislation</li> </ul> <p>The amendment of legislation and policy relating to organised crime, corruption, money laundering and terrorism to include the arms transfer control obligations of a future ATT.</p>
<p><b>National authorities and systems</b></p>	<p>The establishment or modification of national arms control authorities, as well as authorization and notification systems that make provision for:</p> <ul style="list-style-type: none"> <li>• Adequate coordination between the relevant government bodies</li> <li>• A relevant and up-to-date control list</li> </ul>

	<ul style="list-style-type: none"> <li>• Authorisation, verification and validation systems and instruments for the control of arms transfers (which takes scope and criteria into consideration)</li> <li>• Required record-keeping, transparency and reporting on arms transfers (and denials)</li> <li>• The deployment/hiring of sufficiently skilled personnel</li> </ul>
<p><b>Law enforcement and judicial mechanisms (including investigative and prosecutory measures)</b></p>	<p>Establishing or empowering law enforcement agencies and the judiciary to investigate and prosecute individuals and entities suspected of contravening the provisions of a future ATT (as prescribed in the domestic legislation). This may require:</p> <ul style="list-style-type: none"> <li>• Legislation amendments</li> <li>• Allocation of targeted resources</li> <li>• Technical assistance</li> <li>• Capacity-building</li> </ul>

Most African States are required, by virtue of being party to sub-regional SALW protocols and conventions, to establish similar enforcement mechanisms mentioned above, but specifically in relation to SALW. Some African States have made considerable progress in implementing such mechanisms. A future ATT will require these States to build on their successes.



# Implementation

International cooperation



# The rationale for international cooperation in relation to arms control

The principle of international cooperation is enshrined in Article 1 of the UN Charter,<sup>75</sup> which stipulates that a central purpose of the UN is:

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Consequently, international cooperation is a key component of most UN treaties, conventions, and other multilateral instruments. Given the global nature and the risk that uncontrolled arms (and related materials) pose to international peace and security, international cooperation has featured in most international arms control, non-proliferation and disarmament instruments. For example, according to the UNPoA on SALW:<sup>76</sup>

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 and to encourage the establishment and strengthening of cooperation and partnerships at all levels among international and intergovernmental organizations and civil society, including non-governmental organizations and international financial institutions.

Commitments to international cooperation are also included in the following treaties and conventions (among others):

- The Treaty on the Non-Proliferation of Nuclear Weapons

- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction
- The Convention of the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention)
- The Convention on Cluster Munitions

As a future ATT will seek to regulate the international trade in conventional arms, cooperation between States and intergovernmental organizations will be essential to prevent, combat and eradicate the illicit transfer, illicit production and illicit brokering of conventional arms and their diversion into the illicit market. The ATT Preparatory Committee meeting Chair's non-paper<sup>77</sup> noted that international cooperation could take the form of:

- Exchange of information on matters regarding the implementation and application of the ATT, which could include information on implementation measures, specific exporters, importers and brokers and on any prosecutions brought domestically (in line with commercial and proprietary protections)
- Law enforcement institutional interaction to combat violations of the future ATT
- Mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the violations of the provisions of this Treaty

# Considerations for African States

Two fundamental purposes of the OAU Charter (Article II) are to ‘coordinate and intensify their [States’] cooperation and efforts to achieve a better life for the peoples of Africa’ and ‘to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights’.<sup>78</sup>

This commitment is further elaborated in arms control agreements at the subregional level.

## African subregional small arms, light weapons and ammunition obligations

All of the African subregional SALW and ammunition subregional instruments require Member States to cooperate in the implementation of these instruments. In fact, African States have had considerable constructive experience of inter-state cooperation with regard to the control of SALW and ammunition. This has mainly been facilitated through processes and activities facilitated by subregional organisations and police cooperation organisations. The specific subregional SALW and ammunition obligations are as follows:

African SALW protocol/convention	Relevant articles
<p><b>ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials</b><sup>79</sup></p> <p>This Convention is legally binding for the following States: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo</p>	<p><b>Article 26</b></p> <p>1. Member States undertake to promote intra- and inter-state cooperation in the implementation of this Convention. To this effect:</p> <p>(a) The ECOWAS Executive Secretary shall prepare procedures for interstate cooperation between security forces, the services in charge of border controls and all other services concerned, in the spirit of this Convention;</p>

African SALW protocol/convention	Relevant articles
	(b) The ECOWAS Executive Secretary shall facilitate and seek assistance for the training of officials in intra- and inter-state cooperation.
<p><b>Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa<sup>80</sup></b></p> <p>This Protocol is legally binding for the following States: Burundi, the Central African Republic, the DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania and Uganda</p>	<p><b>Article 15</b></p> <p>(a) States Parties shall establish appropriate mechanisms for cooperation among law enforcement agencies to promote effective law enforcement including:</p> <ul style="list-style-type: none"> <li>(i) Strengthening regional and continental cooperation among police, customs and border control services to address the illicit proliferation, circulation and trafficking of small arms and light weapons. These efforts should include, but not be limited to, training, the exchange of information to support common action to contain and reduce illicit small arms and light weapons trafficking across borders, and the conclusion of necessary agreements in this regard;</li> <li>(ii) Establishing direct communication systems to facilitate free and fast flow of information among the law enforcement agencies in the sub-region;</li> <li>(iii) Establishing multi-disciplinary/specialized law enforcement units for combating the illicit manufacturing of and trafficking in, possession and use of small arms and light weapons;</li> <li>(iv) Promoting cooperation with international organisations such as the International Criminal Police Organisation (INTERPOL) and the World Customs Organisation (WCO) and to utilise existing data bases such as the INTERPOL Weapons and Explosives Tracing System (IWETS);</li> <li>(v) Introducing effective extradition arrangements.</li> </ul>
<p><b>SADC Protocol on Control of Fire Arms, Ammunition and Other Related Materials<sup>81</sup></b></p> <p>This Protocol is legally binding for the following States: Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe</p>	<p><b>Article 14</b></p> <p>1. State Parties shall cooperate 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.</p> <p><b>Article 15</b></p> <p>State Parties shall establish appropriate mechanisms for cooperation among law enforcement agencies of the State Parties to promote effective implementation of this Protocol including the:</p>

African SALW protocol/convention	Relevant articles
	<ul style="list-style-type: none"> <li>(a) Establishment of direct communication systems to facilitate a free and fast flow of information among the law enforcement agencies in the Region;</li> <li>(b) Establishment of an infrastructure to enhance effective law enforcement, including suitable search and inspection facilities at all designated ports of exit and entry;</li> <li>(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;</li> <li>(d) Promotion of cooperation 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;</li> <li>(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</li> <li>(f) Introduction of effective extradition arrangements.</li> </ul>
<p><b>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<sup>82</sup></b></p> <p>This Convention is yet to enter into force, but has the support of the Member States of the Economic Community of Central African States: Angola, Burundi, Cameroon, the Central African Republic, Chad, Congo, the DRC, Equatorial Guinea, Gabon and São Tomé and Príncipe</p>	<p><b>Article 24</b></p> <ol style="list-style-type: none"> <li>1. In order to strengthen confidence, the States Parties shall establish a system of judicial cooperation and shall share and exchange information through the customs, police, water and forest services, the gendarmerie, the border guards or any other competent State body.</li> <li>2. The information exchanged may concern criminal groups and networks of illicit trafficking in small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly.</li> <li>3. The States Parties shall also exchange information on sources and supply routes, consignee states, means of transport and any financial support available to the groups indicated in Paragraph 2 of this article.</li> <li>4. Each State Party shall inform the others of the convictions of individuals or legal entities involved in manufacture, trade or illicit trafficking decided by its courts. The information shall also cover any seizure and destruction operations.</li> </ol>

African SALW protocol/convention	Relevant articles
	<p>5. Without prejudice to other actions they might take, the States Parties shall also exchange data relating to:</p> <ul style="list-style-type: none"> <li>(a) Manufacture (marking system and techniques, authorized manufacturers);</li> <li>(b) Transfers (exports to and/or imports from any other State, transit, available information concerning national legislation, existing practices and controls, authorized dealers and brokers);</li> <li>(c) Existing stockpiles (security, destruction, losses, thefts, illicit seizures).</li> </ul> <p>6. The cooperation mechanism and the system for the exchange of information must make it possible, inter alia, to improve the capacity of the security forces and other intelligence services including through training sessions on investigative procedures and law enforcement techniques in relation to the implementation of this Convention.</p>
	<p><b>Article 33</b> The States Parties undertake to promote cooperation among states and among various competent government bodies in the implementation of this Convention.</p>



# Implementation

International assistance



# Overview of international assistance

As with international cooperation, international assistance has become an important component of multilateral arms control, non-proliferation and disarmament instruments as a result of the recognition that there are economic, expertise and capacity disparities between States. In addition, it is widely acknowledged that such instruments will not be effective unless all States Parties have the capability to implement the primary provisions of such instruments.

In some instruments there have been humanitarian considerations behind international assistance provisions. For example, assistance for those individuals who have been injured, maimed and/or disabled by anti-personnel mines and cluster munitions is provided for in the Convention of the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and the Convention on Cluster Munitions<sup>83</sup> (see section on Implementation: victim assistance below).

In terms of conventional arms control international assistance has been a consistent focal area of the UNPoA. Two of the key provisions of this instrument are as follows:

States and appropriate international and regional organizations in a position to do so should, upon request of the relevant authorities, seriously consider rendering assistance, including technical and financial assistance where needed, such as small arms funds, to support the implementation of the measures to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects as contained in the Programme of Action.<sup>84</sup>

...

With a view to facilitating implementation of the Programme of Action, States and international and regional organizations should seriously consider assisting interested States, upon request, in building capacities in areas including the development of appropriate legislation and regulations, law enforcement, tracing and marking, stockpile management and security, destruction of small arms and light weapons and the collection and exchange of information.<sup>85</sup>

National reports and statements on the implementation of the UNPoA have revealed that some States, the UN, intergovernmental organizations and non-governmental organizations have provided significant assistance to many of those States that have requested assistance. This support has taken the form of (among others) training and capacity-building (such as marking, record-keeping, stockpile management, border controls, national coordination agency management, law enforcement and public awareness), technical assistance (such as policy, legislation and SALW control practices).

The UN Office for Disarmament Affairs (UNODA), through its UNPoA Implementation Support System, has sought to facilitate a more coordinated approach to international assistance with regard to the implementation of the UNPoA. In 2011 UNODA published a compendium of State requests for assistance from national reports to the 2010 Biennial Meeting of States on the UNPoA titled 'Matching needs and resources'.<sup>86</sup> Three-quarters of the requests for assistance originated from African States.

As indicated in other modules of this toolkit, there is considerable substance and capacity differences of conventional arms control systems and practices between States. Some States that become party to a future ATT are likely to require assistance to enable them to fully implement the provisions of the Treaty. Consequently, the ATT Preparatory Committee meeting Chair's non-paper has recommended the following:<sup>87</sup>

- States Parties may offer or receive assistance.
- State Parties may offer or receive assistance, inter alia, through the UN, international, regional, subregional or national organizations or non-governmental organizations, or on a bilateral basis.

- States Parties in a position to do so, and where appropriate, may provide technical, legal, material and financial assistance to other States Parties in support of their implementation of the obligations under the ATT. Such assistance may take the form of information exchange on best practices, and legislative and legal assistance, related to the Treaty and its practical implementation. States Parties may build upon existing customs and law enforcement cooperation arrangements, including those already established by international, regional and subregional organizations.
- Consistent with their respective legal and administrative systems, States may exchange relevant information and best practices on exports, imports and transfers of conventional arms.
- States Parties shall designate one or more national points of contact to facilitate cooperation and information exchange between States, and to act as a liaison on all matters relating to the implementation of the ATT.
- States providing and receiving assistance under the provisions of the ATT shall do so in a manner consistent with existing commitments and international instruments, with a view to ensuring the full and prompt implementation of agreed assistance programmes.
- The provisions of this Treaty shall be implemented in such a manner as to avoid hampering the economic or technological development of States Parties.

# Considerations for African States

With the exception of a handful of States, most African States do not produce or export arms, with most African States being the recipients of arms transfers. However, there have been significant levels of arms transit, transshipment and re-export within Africa, with controls over such transfers lacking consistency. A future ATT is likely to require all States Parties to implement additional controls for all arms transfers. Hence, some African States may require international assistance.

# Implementation

Victim assistance





## International legal frameworks<sup>88</sup>

Comprehensive international frameworks for victim assistance already exist, and ascribe States' responsibility for providing protection, justice and reparations to all types of victims. A key instrument in this regard is the Convention on the Rights of Persons with Disabilities (2006), which has the purpose to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.<sup>89</sup> These frameworks and mechanisms have led to the creation of broadly accepted, international standards concerning the treatment of victims, which also articulate the full range of States' obligations in this regard.

A primary instrument for victim assistance in relation to international humanitarian and human rights law is the UN Declaration on the Basic Principles of Rights of Victims of Crime and Abuse of Power (1985), which has been complemented by the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005). According to the Basic Principles (2005) a person is a victim if they suffered harm or loss, regardless of whether a perpetrator is identified or whether he/she has a particular relationship with the victim.

In terms of these frameworks, victims of gross violations of international human rights law and serious violations of international humanitarian law are entitled to:

- The right to an effective remedy including justice and fair treatment: this includes a duty on the state to investigate, prosecute and punish those responsible for violations, equal access to an effective judicial remedy as provided for under international law

- The right to reparations that are proportional to the gravity of the violation; restitution measures to restore the victim to his/her original situation before the violation
- Compensation for any economically assessable damage as appropriate and proportional to the gravity of the violation
- Rehabilitation, including appropriate medical and psychological care as well as legal and social services
- Measures of satisfaction including the verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims
- Guarantees of non-repetition from the State including measures to contribute to prevention)

# Specific international instruments on victim assistance

Below are text extracts relating to victim assistance from some of the relevant international instruments.

## Violations of international human rights law

Instrument	Article
<p><b>Universal Declaration of Human Rights<sup>90</sup></b></p>	<p><b>Article 8</b> Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</p>
<p><b>International Covenant on Civil and Political Rights<sup>91</sup></b></p>	<p><b>Article 2(3)</b> Each State Party to the present Covenant undertakes:</p> <ul style="list-style-type: none"> <li>(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;</li> <li>(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;</li> <li>(c) To ensure that the competent authorities shall enforce such remedies when granted.</li> </ul> <p><b>Article 26</b> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>

Instrument	Article
<p><b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>92</sup></b></p>	<p><b>Article 14</b> Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.</p>
<p><b>Convention on the Rights of the Child<sup>93</sup></b></p>	<p><b>Article 39</b> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.</p>

## Violations of international humanitarian law

Instrument	Article
<p><b>Hague Convention (IV) Respecting the Laws and Customs of War on Land, 18 October 1907<sup>94</sup></b></p>	<p><b>Article 3</b> A belligerent Party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.</p>
<p><b>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977<sup>95</sup></b></p>	<p><b>Article 91</b> A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.</p>

## Violations of international criminal law

Instrument	Article
<p><b>Rome Statute of the International Criminal Court<sup>96</sup></b></p>	<p><b>Article 75</b></p> <ol style="list-style-type: none"> <li>1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.</li> <li>2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.           <p style="margin-left: 2em;">Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79 ...</p> </li> </ol>
<p><b>United Nations Convention against Transnational Organized Crime (2000) and its Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2002)<sup>97</sup></b></p>	<p><b>Protocol Article 6</b></p> <ol style="list-style-type: none"> <li>2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:           <ol style="list-style-type: none"> <li>(a) Information on relevant court and administrative proceedings;</li> <li>(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.</li> </ol> </li> <li>3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society ...</li> </ol>

## International arms control and disarmament instruments

Precedents for the inclusion of provisions for victim assistance in arms control and disarmament treaties already exist. The most recent examples include:

- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction
- The Convention on Cluster Munitions
- The Protocol on Explosive Remnants of War (Protocol V to the Convention on Certain Conventional Weapons, 1980)

The indiscriminate nature of antipersonnel mines and cluster munitions, combined with the high levels of civilians casualties and injuries from such weapons, has contributed to the abovementioned conventions arguably being established ‘on the premise that States have responsibilities to ensure the full realisation of the rights of victims and survivors ... [with] victims from these weapon types have the same rights as other people with disabilities’<sup>98</sup> (as specified in the Convention on the Rights of Persons with Disabilities, 2006). The relevant provisions of these three instruments are as follows:

Instrument	Article
<p><b>Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction</b><sup>99</sup></p>	<p><b>Article 6(3)</b>                      Each State Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of mine victims, and for mine awareness programs. Such assistance may be provided inter alia through the UN system, relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.</p>
<p><b>Convention on Cluster Munitions</b><sup>100</sup></p>	<p><b>Article 5(1)</b>                      Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.</p>

Instrument	Article
<b>Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention)</b> <sup>101</sup>	<b>Article 8(2)</b> Each High Contracting Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war. Such assistance may be provided inter alia through the United Nations system, relevant international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

Preliminary discussions regarding the extent of the inclusion of victim assistance provisions in a future ATT have not been conclusive. Some States and civil society organizations have prioritized the inclusion of comprehensive victim assistance provisions in a future ATT, where all types of victims would be included (not just victims from armed conflict). There has even been a suggestion that the ‘polluter-pays principle’<sup>102</sup> should be applied to a future ATT. On the other hand, some other States have not emphasized the inclusion of victim assistance.

Consequently the ATT Preparatory Committee meeting Chair’s non-paper, in seeking to distil the discussions between States during the Preparatory Committee meetings, has suggested the broad framing of the victim assistance provisions as follows:

- Each State Party in a position to do so, and where appropriate, may offer or receive assistance for the care and rehabilitation, and social and economic reintegration, of victims of armed conflict.
- Such assistance may be technical or material in nature and can be provided, inter alia, through the UN system, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis, as appropriate.

# Considerations for African States

Hundreds of thousands of Africans have been victims of armed violence, and many of them were injured, disabled and maimed as a consequence of illicit transfers of conventional arms. Consequently the 'Draft AU Common Position on an Arms Trade Treaty' (compiled in September 2011 by African governmental experts) recommended the inclusion of victim assistance provisions in a future ATT. (See the section on Scope for further details.)



# **Implementation**

**Implementation Support Unit**



# ATT and an Implementation Support Unit

In terms of the implementation of most treaties, common practice is that an Implementation Support Unit (ISU) is established to assist such a process. In some instances new independent structures are created, while in others existing multilateral structures and institutions are afforded the treaty implementation support mandate.

The nature and responsibilities of such units are often the outcome of the manner in which the treaty, convention or protocol was negotiated. That is, international instruments negotiated outside UN processes often result in the establishment of independent support entities, while in most of the cases where international instruments were negotiated under a UN ambit, existing UN structures are tasked with an implementation mandate, or a new UN entity is established.

In the preliminary ATT discussions between States there has been widespread support for the establishment of an ISU to assist with the ratification and implementation of a future ATT. There has, however, been no clear consensus among States as to the autonomy, location, staffing and funding of such an ISU. The ATT Preparatory Committee meeting Chair's non-paper, however, envisages the responsibilities of such an ISU to be as follows:<sup>103</sup>

The Implementation Support Unit shall:

- (a) Serve as the repository for annual reports submitted by States Parties as part of their Treaty obligations;
- (b) Serve as the repository for reports on disputes on transfer denials;

- (c) Assist the Assembly of States Parties in carrying out the activities set forth in the Treaty and make arrangements and provide the necessary services for the sessions of the Assembly of States Parties and subsidiary organs, as necessary;
- (d) Assist States Parties in providing information to the Assembly of States Parties and to each other, as envisaged in the Treaty, upon request;
- (e) Act as a clearing-house for offers of and requests for assistance for Treaty implementation under the terms of the Treaty and promote international cooperation to that end;
- (f) Ensure the necessary coordination with the secretariats of relevant international and regional organizations and represent the Implementation Support Unit in meetings and activities of such organizations, as applicable;
- (g) Conduct outreach to increase awareness of this Treaty regime and to promote the universality of this Treaty; and
- (h) Perform other technical and administrative duties as assigned by the Assembly of States Parties.

# Structure and function of similar implementation support units<sup>104</sup>

For African States involved in negotiating an ATT it may be a useful to examine four other treaty secretariats or support units in relation to:

- Structure and composition
- Mandate
- Role and functions
- Staffing
- Location
- Funding arrangements

## Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean

The Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (OPANAL) is an inter-governmental agency that was created by the Treaty of Tlatelolco of 1967.<sup>105</sup> According to Article 7 of the Treaty, the 'Contracting Parties' to Treaty, in order to ensure compliance with the obligations of the Treaty, were required to establish an international organization to be known as the Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean ('the Agency'). Only the Contracting Parties would be affected by its decisions.

The Agency is responsible for the holding of periodic or extraordinary consultations among Member States on matters relating to the purposes, measures and procedures set forth in this Treaty and to the supervision of compliance with the various obligations. In addition, the Contracting Parties agreed to extend to the Agency full and prompt cooperation in accordance with the provisions of this Treaty, of any agreements they may conclude with the Agency and of any agreements the Agency

may conclude with any other international organization or body. The Agency's headquarters are located in Mexico City.

### **Mandate**

OPANAL is responsible for the convoking of regular and special general conferences and consultation meetings that are related to the established purposes and procedures of the Treaty. OPANAL supervises the adherence to the Control System and the Obligations stemming from the Treaty of Tlatelolco. The Control System as defined in Article 12(2) of the Treaty shall be used in particular for the purpose of verifying:

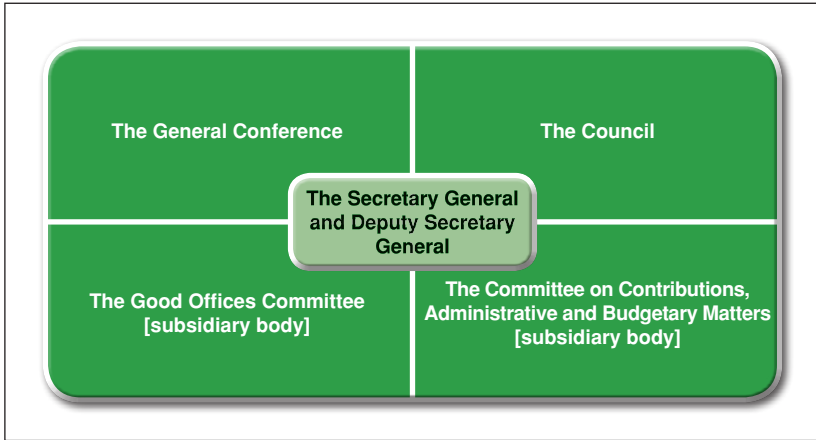
- (a) That devices, services and facilities intended for peaceful uses of nuclear energy are not used in the testing or manufacture of nuclear weapons;
- (b) That none of the activities prohibited in the articles of the Treaty are carried out in the territory of the Contracting Parties with nuclear materials or weapons introduced from abroad; and
- (c) That explosions for peaceful purposes are compatible with the articles of the Treaty.

The obligations of OPANAL are outlined in Article 1(1) of the Treaty, which states that the Contracting Parties undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:

- (a) The testing, use, manufacture, production, or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else, or in any other way; and
  - (b) The receipt, storage, installation, deployment, and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf, or in any other way.
2. The Parties also undertake to refrain from engaging in encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession, or control of any nuclear weapon.

## Structure

OPANAL's functions are categorised into three core bodies and two subsidiary bodies.



The General Conference convenes biennially and special sessions are invoked when necessary. The Conference has the following designated tasks:<sup>106</sup>

- Studying and ruling on any issue or matter addressed in the Treaty, including those that refer to the powers and functions of OPANAL's administrative bodies
- Establishing procedures to ensure the adherence to the Control System established by the Treaty of Tlatelolco
- Electing the members of the Council
- Electing and dismissing the Secretary General
- Receiving and reviewing biennial and special reports presented by the Council and the Secretary General
- Establishing, as the competent body, agreements with governments and international agencies
- Approving the Agency's budget and establishing the financial contributions scale for Member States
- Electing the authorities for each session of the General Conference

- Establishing any subsidiary organisation deemed necessary
- Approving the rules of procedure

The Council performs an oversight function by ensuring that decisions adopted by the General Conference are in line with the Treaty's provisions. One of the main outcomes of the Council is the presentation of a biennial report on its work as well as any other special reports deemed necessary by the General Conference. The Council convenes when the President decides or at the request of any of its members. However, the intervals between Council meetings should not exceed sixty days.<sup>107</sup> The Council consists of five members of OPANAL elected for a four-year term.

The Secretary General is appointed for a four-year term and may be re-elected for one additional term.

## **Implementation Support Unit: Biological and Toxin Weapons Convention**

From 1972 to December 2006, the then United Nations Department of Disarmament Affairs (UNDDA) acted as a secretariat for the Biological and Toxin Weapons Convention (BTWC), but, as Norway argued in its working paper presented at the 2006 Sixth Review Conference, '[although there is] widespread satisfaction with the UNDDA's performance, there are constraints on the resources it can set aside for servicing the BTWC community'.<sup>108</sup> A number of States Parties, including Canada, Argentina and the Netherlands (in consultation with other States Parties), made reference to the establishment of permanent secretariat or an implementation support unit for the BTWC in working papers submitted at the Sixth Review Conference.

The suggestions made in these papers were subsequently used to form the mandate of the Implementation Support Unit, which was formally established at the Sixth Review Conference of the BTWC in December 2006. The ISU steadily took up its mandated activities from April 2007 and became fully operational on 2 August 2007.



## **Funding**

Budgeting for the ISU was included as an item in the estimated costs of BTWC meetings document BWC/CONF.VI/4 of the Sixth Review Conference of the BTWC in 2006. The BTWC ISU is included as a budget item under the BTWC Meetings Budget, which is funded by contributions made by States Parties to the BTWC, based on the UN scale of assessment pro-rated to take into account the number of States Parties participating in the meetings.

According to the Rules of Procedure, costs of meetings, including the Conference of States Parties, are shared among the States Parties participating in meetings, also based on the UN scale of assessment pro-rated to take into account the number of States Parties participating in meetings.

In addition, UN General Assembly Resolution 60/96 requested that the UN Secretary-General continue to provide appropriate assistance to the depository governments of the BTWC and make available services that may be required for the implementation of the decisions and recommendations of the Review Conference.

## **Mandate**

The ISU has performed four key tasks.

- **Administrative support:**
  - Forms the core of the Secretariat of meetings of the BTWC
  - Maintains and develops the BTWC website (including through the development of a restricted access area)
  - Interacts with relevant international organizations
  - Interacts with scientific and academic institutions, as well as non-governmental organizations
  - Attends relevant meetings and events
  - Acts as a clearing house for assistance
- **Confidence-building measures:**
  - Receives and distributes confidence-building measures (CBMs) to/from States Parties
  - Sends information notices to States Parties regarding their annual submissions

- Compiles and distributes data on CBMs (and reports on participation at each meeting of States Parties)
- Serves as an information exchange point for assistance related to preparation of CBMs
- Facilitates activities to promote participation in the CBM process.
- **National implementation:**
  - Serves as an information exchange point for national implementation
  - Collates details of national measures to implement all aspects of the Convention, as well as biosafety and biosecurity obligations
  - Maintains the National Implementation Database
  - Assists States Parties in meeting the obligations to translate the BWC into effective domestic measures
  - Acts as a clearinghouse for assistance with national implementation.
- **Obtaining universality:**
  - Assists the Chairperson in conducting activities related to promoting universality of the BTWC
  - Assists States Parties in conducting activities related to obtaining universality
  - Conducts outreach with Signatories and States not party
  - Maintains details of progress towards universality
  - Reports to the annual Meetings of States Parties and the annual Meetings of Experts

## **Structure**

The ISU is located within the Geneva Branch of the United Nations Office for Disarmament Affairs (UNODA), which is also the Conference Support Branch for the BTWC.

## **Staffing**

The ISU of the BTWC consists of three full-time staff members: a unit head, a political affairs officer and an associate political affairs officer who are appointed according to the relevant UN recruitment procedures through the advertisement of positions.

## The Organisation for the Prohibition of Chemical Weapons of the Chemical Weapons Convention

The Organisation for the Prohibition of Chemical Weapons (OPCW) is the implementing body of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Chemical Weapons Convention, CWC). The Preparatory Commission for the OPCW, which was responsible for creating the future OPCW and organising the First Session of the Conference of the States Parties of the OPCW, was established in terms of the Paris Resolution of 1994.<sup>109</sup> The OPCW was formally established by the CWC in 1997, under Article VIII of the CWC, and has its headquarters in The Hague, in the Netherlands.

### Funding

The Paris Resolution stipulated that States Signatories to the CWC participating in the Preparatory Commission would fund that Commission as well as the Provisional Technical Secretariat. Contributions were determined according to the UN scale of assessment adjusted to consider the differences between the UN membership and the participation of States signatories in the Commission and timing of signature. The Commission and the Provisional Technical Secretariat could also benefit from voluntary contributions. According to the CWC, financial contributions made by States Parties to the Preparatory Commission would be deducted in an appropriate way from their contributions to the regular budget of the OPCW.

The OPCW's activities are paid by States Parties in accordance with the UN scale of assessment adjusted to take into account differences in membership between the UN and the OPCW, and subject to the provisions of Articles IV and V of the CWC, which relate to destruction and verification costs.<sup>110</sup> The budget of the OPCW is divided into two chapters: one relating to administrative costs and one relating to verification costs.

In terms of Article VIII(8) a member of the OPCW that is in arrears in the payment of its financial contribution to the OPCW shall have no

vote in the Organization if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The Conference of States Parties may, nevertheless, permit such a member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the member.

The Conference of States Parties is responsible for determining the scale of financial contributions to be paid by States Parties in accordance with Article VIII(7) of the CWC. In addition, the Conference was responsible for establishing the voluntary fund for assistance in accordance with Article X of the CWC, which relates to the assistance and protection against chemical weapons.

### **Mandate**

The OPCW is given the mandate to achieve the objectives and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

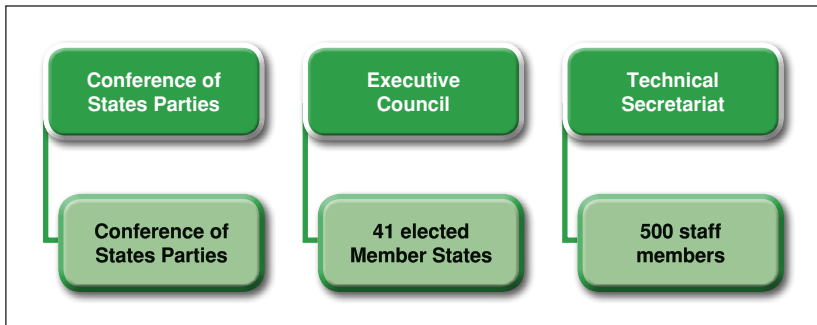
The OPCW works in the following key areas:<sup>111</sup>

- **Demilitarization:** The destruction of existing chemical weapons
- **Non-proliferation:** Ensuring that each State Party adopts the necessary measures to ensure that toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used within its territory or in any other place under its jurisdiction or control for purposes not prohibited under the Convention
- **Assistance and protection:** Ensuring that each Member State provides assistance and protection to fellow Member States threatened by the use of chemical weapons or attacked with chemical weapons
- **International cooperation:** Providing capacity-building for the peaceful applications of chemistry in areas which are relevant to the CWC
- **Universality:** Facilitating the creation of a favourable atmosphere for bilateral and multilateral cooperation and interaction in the field of disarmament and security

- **Implementation support:** Assisting States Parties to meet their obligations under article VII of the Convention through the Technical Secretariat's implementation-support programme

### Structure

The OPCW consists of three main bodies, namely the Conference of States Parties, the Executive Council, and the Technical Secretariat. The Conference of States Parties is the chief policy-making organ of the OPCW. It consists of all States Parties to the CWC and meets annually as well as in special session when required. The Executive Council is the main decision-making body of the OPCW and is made up of 41 representatives from Member States to the CWC who are elected for a two-year term. The Council primarily deals with policy matters and issues surrounding the interpretation of the Convention and usually meets four times a year.



The Technical Secretariat is responsible for the day-to-day administration and implementation of the Convention, as well as inspections. According to Article VIII(38 and 39) of the CWC, the Technical Secretariat shall:<sup>112</sup>

- Prepare and submit the draft programme, budget, draft report (and any other reports requested by the Conference or the Executive Council) to the Executive Council
- Provide administrative and technical support to the Conference, the Executive Council and subsidiary organs

- Address and receive communications on behalf of the OPCW to and from States Parties on the implementation of the CWC
- Provide technical assistance and technical evaluation on the implementation of the CWC, including evaluation of scheduled and unscheduled chemicals
- Negotiate agreements or arrangements relating to the implementation and verification activities with States Parties, subject to approval by the Executive Council
- Coordinate the establishment and maintenance of permanent stockpiles of emergency and humanitarian assistance by States Parties in accordance with Article X of the CWC
- Administer the voluntary fund as set out in Article X of the CWC
- Compile declarations made by the States Parties and register, when requested, bilateral agreements concluded between States Parties or between a State Party and the OPCW for Article X purposes

In addition to the three main bodies discussed above, three subsidiary bodies have been established by the CWC to aid the OPCW with its work. These are the Scientific Advisory Body (SAB), which is managed by the Director-General, the Confidentiality Commission, and the Advisory Body on Administrative and Financial Issues.

### **Staffing**

The Technical Secretariat is made up of the Director-General, who is the head and chief administrative officer, inspectors, and scientific, technical and other personnel as may be required. The Director-General is appointed by the Conference, on recommendation of the Council, for a four-year term (which can be renewed only once). The Director-General has the following responsibilities:

- To appoint staff
- To ensure the organisation and functioning of the Secretariat
- To act as the official interface between the Secretariat, the Conference and the Council

- To attend sessions and meetings of the Conference and the Council ex officio, and may, with prior approval, make written or oral statements at meetings
- To oversee the administrative and technical support provided to the Conference and the Council
- To prepare provisional agenda for sessions and meetings of the Conference and the Council
- To prepare periodic reports to the Conference and the Council on verification activities and on the status of implementation of the CWC in general
- To act as originator of all inspection mandates
- To investigate cases of alleged use of chemicals and challenged inspections
- To oversee the confidentiality regime of the OPCW, handling of samples and designation of inspectors

The staff of the OPCW are appointed by the Director-General in accordance with Article VIII(44) of the CWC, which states that due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible and that recruitment shall be guided by the principle that staff be kept to the minimum necessary for the proper discharge of the responsibilities of the Secretariat.<sup>113</sup> In addition, only citizens of States Parties to the CWC may serve as Director-General or as other staff of the OPCW.

## Implementation Support for the Chemical Weapons Convention

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (the Chemical Weapons Convention) opened for signature on 3 December 1997 and entered into force on 1 March 1999. An intercessional meeting on this Convention in May 2001 proposed the establishment of a small unit in accordance with the mandate of States Parties that would enhance the operations of the implementation process of the Convention.

The Third Meeting of States Parties of the Convention in September 2001 formally welcomed the establishment of an ISU. The Geneva International Centre for Humanitarian Demining (GICHD) was mandated to manage the unit in accordance with the duties approved by States Parties. The agreement between the GICHD and States Parties was finalised on 7 November 2001.

### **Mandate**

The ISU's responsibilities, outlined in the President's Paper and endorsed at the Third Meeting of the States Parties, are as follows:<sup>114</sup>

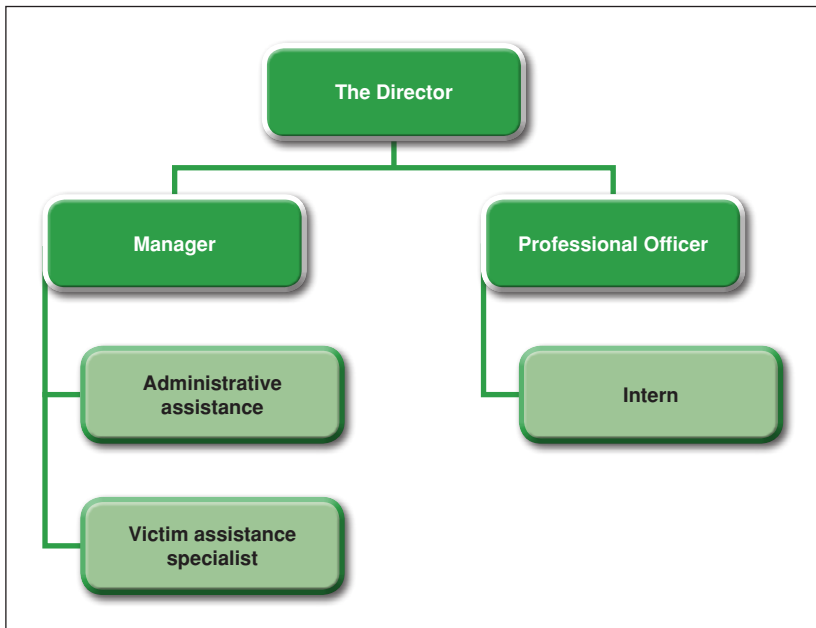
- Providing support and advice to the Coordinating Committee and following up on Coordinating Committee decisions. The Committee was established in 2000 to coordinate matters related to the Intercessional Work Programme. The Coordinating Committee includes the Standing Committee's 16 Co-Chairs and Co-Rapporteurs and is chaired by the President of the most recent meeting of the States Parties
- Providing support and advice across all facets of current and incoming Presidents' duties
- Providing support and advice to the Co-Chairs and Co-Rapporteurs of the Standing Committees, undertaking preparations for meetings of the Standing Committees and executing any necessary follow-up
- Interacting with the ICBL, ICRC, UN and other international organisations and agencies
- Collecting, collating, storing and retrieving documentation on the Convention and its implementation
- Ensuring that the GICHD website contains the latest information on the implementation process

### **Structure and staffing**

The ISU operates under the financial and administrative guidance of the Director of the GICHD. The Director is accountable to the States Parties by complying with the agreement to establish an ISU to carry out the



duties related to the Convention and not the GICHD's governing body. The Director is mandated to submit an annual report on the functioning of the ISU to the States Parties at their annual meeting. The report covers the period between two meetings of States Parties. The Director may be invited by the President or the Coordinating Committee to present an oral report on the functioning of the ISU at intercessional meetings or on other occasions as requested. Below is a diagrammatic representation of the ISU.



### **Funding**

The agreement between the States Parties and the GICHD-ISU states: 'A fund for voluntary contributions shall be established to finance the on-going activities of the ISU.'<sup>115</sup> The Coordinating Committee and the Director of the GICHD are responsible for the annual budget for the ISU. The basic infrastructure costs (for example general services, human resources, accounting, conference management) of the ISU are covered by the GICHD and are not included in the ISU budget.

# Considerations for African States

In terms of AU preliminary discussions on developing an AU Common Position on an ATT there has been a recommendation for 'a Secretariat to serve, promote and verify the effective, fair and accountable implementation of the Treaty. Such a Secretariat could be funded from funds charged on revenues from arms sales from major producers, on an agreed percentage.'<sup>116</sup> However, no clear consensus has emerged as to whether the ISU should be an independent entity or should be based within the UN system. There has also been no further elaboration on how such a 'levy' on 'major arms producers' will be administered.

There appears to be no firm agreement among African States on the mandate that such an ISU could have with regards to providing technical assistance to those States that require support to establish and/or enhance national conventional arms control measures and processes in accordance with a future ATT. This is an important consideration as comprehensive, national conventional arms transfer control entities in Africa are not commonplace. If technical assistance is a priority, then the multifunctional mandate similar to that of the ISU for the BTWC may be preferable for African States.

Should African States require an ISU that provides States with technical assistance on request, then it will be in the interests of such States for the ISU to be staffed with conventional arms control technical experts, as in the case of the OPCW. These experts should be able to provide specialised advice and support on the elements of an ATT, especially with regard to national implementation.

A likely fundamental role for the ISU will be to be a clearinghouse for state reports on arms transfers. Given the current substantial international arms control reporting requirements, it may be in the interests

of African States for the ISU to provide targeted reporting assistance. In addition, it may be prudent for such an entity to facilitate simplified and streamlined reporting procedures in order to encourage extensive and regular reporting.

Informally, many African States have suggested that the ISU be a focal point for funding applications for ATT implementation assistance. Some States have also recommended that the ISU administer a voluntary implementation assistance fund, similar to the case of the ISU for the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

# List of ATT online resources

Amnesty International	<a href="http://www.amnesty.org/en/campaigns/control-arms">http://www.amnesty.org/en/campaigns/control-arms</a>
ATT Legal Blog	<a href="http://armstradetreaty.blogspot.com/">http://armstradetreaty.blogspot.com/</a>
ATT Negotiation Mapping Database	<a href="http://armstreaty.org/index.php">http://armstreaty.org/index.php</a>
Control Arms	<a href="http://www.controlarms.org/home">http://www.controlarms.org/home</a>
ICRC	<a href="http://www.icrc.org/eng/war-and-law/weapons/index.jsp">http://www.icrc.org/eng/war-and-law/weapons/index.jsp</a>
International Action Network on Small Arms	<a href="http://www.iansa.org/campaign/arms-trade-treaty">http://www.iansa.org/campaign/arms-trade-treaty</a>
Oxfam	<a href="http://www.oxfam.org/en/category/freetags/arms-trade-treaty/">http://www.oxfam.org/en/category/freetags/arms-trade-treaty/</a>
Reaching Critical Will	<a href="http://www.reachingcriticalwill.org/disarmament-fora/att">http://www.reachingcriticalwill.org/disarmament-fora/att</a>
Saferworld	<a href="http://www.saferworld.org.uk/what/arms-trade-treaty-">http://www.saferworld.org.uk/what/arms-trade-treaty-</a>
SIPRI	<a href="http://www.sipri.org/">http://www.sipri.org/</a>
Transparency International	<a href="http://www.ti-defence.org/focus-areas/att">http://www.ti-defence.org/focus-areas/att</a>
UNIDIR	<a href="http://unidir.org/bdd/fiche-activite.php?ref_activite=537">http://unidir.org/bdd/fiche-activite.php?ref_activite=537</a>
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- 96 Available at <http://untreaty.un.org/cod/icc/statute/romefra.htm> (accessed 16 June 2012).
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- 102 The “polluter-pays principle” has traditionally been applied to environmental cases and involves the norm where the polluting company/organization/State bears the responsibility for the restoration of the environment that it polluted and/or for compensation. Simply put, the application of the “polluter-pays principle” to the conventional arms trade would mean that States responsible for transfers in violation of a future ATT would be responsible to provide reparations and compensation to the victims of those arms transfers.
- 103 See [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/CONF.217/1&referer=http://www.un.org/disarmament/ATT/&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/1&referer=http://www.un.org/disarmament/ATT/&Lang=E) (accessed 16 June 2012).
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- 115 See [http://www.apminebanconvention.org/fileadmin/pdf/mbc/MSP/3MSP/Reports/3MSP\\_Final\\_Report\\_E.pdf](http://www.apminebanconvention.org/fileadmin/pdf/mbc/MSP/3MSP/Reports/3MSP_Final_Report_E.pdf) (accessed 16 June 2012).
- 116 African Union, Draft African Union Common Position on an Arms Trade Treaty, Addis Ababa, 2012, 8, [http://www.gca.org.za/LinkClick.aspx?link=AU\\_common\\_position\\_ATT.pdf&tabid=1120&mid=7919&language=en-US](http://www.gca.org.za/LinkClick.aspx?link=AU_common_position_ATT.pdf&tabid=1120&mid=7919&language=en-US) (accessed 16 June 2012).



# **Annex 1**

**Report of the Preparatory Committee  
for the United Nations Conference  
on the Arms Trade Treaty**







# General Assembly

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## United Nations Conference on the Arms Trade Treaty

New York, 2-27 July 2012

### Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty

#### I. Introduction

1. In its resolution 63/240, entitled “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms”, the General Assembly decided to establish an open-ended working group that would meet for up to six one-week sessions starting in 2009 in order to facilitate further consideration on the implementation of the relevant recommendation contained in paragraph 27 of the report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms (see A/63/334), on a step-by-step basis among all States Members of the United Nations, in an open and transparent manner.

2. The Open-ended Working Group towards an Arms Trade Treaty: establishing common international standards for the import, export and transfer of conventional arms met on 23 January, from 2 to 6 March and from 13 to 17 July 2009 and submitted its report (A/AC.277/2009/1) to the General Assembly at its sixty-fourth session.

3. At its sixty-fourth session, the General Assembly adopted resolution 64/48, in which it decided to convene a United Nations Conference on the Arms Trade Treaty to meet for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms; also decided that the Conference would be undertaken in an open and transparent manner, on the basis of consensus, to achieve a strong and robust treaty; and further decided to consider the remaining sessions of the Open-ended Working Group in 2010 and 2011 as a preparatory committee for the Conference. In addition, the Assembly requested the Preparatory Committee, at its four sessions in 2010 and 2011, to make recommendations to the Conference on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms, bearing in mind the views and recommendations expressed in

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the replies of Member States (see A/62/278 (Parts I and II) and Add.1-4) and those contained in the report of the Group of Governmental Experts and the report of the Open-ended Working Group, and to present a report containing those elements to the Assembly at its sixty-sixth session. In the same resolution, the Assembly decided to establish a fifth session of the Committee in 2012 of up to three days' duration to decide on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents, for the Conference; decided that intergovernmental organizations and specialized agencies, having received a standing invitation to participate as observers in the work of the Assembly, might participate as observers in the sessions of the Committee and requested the Committee to take decisions on the modalities of attendance of non-governmental organizations at its sessions; and stressed the need to ensure the widest possible and effective participation in the Conference in 2012.

4. At its sixty-sixth session, the General Assembly adopted decision 66/518, by which it decided to hold, within existing resources, the final session of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty from 13 to 17 February 2012 in New York, to conclude the Preparatory Committee's substantive work and to decide on all relevant procedural matters, pursuant to paragraph 8 of Assembly resolution 64/48.

## **II. Organizational matters**

### **A. Sessions of the Preparatory Committee**

5. The Preparatory Committee held its first session, which combined two of the four sessions requested in paragraph 7 of General Assembly resolution 64/48 into one two-week session, at United Nations Headquarters from 12 to 23 July 2010. At the opening of the session, the High Representative for Disarmament Affairs made a statement.

6. The Chief of the Disarmament and Peace Affairs Branch, Department for General Assembly and Conference Management of the United Nations Secretariat, served as Secretary of the Preparatory Committee for the four sessions.

7. The lists of participants of the four sessions of the Preparatory Committee are contained in documents A/CONF.217/PC/INF/1; A/CONF.217/PC.II/INF/1 and Add.1; A/CONF.217/PC.III/INF/1 and Add.1; and A/CONF.217/PC.IV/INF/1 and Add.1. The list of participating non-governmental organizations is contained in document A/CONF.217/PC.IV/INF/2.

### **B. Election of officers**

8. The Preparatory Committee elected the following officers for its duration:

*Chair:*

Roberto García Moritán (Argentina)

*Vice-Chairs:*

Australia

Bulgaria

France  
Japan  
Mexico  
Nigeria  
Republic of Korea  
Romania  
South Africa

### **C. Documentation**

9. The list of documents before the Preparatory Committee at its sessions is contained in annex I.

### **D. Adoption of the agenda and proceedings of the sessions of the Preparatory Committee**

10. At the 1st meeting of its first session, on 12 July 2010, the Preparatory Committee adopted the provisional agenda of the session, contained in document A/CONF.217/PC/L.1, as amended, which read as follows:

1. Opening of the session.
2. Adoption of the agenda and other organizational matters.
3. Welcome and opening remarks by the High Representative for Disarmament Affairs.
4. Election of members of the Bureau.
5. Recommendations on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms, in accordance with paragraph 7 of General Assembly resolution 64/48.
6. Other matters.

11. The Committee held 11 plenary meetings at its first session, at which statements were made by a total of 64 States and 4 observers on recommendations on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms, in accordance with paragraph 7 of General Assembly resolution 64/48. At the 6th meeting of the first session, on 14 July 2010, the Chair appointed three facilitators to preside over informal meetings on the following issues: scope (Trinidad and Tobago), criteria and parameters (Australia) and implementation (Egypt).

12. At the 1st meeting of its first session, the Committee adopted a draft decision on the modalities of attendance of non-governmental organizations at its sessions, as contained in document A/CONF.217/PC/L.2.

13. The Preparatory Committee held its second session at United Nations Headquarters from 28 February to 4 March 2011. At the 1st meeting of its second

session, the Committee adopted the provisional agenda for its second session, as contained in document A/CONF.217/PC.II/L.1. The agenda read as follows:

1. Opening of the session.
2. Adoption of the agenda and other organizational matters.
3. Recommendations on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms.
4. Other matters.

14. The Preparatory Committee held nine plenary meetings at its second session, at which statements were made by a total of 84 States and 4 observers on recommendations on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms.

15. The Preparatory Committee held its third session at United Nations Headquarters from 11 to 15 July 2011. At the 1st meeting of its third session, the Committee adopted the following agenda, as contained in document A/CONF.217/PC.III/L.1:

1. Opening of the session.
2. Adoption of the agenda and other organizational matters.
3. Recommendations on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms.
4. Other matters.

16. The Preparatory Committee held 10 plenary meetings at its third session, at which statements were made by a total of 82 States and 4 observers on recommendations on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms.

17. At its sessions, the Committee discussed, *inter alia*, the following elements: preamble, principles, goals and objectives, scope, criteria and parameters, implementation, international cooperation and assistance, final provisions, and transactions and activities, to be covered by the arms trade treaty.

18. At the 8th meeting of its first to third sessions, on 16 July 2010, 3 March 2011 and 14 July 2011, respectively, and the 6th meeting of its fourth session, on 15 February 2012, the Preparatory Committee suspended the meeting for an informal exchange of views with representatives of non-governmental organizations.

19. The Preparatory Committee held further discussions on the elements of the arms trade treaty, including its principles, goals and objectives, scope, criteria, international cooperation and assistance, implementation and final provisions. To assist in the Committee's work, the Chair provided non-papers to inform the debate. These non-papers were submitted under the Chair's own responsibility without prejudice to the position of any delegation or to the final outcome of the

Committee's work. During each Committee meeting, divergent views were expressed by Member States.

20. Under his own responsibility, the Chair produced a non-paper dated 14 July 2011 (contained in annex II to this report), which would serve as one of the background documents for the Conference. None of the elements within the Chair's non-paper have been agreed and not all views are reflected therein. The non-paper was produced without prejudice to the views and positions of Member States and their right to put forward proposals on the treaty in the Conference.

21. Pursuant to General Assembly resolution 64/48 and Assembly decision 66/518, the Preparatory Committee held its fourth session at United Nations Headquarters in New York from 13 to 17 February 2012, to conclude its substantive work and consider all relevant procedural matters.

22. At the 1st meeting of its fourth session, on 13 February, the Committee adopted the provisional agenda as contained in document A/CONF.217/PC.IV/L.1, as orally amended, which read as follows:

1. Opening of the session.
2. Adoption of the provisional agenda and organization of work.
3. Adoption of recommendations on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents, for the United Nations Conference on the Arms Trade Treaty.
4. Substantive matters.
5. Other matters.
6. Adoption of the report of the Preparatory Committee.

23. At the 1st to 9th meetings of its fourth session, from 13 to 17 February, the Preparatory Committee considered agenda item 3, entitled "Adoption of recommendations on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents, for the United Nations Conference on the Arms Trade Treaty".

### **III. Adoption of the report of the Preparatory Committee**

24. At the 6th meeting, on 15 February 2012, the Chair introduced the draft report of the Preparatory Committee, as contained in document A/CONF.217/PC.IV/CRP.1.

25. At the 10th meeting, on 17 February, the Chair introduced the revised draft report of the Preparatory Committee, as contained in document A/CONF.217/PC.IV/CRP.1/Rev.1. At the same meeting, the Committee adopted the revised draft report.

#### **IV. Decisions and recommendations of the Preparatory Committee**

26. At its 10th meeting, on 17 February 2012, the Preparatory Committee made the following decisions and recommendations:

**A**

**Nomination of the President of the Conference**

To request the Secretary-General of the United Nations to undertake consultations for the nomination of the President Designate of the Conference.

**B**

**Nomination of the Secretary-General of the Conference**

To invite the Secretary-General of the United Nations, in consultation with Member States, to nominate an official to act as Secretary-General of the Conference.

**C**

**Background documentation for the Conference**

To request the United Nations Secretariat to make available the following background documents for the United Nations Conference on the Arms Trade Treaty: General Assembly resolutions 61/89, 63/240 and 64/48; the report of the Secretary-General containing the views expressed by Member States on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms (A/62/278 (Parts I and II) and Add.1-4); the report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms (see A/63/334); the report of the Open-ended Working Group towards an Arms Trade Treaty (A/AC.277/2009/1); the report of the Secretary-General containing the views expressed by Member States on proposed treaty elements and other relevant issues relating to the United Nations Conference on the Arms Trade Treaty (A/66/166 and Add.1 and 2); and the Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty (A/CONF.217/1).

To invite those participating States wishing to do so to submit focused views, of no more than 1,500 words, on the elements of an arms trade treaty, such as those enumerated in paragraph 17 of the present report, by 31 March 2012, without prejudice to their right to put forward additional proposals during the Conference.

To request the Secretary-General to prepare, as one of the background documents for the Conference, a compilation of these views, organized accordingly, to be made available no later than 31 May 2012.

**D****Draft provisional agenda of the Conference**

To recommend for adoption by the United Nations Conference on the Arms Trade Treaty the following draft provisional agenda:

**Draft provisional agenda of the Conference**

1. Opening of the Conference by the Secretary-General of the United Nations.
2. Election of the President.
3. Statement by the President.
4. Address by the Secretary-General of the United Nations.
5. Adoption of the rules of procedure.
6. Adoption of the agenda.
7. Organization of work.
8. Election of officers other than the President.
9. Credentials of representatives to the Conference:
  - (a) Appointment of the members of the Credentials Committee;
  - (b) Report of the Credentials Committee.
10. Confirmation of the Secretary-General of the Conference.
11. Submission of the report of the Preparatory Committee by the Chair of the Committee.
12. General exchange of views.
13. Statements by:
  - (a) Representatives of intergovernmental organizations;
  - (b) Representatives of non-governmental organizations.
14. Reports of the Main Committees.
15. Consideration and adoption of the final documents of the Conference.
16. Other matters.
17. Adoption of the report of the Conference for submission to the General Assembly.

**E****Other officers of the Conference**

To recommend that the United Nations Conference on the Arms Trade Treaty elect fourteen Vice-Presidents, comprising two representatives from the regional group of the President Designate and three from each of the other regional groups. Nominations should be held at an early stage in order to permit the President Designate to benefit from the support of the Bureau during his or her preparations for the Conference.

**F**

**Draft provisional rules of procedure of the Conference**

To recommend for adoption by the United Nations Conference on the Arms Trade Treaty the draft provisional rules of procedure as contained in document in A/CONF.217/L.3, as revised by the Preparatory Committee, to be issued as a document of the Conference (A/CONF.217/L.1).



## Annex I

### List of documents

A/CONF.217/PC/III/1*	Letter dated 27 June 2011 from the Chair of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty addressed to the delegations
A/CONF.217/PC/L.1	Provisional agenda of the first session
A/CONF.217/PC/L.2	Draft decision on the modalities of attendance of non-governmental organizations at the sessions of the Preparatory Committee
A/CONF.217/PC.II/L.1	Provisional agenda of the second session
A/CONF.217/PC.II/L.2	Provisional programme of work for the second session
A/CONF.217/PC.III/L.1	Provisional agenda of the third session
A/CONF.217/PC.III/L.2*	Provisional programme of work for the third session
A/CONF.217/PC.IV/L.1	Provisional agenda of the fourth session
A/CONF.217/PC.IV/L.2	Draft provisional agenda of the Conference
A/CONF.217/PC.IV/L.3	Provisional rules of procedure of the Conference
A/CONF.217/PC/INF/1	List of participants at the first session
A/CONF.217/PC.II/INF/1 and Add.1	List of participants at the second session
A/CONF.217/PC.III/INF/1 and Add.1	List of participants at the third session
A/CONF.217/PC.IV/INF/1 and Add.1	List of participants at the fourth session
A/CONF.217/PC.IV/INF/2	List of non-governmental organizations accredited to any or all of the sessions of the Preparatory Committee

## **Annex II**

### **Chair's non-paper**

(14 July 2011)

#### **Elements**

- I. Preamble
  - II. Principles
  - III. Goals and objectives
  - IV. Scope
  - V. Criteria
    - A. International, regional and subregional obligations of a State
    - B. Potential consequences of arms transfers on peace and security
  - VI. Implementation
    - A. National authority and systems
    - B. Record-keeping, reporting and transparency
    - C. Enforcement
    - D. International cooperation
    - E. International assistance
    - F. Victim assistance
    - G. Implementation Support Unit
  - VII. Final provisions
    - A. Depository and authentic texts
    - B. Signature, ratification or accession
    - C. Entry into force
    - D. Withdrawal and duration
    - E. Reservations
    - F. Amendments
    - G. Assembly of States Parties
    - H. Review Conferences
    - I. Consultation
    - J. Dispute settlement
    - K. Relations with States not party to this Treaty
    - L. Relationship with other instruments
- Annex
- A. Transactions or activities to be covered by this Treaty

## I. Preamble

1. *Recognizing* the legitimate political, security, economic and commercial interests of States in the import, export and transfer of conventional arms and related items,
2. *Recognizing also* that the absence of commonly agreed international standards for the transfer of conventional arms and their diversion to the illicit market are contributory factors to armed conflict, serious violations of international human rights law and international humanitarian law, gender-based violence, the displacement of people, transnational organized crime, terrorism and the illicit trade in narcotics, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development,
3. *Mindful of* the need to prevent the destabilizing effects of excessive and uncontrolled conventional arms stockpiles and to prevent the diversion of conventional arms from the legal into the illicit market,
4. *Recognizing* the need to prevent, combat and eradicate the irresponsible and illicit trade of conventional arms and related items and the responsibility of all States to effectively regulate and control the import, export and transfer of conventional arms and related items,
5. *Recognizing also* that existing national, regional and subregional best practices on the import, export and transfer of conventional arms can play an important role in furthering the goals and objectives of an Arms Trade Treaty,
6. *Recognizing further* the sovereign right of States to determine any regulation of internal transfers of arms and national ownership exclusively within their territory, including through national constitutional protections on private ownership,
7. *Recognizing* that States may adopt more restrictive measures than those provided in the Arms Trade Treaty,

## II. Principles

1. *Guided by* the purposes and principles enshrined in the Charter of the United Nations, and reaffirming States Parties' respect for and commitment to international law,
2. *Reaffirming* the inherent right of all States to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations,
3. *Recalling* the commitment to the principles of political independence, sovereign equality and territorial integrity of all States, and acknowledging that peace and security, development and human rights are the foundations for collective security,
4. *Reaffirming* the right of all States to territorial integrity and political independence,
5. *Reaffirming also* the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognizing the rights of peoples to take legitimate action in accordance with the Charter of the United Nations to realize

their inalienable right of self-determination. This shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples,

6. *Acknowledging* the right of all States to manufacture, develop, acquire, import, export, transfer and retain conventional arms and related items and capabilities for self-defence and security needs and in order to participate in peacekeeping operations in accordance with the Charter of the United Nations. This does not create any obligation of States with respect to such a right, which must be exercised in accordance with international law,

7. *Reiterating* the general prohibition against the use of force and threat of use of force and the principles of the peaceful settlement of disputes and non-interference in the internal affairs of States, as set out in Article 2 of the Charter of the United Nations,

8. *Recalling* the obligations of all States to comply with United Nations Security Council decisions, in particular arms embargoes and sanctions,

9. *Recognizing* that disarmament, non-proliferation and arms control are essential for the maintenance of international peace and security,

10. *Recognizing also* that the control and regulation of the import, export and transfer of conventional arms and related items are without prejudice to the priorities accorded to nuclear disarmament and weapons of mass destruction and conventional disarmament,

11. *Reaffirming* the rights and obligations of States under international law, including international human rights law and international humanitarian law,

### III. Goals and objectives

This Treaty will seek to:

1. *Promote* the goals and objectives of the United Nations Charter;
2. *Establish* the highest possible common international standards for the import, export and transfer of conventional arms;
3. *Prevent, combat and eradicate* the illicit transfer, illicit production and illicit brokering of conventional arms and their diversion into the illicit market, including for use in transnational organized crime and terrorism;
4. *Contribute* to international and regional peace, security and stability by preventing international transfers of conventional arms that contribute to or facilitate: human suffering, serious violations of international human rights law and international humanitarian law, violations of United Nations Security Council sanctions and arms embargoes and other international obligations, armed conflict, the displacement of people, transnational organized crime, and terrorist acts, and thereby undermine peace, reconciliation, safety, security, stability and sustainable social and economic development;

5. *Promote* transparency and accountability in import, export, and transfers of conventional arms;
6. *Be* universal in its application.

#### IV. Scope

1. For the purposes of this Treaty, conventional arms shall include any items that fall within the following categories:
  - (a) Tanks;
  - (b) Military vehicles;
  - (c) Artillery systems;
  - (d) Military aircraft (manned or unmanned);
  - (e) Military helicopters (manned or unmanned);
  - (f) Naval vessels (surface and submarine vessels armed or equipped for military use);
  - (g) Missiles and missile systems (guided or unguided);
  - (h) Small arms;
  - (i) Light weapons;
  - (j) Ammunition for use with weapons referred to in paragraphs (a) to (i);
  - (k) Parts or components specially and exclusively designed for any of the categories set out in paragraphs (a) to (j);
  - (l) Technology and equipment specially and exclusively designed and used to develop, manufacture or maintain any of the items in the categories set out in paragraphs (a) to (k).
2. The international transactions or activities covered by this Treaty include those listed below and defined in Annex A:
  - (a) Import;
  - (b) Export;
  - (c) Transfer;
  - (d) Brokering;
  - (e) Manufacture under foreign licence;
  - (f) Technology transfer.

#### V. Criteria

In reaching a decision on whether or not to authorize an export application, competent national authorities of States Parties shall make assessments of whether or not to transfer arms on an objective and non-discriminatory basis, taking into

account information on the nature of the arms to be transferred and risk assessment of the potential use of the weapon and the end-user.

### **A. International, regional and subregional obligations of a State**

1. A State Party shall not authorize a transfer of conventional arms from, to or through territories under its jurisdiction if the transfer would violate any measure adopted by the Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

2. A State Party shall not authorize a transfer of conventional arms from, to or through territories under its jurisdiction if the transfer violates any of its other relevant international, regional or subregional obligations or commitments regarding the control and regulation of international transfers of conventional arms.

### **B. Potential consequences of arms transfers on peace and security**

A State Party shall not authorize a transfer of conventional arms if there is a substantial risk that those conventional arms would:

1. Be used in a manner that would seriously undermine peace and security or provoke, prolong or aggravate internal, regional, subregional or international instability.

2. Be used to commit or facilitate serious violations of international humanitarian law.

3. Be used to commit or facilitate serious violations of international human rights law.

4. Be used to commit or facilitate serious violations of international criminal law, including genocide, crimes against humanity and war crimes.

5. Seriously impair poverty reduction and socio-economic development or seriously hamper the sustainable development of the recipient State.

6. Be diverted to unauthorized end-users for use in a manner inconsistent with the principles, goals and objectives of the Treaty, taking into account the risk of corruption.

7. Be used in the commission of transnational organized crime as defined in the United Nations Convention against Transnational Organized Crime.

8. Be used to support, encourage or perpetrate terrorist acts.

## **VI. Implementation**

1. The provisions of this Treaty shall be implemented in such a manner as to avoid hampering the right of self-defence of any State Party.

2. Each State Party, during the implementation of its obligations under this Treaty, shall assign the highest priority to ensuring that implementation in

accordance with the Treaty is not discriminatory or subjective in nature and that such implementation would not entail, inter alia, abuse of a political nature.

3. Each State Party shall take the necessary legislative and administrative measures, to adapt, as necessary, national laws and regulations to implement the obligations of this Treaty.
4. Each State Party shall establish a national contact point for the provision and receipt of information and requests pursuant to this Treaty, including to facilitate cooperation and information exchange. Each State Party shall notify the Implementation Support Unit (see Article [ ]) of its national contact point. A list of national contact points shall be maintained and distributed by the Implementation Support Unit on a quarterly basis.
5. Each State Party may refuse, suspend or revoke any transfer.
6. Each State Party, during the implementation of this Treaty, is encouraged to maintain consultations and to share information regarding the implementation of the Treaty, as a confidence-building measure.

## **A. National authority and systems**

### **Authorization systems**

1. Each State Party shall designate competent national authorities, define their respective duties and responsibilities, and ensure adequate coordination at the national level among those authorities to ensure that a transparent, predictable, and effective national control system exists for authorizing and licensing the export, re-export, manufacture under foreign licence or technology transfer of items under the scope of this Treaty.
2. In deciding whether to authorize an export of items under the scope of this Treaty, each State Party shall assess the export against the assessment criteria listed in Article [ ].
3. Each State Party shall have a national control list of those items subject to this Treaty, consistent with the terms of the Treaty under Article [ ].
4. Each State Party shall take measures to ensure that it can verify or validate its authorizations. All authorizations for an export of conventional arms in accordance with this Treaty must be detailed and issued prior to the export. Details of the authorization shall accompany the arms shipment and be made available to transit and trans-shipment States upon request. The format, content and conditions of the authorizations remain to be determined through a national decision of the authorizing State Party.
5. States Parties shall take all necessary measures to control brokering activities taking place within its territories or by its nationals in the context of transfers of arms under this Treaty. States Parties shall ensure that all brokers are registered with the appropriate national authority before engaging in activities under the scope of the Treaty.
6. Each State Party shall take all appropriate measures necessary to prevent the diversion of exported arms into the illicit market or to unintended end-users.

### **Notification systems**

1. Importing States shall provide appropriate documentation and other information, inter alia, end-user certification, requested by the exporting State to assist the exporting State in its criteria assessment and to verify the delivery to the approved end-user.
2. States Parties should ensure that all arms transferred to their territory as the final destination are recorded and are accompanied by details of the authorization issued in accordance with this Treaty.
3. States Parties should monitor and control, where necessary, all arms that transit or trans-ship through their territories and should ensure that they are accompanied by details of the authorization issued in accordance with this Treaty.
4. States Parties shall take all appropriate measures necessary to prevent the diversion of imported arms into the illicit market or to unintended end-users.

## **B. Record-keeping, reporting and transparency**

1. States Parties shall maintain records of all arms authorizations, transfers and denials. Such records may contain information, inter alia, on quantity, model or type, arms transfers authorized and refused, arms actually transferred, and details of transit State(s), recipient State(s) and end-users. Records shall be kept for a minimum of ten years.
2. States Parties shall maintain records of all arms imports and shipments of arms that transit their territory. Such records may contain information, inter alia, on quantity, model or type, arms actually transferred, and details of transit State(s), exporting State(s) and end-users. Records shall be kept for a minimum of ten years.
3. No later than one hundred and eighty days after a State Party's ratification of this Treaty, that State shall submit an initial report to the Implementation Support Unit of all activities undertaken in order to accomplish the implementation of the Treaty, including, inter alia, domestic laws, regulations and administrative measures.
4. Each State Party shall submit annually to the Implementation Support Unit a report for the preceding year concerning the transfer of arms, as detailed in section B, paragraphs 1 and 2, of the present Article, as well as any new national legislation or other measures used to regulate or control the items and transaction within the Treaty's domain.

## **C. Enforcement**

1. Each State Party shall adopt legislation or other appropriate measures, including appropriate law enforcement and judicial mechanisms, to ensure its ability to enforce domestically the obligations of this Treaty and to prohibit the transfer of arms from any location under that State's jurisdiction and control, unless authorized in accordance with the Treaty.
2. Each State Party shall establish effective penalties or other appropriate measures for violations of this Treaty by any entity under its jurisdiction and control. Each State Party shall adopt such measures as may be necessary to provide



for the investigation and prosecution of individuals and other entities for offences violating the Treaty and relevant national laws.

3. States Parties shall take all necessary measures to prevent, counter and prosecute corruption, as well as money-laundering, within its territories or by its nationals in the context of transfers of arms under this Treaty.

#### **D. International cooperation**

1. States Parties shall encourage and facilitate international cooperation, including the exchange of information among themselves, on matters regarding the implementation and application of this Treaty. The information exchange could include, *inter alia*, information on implementation measures, as well as information on specific exporters, importers and brokers and on any prosecutions brought domestically, in line with commercial and proprietary protections.

2. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement institutions in combating violations of the provisions of this Treaty.

3. States Parties shall, when appropriate, afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the violations of the provisions of this Treaty.

#### **E. International assistance**

Provisions for strengthening capacity and building national capabilities are essential elements for the implementation of the Treaty. In this regard:

1. In fulfilling its obligations under this Treaty, each State Party may offer or receive assistance.

2. States Parties may offer or receive assistance, *inter alia*, through the United Nations, international, regional, subregional or national organizations or non-governmental organizations, or on a bilateral basis.

3. States Parties in a position to do so, and where appropriate, may provide technical, legal, material and financial assistance to States Parties in support of their implementation of the obligations under this Treaty. Such assistance may take the form of information exchange on best practices, and legislative and legal assistance, related to the Treaty and its practical implementation. States Parties may build upon existing customs and law enforcement cooperation arrangements, including those already established by international, regional and subregional organizations.

4. Consistent with their respective legal and administrative systems, States Parties may exchange relevant information and best practices on exports, imports and transfers of conventional arms.

5. States Parties shall designate one or more national points of contact to facilitate cooperation and information exchange between States Parties, and to act as a liaison on all matters relating to the implementation of this Treaty.

6. States Parties providing and receiving assistance under the provisions of this Article shall do so in a manner consistent with existing commitments and international

instruments, with a view to ensuring the full and prompt implementation of agreed assistance programmes.

7. The provisions of this Treaty shall be implemented in such a manner as to avoid hampering the economic or technological development of States Parties.

## **F. Victim assistance**

1. Each State Party in a position to do so, and where appropriate, may offer or receive assistance for the care and rehabilitation, and social and economic reintegration, of victims of armed conflict.

2. Such assistance may be technical or material in nature and can be provided, inter alia, through the United Nations system, international, regional, subregional or national organizations or non-governmental organizations, or on a bilateral basis, as appropriate.

## **G. Implementation Support Unit**

1. This Treaty hereby establishes an Implementation Support Unit to assist States Parties in the implementation of this Treaty.

2. The Implementation Support Unit shall:

(a) Serve as the repository for annual reports submitted by States Parties as part of their Treaty obligations;

(b) Serve as the repository for reports on disputes on transfer denials;

(c) Assist the Assembly of States Parties in carrying out the activities set forth in the Treaty and make arrangements and provide the necessary services for the sessions of the Assembly of States Parties and subsidiary organs, as necessary;

(d) Assist States Parties in providing information to the Assembly of States Parties and to each other, as envisaged in the Treaty, upon request;

(e) Act as a clearing house for offers of and requests for assistance for Treaty implementation under the terms of the Treaty and promote international cooperation to that end;

(f) Ensure the necessary coordination with the secretariats of relevant international and regional organizations and represent the Implementation Support Unit in meetings and activities of such organizations, as applicable;

(g) Conduct outreach to increase awareness of the Treaty regime and to promote the universality of the Treaty;

(h) Perform other technical and administrative duties, as assigned by the Assembly of States Parties.

## **VII. Final provisions**

### **A. Depository and authentic texts**

1. The Secretary-General of the United Nations is the Depository of this Treaty.
2. The original 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.

### **B. Signature, ratification or accession**

1. This Treaty shall be open to all States for signature on [date] at United Nations Headquarters in New York.
2. This Treaty Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General of the United Nations shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession and the date of the entry into force of this Convention, and of the receipt of other notices.

### **C. Entry into force**

1. This Treaty shall enter into force on the first day of the month after the [ ] day following the date of the deposit with the Secretary-General of the United Nations of the [ ] instrument of ratification, acceptance, approval or accession.
2. For those States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, the Treaty shall enter into force on the thirtieth day following the date of deposit of their instruments of ratification or accession.

### **D. Withdrawal and duration**

1. This Treaty shall be of unlimited duration.
2. A State Party may, by written notification addressed to the Depository, withdraw from this Treaty. The withdrawal shall take effect one hundred and eighty days after the date of receipt of the notification, unless the notification 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 the Treaty, including any financial obligations.

## **E. Reservations**

1. No reservations that are incompatible with the object and purpose of the present Treaty shall be permitted.

## **F. Amendments**

1. At any time after the entry into force of this Treaty, a State Party may propose an amendment to the Treaty.
2. Any proposed amendment shall be submitted in writing to the Depositary and the Implementation Support Unit, which will then circulate the proposal to all States Parties. Amendments shall be decided upon at the next scheduled Review Conference.

## **G. Assembly of States Parties**

1. An Assembly of States Parties to this Treaty is hereby established to improve the capacity of States Parties to promote the implementation of the Treaty.
2. The Assembly of States Parties shall convene not later than one year following the entry into force of this Treaty. The Assembly of States Parties shall adopt rules of procedure and rules governing its activities, including on frequency of meetings and on payment of expenses incurred in carrying out those activities.
3. In the years when a Review Conference is scheduled, no meetings of the Assembly of States Parties will be held. Instead, two preparatory committee meetings shall be convened for the Review Conference.
4. If required and merited by circumstances, an exceptional meeting of States Parties may be convened, if resources allow.

## **H. Review Conferences**

1. In order to review the implementation and operation of this Treaty, a Review Conference shall be convened five years after the entry into force of the Treaty and every five years thereafter.
2. The preparatory meetings for the Review Conference shall agree upon the procedures necessary to achieve the objectives of the Review Conference, including, *inter alia*, facilitating activities by States Parties under the Articles of this Treaty; reviewing the implementation of the Treaty; and making recommendations to improve the Treaty and its implementation and operation.

## **I. Consultation**

1. States Parties may consult with each other and request information on any matter regarding the implementation and operation of this Treaty.

2. States Parties shall provide information requested in accordance with their domestic legal systems. Requests for consultation or information shall be made in writing to the relevant national contact points.

3. When considering a potential transfer denial, the parties involved in the potential transaction are encouraged to consult with each other in order to take into account any relevant information so as to allow the recipient the opportunity to take any necessary measures to avert a denial of transfer.

#### **J. Dispute settlement**

1. States Parties shall consult and cooperate with each other in order to settle any dispute that may arise with regard to the application or the interpretation of this Treaty.

2. Disputes that may arise as a result of a transfer denial should be settled by negotiations between the relevant parties.

3. States Parties shall settle any dispute between them concerning the interpretation or application of this Treaty by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations.

#### **K. Relations with States not party to this Treaty**

1. With the goal of achieving universal adherence, each State Party shall encourage States not party to this Treaty to ratify, accept, approve or accede to the Treaty.

#### **L. Relationship with other instruments**

1. This Treaty shall not affect the right of States Parties to enter into bilateral or multilateral agreements provided that these agreements are compatible with States' obligations under the Treaty.

## **Annex A**

### **Transactions or activities to be covered by this Treaty**

1. For the purposes of this Treaty, the following transactions or activities shall be covered by States in their national legislation and regulations:

(a) International arms transfers (including import, export, re-export, temporary transfer, trans-shipment, transit, transport, leases, loans and gifts of conventional arms). The transfer of title or control over the equipment as well as the physical movement of the equipment into or from a national territory;

(b) Brokering: The facilitation by an intermediary who brings together relevant parties and arranges or facilitates a potential transaction of conventional arms in return for some form of benefit, whether financial or otherwise;

(c) Manufacture under foreign licence: An agreement whereby a person or entity in the exporting State grants a person or entity in the importing State an authorization to manufacture conventional arms that involves technology transfer or the use of technology or conventional arms previously supplied by the exporting State;

(d) Technology transfer: The export, by tangible or intangible means, of information that is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of conventional arms.

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# **Annex 2**

## **Provisional Rules of Procedure of the Conference**







# General Assembly

Distr.: Limited  
7 March 2012

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## United Nations Conference on the Arms Trade Treaty

New York, 2-27 July 2012

### Provisional rules of procedure of the Conference

#### I. Representation and credentials

##### Composition of delegations

###### Rule 1

The delegation of each State participating in the Conference shall consist of a head of delegation and such other representatives, alternate representatives and advisers as may be required.

##### Alternates and advisers

###### Rule 2

The head of delegation may designate an alternate representative or an adviser to act as a representative.

##### Submission of credentials

###### Rule 3

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Secretary-General of the Conference, if possible not less than one week before the date fixed for the opening of the Conference. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.

##### Credentials Committee

###### Rule 4

A Credentials Committee of nine members shall be appointed at the beginning of the Conference. Its composition shall be based on that of the Credentials Committee of the General Assembly of the United Nations at its most recent session. It shall examine the credentials of representatives and report to the Conference without delay.



**Provisional participation in the Conference**

**Rule 5**

Pending a decision of the Conference upon their credentials, representatives shall be entitled to participate provisionally in the Conference.

**II. Officers**

**Elections**

**Rule 6**

The Conference shall elect from among the representatives of participating States the following officers: a President, 14 Vice-Presidents and a Rapporteur-General, as well as the Chairs of the Main Committees established in accordance with rule 46. These officers shall be elected with due regard to equitable geographical representation. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

**General powers of the President**

**Rule 7**

1. In addition to exercising the powers conferred upon him/her elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each meeting, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times each representative may speak on a question, the adjournment or closure of the debate and the suspension or the adjournment of a meeting.
2. The President, in the exercise of his/her functions, remains under the authority of the Conference.

**Acting President**

**Rule 8**

1. If the President is absent from a meeting or any part thereof, he/she shall designate one of the Vice-Presidents to take his/her place.
2. A Vice-President acting as President shall have the same powers and duties as the President.

**Replacement of the President**

**Rule 9**

If the President is unable to perform his/her functions, a new President shall be elected.

**Voting rights of the President****Rule 10**

The President, or a Vice-President acting as President, shall not vote in the Conference, but may appoint another member of his/her delegation to vote in his/her place.

**III. Bureau/General Committee****Composition****Rule 11**

The President, the Vice-Presidents, the Rapporteur-General and the Chairs of the Main Committees shall constitute the Bureau/General Committee. The President, or, in his/her absence, one of the Vice-Presidents designated by him/her, shall serve as Chair of the Bureau/General Committee. The Chair of the Credentials Committee and other committees established by the Conference in accordance with rule 48 may participate, without the right to vote, in the Bureau/General Committee.

**Substitute members****Rule 12**

If the President or a Vice-President of the Conference is to be absent during a meeting of the Bureau/General Committee, he/she may designate a member of his/her delegation to sit and vote in the Committee. In case of absence, the Chair of a Main Committee shall designate the Vice-Chair of that Committee as his/her substitute. When serving on the Bureau/General Committee, the Vice-Chair of a Main Committee shall not have the right to vote if he/she is of the same delegation as another member of the Bureau/General Committee.

**Functions****Rule 13**

In addition to performing other functions specified in these rules, the Bureau/General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the coordination of its work.

**IV. Secretariat of the Conference****Duties of the Secretary-General of the Conference****Rule 14**

1. There shall be a Secretary-General of the Conference.
2. The Secretary-General of the Conference shall act in that capacity in all meetings of the Conference and its subsidiary organs and shall be responsible for making all the necessary arrangements for carrying out the work of the Conference.
3. The Secretary-General of the Conference may designate a member of the secretariat to act in his/her place at these meetings.

4. The Secretary-General of the Conference shall direct the staff required by the Conference.

**Duties of the secretariat**

**Rule 15**

The secretariat of the Conference shall, in accordance with these rules and pertinent directions of the General Assembly:

- (a) Interpret speeches made at meetings;
- (b) Receive, translate, reproduce and circulate the documents of the Conference;
- (c) Publish and circulate the official documents and any reports of the Conference;
- (d) Prepare and circulate records of public meetings;
- (e) Make and arrange for the keeping of sound recordings and the summary records of meetings;
- (f) Arrange for the custody and preservation of the documents of the Conference in the archives of the United Nations;
- (g) Generally perform all other work that the Conference may require;
- (h) Report the proceedings of the Conference in appropriate journals.

**Statements by the secretariat**

**Rule 16**

The Secretary-General of the United Nations, the Secretary-General of the Conference, or any member of the secretariat designated by either for that purpose, may, at any time, but subject to rule 20, make either oral or written statements concerning any question under consideration.

**V. Opening of the Conference**

**Temporary President**

**Rule 17**

The Secretary-General of the United Nations, the Secretary-General of the Conference or, in his/her absence, a member of the Secretariat of the United Nations designated by him/her for that purpose, shall open the first meeting of the Conference and preside over it until the Conference has elected its President.

**Decisions concerning organization**

**Rule 18**

On the basis of recommendations submitted by the Preparatory Committee, the Conference shall, to the extent possible, at its first meeting:

- (a) Adopt its rules of procedure, the draft of which shall until such adoption be the provisional rules of procedure of the Conference;

- (b) Elect its officers and constitute its subsidiary organs;
- (c) Adopt its agenda, the draft of which shall until such adoption be the provisional agenda of the Conference;
- (d) Decide on the organization of its work.

## **VI. Conduct of business**

### **Quorum**

#### **Rule 19**

The President may declare a meeting open and permit the debate to proceed when at least one third of the representatives of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

### **Speeches**

#### **Rule 20**

1. No representative may address the Conference without having previously obtained the permission of the President. Subject to rules 21, 22 and 25 to 27, the President shall call upon speakers in the order in which they signify their desire to speak. The secretariat shall be in charge of drawing up a list of speakers.
2. Debate shall be confined to the question before the Conference and the President may call a speaker to order if his/her remarks are not relevant to the subject under discussion.
3. The Conference may limit the time allowed to each speaker and the number of times each participant may speak on any question. Permission to speak on a motion to set such limits shall be accorded only to two representatives in favour of and to two opposing such limits, after which the motion shall be immediately put to the vote. In any event, with the consent of the Conference, the President shall limit each intervention on procedural matters to five minutes. When the debate is limited and a speaker exceeds the allotted time, the President shall call him/her to order without delay.

### **Points of order**

#### **Rule 21**

During the discussion of any matter, a representative may at any time raise a point of order, which shall be immediately decided by the President in accordance with these rules. A representative 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 representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

### **Precedence**

#### **Rule 22**

The Chair, Vice-Chairs, Rapporteur of the Main Committees or a representative designated by any other subsidiary organ, such as a subcommittee or

working group, may be accorded precedence for the purpose of explaining the conclusions arrived at by the organ concerned.

### **Closing of the list of speakers**

#### **Rule 23**

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. When the debate on an item is concluded because there are no more speakers, the President shall declare the debate closed. Such closure shall have the same effect as closure of the debate pursuant to rule 26.

### **Right of reply**

#### **Rule 24**

1. Notwithstanding rule 23, the President shall accord the right of reply to a representative of any State participating in the Conference who requests it. Any other representative may be granted the opportunity to make a reply.
2. The statements made under this rule shall normally be made at the end of the last meeting of the day, or at the conclusion of the consideration of the relevant item if that is sooner.
3. The representatives of a State 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 attempt to be as brief as possible.

### **Adjournment of debate**

#### **Rule 25**

A representative may at any time move the adjournment of the debate on the question 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, subject to rule 28, be immediately put to the vote.

### **Closure of debate**

#### **Rule 26**

A representative may at any time move the closure of the debate on the question 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 representatives opposing the closure, after which the motion shall, subject to rule 28, be immediately put to the vote.

### **Suspension or adjournment of the meeting**

#### **Rule 27**

Subject to rule 38, a representative may at any time move the suspension or the adjournment of the meeting. No discussion on such motions shall be permitted and they shall, subject to rule 28, be immediately put to the vote.

**Order of motions****Rule 28**

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 question under discussion;
- (d) To close the debate on the question under discussion.

**Submission of proposals and substantive amendments****Rule 29**

Proposals and substantive amendments shall normally be submitted in writing to the Secretary-General of the Conference, who shall circulate copies to all delegations. Unless the Conference decides otherwise, no substantive proposal shall be considered unless copies have been circulated to all delegations in all languages of the Conference 24 hours before the meeting. The President may, however, permit the discussion of amendments, even though such amendments have not been circulated or have only been circulated the same day.

**Withdrawal of proposals and motions****Rule 30**

A proposal or a motion may be withdrawn by its sponsor at any time before a decision on it has been taken, provided that it has not been amended. A proposal or a motion thus withdrawn may be reintroduced by any representative.

**Decisions on competence****Rule 31**

Subject to rule 28, 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 before the matter is discussed or a decision is taken on the proposal in question.

**Reconsideration of proposals****Rule 32**

When a proposal has been adopted or rejected, it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives 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 the vote.

**VII. Decision-making**

The Conference shall conduct its work in an open and transparent manner, on the basis of consensus.

**Substantive work**

**Rule 33**

The Conference shall take its decisions and consider the text of the Treaty by consensus, in accordance with General Assembly resolution 64/48.

**Procedural matters**

**Rule 34**

1. The Conference shall make every effort to ensure that all its decisions on matters of procedure are taken by consensus.
2. Except as otherwise provided in these rules, decisions of the Conference on all matters of procedure shall be taken by a two-thirds majority of the representatives present and voting, only when the President decides that efforts to reach a consensus have been exhausted.
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 the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.
4. If a vote is equally divided, the proposal or motion shall be regarded as rejected.

**Voting rights**

**Rule 35**

Each State participating in the Conference shall have one vote.

**Meaning of the phrase “representatives present and voting”**

**Rule 36**

For the purpose of these rules, the phrase “representatives present and voting” means representatives casting an affirmative or negative vote. Representatives who abstain from voting shall be regarded as not voting.

**Method of voting**

**Rule 37**

1. Except as provided in rule 44, the Conference shall normally vote by show of hands, except that a representative may request a roll-call, which shall then be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President. The name of each State shall be called in all roll-calls, and its representative shall reply “yes”, “no” or “abstention”.
2. When the Conference votes by mechanical means, a non-recorded vote shall replace a vote by show of hands and a recorded vote shall replace a roll-call. A representative may request a recorded vote which shall, unless a representative requests otherwise, be taken without calling out the names of the States participating in the Conference.
3. The vote of each State participating in a roll-call or a recorded vote shall be inserted in any record of or report on the meeting.



**Conduct during voting****Rule 38**

After the President has announced the commencement of voting, no representative shall interrupt the voting except on a point of order in connection with the process of voting.

**Explanation of vote****Rule 39**

1. Representatives may make brief statements consisting solely of explanations of vote, before the voting has commenced or after the voting has been completed. The President may limit the time to be allowed for such explanations. The representative of a State sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended.
2. When the same matter is considered successively in several organs of the Conference, the representatives of a State should, as far as possible, explain the votes of their delegation only in one such organ, unless those votes differ.
3. Similarly, explanatory statements of position may be made in connection with a decision taken without a vote.

**Division of proposals****Rule 40**

A representative may move that parts of a proposal be decided on separately. If a representative objects, the motion for division shall be voted upon. Permission to speak on the motion shall be accorded only to two representatives in favour of and to two opposing the division. If the motion is carried, those parts of the proposal that are subsequently approved shall be put to the Conference for decision as a whole. If all operative parts of the proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

**Amendments****Rule 41**

A proposal is considered an amendment to another proposal if it merely adds to, deletes from or revises part of that proposal. Unless specified otherwise, the word "proposal" in these rules shall be considered as including amendments.

**Order of voting on amendments****Rule 42**

1. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted on.

2. When the Conference decides, in accordance with rule 40, to consider an extensive text in convenient portions (such as paragraphs or articles), each of these shall be treated as a separate proposal for the purpose of paragraph 1.

#### **Order of voting on proposals**

##### **Rule 43**

1. If two or more proposals, other than amendments, relate to the same question, they shall, unless the Conference decides otherwise, be voted on in the order in which they were submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal.
2. Revised proposals shall be voted on in the order in which the original proposals were submitted, unless the revision substantially departs from the original proposal. In that case the original proposal shall be considered as withdrawn and the revised proposal shall be treated as a new proposal.
3. A motion requiring that no decision be taken on a proposal shall be put to the vote before a decision is taken on the proposal in question.

#### **Elections**

##### **Rule 44**

All elections shall be held by secret ballot unless, in the absence of any objection, the Conference decides to proceed without taking a ballot when there is an agreed candidate or slate of candidates.

#### **Balloting**

##### **Rule 45**

1. When one 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 a majority of the votes cast and the largest number of votes, shall be elected.
2. If the number of candidates so elected is less than the number of places to be filled, additional ballots shall be held to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot in a number not more than twice the places remaining to be filled.

### **VIII. Subsidiary bodies**

#### **Main Committees**

##### **Rule 46**

The Conference may establish Main Committees, as required, which may set up subcommittees or working groups.

#### **Representation of the Main Committees**

##### **Rule 47**

Each State participating in the Conference may be represented by one representative on each Main Committee established by the Conference. It may assign to these Committees such alternate representatives and advisers as may be required.

**Other committees and working groups****Rule 48**

1. In addition to the Committees referred to above, the Conference may establish such committees and working groups as it deems necessary for the performance of its functions.
2. Subject to the decisions of the Conference, each committee may set up subcommittees and working groups.

**Rule 49**

1. The members of the committees and working groups of the Conference referred to in rule 48, paragraph 1, shall be appointed by the President, subject to the approval of the Conference, unless the Conference decides otherwise.
2. Members of the subcommittees and working groups of committees shall be appointed by the Chair of the committee in question, subject to the approval of that committee, unless the committee decides otherwise.

**Officers****Rule 50**

Except as otherwise provided in rule 6, each committee, subcommittee and working group shall elect its own officers.

**Quorum****Rule 51**

1. The Chair of a Main Committee may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.
2. A majority of the representatives of the Bureau/General Committee or the Credentials Committee or of any committee, subcommittee or working group shall constitute a quorum.

**Officers, conduct of business and voting****Rule 52**

The rules contained in chapters II, VI (except rule 19) and VII above shall be applicable, *mutatis mutandis*, to the proceedings of committees, subcommittees and working groups, except that the Chairs of the Bureau/General Committee and Credentials Committee and the Chairs of the committees, subcommittees and working groups may exercise the right to vote.

**IX. Languages and records****Languages of the Conference****Rule 53**

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

**Interpretation**

**Rule 54**

1. Speeches made in a language of the Conference shall be interpreted into the other such languages.
2. A representative may speak in a language other than a language of the Conference if the delegation concerned provides for interpretation into one such language. 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.

**Languages of official documents**

**Rule 55**

Official documents of the Conference shall be made available in the languages of the Conference.

**Sound recordings of meetings**

**Rule 56**

Sound recordings of meetings of the Conference and of any Main Committee shall be made and kept in accordance with the practice of the United Nations. Unless otherwise decided by the Conference or the Main Committee concerned, no such recordings shall be made of the meetings of any working group thereof.

**X. Public and private meetings**

**General principles**

**Rule 57**

1. The plenary meetings of the Conference and its Main Committees shall be held in public unless the body concerned decides otherwise. All decisions taken by the plenary of the Conference at a private meeting shall be announced at an early public meeting of the plenary.
2. As a general rule, meetings of other organs of the Conference shall be held in private.

**Communiqués on private meetings**

**Rule 58**

At the close of a private meeting, the presiding officer of the body concerned may issue a communiqué through the Secretary-General of the Conference.

## **XI. Other participants and observers**

### **Representatives of entities, intergovernmental organizations and other entities that have received a standing invitation from the General Assembly to participate in the capacity of observers in the sessions and work of all international conferences convened under its auspices**

#### **Rule 59**

Representatives designated by entities, intergovernmental organizations and other entities that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under its auspices have the right to participate as observers, without the right to vote, in the deliberations of the Conference, any Main Committee and, as appropriate, any other committee or working group.

### **Representatives of the specialized agencies**

#### **Rule 60**

Representatives designated by the specialized agencies may participate, without the right to vote, in the deliberations of the Conference, any Main Committee and, as appropriate, any other committee or working group on questions within the scope of their activities.

### **Representatives of other intergovernmental organizations**

#### **Rule 61**

Representatives designated by other intergovernmental organizations invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference, any Main Committee and, as appropriate, any other committee or working group on questions within the scope of their activities.

### **Representatives of interested United Nations organs**

#### **Rule 62**

Representatives designated by interested organs of the United Nations may participate as observers, without the right to vote, in the deliberations of the Conference, any Main Committee and, as appropriate, any other committee or working group on questions within the scope of their activities.

### **Representatives of non-governmental organizations**

#### **Rule 63**

With respect to the attendance of non-governmental organizations at the Conference, attendance will be open to:

(a) Relevant non-governmental organizations in consultative status with the Economic and Social Council in accordance with the provisions of Council resolution 1996/31 of 25 July 1996. These non-governmental organizations should inform the President of the Conference about their interest to attend;

(b) Other interested non-governmental organizations relevant and competent to the scope and the purpose of the Conference provided that requests to do so are submitted to the President of the Conference and are accompanied by information on the organization's purpose, programmes and activities in areas relevant to the

scope of the Conference. The President of the Conference will subsequently provide the Conference with a list of these non-governmental organizations for consideration on a no-objection basis;

(c) Non-governmental organizations accredited through the process specified above may attend open meetings of the Conference;

(d) Representatives of accredited non-governmental organizations will be allowed to address the Conference during one meeting specifically allocated for this purpose. Additional time during a subsequent meeting may be allocated for this purpose.<sup>1</sup> These meetings will not coincide with other meetings of the Conference;

(e) Accredited non-governmental organizations will be provided, upon request, with documents related to the Conference, and they may, at their own expense, provide material to the delegations, outside the conference room, in the area of the Conference;

(f) Arrangements concerning the accreditation and attendance of non-governmental organizations at the Conference shall in no way create a precedent for other United Nations conferences.

#### **Written statements**

##### **Rule 64**

Written statements submitted by the designated representatives referred to in rules 59 to 63 shall be distributed by the secretariat to all delegations in the quantities and in the language in which the statements are made available to it at the site of the Conference, provided that a statement submitted on behalf of a non-governmental organization is related to the work of the Conference and is on a subject in which the organization has a special competence. Written statements shall not be made at United Nations expense and shall not be issued as official documents.

## **XII. Amendment or suspension of the rules of procedure**

#### **Method of amendment or suspension**

##### **Rule 65**

These rules of procedure may be amended or suspended by a decision of the Conference taken in accordance with rule 33, after the Bureau/General Committee has reported on the proposed amendment or suspension.

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<sup>1</sup> This does not constitute a precedent for future meetings.





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