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SYNERGIES AND COMPLEMENTARITIES BETWEEN THE ARMS TRADE TREATY, THE ECOWAS CONVENTION ON SALW, THE UNPoA AND OTHER RELATED INSTRUMENTS



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ON SALW, THE UNPoA AND OTHER RELATED INSTRUMENTS

This paper is prepared by the United Nations Office for Disarmament Affairs (UNODA), through its Regional Centre for Peace and Disarmament in Africa (UNREC) in collaboration with the Economic Community of West African States (ECOWAS). It constitutes an output of the project 'Support to the ratification and future implementation of the ATT - Improving understanding of the Treaty' that UNREC and the ECOWAS Commission implemented in 2015.

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FOREWORD

The Economic Community of West African States (ECOWAS) in collaboration with the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) undertook the implementation of the project on Synergies and Complementarities looking at the ECOWAS Convention on SALW, Their Ammunition and Other Related Materials; the Arms Trade Treaty (ATT); the United Nations Programme of Action (UNPoA); and other related instruments.

The objective was clearly to contribute to the harmonization of implementation efforts of multilateral disarmament initiatives and non – proliferation regimes by Member States in the ECOWAS region. The exercise was commendable as the joint effort of the two organizations resulted in having it handy, this documented analysis of areas of synergies and complementarities to be utilized by all actors engaged in the implementation of these instruments.

This documented study presents a very useful reference guide to all stakeholders, in the region and beyond, with the insights into the effective way the ECOWAS region implements these disarmament instruments. Hitherto, the scenario was uncoordinated and often fraught with reported cases of duplication of efforts, especially by donor partners in the deployment and application of resources, when these instruments are essentially meant to contribute to the same goals.

Indeed, the objective of the study was attained by leveraging on the multi –donor trust fund facility, the UNSCAR, a demonstration of the strong commitments of the international community towards supporting the universalization of these instruments. The unique response of the Member States in the ECOWAS region contributed significantly to the successful outcome of the exercise coupled with the support of the subject matter experts who cumulatively informed the huge results presented by this study.

The ECOWAS Commission is to continue to support similar joint initiatives and collaborations in order to fulfil its role of accompanying Member States in the region in the area of controlling proliferation of weapons in the region.

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PREFACE

With the adoption of the Arms Trade Treaty (ATT) on 2 April 2013, the United Nations Member States, including the Member States of the Economic Community of West African States (ECOWAS), established the highest possible common international standards regulating the international transfer of conventional arms. The ATT is the first legally binding instrument to provide such a framework at a global level. However, there are other instruments, at a global and regional scale, that address the issue of international arms transfers of small arms and light weapons (SALW).

These instruments all contribute to the goal of ensuring peace, security and stability through the effective and efficient control of arms, their ammunition, parts and components. The commitment to multiple instruments regulating the same matter automatically leads to a question of great importance: How can practical implementation efforts be harmonised?

Among the essential conditions for achieving harmonised implementation are the thorough analysis and comparison of the relevant instruments and the identification of the existing synergies and complementarities.

In this light, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC), in collaboration with the ECOWAS Commission, implemented a project in 2015 relating to the synergies and complementarities between the ATT, the ECOWAS Convention, the United Nations Programme of Action (UNPoA) and other related instruments. The project aimed to assist the ECOWAS Member States in enhancing the understanding of the ATT and its links with the existing disarmament and arms control instruments.

One of the outcomes of this project is this paper on “Synergies and Complementarities between the Arms Trade Treaty, the ECOWAS Convention, the UNPoA and other Related Instruments” which was prepared by the implementers and presented to the ECOWAS Member States and other stakeholders during a sub-regional workshop organised from 22 to 23 July 2015 in Abuja, Nigeria. Feedback and comments received during the workshop were integrated into the paper and workshop participants had the opportunity to provide further comments on the written draft of the paper.

UNREC and the ECOWAS Commission would like to thank all the contributors for their pertinent comments and suggestions which enriched the paper and will allow it to become a useful tool when harmonising the implementation of the different disarmament instruments. The implementers would also like to thank contributors to United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) for funding this project.

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EXECUTIVE SUMMARY

As at 25 January 2016, the majority of the African States Parties to the Arms Trade Treaty (ATT) are Member States of the Economic Community of West African States (ECOWAS). The result of this commendable commitment to this new Treaty that regulates, for the first time at a global level, the international trade in conventional arms, is that all these States face a common challenge: The harmonised implementation of the existing disarmament and arms control instruments.

In an effort to assist ECOWAS Member States in this harmonisation process, this paper outlines the relevant disarmament instruments and contains a thorough analysis of the synergies and complementarities between, in particular, the ECOWAS Convention on SALW and the ATT. This analysis comprises eleven chapters, including (1.) scope of application, (2.) definitions, (3.) transfer of arms including their import, export, transit and trans-shipment, (4.) brokering, (5.) diversion, (6.) record keeping, (7.) reporting, (8.) institutional arrangements, (9.) enforcement of regulations, (10.) international cooperation and exchange of information, (11.) international assistance.

Each chapter is complemented by recommendations that, first of all, aim to highlight the areas of the ATT that require national legislative and administrative measures. Secondly, the recommendations are formulated with a view to underscoring aspects which have been evoked during many national consultations and sub-regional seminars as fields which necessitate further discussion and decision-making at a national and sub-regional level.

The analysis and recommendations centre on the following key areas:

- The establishment of a national transfer control system on the eight categories of conventional arms, their ammunition, parts and components as covered by the ATT:

Attention is brought to the requirements of such a control system, including, among others, the designation of competent authorities, adoption of national control lists, keeping of records and consideration of certain risks before the issuance of transfer authorisations. Furthermore, the requirement to establish a national control system is considered. This is due to the general approach of the ECOWAS Convention on Small Arms and Light Weapons (SALW) to decide on arms transfers in a sub-regional procedure referred to as the “exemption procedure”.

- The fight against diversion of arms:

Specific measures to prevent and address the diversion of arms are identified as the key complementarity between the ATT on the one hand and the ECOWAS Convention on the other.



- The establishment of cooperation and assistance frameworks:

The call on the States Parties to exchange information and cooperate in the fight against the illicit trade in arms is emphasised throughout the paper. This demand for increased cooperation requires the States Parties to assess their capacity to provide assistance and act accordingly.

- The question of whether the ATT has any impact on the ECOWAS Convention on SALW:

The States Parties to this Convention subject their sovereignty to transfer SALW to a positive outcome of the above-mentioned exemption procedure. This procedure is not required for transfers of arms other than SALW. The question of extending this exemption procedure along with other control measures inscribed in the Convention to other conventional arms was evoked by several stakeholders from the sub-region.



I. OBJECTIVE OF THE PAPER

The objective of this paper is to put the ATT in a sub-regional context. As there are several disarmament instruments applicable in the sub-region, this paper aims at informing the governmental officials and legal drafters of the ECOWAS Member States on particularly those obligations inscribed in the ATT that complement the ECOWAS Convention on SALW. The paper has the aim of facilitating understanding of officials and practitioners on the ATT by continuously asking the following question: “Assuming that the ECOWAS Convention on SALW is comprehensively implemented by ECOWAS States, what additional efforts do ECOWAS States have to undertake to comply with the ATT?”

II. OVERVIEW OF THE ANALYSED DISARMAMENT INSTRUMENTS

This paper focuses on the relation between the Arms Trade Treaty and the ECOWAS Convention on SALW. Additionally, reference is made to other international instruments, frameworks and standards which address or regulate the international trade in conventional arms. Those references serve as interpretative aide and help to provide a complete picture of conventional arms trade regulations and control mechanisms.

The following instruments, standards and mechanisms, relevant to the ECOWAS Member States, have been taken into account:

1. ARMS TRADE TREATY

The *Arms Trade Treaty* (ATT) was adopted on 2 April 2013 and entered into force on 24 December 2014, three months after the deposit of the 50th ratification instrument. The ATT is the first legally binding instrument to provide, at a global level, a comprehensive framework for the regulation of the international transfer of conventional arms, ammunition, parts and components. The objective of the Treaty is to establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms, including their export, import, transit, trans-shipment and brokering. The Treaty also aims at preventing and eradicating the illicit trade in conventional arms and preventing their diversion. Among the eight categories of conventional arms regulated under the Treaty are SALW, which leads to the existence of several synergies between the ATT and the ECOWAS Convention. As at 25 January 2016, 80 United Nations Member States



have ratified or acceded to the ATT, including eighteen African States⁽¹⁾. Eleven out of these eighteen States are ECOWAS Member States.

2. ECOWAS CONVENTION ON SMALL ARMS AND LIGHT WEAPONS

The *ECOWAS Convention on Small Arms and Light Weapons, their ammunition and other related materials* (ECOWAS Convention) was adopted on 14 June 2006 and entered into force on 29 September 2009. It was adopted taking into account the 1998 Moratorium on the Importation, Exportation and Manufacture of Light Weapons in ECOWAS Member States. The ECOWAS Convention contains legally binding provisions relating to the complete life-cycle of SALW, ammunition and other related materials, including their manufacture, marking, registration, international transfers, stockpiling, civilian possession and destruction. Fourteen of the fifteen ECOWAS States are State Party to the ECOWAS Convention⁽²⁾.

3. UNITED NATIONS PROGRAMME OF ACTION

The *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (United Nations Programme of Action - UNPoA) was adopted by the United Nations Conference on the Illicit Trade in SALW in All Its Aspects held in July 2001. The UNPoA establishes a policy framework for the control of SALW and provides, similar to the ECOWAS Convention, regulations relating to the life-cycle of SALW.

4. FIREARMS PROTOCOL

The *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts, Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime* (Firearms Protocol) was adopted on 31 May 2001 and entered into force on 3 July 2005. It is the third protocol to supplement the United Nations Convention against Transnational Organised Crime.

¹ The eighteen African States having ratified or acceded to the ATT are: Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Ghana, Guinea, Lesotho, Liberia, Mali, Mauritius, Mauritania, Niger, Nigeria, Senegal, Seychelles, Sierra Leone, South Africa, and Togo.

² The fourteen States Parties to the ECOWAS Convention are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.



The Firearms Protocol contains provisions relating to the prevention and criminalisation of illicit manufacturing of and trafficking in firearms, parts, components and ammunition. It is legally binding on the twelve ECOWAS Member States that have ratified or otherwise formally expressed their consent to be bound by it³.

5. OTHER RELATED INSTRUMENTS, STANDARDS AND MECHANISMS

Where appropriate, the study further refers to the international instruments and standards that do not necessarily regulate the international trade in arms, but are nonetheless of relevance in implementing the ATT.

Among these instruments is the *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (International Tracing Instrument – ITI) which is a policy framework adopted by the United Nations Member States in December 2005. It focuses on the marking, record-keeping and tracing of arms. The ITI provides an internationally acknowledged definition of “small arms and light weapons”, hence the great importance when it comes to the interpretation of the ATT.

Although the *International Ammunition Technical Guidelines* (IATG)⁴ do not constitute a disarmament or arms control instrument, they are helpful in interpreting the ATT and other related instruments. Developed upon request of the General Assembly, the IATG provide a frame of reference which encourages national authorities responsible for conventional ammunition stockpile management to achieve and demonstrate effective levels of safety and security. Similarly, the *International Small Arms Control Standards* (ISACS)⁵ can serve as interpretative aide. The ISACS were developed by the United Nations in collaboration with its partners worldwide, with the aim of providing clear, practical and comprehensive guidance to practitioners and policymakers on the fundamental aspects of SALW control.

Lastly, this study makes reference to the *United Nations Register on Conventional Arms* (UNROCA)⁶, a public global register containing information relating to the international trade in conventional arms. Since its inception in 1991, the register has received reports from more than 170 States. The reports include data provided by the countries on arms transfers as well as information on holdings, domestic purchases and relevant policies. Upon its establishment, the States decided to continue working on expanding the Register’s scope.

³ The twelve ECOWAS States that are party to the Firearms Protocol are: Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Ghana, Guinea-Bissau, Liberia, Mali, Nigeria, Senegal, Sierra Leone and Togo.

⁴ For more information on the IATG see [lc.cx/4XdR](https://www.un.org/development/desa/pd/datastore/iatg).

⁵ For more information on the ISACS see [lc.cx/4XPU](https://www.un.org/development/desa/pd/datastore/isacs).

⁶ For more information on UNROCA see [lc.cx/4XPi](https://www.un.org/development/desa/pd/datastore/unroca).



They have done so through the Groups of Governmental Experts (GGE) that convene every three years and report to the General Assembly, which may adopt a resolution incorporating the GGE recommendations. The last triennial review by a GGE was undertaken in 2013.

III. ANALYSIS OF SYNERGIES AND COMPLEMENTARITIES AS WELL AS RECOMMENDATIONS

In line with the ATT's scope of application, the main emphasis of this paper is on provisions regulating the international transfer of arms, including (1.) scope of application, (2.) definitions, (3.) transfer of arms including their import, export, transit and trans-shipment, (4.) brokering, (5.) diversion, (6.) record keeping, (7.) reporting, (8.) institutional arrangements, (9.) enforcement of regulations, (10.) international cooperation and exchange of information, (11.) international assistance. The analysis focuses on the ATT and the ECOWS Convention. In order to provide a complete picture of relevant arms transfer regulations, reference to other instruments and standards is made in a second step.

The recommendations are specifically tailored to the ECOWAS Member States. They refer to those obligations and measures contained in the ATT and other analysed instruments which exceed control measures contained in the transfer control system under the ECOWAS Convention.

The eleven chapters are all complemented by comparative tables that contain relevant provisions from the analysed instruments. These tables are contained in an annex to the paper and readers of the paper are invited to use them as a tool to further analyse the synergies and complementarities between the different disarmament instruments.

1. SCOPE OF APPLICATION

The scope of application of the analysed instruments can be examined in terms of the governed arms and items as well as the provided measures.

a. Scope of the governed arms and items

Both the ECOWAS Convention and the ATT govern SALW, their ammunition, parts and components. It should however be noted that the instruments do not use all the terms in the same way and that not all the provisions contained in the instruments apply to all the governed arms and items. The ATT governs seven additional categories of conventional arms, as well as their ammunition, parts and components. The Treaty provides a framework for the regulation of the international trade in battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircrafts, attack helicopters, warships, missiles and missile launchers, SALW, their ammunition as well as parts and components [Articles 2, 3, 4 - ATT].

Information relating to other instruments

The UNPoA also governs SALW but in contrast to the ECOWAS Convention and the ATT, it does not regulate their ammunition or parts and components of SALW. The Firearms Protocol governs firearms, their ammunition, parts and components.

b. Scope of the governed activities

The focus of the ATT is set on the international trade in conventional arms, including their export, import, transit, trans-shipment and brokering. As one of the objectives of the ATT is to prevent the diversion of arms, the Treaty also contains obligations addressing this phenomenon. Both of these aspects are also governed by the ECOWAS Convention.

It should be noted that unlike the ECOWAS Convention, the ATT generally only requires the establishment of a system controlling the transfer of ammunition, parts and components, when they are being exported [Article 3 and 4 - ATT]. The regulation of the import, transit, trans-shipment and brokering of such items is not required.

The ATT does not apply to the international movement of conventional arms by or on behalf of a State Party for its use provided that the conventional arms remain under that State Party's ownership [Article 2 (3) - ATT]. This excludes for example weapons owned by one State and brought to a different country for the use of peacekeepers from that same State. The exemption only applies if the arms remain under that State's ownership. Therefore, if the ownership of the arms is passed, even at a later stage, the transaction would constitute a transfer under the ATT. The ECOWAS Convention does not contain such an exemption. On the contrary, it requires the States Parties to establish a regional register of the SALW destined for the use in peacekeeping operations as a means to control the movements of arms and their effective withdrawal [Article 11 (1a) - ECOWAS Convention].



Information relating to other instruments

The Firearms Protocol contains an exemption that is even wider than the one inscribed in the ATT. It provides that the Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of the national security consistent with the Charter of the United Nations [Article 4 (2) - Firearms Protocol]. This exemption excludes transactions that the States undertake in a sovereign capacity from the Firearms Protocol's scope of application. The States acting in their commercial capacity are however bound by the provisions of the Protocol⁷.

Recommendations on the implementation of the ATT:

RECOMMENDATION 1

The ECOWAS Member States should establish and maintain control systems relating to the international transfer (import, export, transit, trans-shipment, brokering) and prevention of the diversion of the seven categories of conventional arms that are not governed under the ECOWAS Convention, as well as the ammunition, parts and components that are exported. It is at the discretion of the States Parties to decide, whether the existing legislation is to be amended or whether new legislation is to be adopted, in order to fulfil this recommendation.

2. DEFINITIONS

Definitions generally facilitate understanding and harmonised implementation of the legal instruments. They help the States Parties and practitioners to share a common understanding of the key concepts of the instruments and to use harmonised terminology.

a. Small arms and light weapons and other governed arms

SALW

The ATT gives the States Parties a certain prerogative in developing national definitions of covered arms and items. This prerogative is limited by the introduction of a minimum threshold: Article 5 (3) - ATT stipulates that the definitions of SALW “[...] shall not cover less than the descriptions used in the relevant United Nations instruments at the time of the entry into force of this Treaty.”

⁷ See Legislative Guide for the Implementation of the Firearms Protocol, page 426.
The guide is available at: lc.cx/4XPS.

The same paragraph encourages the States Parties “to apply the provisions of this Treaty to the broadest range of conventional arms”.

The single United Nations instrument containing a definition of SALW is the ITI. Therefore, the ITI can serve as interpretive aide for the ATT.

●●● Please see the comparative tables for more details.

The definitions on SALW provided by the ITI and the ECOWAS Convention are very similar. They are both based on the Report of the Panel of Governmental Experts on Small Arms presented in 1997 at the request of the United Nations Secretary-General^[8].

The two main differences between the definitions contained in the ITI and that adopted in the ECOWAS Convention are as follows:

The two main differences between the definitions contained in the ITI and that adopted in the ECOWAS Convention are as follows:

- Reference to landmines

Unlike the ITI, the ECOWAS Convention includes references to landmines in the list of small arms [Article 1 (2) - ECOWAS Convention].

At a global level, there are specific instruments that were adopted to either strictly regulate or completely prohibit the trade in, manufacture and use of certain types of arms and ammunition. These include, among others, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction^[9] and the Protocols supplementing the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons Which May Be deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001^[10]. Subjecting anti-personnel landmines, for example, to the transfer control system established under the ATT by including them in the list of arms that are generally eligible for transfer, can lead to the interpretation that the trade in these arms was allowed. The trade in anti-personnel landmines is, however, strictly prohibited under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, to which all the fifteen ECOWAS Member States adhere.

⁸ The report can be found in English under [lc.cx/4XPq](#) ; the term SALW is discussed after op 23.

⁹ The text of the convention can be found in the six official languages of the United Nations under [lc.cx/4XPG](#).

¹⁰ The text of the convention and its protocols can be found in the six official languages of the United Nations under [lc.cx/4XPf](#).



- Reference to antique weapons

In contrast to the ITI, the ECOWAS Convention does not stipulate that the States Parties shall adopt national legislations relating to antique weapons [Paragraph 4 - ITI], i.e. arms manufactured until 1899. The fact that the ECOWAS Convention does not make reference to antique weapons suggests that all SALW, regardless of whether manufactured before or after 1899, follow the same regulations. The ITI opens up the possibility for the States to adopt less restrictive legislation with regard to antique weapons.

Information relating to other instruments

The Firearms Protocol also contains a reference to antique weapons [Article 3 - Firearms Protocol].

Other governed arms

In addition to SALW, the ATT provides a framework for regulating international transfers of battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircrafts, attack helicopters, warships, and missiles and missile launchers [Article 2 (1) - ATT]. It provides minimal descriptions of the conventional arms to be regulated and subjected to the national control system by stipulating that “national definitions [...] shall not cover less than the descriptions used in the United Nations Register of the Conventional Arms at the time of the entry into force of this Treaty” [Article 5 (3) - ATT]. The ECOWAS Convention does not provide a definition on arms other than SALW.

●●● Please see Annex 2 for more details

b. Ammunition

The ATT does not provide a definition on ammunition. The definition provided by the ECOWAS Convention refers to devices that are destined to be shot or projected through ‘firearms or other vectors’. The mention of the term ‘firearm’ seems incoherent, since it is not a category otherwise employed by the ECOWAS Convention. Although the terms ‘firearm’ and ‘SALW’ are often used interchangeably, firearms do not necessarily comprise all SALW.

Information relating to other instruments

At a global level, the only instrument containing a definition on ammunition is the Firearms Protocol that, in line with its scope of application, provides a definition on firearm ammunition. For the facilitation of interpretation of disarmament and arms control instruments, the definitions contained in the IATG and the ISACS can also serve as reference.

●●● Please see the comparative tables for more details.



c. Parts and components

The ATT does not provide a definition on parts and components. The definition adopted in the ECOWAS Convention on SALW refers to pieces and spare pieces for SALW or ammunition necessary for their functioning, or any chemical substance serving as material used as propelling or explosive agent [Article 1 (4) ECOWAS Convention]. The definition therefore excludes other parts and components that are either not specifically designed for SALW or that are not essential to their functioning.

Information relating to other instruments

The definition inscribed in the ECOWAS Convention, unlike the definition adopted in the Firearms Protocol [Article 3 - Firearms Protocol], does not refer to devices designed or adapted to diminish the sound caused by firing a firearm. Even though these devices are not essential for the operationalisation of arms, they are considered as parts/components under the Firearms Protocol, given the additional threat to public safety when they are added to the arms. It should also be noted that the list of the parts and components contained in the Firearms Protocol which refers to the barrel, frame or receiver, slide or cylinder, bolt or breech block, is not exhaustive.

d. Brokering

Contrary to the ECOWAS Convention, the ATT does not contain a definition of brokering. The ECOWAS Convention refers to “work carried out as an intermediary between any manufacturer, supplier, or distributor of SALW and any buyer or user; this includes the provision of financial support and the transportation of SALW” [Article 1 (8) - ECOWAS Convention].

Information relating to other instruments

The ISACS, which do not constitute an international binding instrument, but are voluntarily applicable standards, provide a definition of brokering that can serve as additional interpretative aide. It is based on the 2007 Report of the Group of Governmental Experts established pursuant to the General Assembly Resolution 60/81 to consider further steps to enhance the international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons¹¹.

●●● Please see the comparative tables for more details.

¹¹ The report can be found on [lc.cx/4XPY](https://www.un.org/News/Press/docs/2007/07/070611.htm).



e. Transfer

The ECOWAS Convention was the first disarmament instrument to provide a definition of «transfer» of SALW. The definition is very broad comprising “import, export, transit, trans-shipment and transport or any other movement whatsoever of SALW [...] from or through the territory of a State” [Article 1 (9) - ECOWAS Convention]. The ATT considers export, import, transit, trans-shipment and brokering as “transfers” [Article 2 (2) - ATT]. In contrast to the ATT, the ECOWAS Convention regulates brokering separately.

It depends on national interpretation whether the ATT also comprises non-remunerative transactions such as loans and gifts¹². Taking into account the broadness of the ECOWAS Convention’s scope of application, it is likely to be interpreted in a way to comprise such transactions.

The ATT does not apply to the international movements of conventional arms by or on behalf of a State Party for its use provided that the conventional arms remain under that State Party’s ownership [Article 2 (3) - ATT]. This is for example the case during peacekeeping missions [see section on scope of application].

Information relating to other instruments

The ISACS list supplementary transactions under the definition of transfer, such as sales, leases, loans and gifts, re-export, licensed production abroad, and tangible and intangible transfers of equipment and technology for the purpose of producing SALW.

Recommendations on the implementation of the ATT:

RECOMMENDATION 2

The ECOWAS Member States should adopt national definitions of arms and items governed under the ATT and their national control system and include those definitions in their national control lists [Article 5 (2, 3) - ATT].

¹² The Government of Lichtenstein for example already officially declared that “It is the understanding of Liechtenstein that the terms «export», «import», «transit», «transshipment» and «brokering» in Article 2, paragraph 2, include, in light of the object and purpose of this Treaty and in accordance with their ordinary meaning, monetary or non-monetary transactions, such as gifts, loans and leases, and that therefore these activities fall under the scope of this Treaty.”. The declaration can be found on lc.cx/4XPA.

3. TRANSFER OF ARMS INCLUDING THEIR IMPORT, EXPORT, TRANSIT AND TRANS-SHIPMENT

a. A short overview of the transfer control system under the ECOWAS Convention

Article 3 (1) - ECOWAS Convention contains a general prohibition of the transfers of SALW and their manufacturing materials into national territory of the Member States or from/through their national territory. The Member States have the possibility to request an exemption from the general ban if the transfer would meet legitimate national defence and security needs; the transfer is needed to maintain public order or the SALW are destined to be used to participate in peace support or other operations. This authorisation procedure constitutes an area of double jurisdiction both at the national and regional level. At the national level, the Member States have the obligation to establish and maintain an effective system of export and import licensing or authorisation and measures on international transits [Article 4 (2) - ECOWAS Convention]. However, the transferring State cannot decide independently whether a SALW transfer authorisation will be granted. Besides the issuance of a national authorisation, the State Party has to complete the regional exemption procedure detailed in Articles 5 and 6 - ECOWAS Convention. These articles describe the conditions and procedures for exemption as well as the cases for refusal of exemptions for transfers. The exemption certificate will only be granted if all the Member States to the ECOWAS Convention decide by consensus to grant the authorisation or, if the consensus cannot be reached, the ECOWAS Mediation and Security Council shall grant the authorisation. The objective of the exemption procedure is to restrict the transfer of arms to the legitimate needs of the Member States and to encourage confidence-building and transparency among the Member States¹³. It is, as the general prohibition of arms transfers, unprecedented.

The ECOWAS Convention clearly states that SALW are not considered as “goods” in the sense of Article 45 of the revised ECOWAS Treaty [Article 3 (3) ECOWAS Convention]. Consequently, the regulation on the free movement of goods across the territories of the ECOWAS Member States, as long as the customs duties are paid, does not apply to SALW and items governed under the Convention.

It should be reiterated that the term “transfer” employed by the ECOWAS Convention comprises all movements whatsoever of SALW, ammunition and other related materials from or through the territory of a State. Therefore the general prohibition, the national authorisation or licensing system as well as the elaborated exemption procedure pertain to imports as well as exports, transits, trans-shipments and other transfers from or through the territory of a State Party.

It should also be stressed that the Convention defined “SALW” as including ammunition and other related materials [Article 1 (11) - ECOWAS Convention]. The transfer control system therefore applies not only to SALW but also to their ammunition as well as other related materials.

¹³ See Practical Guide on the Exemption Procedure, ECOWAS Commission, page 7.



b. A short overview of the transfer control system under the ATT

The ATT requires States to establish and maintain a national control system, including a national control list [Article 5 (2) - ATT]. At the centre of the control system are certain transfer prohibitions [Article 6 - ATT]. The specific parameters of the control system are detailed for the export of arms, ammunition, parts and components [Article 7 - ATT]. The determination of the nature and features of the system controlling other kinds of transfer are mostly the prerogative of the State Party.

In general, the ATT sets a focus on fostering communication and transparency between the States participating in a transfer by providing the rights and obligations of the parties concerning the exchange of information related to transfer authorisations and measures to prevent diversion.

c. Transfert control obligations for exports, imports, transits and transshipments common to the ATT and the ECOWAS Convention

i. Establishment of a national control system

Both the ECOWAS Convention and the ATT are based on a national transfer control system. The ATT explicitly requires the designation of competent authorities for the implementation of the treaty as well as the adoption of national control lists [Article 5 (2, 4) - ATT]. These national control lists specify and define arms and items that are subject to the transfer control system. The ATT encourages States Parties to apply the provisions of the treaty to the broadest range of conventional arms. It provides minimal descriptions of the conventional arms to be regulated and subjected to the national control system by stipulating that “national definitions [...] shall not cover less than the descriptions used in the United Nations Register of the Conventional Arms at the time of the entry into force of this Treaty” [Article 5 (3) - ATT]. For SALW, the Treaty makes references to the descriptions used in relevant United Nations instruments, in particular the ITI. Hence, even though the ATT does not contain specific definitions, they play a particular role in the implementation of the Treaty.

The States have the obligation to submit the national control lists to the ATT-Secretariat and are further encouraged to publish them [Article 5 (4) - ATT].

Information relating to other instruments

The approach of establishing national transfer control systems is in line with the UNPoA [Part II Paragraph 2 - UNPoA] and the Firearms Protocol [Article 10 - Firearms Protocol].

ii. Prohibition of certain transfers

Both the ECOWAS Convention and the ATT prohibit the transfer of the respectively governed arms under certain pre-defined circumstances. Among these circumstances are: where the transfer would violate the measures adopted by the United Nations Security Council under Chapter VII of the United Nations Charter [Article 6 (2a) - ECOWAS Convention; Article 6 (1) - ATT], the transfer would violate the relevant international obligations of the concerned State [Article 6 (2c) - ECOWAS Convention; Article 6 (2) - ATT], and the transferred arms would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements [Article 6 (3a, b) - ECOWAS Convention; Article 6 (3) - ATT].

The first criterion relates to the measures adopted by the United Nations Security Council under Chapter VII of the United Nations Charter. This chapter regulates the actions of the United Nations with respect to threats to peace, breaches of peace, and acts of aggression. According to Article 39 of the United Nations Charter, the Security Council shall make recommendations or decide what measures shall be taken to maintain or restore international peace and security. There is a range of measures the Security Council can recommend or adopt. The measure most related to the arms trade is the imposition of an arms embargo. The overall aim of an arms embargo is to deny access to the listed individuals and entities to any type of arms and related materials. The exact content of an arms embargo depends on the specific decision taken by the Security Council.¹⁴ The embargo often contains strict obligations to prevent the direct or indirect supply, sale or transfer of arms and related materials to the listed individuals and entities. The obligation under Article 6 (2a) - ECOWAS Convention and Article 6 (1) - ATT is not new but complements existing international law and the obligation of United Nations Member States to accept and carry out the decisions of the Security Council [Article 25 - Charter of the United Nations].

The same is the case for the second circumstance listed in Article 6 (2c) - ECOWAS Convention and Article 6 (2) - ATT, whereby a transfer of conventional arms shall not be authorised if the transfer would violate international obligations of the State Party. The obligation to deny the transfer authorisation originates from the relevant international obligation and is complemented by the provision of the ECOWAS Convention and the ATT. The ECOWAS Convention lists obligations under the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction as well as under the Protocols supplementing the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons Which May Be deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001, as examples of the existing international law.

¹⁴ For more information on specific sanctions imposed by the United Nations Security Council see goo.gl/HzUXmm.

Thirdly, Article 6 (3) - ATT stipulates that a State Party shall not authorise any transfer of conventional arms, ammunition, parts or components if it has knowledge at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by the international agreements to which it is a Party. This obligation reinforces relevant international humanitarian and human rights law. Except for the reference to “other war crimes”, the ECOWAS Convention contains very similar transfer criteria. For this third circumstance, the ATT introduced a particular qualification: The arms transfer shall not be authorised if the State Party has knowledge about the future commission of one of the listed crimes. While the ATT does not provide a definition of “knowledge”, the definition provided by the 1998 Rome Statute of the International Criminal Court (ICC Statute) can serve as basis for interpretation. According to Article 30 (3) of the ICC Statute, knowledge means “awareness that a circumstance exists or a consequence will occur in the ordinary course of events”.

The ECOWAS Convention prescribes additional cases in which a transfer of SALW, including their ammunition, parts and components, shall not be authorised. An exemption certificate shall not be granted if:

- Authorisation of export, import, transit, trans-shipment or brokering has not been provided by all the States directly concerned with the transfer [Article 6 (1a) - ECOWAS Convention];
- Not all the required information has been supplied to the ECOWAS Commission ⁽¹⁵⁾[Article 6 (1b) - ECOWAS Convention];
- The arms have not been marked according to the requirements under the Convention [Article 6 (1c) - ECOWAS Convention];
- SALW are destined to be used for the infringement on human and peoples’ rights and freedoms, or for the purpose of oppression [Article 6 (3a) - ECOWAS Convention];
- SALW are destined to be used to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts, or aggravating the existing tensions [Article 6 (3c) - ECOWAS Convention];
- SALW are destined to be used to carry out terrorist acts or support or encourage terrorism [Article 6 (3d) - ECOWAS Convention];
- SALW are destined to be used other than for the legitimate defence and security needs of the beneficiary country [Article 6 (3e) - ECOWAS Convention];
- Transfer is destined to be used for or to facilitate the commission of violent or organised crime [Article 6 (4a) - ECOWAS Convention];
- Transfer is destined to be used to adversely affect regional security, endanger peace, contribute to destabilising or uncontrolled accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability [Article 6 (4b) - ECOWAS Convention];
- Transfer is destined to hinder or destroy sustainable development and unduly divert

¹⁵ It should be noted that the Executive Secretariat that is referenced in the ECOWAS Convention was transformed into the ECOWAS Commission in 2007.

human and economic resources to armaments of the States involved in the transfer [Article 6 (4c) - ECOWAS Convention];

- Transfer involves corrupt practices at any stage, from the supplier through any middlemen or brokers to the recipient [Article 6 (4d) - ECOWAS Convention];
- Transfer is likely to be diverted within the transit or importing country or re-exported to unauthorised uses or users or into the illicit trade [Article 6 (5) - ECOWAS Convention].

According to Article 6 (6) - ECOWAS Convention, the ECOWAS Commission and all the Member States have the burden of proof for each of the circumstances to be considered in the exemption procedure.

iii. Level of application of transfer prohibitions

While both the ATT and the ECOWAS Convention refer to specific cases in which a transfer shall be prohibited, the instruments differ with regard to the level of application of the transfer prohibitions. The ATT requests the individual States Parties to prohibit certain transfers, thereby making the transfer prohibitions an integral part of the national transfer control system. The ECOWAS Convention on the other hand, stipulates that all the above-listed criteria shall be taken into account in the framework of the sub-regional exemption procedure. It does not include details on the criteria to be applied to the national authorisation procedure, and as such, does not request the States Parties to ensure the application of specific transfer prohibitions at a national level.

Both approaches should result in the denial of a transfer authorisation if one of the criteria listed in Article 6 - ATT or Article 6 - ECOWAS Convention is met, in particular since, as mentioned above, the transfer prohibitions also originate from other international law. However, besides constituting a legal obligation under the ATT, the application of certain transfer prohibitions at a national level establishes a strong political signal of assuming national responsibility for arms transfers.

d. Additional transfer control obligations pertaining to the export of arms and items

It is important to underline that the export control obligations inscribed in the analysed instruments do not only apply to the export of locally-produced arms and items, but also to the re-exportation of arms, ammunition, parts and components. While the ECOWAS Member States might not produce arms destined for export, it can happen that previously imported arms are re-exported. Furthermore, the analysed instruments are not intended to regulate the status quo only, but serve as frameworks that also take into account potential future developments. ECOWAS Member States may not currently produce arms, ammunition, parts and components that are destined for export, but this might change in the future. It is therefore crucial for the States to establish an effective export control system as provided by the ECOWAS Convention and the ATT that can easily be operationalised and applied if needed.



i. Case-by-case export risk assessment

In the case of an export of arms, ammunition, parts and components, the ATT requires the States Parties to conduct, prior to the authorisation of the export, an export risk assessment that takes into account several criteria. The risk assessment constitutes the second step in the export control system and is only to be conducted, if the transfer is not already prohibited under Article 6 - ATT. The factors to be assessed include [Article 7 - ATT]:

- whether the exported arms or items would contribute to or undermine peace and security [Article 7 (1a) - ATT]. Both positive and negative consequences can be considered when conducting the case-by-case assessment.
- whether arms or items would be used to commit or facilitate a serious violation of international humanitarian or human rights law [Article 7 (1b i, ii) - ATT].
- whether arms or items would be used to commit or facilitate an act constituting an offence under the international conventions or protocols relating to terrorism or transnational organised crime to which the exporting State is a Party [Article 7 (1b iii, iv) - ATT]. Among offences under the relevant conventions are also the laundering of the proceeds of crime and corruption.

It should be noted that these criteria are also contained in the list of factors inscribed in Article 6 - ECOWAS Convention.

If one of the abovementioned risks is identified, the exporting State shall, in a third step, consider, in coordination and cooperation with the importing State, mitigation measures [Article 7 (2) - ATT]. The Treaty proposes that the measures could include confidence-building measures or jointly developed and agreed programmes. An export authorisation shall be denied if, after conducting the risk assessment and considering the mitigation measures, the exporting State determines that there is an overriding risk of any of the negative consequences listed above [Article 7 (2, 3) - ATT]. The decision on whether an overriding risk exists is taken by the exporting State.

In line with the obligations contained in the ECOWAS Convention, the ATT requests the exporting States to consider the risk of arms diversion before granting an export authorisation [Article 11 (2) - ATT].

Unlike the ECOWAS Convention, the ATT additionally requires the exporting States to take into consideration the risk of the exported arms or items being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children [Article 7 (4) - ATT]. However, it should be noted that the commission or facilitation of those acts would constitute grave violations of international humanitarian or human rights law, which are listed among the factors that influence the obligation to deny the export authorisation. In most cases, the Article 7 (4) criteria would thus not establish a

supplementary assessment criterion, but could be interpreted as setting a specific focus on violence against particular vulnerable groups of the society.

ii. Requirement relating to the level of risk

The ECOWAS Convention and the ATT differ with regard to the requirements relating to the level of risk. While the ECOWAS Convention stipulates that the transfer shall not be authorised if it is destined to be used to commit one of the listed risks [Article 6 (3, 4) - ECOWAS Convention], the ATT requires the States to deny arms exports if there is an “overriding risk” of any of the negative consequences. In other words, the ECOWAS Convention requires the knowledge that the arms and items are transferred to serve a specific purpose, while the ATT requires the States to deny arms exports if there is a certain degree of risk that the items, even if not clearly destined for the specific use, will be used for any of the negative consequences stated above.

The term “overriding risk” is not a clear or established concept in international law. The term implies that the export control authority must balance the predictable negative and positive consequences of arms export. A State Party is only obliged to deny the export if, according to its own evaluation, the anticipated negative consequences of the export exceed the expected positive consequences.¹⁶

iii. Level of application of transfer prohibitions and risk assessment

Similar to the level of application of transfer prohibitions, it should be noted that the ATT requires the exporting States to conduct the case-by-case risk assessment at a national level. The risk assessment as inscribed in the ECOWAS Convention does not entirely meet this requirement, as it provides for the assessment of risks at the sub-regional level only.

iv. Right to request information relevant to the export risk assessment

The ATT requires the importing State to provide, upon request and pursuant to its national laws, appropriate and relevant information to the exporting State that helps the latter to conduct the export risk assessment [Article 8 (1) - ATT]. This obligation implies the exporting State’s right to request appropriate and relevant information.

¹⁶ There were a number of States that supported the introduction of the term “substantial” instead of the term “overriding” in the ATT in order to avoid balancing the consequences. New Zealand for example officially declared that it considers the effect of the term “overriding risk” in Article 7(3) to be that it is required to decline an export authorization where it is determined that there is a substantial risk of any of the negative consequences in Article 7(1) (lc.cx/4XPA).



v. Obligation to share information on export authorisation with the importing State

The ATT grants the importing State the right to request information from the exporting State Party concerning any pending or actual export authorisation where the importing State is the country of final destination [Article 8 (3) -ATT]. This right implies the exporting State's obligation to provide the requested information.

e. Additional transfer control obligations pertaining to the import of arms and items

i. Obligation to provide appropriate and relevant information

Unlike the ECOWAS Convention, the ATT imposes an obligation on the importing State towards the exporting State to provide, upon request, appropriate and relevant information to assist the exporting State in conducting its national export assessment under Article 7-ATT [Article 8 (1) - ATT].

For the ECOWAS countries which are predominantly on the importing side of the arms transfer, this obligation is of a particular importance. In order to comprehend what information is relevant and appropriate, the importing States Parties to the ATT have to familiarise themselves with the export control system under the ATT.

The ATT refers to the sharing of end use and end user documentation as potential measures [Article 8 (1) - ATT].

Other information that could be shared includes:

- Information on the security situation in the country of import;
- Information on whether the country of import ratified and implemented the conventions and treaties relating to human rights, international humanitarian law as well as the protection of vulnerable groups of society;
- Information on the structures in place to prevent and address the violation of international humanitarian and human rights law in the country of import;
- Information on whether the importing State ratified and implemented the relevant conventions and treaties relating to terrorism and transnational organised crime;
- Information on the structures in place to prevent terrorism and transnational organised crime;
- Information relating to the system and capacity of the importing State to control the imported arms.

Information relating to other instruments

According to Article 10 (4) - Firearms Protocol, the importing State has to inform, upon request, the exporting State of the receipt of the dispatched shipment of arms. This obligation is not reflected in the ECOWAS Convention.

ii. Rights of the importing States

The ATT grants the importing State the right to request information from the exporting State Party concerning any pending or actual export authorisation where the importing State is the country of final destination [Article 8 (3) - ATT].

This right, together with the importing State's obligation to provide information relevant to the export risk assessment [Article 8 (1) - ATT] and the ATT's call for the exporting and importing States to jointly develop measures to mitigate negative consequences of the transfer and the risk of diversion [Article 7 (2), 11 (2) - ATT], is an integral part of the ATT's approach in enhancing the exchange of information, cooperation and transparency between the States Parties.

f. Additional transfer control obligations pertaining to the transit and trans-shipment of arms and items

The need to regulate transit and trans-shipment of arms is acknowledged in the ATT and the ECOWAS Convention. However, they don't specify what measures the transit or trans-shipment States have to adopt.

Exemption procedure and existing international law

A strict application of the ECOWAS Convention requires the submission of an exemption request for any transit or trans-shipment of SALW, including their ammunition, parts and components [Article 3 (1), 4 (1) - ECOWAS Convention].

However, some of the existing international laws that the States Parties need to take into account when considering the establishment of arms transit control measures are:

- The United Nations Convention on the Law of the Sea (1982) ⁽¹⁷⁾: In particular Article 17 on the right of innocent passage, if the transit goes through territorial waters. The flag State has the main responsibility to ensure a secure transit and prevent the diversion of the goods.

¹⁷ The United Nations Convention on the Law of the Sea can be found on goo.gl/rL7nWM.

- The Convention on Transit Trade of Land-locked States (1965)^[18] : The Convention recognises the right of landlocked States to free access to the sea as an essential principle (Principle 1 of the Preamble). The Convention stipulates however that the control measures for arms transits prevail if imposed by another legally binding international or regional instrument (Article 11 (3a)). For the landlocked countries, Article 125 of the United Nations Convention on the Law of the Sea which provides that landlocked States shall enjoy freedom of transit through the territory of transit States by all means of transport, should also be taken into account.
- The Convention on International Civil Aviation (1944)^[19] : According to this Convention, an authorisation is needed for scheduled flights over a foreign territory (Article 6 - ICAO), while non-scheduled ones (charter flights for example) can take place without prior authorisation (Article 5 - ICAO). Article 35 – ICAO further places a limitation on certain cargos, stating that the permission of the transit State is needed if the cargo consists of “munitions of war or implements of war”. It is up to the transit State to interpret and define those terms.

International law may therefore restrain the ATT States Parties from establishing exceedingly restrictive transit control measures. Besides setting up a licensing or authorisation system, the States Parties could for example establish a notification system or exercise control via the customs authorities. The difference between these systems lies in the basic underlying principle of whether the transit of arms should generally be allowed and only prohibited under certain circumstances or whether the transit of arms should generally be prohibited and only allowed under certain circumstances. In addition, the different systems might implicate different levels of administrative, human and financial resources.

Information relating to other instruments

As an additional obligation, the States Parties to the Firearms Protocol should note that Article 10 (3) - Firearms Protocol requires the provision of information contained in the import license to the transit States.^[20]

Recommendations on the implementation of the ATT:

RECOMMENDATION 3

The ECOWAS Member States should designate competent authorities that apply the system of controlling exports, imports, transits and trans-shipments of conventional arms, ammunition, parts and components governed under the ATT at a national level. The national control system should include, at a minimum, a legal basis, transfer policies, a decision-making mechanism and an enforcement mechanism.^[21]

¹⁸ The Convention on Transit Trade of Land-locked States can be found on goo.gl/TVfkRp.

¹⁹ The Convention on International Civil Aviation can be found on goo.gl/A1cEVc.

²⁰ For more information on the interpretation of that provision see Firearms Protocol Model Law, page 40/41, under goo.gl/LvTIYY.

²¹ See ISACS 03.20:2014EV1.0, page 15. The document can be found on goo.gl/PCj3jy.

RECOMMENDATION 4

The ECOWAS Member States should develop and share with the ATT-Secretariat a national control list that lists the arms and items that are subjected to the transfer control system and contains definitions thereof [Article 5 (2, 4) - ATT]; designate the authorities and points of contact in charge of the development of the list and communicate such designations to the ATT Secretariat [Article 5 (5, 6) - ATT].

RECOMMENDATIONS 5

The ECOWAS Member States should adopt national legislation that prohibits the transfer of conventional arms governed under the ATT pursuant to Article 6 - ATT and ensure its enforcement [Article 6, 14 - ATT]. The legislations should further require the competent national authorities to conduct an export risk assessment pursuant to Article 7 - ATT, and also taking into account the risk of diversion pursuant to Article 11 (2) - ATT.

RECOMMENDATION 6

The exporting States should ensure that export authorisations are denied if an overriding or substantial risk of any of the negative consequences listed in Article 7 (1) - ATT exists. The knowledge that the arms are destined to be used for the commission of a certain crime is not required under Article 7 - ATT.

RECOMMENDATION 7

The ECOWAS Member States should designate and mandate competent authorities to:

- compile and provide appropriate and relevant information, upon request, to the exporting State, to assist the exporting State in conducting its national export assessment under Article 7 - ATT [Article 5 (5), 8 (1) - ATT].
- request information relevant to the export risk assessment from the importing State [Article 5 (5), 8 (1) - ATT].
- confirm to the exporting State the receipt of the dispatched shipment [Article 10 (4) - Firearms Protocol].
- request information from the exporting State Party concerning any pending or actual export authorisation where the importing State is the country of final destination [Article 5 (5), 8 (3) - ATT].
- provide information to the importing State Party concerning any pending or actual export authorisation where the importing State is the country of final destination [Article 5 (5), 8 (3) - ATT].

Additional recommendations on aspects of the ATT which do not require mandatory implementation, and other relevant areas:



RECOMMENDATION 8

It is recommended that the ECOWAS Member States engage in inter and intra-governmental discussions on the question of whether the exemption procedure as inscribed in the ECOWAS Convention, which is a major tool to enhance transparency between the States Parties, should also apply to the additional seven categories of conventional arms governed under the ATT.

4. BROKERING

The ATT and the ECOWAS Convention address the issue of brokering and request the States Parties to regulate brokers and their transactions. However, with the exception of certain brokering prohibitions [Article 6 - ATT], only the ECOWAS Convention provides specific measures that are legally binding. It requires the registration of all brokers, issuance of an authorisation for each individual brokering activity, full disclosure of the relevant import and export licenses, and other associated documents and information. It also criminalises illicit brokering activities [Article 20 - ECOWAS Convention].

Both the ECOWAS Convention and the ATT refer to certain cases in which brokering activities shall be prohibited. The ECOWAS Convention refers to the criteria listed under Article 6 - ECOWAS Convention. Under the ATT, brokering constitutes a type of activity related to the international trade in arms; therefore the prohibitions contained in Article 6 - ATT apply.

The system of brokering control as adopted in the ECOWAS Convention is in line with the suggested measures provided by the ATT [Article 10 - ATT].

Information relating to other instruments

The Firearms Protocol [Article 15 - Firearms Protocol] and the UNPoA [Part II Paragraph 14 UNPoA] also address the matter of brokering and suggest pertinent control measures. In addition to the measures requested by the ECOWAS Convention, the Firearms Protocol suggests the keeping of records on brokers and brokering.

Recommendations on the implementation of the ATT:

RECOMMENDATION 9

The ECOWAS Member States should adopt the legislation and administrative procedures that regulate brokering in conventional arms governed under the ATT taking place under their jurisdiction [Article 10 - ATT]. The ECOWAS Member States may consider extending the

brokering control system provided by the ECOWAS Convention to the additional categories of conventional arms governed under the ATT.

RECOMMENDATION 10

The ECOWAS Member States should develop and share with the ATT Secretariat a national control list that lists arms and items that are subject to the brokering regulations and contains definitions thereof [Article 5 (2, 4) - ATT]; designate the authorities and points of contact in charge of the development of the list and communicate such designations to the ATT Secretariat [Article 5 (5, 6) - ATT].

RECOMMENDATION 11

The ECOWAS Member States should ensure the enforcement of the legislation and administrative procedures regulating brokers and their activities [Articles 5 (5), 14 - ATT].

Additional recommendations on aspects of the ATT which do not require mandatory implementation, and other relevant areas:

RECOMMENDATION 12

It is recommended that the ECOWAS Member States collect aggregated data on brokers, brokering authorisations and actual brokering activities in the national registers, independent from an individual transfer.

RECOMMENDATION 13

It is recommended that the ECOWAS Member States engage in inter and intra-governmental discussions on the question of whether the ECOWAS SALW database and register provided in Article 10 - ECOWAS Convention should also comprise information on brokers, brokering activities and authorisations related to SALW as well as the additional categories of conventional arms, ammunition, parts and components governed under the ATT.



5. DIVERSION

The important issue of arms diversion is among the main aspects that underline the complementarity of the ATT and the ECOWAS Convention. While the ATT focuses on creating a general control framework that prevents the diversion of arms, the ECOWAS Convention provides for many specific measures that contribute to the fight against diversion. The term “diversion” is not defined in any of the analysed disarmament instruments.

Information relating to other instruments

A definition which can serve as a common basis of understanding is the definition contained in the ISACS. According to ISACS 01.20:2014(E)V1.2²², diversion is a “movement – either physical, administrative or otherwise – of a small arm or light weapon, its parts, components or ammunition, from the legal to the illicit realm”.

a. Specific measures to prevent and address diversion under the ATT

Article 11 of the ATT is devoted to the fight against the diversion of arms. By requesting each State involved in the transfer of conventional arms to take measures to prevent their diversion [Article 11 (1) - ATT], the ATT emphasises the fact that preventing diversion is a shared responsibility among all the States engaged in the international transfer of arms.

In addition to the requirement to assess the risk of diversion before granting an export authorisation, the ATT requests the exporting State to consider the establishment of risk mitigation measures, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States [Article 11 (2) - ATT]. The ATT suggests that other preventive measures may include: examining parties involved in the export, requiring additional documentation or certificates, and assurances. The ATT further requests the importing, transit, trans-shipment and exporting States to cooperate and exchange information in order to mitigate the risk of diversion [Article 11 (3, 5, 6) - ATT]. All the States Parties are encouraged to share information on the effective measures to address diversion such as information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, and methods of concealment and common points of dispatch or destinations used by the organised groups engaged in diversion. The ATT encourages all the States to report, through the ATT Secretariat, on the measures taken to address diversion [Article 11 (6), 13 (2) - ATT]; while requiring the States Parties to also address detected diversion [Article 11 (4) - ATT]. The treaty suggests that the relevant measures may include alerting potentially affected States Parties, examining diverted shipments and taking follow up measures through investigation and law enforcement.

²² The ISACS 01.20:2014(E) V1.2 can be downloaded from goo.gl/cDJ0fN

b. Specific measures to prevent and address diversion under the ECOWAS Convention

Besides the obligation to deny an exemption request in case the requested transfer is likely to be diverted [Article 6 (5) - ECOWAS Convention], the ECOWAS Convention lists several measures and contains several obligations that help to prevent diversion of SALW. Those measures include:

- The procedure of entering locally manufactured SALW in the national SALW register [Article 8 b - ECOWAS Convention];
- The establishment and permanent maintenance of detailed national computerised registers and databases on SALW, containing, among others, information on arms owners and each concluded transaction [Article 9 - ECOWAS Convention];
- The establishment and maintenance of an ECOWAS register and database on SALW as well as a register on arms for peace operations [Articles 10, 11 - ECOWAS Convention];
- The regulations governing the possession of small arms by civilians, including the establishment of a registration and authorisation system and the obligation to introduce penal sanctions for illicit possession and use of small arms [Article 14 - ECOWAS Convention];
- The obligation to ensure the safe and effective management, storage and security of national stocks of SALW including the introduction of standards on appropriate sites, physical security measures, inventory management and record keeping, staff training, security measures during the manufacture and transportation and the introduction of sanctions in case of theft or loss of arms [Article 16 - ECOWAS Convention];
- The obligation to collect and/or destroy surplus and obsolete arms, seized arms, unmarked or illicitly held arms and arms collected during voluntary collection programmes [Article 17 - ECOWAS Convention];
- The obligation to mark weapons and ammunition upon manufacture, and, if not yet properly marked, upon import [Article 18 - ECOWAS Convention];
- The obligation to exchange information with other ECOWAS Member States on a regular basis on the manufacture, transfers and existing stockpiles [Article 19 (2) - ECOWAS Convention];
- The obligation to strengthen border control and cooperation to combat the illicit circulation of SALW [Article 22 - ECOWAS Convention].

Recommendations on the implementation of the ATT:

RECOMMENDATION 14

The ECOWAS Member States should adopt legislative and administrative procedures providing measures to prevent the diversion of conventional arms governed under the ATT, independent of their role in international transfers [Article 11 (1) - ATT].



RECOMMENDATION 15

The ECOWAS Member States should include the assessment of the risk of diversion of all the conventional arms governed under the ATT in the catalogue of risks that need to be assessed at a national level before granting export authorisations [Article 11 (2) - ATT]. The States may consider the establishment of confidence-building measures or jointly developed and agreed programmes by the exporting and importing States in order to mitigate the risk of diversion [Article 11 (2) - ATT].

RECOMMENDATION 16

The ECOWAS Member States should designate competent national authorities that are mandated to cooperate, compile and exchange information between the States participating in the arms transfer relating to, among others, illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch or destinations used by organised groups engaged in diversion, as well as information on effective measures to address diversion [Article 11 (3, 5) - ATT].

RECOMMENDATION 17

The ECOWAS Member States should adopt legislative and administrative procedures and mandate national authorities to take specific measures to address detected diversion. These measures can include alerting potentially affected States Parties, examining diverted shipments and taking follow-up measures through investigation and law enforcement [Article 11 (4) - ATT].

Additional recommendations on aspects of the ATT which do not require mandatory implementation, and other relevant areas:

RECOMMENDATION 18

It is recommended that the ECOWAS Member States report to the other States Parties, via the ATT Secretariat, information on measures taken that have proven to be effective in addressing the diversion of transferred conventional arms [Article 13 (2) - ATT].

6. RECORD KEEPING

Both the ECOWAS Convention and the ATT require the maintenance of national records of exported arms. In contrast to the ECOWAS Convention, the ATT does not contain a legally binding obligation on the keeping of records of imports, transits and trans-shipments but explicitly encourages States to do so.

Information relating to other instruments

Obligations on record keeping are also contained in the Firearms Protocol and the UNPoA.

●●● Please see the comparative tables for more details.

a. Scope of information to be kept

The ECOWAS Convention requires States to keep a national database and register on SALW. Besides the information on all weapons such as the type or model, calibre, marking and date of registration, the States are required to enter detailed data on every transaction involving arms, ammunition and other related materials [Article 9 - ECOWAS Convention]. The ATT requires the States to maintain national records on the issuance of export authorisations or actual exports of conventional arms. The requirement does not apply to ammunition, parts and components or other kinds of transfers of conventional arms. However, the ATT explicitly encourages States to keep records on other types of transfers [Article 12 (2) - ATT]. The ATT does not set the scope of information to be kept in the records in a legally binding way. It encourages the States to include information on the quantity, value, model/type, authorised transfers, arms actually transferred, details of the involved States (exporting, importing, transit and trans-shipment States) as well as end users [Article 12 (3) - ATT]. Of this suggested scope of information, only the information on the value of transfer is not listed under the information to be kept under Article 9 - ECOWAS Convention.

Information relating to other instruments

While the ECOWAS Convention requests that information on “intermediaries” and “financial institutions” be entered into the national register when participating in a transaction, it should be noted that it does not contain an explicit requirement to keep national registers on brokers and brokering activities. However, the keeping of records on brokers and brokering activities is proposed as a control measure in Article 15 (2) - Firearms Protocol.



b. Period of record keeping

The ECOWAS Convention requires that records be kept permanently [Article 9 (3) -ECOWAS Convention]. The ATT on the other hand, requires the States Parties to keep records for a minimum of ten years [Article 12 (4) - ATT].

Information relating to other instruments

In line with the ATT, the Firearms Protocol also requests the keeping of records for a period of 10 years [Article 7 (b) - Firearms Protocol].

c. Level of record keeping

In addition to the requirement to keep national registers and databases, Articles 10 and 11 - ECOWAS Convention require the keeping of a regional register and database on SALW as well as on arms for peace operations. According to Article 10 (1) - ECOWAS Convention, the main purpose of these measures is to promote confidence among the States Parties.

Recommendations on the implementation of the ATT:

RECOMMENDATION 19

The ECOWAS Member States should adopt legislative and administrative procedures that require and allow the keeping of records of issued export authorisations or actual exports of all the conventional arms governed under the ATT [Article 12 (1) - ATT].

Additional recommendations on aspects of the ATT which do not require mandatory implementation, and other relevant areas:

RECOMMENDATION 20

It is recommended that the ECOWAS Member States adopt legislative and administrative procedures that require and allow the keeping of records of the conventional arms governed under the ATT that are imported, in transit or are being trans-shipped [Article 12 (2) - ATT].



RECOMMENDATION 21

It is recommended that the ECOWAS Member States compile and include in their national register and database aggregated data on brokers, brokering authorisations and actual brokering activities.

RECOMMENDATION 22

It is recommended that the ECOWAS Member States include information on the value of transferred arms and items in the national register and database [Article 12 (3) - ATT].

7. REPORTING

Reporting frameworks constitute confidence-building measures which aim to enhance transparency between the participating States Parties as well as the States and the public. They are important measures as transparency in armaments fosters the reduction of dangerous misperceptions or miscalculations about the intentions of States, eases tensions, strengthens regional and international peace and security, ensures the timely identification of trends in arms transfers, and raises public awareness about military matters. The regular participation in established confidence-building activities further demonstrates States Parties' readiness for dialogue on security matters.^[23] In addition, the reporting frameworks are particularly useful to monitor and evaluate the progress of implementation of the different disarmament and arms

a. Report on the implementation process

The ECOWAS Member States are requested to submit annual reports to the ECOWAS Commission on their activities related to SALW and the convention [Article 28 (4) - ECOWAS Convention]. Additionally, a Group of Independent Experts, appointed by the ECOWAS Commission shall submit a report on the implementation process to the Commission [Article 28 (1) - ECOWAS Convention]. The periodicity of the report of the Group of Independent Experts is not indicated. It is also not specified whether the reports will be shared with other States Parties or the wider public. However, Article 25 (1d) - ECOWAS Convention requires the ECOWAS Commission, being responsible for supporting and supervising the application of the convention's provisions, to present an annual report on the status of implementation of the convention to the ECOWAS Summit of Heads of State and Government.

²³ For further information, see UNODA Occasional Papers No. 16, Assessing the United Nations Register on Conventional Arms, downloadable from goo.gl/49bN0P.

The States Parties to the ATT are also requested to submit a report on the implementation of the Treaty [Article 13 (1) - ATT]. Under the ATT reporting framework, the States Parties have to submit an initial report on the implementation of the ATT including on national laws, national control lists, and other regulations and administrative measures, within one year after the entry into force of the Treaty for the individual State Party. After submitting this initial report, the States Parties shall report any new measures undertaken to implement the ATT to the ATT Secretariat, when appropriate. The ATT Secretariat shall make the reports available to Member States [Article 13 (1) - ATT].

Information relating to other instruments

The UNPoA and the ITI also refer to reporting on the implementation of the instruments. The voluntary reporting efforts relating to the implementation of the UNPoA and the ITI are an integral part of the Biannual Meetings of States, the last of which was held in June 2014.^[24]

b. Annual report on the international transfers of arms

In order to feed the regional SALW register and database, the ECOWAS Member States shall provide the ECOWAS Commission^[25] with all information it requires to maintain a record of these instruments and submit an annual report on their orders and purchases to the ECOWAS Commission [Article 10 (3) - ECOWAS Convention]. The information is shared with the other States Parties via an annual report on the workings of the database and register at the ECOWAS Summit of Heads of State and Government [Article 10 (4) - ECOWAS Convention]. Furthermore, Article 5 (4) - ECOWAS Convention, which is part of the provisions relating to the exemption procedure, requires the ECOWAS Commission to “compile and publish a comprehensive annual report detailing all the international arms transfers granted exemptions and a list of refusals”.

The ATT States Parties are requested to annually submit a report on authorised or actual exports and imports of conventional arms which are to be “made available and distributed to the States Parties” [Article 13 (3) - ATT]. In contrast to the reports submitted under the ECOWAS Convention, those submitted under the ATT reporting framework may exclude commercially sensitive or national security information [Article 13 (3) - ATT].

The ATT explicitly states that the report on exports and imports submitted to the ATT Secretariat may contain the same information submitted by the State Party under the relevant United Nations frameworks, including the United Nations Register on Conventional Arms (UNROCA). The UNROCA, which was created in 1991 and received reports from over 170 United Nations Member States on imports and exports of conventional arms and additional information to enhance transparency in armaments, constitutes a global reporting instrument.^[26]

²⁴ For more information on the Biannual Meeting of States and the outcome document of the last meeting, see goo.gl/5VN20J.

²⁵ It should be noted that the Executive Secretariat that is referenced in the ECOWAS Convention was transformed into the ECOWAS Commission in 2007.

²⁶ For more information on the United Nations Register on Conventional Arms see goo.gl/tOXcsX.

c. Report on measures to address diversion

As the ATT places an emphasis on addressing the diversion of arms, it encourages the States to report to other States Parties and the ATT Secretariat on the effective measures taken to address the diversion of transferred arms [Article 11 (6), 13 (2) - ATT].

d. Differences in reporting bodies, periodicity and recipients

As elaborated above, the reporting frameworks under the ECOWAS Convention and the ATT differ in the sense that different bodies at different levels are required to report at different periods to different recipients. The ATT generally requires the States Parties to report to the ATT Secretariat which then shares the information with the other States Parties. Under the ECOWAS Convention, the States Parties generally report to the ECOWAS Commission which then reports on the implementation of the convention and the functioning of the ECOWAS database and register to the Summit of Heads of State and Government. The ECOWAS Commission is further required to publish a detailed report on all the international transfers that were granted and denied [Article 5 (4) - ECOWAS Convention].

Recommendations on the implementation of the ATT:

RECOMMENDATION 23

The ECOWAS Member States should adopt legislative and administrative procedures that allow the compilation of information and reporting to the ATT Secretariat on the:

- implementation of the ATT [Article 13 (1) - ATT]; and
- authorised or actual imports and exports of conventional arms [Article 13 (3) - ATT].

Additional recommendations on aspects of the ATT which do not require mandatory implementation, and other relevant areas:

RECOMMENDATION 24

It is recommended that the ECOWAS Member States adopt legislative and administrative procedures and designate the authorities to ensure reporting to the ATT Secretariat on the measures taken that have proven effective in addressing the diversion of the conventional arms governed under the ATT [Article 13 (2) - ATT].



RECOMMENDATION 25

In line with the transparent approach of the ECOWAS Convention, it is recommended that the ECOWAS Member States report on a regular basis to the UNROCA, which is a key global mechanism to enhance transparency in arms transfers.

8. INSTITUTIONAL ARRANGEMENTS

In order to ensure the effective implementation and increase the possibilities to monitor and coordinate the implementation process, the analysed instruments require the establishment or designation of competent authorities which are charged with the implementation. Furthermore, the instruments require the designation of focal or contact points mandated to liaise with other States Parties and to ensure the exchange of information and submission of reports.

a. National implementation authorities

The ATT explicitly requests the designation of competent national authorities in charge of the implementation of the Treaty [Article 5 (5) - ATT] as well as the designation of one or more national points of contact to exchange information on matters related to the implementation of the Treaty [Article 5 (6) - ATT].

The ECOWAS Convention on the other hand, requests the establishment of a national commission for the fight against the illicit proliferation and circulation of SALW that coordinates implementation efforts related to the ECOWAS Convention [Article 24 - ECOWAS Convention]. While the national focal or contact points mainly have the responsibility of exchanging information on matters relating to the implementation of the instruments and act as liaison between the States Parties, the national commissions have the additional responsibility of fostering and coordinating the implementation of the ECOWAS Convention at a national, intra-State level [Article 24 (1) - ECOWAS Convention; Article 51 of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security]. The role of the national commissions therefore exceeds the role of the focal or contact points which are to be designated under the ATT.

Information relating to other instruments

While most of the analysed instruments require either the designation of a national contact/focal point or the establishment of a national coordination body, the UNPoA refers to both [Part II Paragraph 4, 5 - UNPoA]. Article 13 (2) - Firearms Protocol also request the designation of a contact point mandated to act as liaison between States Parties on matters related to the Protocol.



b. Regional/Global institutions

The ECOWAS Convention and the ATT do not only require the designation or establishment of national authorities, they also allocate essential roles in implementation assistance and information exchange to regional or global institutions, such as the ECOWAS Commission [Articles 5, 10, 11, 25 - ECOWAS Convention] and the ATT Secretariat [Articles 13, 18 - ATT]. Both institutions have the responsibilities of assisting the States Parties in the effective implementation of the instruments. While the ATT Secretariat is requested to assume this responsibility by distributing reports and lists of national points of contacts, facilitating the matching of assistance needs and resources, facilitating the works of the Conference of States Parties and performing other duties as decided by the Conference [Article 18 (3) - ATT], the ECOWAS Commission is requested to assist the States Parties in the practical implementation of the arms control measures inscribed in the Convention and to ensure a harmonised implementation. As such, it is generally mandated to support and supervise the application of the ECOWAS Convention [Article 25 - ECOWAS Convention].

Recommendations on the implementation of the ATT:

RECOMMENDATION 26

The ECOWAS Member States should designate and mandate competent national authorities and contact points to apply the legislative and administrative procedures governing the national transfer control system and relating to the implementation of the ATT [Article 5 (5, 6) - ATT]. This comprises, among others, the designation of the authorities or focal points mandated to:

- Establish and share the national control lists with the ATT Secretariat [Article 5 (2) - ATT];
- Authorise and regulate transfers and apply the measures relating to the national transfer control systems [Article 5 (5) - ATT], including the application of the transfer prohibitions contained in Article 6 - ATT and the export risk assessment contained in Article 7 - ATT;
- Compile, share or request information relevant for the export risk assessment [Article 8 (1) - ATT] (It is the responsibility of the State Party to decide whether the same authority or contact point compiles, shares or requests the relevant information);
- Request or share information concerning any pending or actual export authorisation [Article 8 (3) - ATT];
- Establish and implement the measures preventing and addressing the diversion of conventional arms [Article 11 - ATT];
- Establish and maintain the national records on international transfers pursuant to Article 12 - ATT;



- Compile information and submit reports to the ATT Secretariat in line with Article 13 - ATT on the implementation of the ATT, annual imports and exports of conventional arms and effective measures to address diversion (It is the responsibility of the State Party to decide whether the same authority or contact point compiles the relevant information and submits the reports);
- Enforce the legislation and provisions relating to the implementation of the ATT [Article 14 - ATT];
- Exchange information and cooperate with the other States Parties in line with Article 15 - ATT;
- Assess the need for assistance and evaluate the capacity to provide assistance in line with Article 16 - ATT;
- Participate in the conferences of the States Parties [Article 17 -ATT].

Additional recommendations on aspects of the ATT which do not require mandatory implementation, and other relevant areas:

RECOMMENDATION 27

It is recommended that the ECOWAS Member States engage in intra and inter-State discussions on the question of what role existing authorities can assume in the implementation of the ATT, in particular the National Commissions on SALW. One option is the establishment of a “National Commission on Arms Control” that comprises several departments which coordinate the implementation of disarmament and arms control instruments governing the specific types of arms, including instruments governing conventional arms and weapons of mass destruction.^[27] It should, however, be emphasised that many instruments cover cross-cutting issues which would affect the mandate of the different departments.

9. ENFORCEMENT OF REGULATIONS

Both the ECOWAS Convention and the ATT address the enforcement of provisions at a national level. Additionally, institutions exist for judicial review of violations of both instruments at a regional/international level.

Information relating to other instruments

The Firearms Protocol and the UNPoA also provide for the criminalisation of actions in violation of the instruments.

²⁷ This option was discussed during the Regional Workshop on Synergies and Complementarities between the ATT, the ECOWAS Convention, the UNPoA and other Related Instruments” held in Abuja on 22 and 23 July 2015.

a. Enforcement at the national level

While the ATT does not stipulate any particular enforcement measure that the States Parties need to adopt, the ECOWAS Convention addresses the matter of specific enforcement measures through the criminalisation of certain behaviours. It requires the States Parties to criminalise the illicit possession and use of SALW [Article 14 (7) - ECOWAS Convention], the realisation of illicit brokering activities [Article 20 (4) - ECOWAS Convention], and, in more general terms, any activity carried out in violation of the provisions of the Convention or an internationally imposed arms embargo [Article 21 (2) - ECOWAS Convention].

b. Enforcement at the regional/international level

Article 27 of the ECOWAS Convention provides a compliance procedure which makes it possible to refer violations of the ECOWAS Convention to the ECOWAS Mediation and Security Council. The Council can decide on the appropriate measures such as sanctions, inquiry, and study or refer the matter to the ECOWAS Community Court of Justice. The complaining State or individual also has the possibility of directly bringing the case to the ECOWAS Community Court of Justice [Article 27 (3) - ECOWAS Convention]. The Convention further refers to Article 77 of the ECOWAS Revised Treaty which contains sanctions applicable to the non-fulfilment of obligations.

At a global level, alleged violations of international law, such as the ATT, can be referred to the International Court of Justice (ICJ). Unlike the procedures provided within ECOWAS, only States can be parties to ICJ cases. Judgments of the Court are legally binding on the affected parties, and if they do not comply with the decision of the Court, the matter can be brought to the Security Council which can recommend or decide upon the measures to be taken to give effect to the judgment.

Recommendations on the implementation of the ATT:

RECOMMENDATION 28

The ECOWAS Member States should adopt measures that allow the enforcement of legislative and administrative procedures relating to the implementation of the ATT [Article 14 - ATT]. Examples of such measures are: the criminalisation of certain behaviours and the creation of conditions that allow proper and unbiased investigation and prosecution.



10. INTERNATIONAL COOPERATION AND EXCHANGE OF INFORMATION

Intra and inter-State cooperation is essential for the effective implementation of all the analysed disarmament instruments. The ECOWAS Convention and the ATT underline this importance by including the promotion of cooperation and exchange of information on their respective lists of objectives [Article 2 (6) - ECOWAS Convention; Article 1 - ATT].

The ECOWAS Convention and the ATT generally request cooperation in their respective implementation [Article 26 - ECOWAS Convention; Article 15 - ATT]. The ATT also explicitly requests cooperation among the States to mitigate the risk of diversion [Article 11 (3) - ATT].

The instruments address the issue of the exchange of information related to illicit activities and actors. The ECOWAS Convention requests the States to exchange information on illicit and seized SALW as well as trafficking in SALW [Article 19 (1) - ECOWAS Convention]. The ATT encourages States to share information regarding illicit activities and actors [Article 15 (4) - ATT]. Contrary to the provisions of the ECOWAS Convention, the ATT is not binding in this regard.

In addition, both the ECOWAS Convention and the ATT address the issue of cooperation to combat corruption within their scope of application. The ATT encourages the States Parties to cooperate to prevent the transfer of arms from becoming subject to corrupt practices [Article 15 (6) - ATT]. The ECOWAS Convention requests for cooperation between administrative departments and law enforcement agencies to curb corruption associated with the illicit manufacturing of, trafficking in, illicit possession and use of SALW [Article 13 - ECOWAS Convention].

Unlike the ATT, the ECOWAS Convention contains specific provisions on the cooperation with manufacturers and suppliers [Article 12 (1) - ECOWAS Convention] as well as the cooperation in tracing [Article 19 - ECOWAS Convention].

Information relating to other instruments

States are generally requested to cooperate in the implementation of the different analysed disarmament and arms control instruments [Article 13 - Firearms Protocol; Part II Paragraph 2, 5 UNPoA; Chapter VI ITI]. The exchange of information on illicit activities is also requested under Article 12 - Firearms Protocol and Part II Paragraph 5 - UNPoA. In addition to this, cooperation in tracing is requested which complements similar provisions contained in the ECOWAS Convention [Article 12 (4) - Firearms Protocol; Part II Paragraph 11 - UNPoA; Chapter V ITI].

●●● Please see the comparative tables for more details.

Recommendations on the implementation of the ATT:

RECOMMENDATION 29

The ECOWAS Member States should adopt mechanisms that allow for and institutionalise the cooperation in the implementation of the ATT, including the exchange of information relating to illicit activities and practices, the assistance in investigations, prosecutions and judicial proceedings and the sharing of lessons learned from any aspect of the Treaty [Article 15 - ATT].

11. INTERNATIONAL ASSISTANCE

While international assistance is a major aspect when it comes to the implementation of the ATT, it does not seem to be in the ECOWAS Convention's centre of focus. In fact, the ECOWAS Convention refers only to the ECOWAS Commission^[28] as the institution from which to seek assistance for the implementation of the Convention [Article 26 b - ECOWAS Convention]. The ATT, on the other hand, provides for the possibility to request assistance from several actors, including the United Nations, international, regional, sub-regional or national organisations, non-governmental organisations or on a bilateral basis. The Treaty suggests a wide range of fields to which the assistance could relate, such as legal or legislative assistance, institutional capacity-building and technical, material or financial assistance relating, among others, to stockpile management, disarmament, demobilization and reintegration programmes, model legislation and effective practices for implementation [Article 16 (1) - ATT].

To facilitate assistance measures, the ATT requires the States Parties to establish a voluntary trust fund [Article 16 (3) - ATT].

Information relating to other instruments

Similar fields of assistance are addressed in the UNPoA. The Firearms Protocol refers to training and technical assistance to enhance the ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in the governed arms and items [Article 14 - Firearms Protocol]. It also includes a wide range of potential fields of assistance.

²⁸ It should be noted that the Executive Secretariat that is referenced in the ECOWAS Convention was transformed into the ECOWAS Commission in 2007.



Recommendations on the implementation of the ATT:

RECOMMENDATION 30

The ECOWAS Member States should engage in internal discussions on the capacity to provide assistance to other ATT States Parties [Article 16 - ATT].

RECOMMENDATION 31

The ECOWAS Member States should engage in internal discussions in order to identify assistance needs and priorities. This is of particular importance as assistance is only sustainable under certain conditions, such as, the identification of priority assistance needs, the existence of political commitment and ownership at all levels relating to the assistance programme, as well as the integration of the assistance programme into a national framework.

- END -

IV. ANNEX 1 – COMPARATIVE TABLES

1. SCOPE OF APPLICATION

ECOWAS CONVENTION

Article 2 Objectives

SALW, including their ammunition and other related materials.

Chapter II, Transfer of SALW.

Chapter III, Manufacture of SALW.

Chapter V, Operational mechanism.

ARMS TRADE TREATY

Article 2 Scope

1. This Treaty shall apply to all conventional arms within the following categories:

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

2. [...] the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.

3. The treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3, Ammunition/Munitions

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



Article 4, Parts and Components

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

FIREARMS PROTOCOL

Article 4 , Scope of application

1. This Protocol shall apply, except as otherwise stated herein, to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group.

2. This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations.

UNPoA

Part II, Paragraph 1

[...] Measures to prevent, combat and eradicate the illicit trade in SALW in all its aspects.

2. DEFINITIONS

a. Small arms and light weapons and other governed arms

ECOWAS CONVENTION

Article 1 (1,2) Definitions

1. LIGHT WEAPONS:

Portable arms designed to be used by several persons working together in a team and which include notably:

- heavy machine guns;
- portable grenade launchers, mobile or mounted;
- portable anti-aircraft cannons;
- portable anti-tank cannons, non-recoil guns;
- portable anti-tank missile launchers or rocket launchers;
- portable anti-aircraft missile launchers;
- mortars with a calibre of less than 100 millimetres;

2. SMALL ARMS:

- Arms used by one person and which include notably:
- firearms and other destructive arms or devices such as an exploding bomb, an incendiary bomb or a gas bomb, a grenade, a rocket launcher, a missile, a missile system or landmine;
- revolvers and pistols with automatic loading;
- rifles and carbines;
- machine guns;
- assault rifles;
- light machine guns.

ARMS TRADE TREATY

Article 5 (3) General Implementation

Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.



FIREARMS PROTOCOL

Article 3 (a), Use of terms

“Firearm” shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899.

International Tracing Instrument

II Definitions, Paragraph 4

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

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

(b) “Light weapons” are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.



b. Ammunition

ECOWAS CONVENTION

Article 1 (3) Definitions

Devices destined to be shot or projected through the means of firearms or other vector, including among others:

- cartridges;
- projectiles and missiles for light weapons;
- mobile containers with missiles or projectiles for anti-aircraft or anti-tank single action systems.

Article 1 (3) Definitions^[29]

ARMS TRADE TREATY

Article 3, Ammunition/Munitions

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

FIREARMS PROTOCOL

Article 3 (c), Use of terms

“Ammunition” shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party.

²⁹ As the French and the English version of the ECOWAS Convention differ in this regard, the text of the French version is used for the analysis.



ISACS

ISACS 01.20:2014(E)V1.2

Ammunition= the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in SALW.

NOTE : Includes

- cartridges (rounds) for SALW;
- explosive shells, grenades and missiles for light weapons; and
- mobile containers with missiles or shells for anti-aircraft or anti-tank systems.

c. Parts and components

ECOWAS CONVENTION

Article 1 (4) Definitions

All components, parts or spare parts for small arms or light weapons or ammunition necessary for its functioning; or any chemical substance serving as active material used as propelling or explosive agent.

ARMS TRADE TREATY

Article 4, Parts and Components

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

FIREARMS PROTOCOL

Article 3 (b), Use of terms

“Parts and components” shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm.

ISACS

ISACS 01.20:2014(E)V1.2

Parts and components= any element or replacement element specifically designed for a SALW and essential to its operation.

NOTE : Includes barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing.

d. Brokering

ECOWAS CONVENTION

Article 1 (8) Definitions:

Work carried out as an intermediary between any manufacturer, supplier or distributor of SALW and any buyer or user; this includes the provision of financial support and the transportation of SALW.

ISACS

ISACS 01.20:2014(E)V1.2 :

Broker: a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of SALW in return for some form of benefit, whether financial or otherwise.

Brokering: activities carried out by a broker in the context of arranging or facilitating an international transfer of small arms or light weapons.

NOTE 1 : Brokering activities include, but are not limited to

- serving as a finder of business opportunities to one or more parties;
- putting relevant parties in contact;
- assisting parties in proposing, arranging or facilitating agreements or possible contracts between them;



- assisting parties in obtaining the necessary documentation; and
- assisting parties in arranging the necessary payments.

NOTE 2 : Some activities closely associated with brokering in SALW, that do not necessarily in themselves constitute brokering activities, might be undertaken by brokers as part of the process of putting a deal together to gain a benefit. These activities may include, for example, acting as dealers or agents in SALW, providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services.

NOTE 3 : Brokering activities can take place in the broker's country of nationality, residence or registration; they can also take place in another country. The SALW do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of the SALW.

e. Transfer

ECOWAS CONVENTION

Article 1 (9) Definitions :

Includes import, export, transit, transshipment and transport or any other movement whatsoever of SALW, ammunition and other related materials from or through the territory of a State.

ARMS TRADE TREATY

Article 2 (2), Scope

The activities of the international trade comprise export, import, transit, transshipment and brokering, hereafter referred to as "transfer".

Article 2 (3), Scope

This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership.

ISACS

ISACS 01.20:2014(E)V1.2

Transfer= General term encompassing the import, export, transit, trans-shipment and brokering of SALW.

NOTE : Includes sales, leases, loans and gifts, re-export, licenced production abroad, and tangible and intangible transfers of equipment and technology for the purpose of producing SALW.

3. IMPORT, EXPORT, TRANSIT AND TRANS-SHIPMENT

ECOWAS CONVENTION

Article 3, Prohibition of transfer of SALW

1. Member States shall ban the transfer of SALW and their manufacturing materials into their national territory or from/ through their national territory.
2. Member State shall ban, without exception, transfers of SALW to Non-State Actors that are not explicitly authorised by the importing Member.
3. SALW as defined in this Convention shall not be deemed to be goods for the purpose of Article 45 of ECOWAS Revised Treaty of 1993.

Article 4, Conditions of Exemption

1. A Member State can request exemption from the provisions of Article 3 (b) in order to meet legitimate national defence and security needs, to maintain public order, or to participate in peace support or other operations in accordance with the decisions of the UN, AU, ECOWAS, or other regional or sub-regional body of which it is a member.
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 SALW.

Article 4, Conditions of Exemption^[30]

³⁰ As the French and the English version of the ECOWAS Convention differ in this regard, the text of the French version is used for the analysis.



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.

Article 5, Procedures for Exemption

Article 6, Cases for Refusal of Exemptions for Transfers

ARMS TRADE TREATY

Article 5, General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.
2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.

Article 6, Prohibitions

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

Article 7, Export and export assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;
(b) could be used to:
(i) commit or facilitate a serious violation of international humanitarian law;
(ii) commit or facilitate a serious violation of international human rights law;
(iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or
(iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.

4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.

6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.

7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8, Import

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



2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.

3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

Article 9, Transit or trans-shipment

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

FIREARMS PROTOCOL

Article 10, General requirements for export, import and transit licensing or authorization systems

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.



5. 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.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

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Part II, Paragraph 2

To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control [...] over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in SALW, or their diversion to unauthorized recipients.

Part II, Paragraph 11

To assess applications for export authorizations according to strict national regulations and procedures that cover all SALW and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all SALW, with a view to combating the illicit trade in SALW.

Part II, Paragraph 12

To put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of SALW, including the use of authenticated end-user certificates and effective legal and enforcement measures.

Part II, Paragraph 15

To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations.



4. BROKERING

ECOWAS CONVENTION

Article 20, Brokering

1. Member States shall register all citizens and all companies incorporated in their territory that are brokering SALW, including financial agents and transportation agents on armament and shall make such registration a requirement for their licit operation.
2. Member States shall ensure that all registered SALW brokering agents obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place.
3. Member States shall require that all SALW brokering license applications for authorisation provide full disclosure of relevant import and export licences or authorisations and associated relevant documents, the names and locations of all brokering and shipping agents involved in the transaction and the transit routes and points of the SALW shipments.
4. Member States shall adopt such legislative and other measures to punish and establish as a criminal offence the illicit brokering of SALW.
5. Brokering activities may be assessed under Article 1 and 6 of the present Convention.

ARMS TRADE TREATY

Article 6, Prohibitions

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



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

Article 10, Brokering

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

FIREARMS PROTOCOL

Article 15, Brokers and brokering

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

- (a) Requiring registration of brokers operating within their territory;
- (b) Requiring licensing or authorization of brokering; or
- (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.



UNPoA

Part II, Paragraph 14:

To develop adequate national legislation or administrative procedures regulating the activities of those who engage in SALW brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control.

Part II, Paragraph 39

To develop common understandings of the basic issues and the scope of the problems related to illicit brokering in SALW with a view to preventing, combating and eradicating the activities of those engaged in such brokering.

5. DIVERSION

ECOWAS CONVENTION

Article 6 (5), Cases for Refusal of Exemptions for Transfers

A transfer shall not be authorised if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade.

ARMS TRADE TREATY

Article 11, Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.

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

Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.

3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).

4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.

5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

FIREARMS PROTOCOL

Article 11, Security and preventive measures

In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures:

(a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and

(b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs trans-border cooperation.



UNPoA

Part II, Paragraph 11

[...] To assess applications for export authorizations according to strict national regulations and procedures that cover all SALW and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade.

6. RECORD KEEPING

ECOWAS CONVENTION

Article 9, National Database and Registers of SALW

1. Member States shall establish where they do not exist already, national computerised registers and database of SALW.
2. The following information shall be recorded in the national registry:
 - a) Description of the product (type or model, calibre) and quantity (if it concerns a batch);
 - b) the content of the marking;
 - c) the names and addresses of the former and current owners and, when possible, successive owners;
 - d) the date of registration;
 - e) information concerning each transaction including:
 - i. the name and address of the shipper, the intermediary (where applicable), the consignee and the user indicated on the end-user certificate;
 - ii. the point of departure, transit and destination, as well as the customs references and the dates of departure, transit and delivery to the end-user.
 - iii. the export, transit and import licence (quantities and batches corresponding to the same licence as well as the validity of the license);
 - iv. full details concerning the method of transport and transporter(s);
 - v. the controlling agency or agencies (at point of departure, transit and entry);
 - vi. the nature of the transaction (commercial, non-commercial, private or public, conversion, repair);
 - vii. where applicable, the insurer and/or the financial institution intervening in the transaction.

3. Records shall be permanently kept in the register.

Article 10, ECOWAS SALW Database and Registers

Article 11, Register of Arms for Peace Operations

ARMS TRADE TREATY

Article 12, Record keeping

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

FIREARMS PROTOCOL

Article 7, Record keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(a) The appropriate markings required by article 8 of this Protocol;

(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.



Article 15 (2), Brokers and brokering

States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

UNPoA

Part II, Paragraph 9

To ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of SALW under their jurisdiction. These records should be organized and maintained in such a way as to ensure that accurate information can be promptly retrieved and collated by competent national authorities.

7. REPORTING

ECOWAS CONVENTION

Article 5, Procedures for Exemption

4. [...] The Executive Secretary shall also compile and publish a comprehensive annual report detailing all international arms transfers granted exemptions, and a list of refusals.

Article 10, ECOWAS SALW Database and Registers

1. Member States undertake to establish a sub-regional database and register of SALW under the ECOWAS Executive Secretary as a way of promoting confidence.

3. The Member States shall provide the ECOWAS Executive Secretariat with all the necessary information for the operation of the sub-regional database and register of SALW. Member States also undertake to transmit an annual report to the ECOWAS Executive Secretary detailing their orders or purchase of SALW.



4. The ECOWAS Executive Secretary shall present an annual report on the workings of the sub-regional database and register of SALW at the Summit of Heads of State and Government.

Article 25, The ECOWAS Executive Secretary

1. The ECOWAS Executive Secretary is responsible for supporting and supervising the application of the provisions of this Convention. To this end the ECOWAS Executive Secretary shall:

[...] d: present an annual Report to the Summit of Heads of State and Government on the status of implementation of the Convention.

Article 28 Monitoring the Implementation of this Convention

1. In order to ensure the monitoring of and compliance with the provisions of this Convention, the Executive Secretary shall appoint a Group of Independent Experts who supports him. The Group of Independent Experts shall submit a report to the Executive Secretary.

4. Each Member State shall submit an annual report to the ECOWAS Executive Secretary on its activities related to SALW as well as other matters in relation with this Convention, in accordance with the format of report developed by the Executive Secretary.

ARMS TRADE TREATY

Article 11 (6), Diversion

States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 13, Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.

2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).



3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

ITI

Paragraph 36

States will report on a biennial basis to the Secretary-General on their implementation of this instrument including, where appropriate, national experiences in tracing illicit small arms and light weapons as well as measures taken in the field of international cooperation and assistance.

UNITED NATIONS REGISTER ON CONVENTIONAL ARMS

A/Res/46/36 –L – Transparency in Armaments

7. Requests the Secretary-General to establish and maintain at United Nations Headquarters in New York a universal and non-discriminatory Register of Conventional Arms, to include data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies, as set out in paragraph 10 below and in accordance with procedures and input requirements initially comprising those set out in the annex to the present resolution and subsequently incorporating any adjustments to the annex decided upon by the General Assembly at its forty-seventh session in the light of the recommendations of the panel referred to in paragraph 8 below.

9. Calls upon all Member States to provide annually for the Register data on imports and exports of arms in accordance with the procedures established by paragraphs 7 and 8 above.



UNPoA

Part II, Paragraph 33

To request the Secretary-General of the United Nations, within existing resources, through the Department for Disarmament Affairs, to collate and circulate data and information provided by States on a voluntary basis and including national reports, on implementation by those States of the Programme of Action.

8. INSTITUTIONAL ARRANGEMENTS

ECOWAS CONVENTION

Article 24, Member States

1. Within the framework of the implementation of this Convention, the States Parties which have not yet done so, shall establish through regulation or legislation a National Commission in accordance with Article 51 of the Protocol on mechanisms for prevention, management, resolution of conflict and keeping peace and security and with the enforcement of the decision of the Conference of Heads of State and Government on December 10th, 1999 on the establishment of National Commissions for the fight against the illicit proliferation and circulation of light weapons.

2. The National Commissions shall be established according to the existing ECOWAS guidelines contained in the National Manual prepared by ECOWAS.

3. Member States shall allocate a budget line to ensure effective functioning of National Commissions.

4. The Member States shall elaborate their National Action Plans on SALW.

Article 25, The ECOWAS Executive Secretary

1. The ECOWAS Executive Secretary is responsible for supporting and supervising the application of the provisions of this Convention. To this end the ECOWAS Executive Secretary shall:

- a) define and carry out the policy for mobilising the necessary resources for the implementation of this Convention;
- b) provide the Member States with the necessary financial and technical support for the realisation of their activities;
- c) ensure the monitoring and implementation of this Convention;
- d) present an annual Report to the Summit of Heads of State and Government on the status of implementation of the Convention.



e) if ECOWAS Executive Secretary deems it necessary, refer a specific urgent and/or serious question regarding the application of this Convention to the ECOWAS Mediation and Security Council.

2. The Executive Secretary shall develop a Plan of action for the implementation of this Convention and submit it to the appreciation of the Member States for adoption. Such a plan shall outline key activities that need to be implemented (such as Capacity Building, harmonization of national legislation, border control, public awareness raising, information exchange among National Commissions, strengthening the capacity of civil society, organisations, etc).

3. Member States shall take the necessary measures to endow the ECOWAS Executive Secretariat with the institutional and operational capacities appropriate to the responsibilities given to the Executive Secretary by this Convention.

ARMS TRADE TREATY

Article 5 (5, 6), General Implementation

5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.

6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 18, Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.

2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.

3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:

(a) Receive, make available and distribute the reports as mandated by this Treaty;



- (b) Maintain and make available to States Parties the list of national points of contact;
 - (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;
 - (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
 - (e) Perform other duties as decided by the Conferences of States Parties.
- c) Aider à rapprocher l'offre et la demande d'assistance pour la mise en œuvre du Traité et promouvoir la coopération internationale selon les demandes;
- d) Faciliter les travaux de la Conférence des États Parties, notamment en prenant les dispositions et en fournissant les services nécessaires aux réunions organisées en vertu du présent Traité; et
- e) S'acquitter de toutes autres tâches décidées par la Conférence des États Parties.

FIREARMS PROTOCOL

Article 13 (2) Cooperation,

Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.

ITI

Paragraph 25

States will designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of this instrument.



UNPOA

Part II, Paragraph 4

To establish, or designate as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in SALW in all its aspects. This should include aspects of the illicit manufacture, control, trafficking, circulation, brokering and trade, as well as tracing, finance, collection and destruction of SALW.

Part II, Paragraphe 5

To establish or designate, as appropriate, a national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action.

9. ENFORCEMENT OF PROVISIONS

ECOWAS CONVENTION

Article 14 (7), Control of Possession of SALW by Civilians

Member States undertake to introduce minimum penal sanctions for the illicit possession and use of SALW and the carrying of unlicensed small arms.

Article 20 (4), Brokering

Member States shall adopt such legislative and other measures to punish and establish as a criminal offence the illicit brokering of SALW.

Article 21 (2), Harmonization of Legislative Provisions

Each Member State shall adopt legislative and other necessary measures to establish as a criminal offence in the following cases:

- a) any activity carried out in violation of the provisions of this Convention;
- b) any activity carried out in violation of an arms embargo imposed by the United Nations, the African Union or ECOWAS.



Article 27, Complaint Procedure Concerning Violation of this Convention

1. All concerns relating to the violation of this Convention shall be brought to the attention of the ECOWAS Executive Secretary who would then submit such a complaint to the ECOWAS Mediation and Security Council;
2. If the ECOWAS Mediation and Security Council considers that there is a breach of the obligations under this convention, it shall decide on the appropriate measures to be taken such as sanctions, inquiry, study or refer the matter to the ECOWAS Court of Justice;
3. This review procedure of complaints shall not mean the impossibility for a State or an individual to refer to the ECOWAS Court of Justice if it notes a failure in the application of this Convention.

ARMS TRADE TREATY

Article 14, Enforcement

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

FIREARMS PROTOCOL

Article 5, Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:
 - (a) Illicit manufacturing of firearms, their parts and components and ammunition;
 - (b) Illicit trafficking in firearms, their parts and components and ammunition;
 - (c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct:
 - (a) Subject to the basic concepts of its legal system, attempting to commit or participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence established in accordance with paragraph 1 of this article.



UNPoA

Part II, Paragraph 3

To adopt and implement, in the States that have not already done so, the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of SALW within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes.

Part II, Paragraph 12

To put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of SALW, including the use of authenticated end-user certificates and effective legal and enforcement measures.

10. INTERNATIONAL COOPERATION AND EXCHANGE OF INFORMATION

ECOWAS CONVENTION

Article 12 (1), Dialogue with Manufacturers and Suppliers

The ECOWAS Executive Secretary and each Member State shall strengthen cooperation and dialogue with national and international manufacturers and suppliers of arms as well as with the competent international and regional organisations in order to ensure their support, respect for and compliance with the spirit and the letter of this Convention.

Article 13, Prevention of and the Fight Against Corruption

Member States shall institute appropriate and effective measures for cooperation between administrative departments concerned and law enforcement agencies to curb corruption associated with the illicit manufacturing of, trafficking in, illicit possession and use of SALW.

Article 19, Tracing

1. Member States shall exchange information on illicit SALW and on seized SALW, as well as trafficking in weapons that contravene international law or the internal laws of the States in which the operations take place (condemnation of the person or institution implicated, sanctions, disposal, destruction methods, neutralisation).

2. In the case of other SALW, Member States shall exchange the following data on a regular basis:

- a) on manufacture (the marking system and techniques used, and authorized manufacturers);
- b) on transfers (exports to and/or imports from all other States, transits, information available concerning national legislation, existing practices and controls, authorised dealers and brokers);
- c) on existing stockpiles (management, inventory, security, surplus, losses, theft, destruction).

6. Member States receiving a tracing request shall acknowledge receipt within a reasonable time frame.

7. Member States shall provide reliable responses to tracing requests made by other Member States within one month from the date of receipt of the said request.

Article 22, Strengthening of Border Controls

Member States, in collaboration with the ECOWAS Executive Secretary, shall:

a) Strengthen sub-regional cooperation among defence and security forces, intelligence services, customs and border control officials in combating the illicit circulation of SALW.

b) Enhancing the capacity of national defence and security forces, law enforcement and security agencies, including appropriate training in investigative procedures, border control and law enforcement techniques, and upgrading of equipment and resources.

Article 26, Cooperation Within and Among States

1. Member States undertake to promote intra- and inter-state cooperation in the implementation of this Convention. To this effect:

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.

b) The ECOWAS Executive Secretary shall facilitate and seek assistance for the training of officials in intra- and interstate cooperation.



Article 28 (3), Monitoring the Implementation of this Convention

The Group of Independent Experts may seek any other information it shall deem useful for its work in relation with Member States and through cooperation with Member States of the Wassenaar Arrangements, the European Union and suppliers of arms.

ARMS TRADE TREATY

Article 11 (3), Diversion

Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).

Article 15, International Cooperation

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



FIREARMS PROTOCOL

Article 12, Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and

(d) Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

4. States Parties shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests for assistance in tracing such firearms, their parts and components and ammunition, within available means.

5. Subject to the basic concepts of its legal system or any international agreements, each State Party shall guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State Party pursuant to this article, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.



Article 13, Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.
2. Without prejudice to article 18, paragraph 13, of the Convention, each State Party shall identify a national body or a single point of contact to act as liaison between it and other States Parties on matters relating to this Protocol.
3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect the illicit activities referred to in paragraph 1 of this article.

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- V. Cooperation in tracing**
- VI. Implementation**

UNPoA

Part III, Paragraph 2

States undertake to cooperate and to ensure coordination, complementarity and synergy in efforts to deal with the illicit trade in SALW 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.

Part III, Paragraph 5

States and international and regional organizations should, where appropriate, cooperate, develop and strengthen partnerships to share resources and information on the illicit trade in SALW in all its aspects.

Part III, Paragraph 11

States undertake to cooperate with each other, including on the basis of the relevant existing global and regional legally binding instruments as well as other agreements and arrangements, and, where appropriate, with relevant international, regional and intergovernmental organizations, in tracing illicit SALW, in particular by strengthening mechanisms based on the exchange of relevant information.



11. INTERNATIONAL ASSISTANCE

ECOWAS CONVENTION

Article 26, Cooperation Within and Among States

1. Member States undertake to promote intra- and inter-state cooperation in the implementation of this Convention. To this effect:

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.

b) The ECOWAS Executive Secretary shall facilitate and seek assistance for the training of officials in intra- and interstate cooperation.

ARMS TRADE TREATY

Article 16, International Assistance

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

2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, sub-regional or national organizations, non-governmental organizations, or on a bilateral basis.

3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.



FIREARMS PROTOCOL

Article 14, Training and technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the training and technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, including technical, financial and material assistance in those matters identified in articles 29 and 30 of the Convention.

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VI. Implementation

UNPoA

Among others:

Part III, Paragraph 3

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 SALW in all its aspects as contained in the Programme of Action.

Part III, Paragraph 10

States are encouraged to consider international cooperation and assistance to examine technologies that would improve the tracing and detection of illicit trade in SALW, as well as measures to facilitate the transfer of such technologies.

Part III, Paragraph 13

States are encouraged, subject to their national practices, to enhance, according to their respective constitutional and legal systems, mutual legal assistance and other forms of cooperation in order to assist investigations and prosecutions in relation to the illicit trade in SALW in all its aspects.



Part III, Paragraph 14

Upon request, States and appropriate international or regional organizations in a position to do so should provide assistance in the destruction or other responsible disposal of surplus stocks or unmarked or inadequately marked SALW.

Part III, Paragraph 15

Upon request, States and appropriate international or regional organizations in a position to do so should provide assistance to combat the illicit trade in SALW linked to drug trafficking, transnational organized crime and terrorism.



V. ANNEX 2 – DEFINITIONS OF THE UNITED NATIONS REGISTER ON CONVENTIONAL ARMS

Paragraph 2 (a) of the annex to General Assembly resolution 46/36 L identifies the following seven categories of equipment on which Member States are requested to supply data to the Register: battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles or missile systems. Based on the reports of the Groups of Experts¹ convened in 1994, 1997, 2000, 2003 and 2006, the categories and their definitions to be used for reporting to the Register are as follows:⁽³¹⁾

I. Battle tanks

Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high-level of self-protection, weighing 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 mm and above.

IV. Combat aircrafts

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

³¹ Excerpt of the UNODA 2007 Information booklet on the Register, available from <http://www.un.org/disarmament/convarms/Register/Forms/>

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. For the purposes of the Register, this sub-category includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.

b) Man-Portable Air-Defence Systems (MANPADS).



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