

Appendix I Declaration Form for Students

UNIVERSITY OF NAIROBI

Declaration of Originality Form

This form must be completed and signed for all works submitted to the University for examination.

Name of Student	<u>Ms. Vivian Ntingari</u>
Registration Number	<u>934/2806/2011</u>
College	<u>CHSS</u>
Faculty/School/Institute	<u>LAW</u>
Department	<u>Private Law</u>
Course Name	<u>Research Paper II</u>
Title of the work	<u>The Legal and Institutional Challenges of Regulating the Global Trade in Small Arms and Light Weapons</u>

DECLARATION

1. I understand what Plagiarism is and I am aware of the University's policy in this regard
2. I declare that this dissertation (Thesis, project, essay, assignment, paper, report, etc) is my original work and has not been submitted elsewhere for examination, award of a degree or publication. Where other people's work, or my own work has been used, this has properly been acknowledged and referenced in accordance with the University of Nairobi's requirements.
3. I have not sought or used the services of any professional agencies to produce this work
4. I have not allowed, and shall not allow anyone to copy my work with the intention of passing it off as his/her own work
5. I understand that any false claim in respect of this work shall result in disciplinary action, in accordance with University Plagiarism Policy.

Signature 

Date 3 July 2015

UNIVERSITY OF NAIROBI

SCHOOL OF LAW

**THE LEGAL AND INSTITUTIONAL CHALLENGES OF REGULATING
THE GLOBAL TRADE IN SMALL ARMS AND LIGHT WEAPONS**

BY MS. VIVIAN NTINYARI

(REGISTRATION NO: G34/2806/2011)

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF BACHELOR OF LAWS (LL. B)
DEGREE OF THE UNIVERSITY OF NAIROBI**

NAIROBI

JULY 2015

DECLARATION

I, VIVIAN NTINYARI, do hereby declare that this dissertation is my original work, except where due acknowledgement is made, and that it has not been submitted, nor is currently being submitted for a degree in any other university or institution.

Signature.....[Signature]

Date.....3 July 2015

SUPERVISOR

I confirm that the work presented in this dissertation has been carried out by the student and has been submitted with my approval as the University supervisor.

Name: Prof. F. D. P. Situma

Signature.....

Date.....

ACKNOWLEDGEMENTS

I owe a great deal to my supervisor, Professor Francis D.P. Situma, for supervising my research, and guiding me in writing this dissertation.

To my dear family and friends, I say *merci beau coup*.

LIST OF CONVENTIONS

United Nations, Arms Trade Treaty, 2 April 2013; A/CONF.217/2013/L.3 (2013)

United Nations, Vienna Convention on the Law of Treaties, 23 May 1969; 1155

UNTS 331

LIST OF ABBREVIATIONS

UN- United Nations

USD- United States Dollar

ABSTRACT

Global trade in small arms and light weapons is big business. The trade takes place in both legitimate and illegitimate markets. A large portion of the trade is conducted through legal agreements struck between States. Nonetheless, trade in the 'grey' and 'black' markets continues to thrive and frustrate international peace and conflict management efforts. International legal responses to the problem of small arms trafficking have failed in fulfilling the objectives of regulating the trade, and curbing illicit trafficking of small arms and light weapons. This study explores the current international law regime addressing the regulation of global trade in small arms and light weapons, and identifies the legal challenges these regime has been facing in regulating the trade. The study discusses the newly adopted regime, the Arms Trade Treaty, on the methodological premise of the international rules concerning the interpretation of treaties, contained in Article 31 to 33 of the Vienna Convention on the Law of Treaties, to determine the substantive contributions this treaty is intended to make to the international legal regime on the regulation of the trade in small arms and light weapons. The findings of this study suggest that the Arms Trade Treaty contains many novel elements that make it an important contribution in control of the circulation of small arms and light weapons. However, it also has many shortcomings that are likely to render it inadequate to regulate the trade and to curb illegal trafficking of small arms and light weapons. The study concludes that the Arms Trade Treaty is likely to be faced with similar legal challenges as the current regimes in regulating global small arms and light weapons trade and eradicating their illicit trafficking. It recommends institutional support to enable the Arms Treaty to make a positive impact on trade in small arms and light weapons.

Key words: small arms and light weapons, the Arms Trade Treaty, regulation,
international legal regime, study,

TABLE OF CONTENTS

CHAPTER 1

INTRODUCTION

1.1

TABLE OF CONTENTS

DECLARATION	i
ACKNOWLEDGEMENTS.....	ii
LIST OF CONVENTIONS	iii
LIST OF ABBREVIATIONS.....	iv
ABSTRACT.....	v
TABLE OF CONTENTS	vii
CHAPTER 1	1
INTRODUCTION.....	1
1.1 Background.....	1
1.1.1 Defining Small Arms and Light Weapons	1
1.1.2 What is the small arms and light weapons problem?.....	2
1.1.3 International Law Responses to the Small Arms Problem.....	4
1.1.3.1 United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms.....	4
1.1.3.2 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects 6	
1.1.3.3 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies	6
1.1.3.4 The Arms Trade Treaty- A New Hope?.....	7

1.2	Statement of the Problem	10
1.3	Objective of the Research.....	10
1.4	Hypotheses.....	11
1.5	Research Questions	11
1.6	Theoretical Framework	12
1.6.1	The Early Positive Law theory	12
1.6.2	The Critical Legal Theory	13
1.7	Literature Review.....	15
1.8	Research Methodology.....	16
1.9	Chapter Breakdown.....	17
CHAPTER TWO		19
INTERNATIONAL LAW RESPONSES TO THE SMALL ARMS PROBLEM.....		19
2.1	Introduction	19
2.2	United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms	20
2.3	Critique of the Palermo Protocol	21
2.4	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects.....	25
2.5	Critique of the Programme of Action.....	27
2.6	Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.....	28

2.7 Critique of the Wassenaar Arrangement	31
CHAPTER THREE.....	33
THE ARMS TRADE TREATY	33
3.1 Negotiation and Adoption	33
3.2 Interpreting the Arms Treaty	34
3.3 Prohibited Conduct under the Arms Treaty.....	37
3.3.1 Prohibited Arms Transfers under Article 6	38
3.3.2 Prohibition against Arms Transfers for Committing Grave International Crimes.....	40
3.3.3 Prohibition on Arms Transfers that Contribute to Human Rights and Humanitarian Law Violations or to Violations of Terrorism and Crime Conventions	42
3.4 Anti-diversion Measures	44
(i) Regulating Brokering.....	47
(ii) Use of Information	48
3.5 National Control Systems.....	50
CHAPTER 4	52
CONCLUSION AND RECOMMENDATIONS	52
4.1 Conclusion.....	52
4.2 Recommendations.....	59
BIBLIOGRAPHY	62

CHAPTER 1

INTRODUCTION

1.1 Background

1.1.1 Defining Small Arms and Light Weapons

Small arms and light weapons are defined as “man-made lethal weapons that expel or launch a projectile by the action of an explosive.”¹ Small arms and light weapons may be broken down into two distinct divisions: small arms; and, light weapons. “Small arms” are such weapons as automatic rifles, handguns, and machine guns.² “Light weapons”, by contrast, may be two or three-operator weapon systems, single-operator weapons that require other individuals to assist in transportation and use.³ Among the devices classified as light weapons are multi-person machine guns, rocket-propelled grenade launchers, mortars, anti-tank weapons, and man-portable air-defense systems. Small arms and light weapons are generally portable, easily concealable both in use and in shipping, and relatively inexpensively purchased legally and illegally in various countries.⁴ By inference, small arms and light weapons do not include “heavy” arms, weapons of mass destruction - nuclear, biological, or chemical-, tanks, aircraft, armored vehicles or light armor, or hand-to-hand weapons, such as combat knives and machetes.⁵

¹Hathaway A. Oona, et al., *Arms Trafficking: The International and Domestic Legal Framework* 4 (2011) p. 14, (Unpublished report, Yale Law School), http://www.law.yale.edu/documents/pdf/cglc/YLSreport_armsTrafficking.pdf Retrieved 05 11 2014.

²Ibid.

³Ibid.

⁴Ibid.

⁵See Harold Hongju Koh, “A World Drowning in Guns”, 71 *Fordham Law Review* 2334 (2003), p. 34.

1.1.2 What is the small arms and light weapons problem?

The global trade in small arms is big business. The trade is estimated to be a USD 70 billion business.⁶ Small arms and light weapons are used by insurgents, terrorists, warlords and criminals generally. International and non-international armed conflict have become more and more ubiquitous in the developing world and small arms and light weapons play a major role in supporting these situations. According to the Small Arms Survey, for instance, at least five hundred thousand people are killed every year in armed crime, armed conflict and domestic violence with the use of small arms and light weapons.⁷ Scores more are injured or live in fear of violence from people in possession of arms.⁸

A number of factors are to blame for this situation. Firstly, the global availability of small arms and light weapons at rock bottom prices stands out.⁹ At the end of the Cold War, massive amounts of surplus stocks of arms were released from the former Union of Soviet Socialist Republics (USSR).¹⁰ After the Cold War ended, demand for

⁶See Richard Grimmett and Paul Kerr, "Conventional Arms Transfers to Developing Nations, 2004–2011 (Washington, Congressional Research Service, 2012) p. 3. But see SIPRI Stockholm International Peace Research Institute, "Trends in the Arms Industry," in SIPRI Stockholm International Peace Research Institute, SIPRI Yearbook 2011 (New York: Oxford University Press, 2011), p 5. The value of the global arms market seems to be controversial. It appears that scholars and organizations involved in economic research of the market employ different metrics, thus, the resulting values of sales and the market as a whole do not agree. For example, the SIPRI claimed that in 2011 the world's top hundred arms producing companies sold \$410 billion of arms and military services. However, SIPRI includes computer electronics, aerospace components, and other dual-use technology as part of its measurements, as well as domestic sales, which may explain the disparity between its analysis and the Congressional Research Service's (CRS's) conclusions. The CRS, on the other hand, only considers deliveries and contractual agreements, which may be leaving out legal but clandestine or undisclosed sales.

⁷ Small arms and light weapons ('SALW') are considered to be by far the most common weapons. See Small Arms Survey, "Small Arms Survey 2011: States of Security" (Cambridge, Cambridge University Press, 2011), p. 155, some non-governmental organizations estimate this number to be higher. SALW have consequently been referred to harshly, for example by expressions such as "the real weapons of mass destruction" in humanitarian and arms survey circles.

⁸Ibid., pp. 150-157.

⁹Supra, note 2, p. 33.

¹⁰See Thomas Naylor, "The rise of the modern arms black market and the fall of supply-side control," Frank Cass (ed.), Combating Transnational Crime: Concepts, Activities and Responses

small arms for political purposes reduced as supply increased, thus, opening an economic market for small arms. In 2011, it was estimated that there were more than 875 million small arms alone in global circulation, including those in stock piles and private possession.¹¹ Production in over 90 States where small arms manufacturing plants are located at present is in excess of 1 million every year.¹² Secondly, feeble State controls and non-existent international cooperation in the sphere of arms control have led to the proliferation of these weapons in illicit markets.¹³ Thirdly, small arms are easy to transport, conceal (for smuggling purposes) and use.¹⁴

The illicit, and largely unregulated, flow of arms has evidently worsened armed conflicts in many situations. The 2010/2011 conflict in Cote d'Ivoire is one such example. This conflict was "directly fuelled and sustained by illicit and irresponsible international transfer of arms".¹⁵ The severity of the security and humanitarian crises that followed this conflict is common knowledge in humanitarian circles. Small arms acquired by jihadist groups after the Libyan Civil war are also thought to be presently fuelling the conflict in Mali.¹⁶ The current situation in Syria has also, evidently, been escalated by the availability of small arms.¹⁷

(Oxford, London, 2001), p. 221 <http://issafrica.org/pubs/Books/SocietyUnderSiege1/Naylor.pdf> (Retrieved 21 7, 2014).

¹¹ Small Arms Survey, Supra, note 7, p. 1. This statistic does not include other arms outside the definition of SALW.

¹² Ibid.

¹³ Supra., note 5, at p. 35.

¹⁴ Ibid. See Matt Schroeder and Guy Lamb, "The Illicit Arms Trade in Africa: A Global Enterprise," 1 *African Analyst* (2006), pp. 71. ("As small arms are lightweight, concealable, and durable, the ways in which they can be smuggled are nearly limitless."). Schroeder and Lamb describe how small arms and light weapons are smuggled into African States by trucks, planes, and boats, and even carried individually across borders.

¹⁵ Human Rights Watch, "Cote d'Ivoire, They Killed Them like It Was Nothing: The Need for Justice for Côte d'Ivoire's Post-Election Crimes (New York, Human Rights Watch, 2011), p. 13 http://www.hrw.org/sites/default/files/reports/cYi1011webwcover_0.pdf (Retrieved 28. 5, 2015).

¹⁶ Supra, note 1, p. 4.

¹⁷ Talbot Rohan, "How the Arms Trade Treaty Could Prevent Future Syrias," *The Guardian*, (27 3 ,2013) <http://www.theguardian.com/commentisfree/2013/mar/27/arms-trade-treaty-prevent-future-syrias> (Retrieved 19 10, 2014).

1.1.3 International Law Responses to the Small Arms Problem

International regulatory and treaty structure in respect to small arms and light weapons trade throughout history has been little. There are a couple of reasons for this situation. Firstly, small arms are considered to be important legitimate tools for the maintenance of peace and security.¹⁸ Governments have over time been involved in small arms and light weapons trade, through legal agreements between and among themselves in pursuit of defence and diplomatic interests.¹⁹ Secondly, four of the five permanent members of the United Nations Security Council, namely, the United States of America, the United Kingdom, the Russian Federation, and France, have been involved in the manufacture and export of arms.²⁰

Despite those constraints, a number of international legal regimes exist to regulate the arms trade. These instruments have failed to achieve their desired goal of small arms and light weapons control in the global sphere. They include:

1.1.3.1 United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms

The United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms (Palermo Protocol)²¹ is a legally binding United Nations treaty that is part of the United Nations Transnational Organized Crime regime. The treaty's objective is to urge treaty parties to device and implement independent action with the ultimate

¹⁸Maria Haug, "Crime, Conflict and Corruption: Global Illicit Small Arms Transfers", in Graduate Institute Of International Studies, *Small Arms Survey 2001: Profiling The Problem* 165, 167–68 (Peter Batchelor & Keith Krause eds., 2001) p. 166.

¹⁹*Ibid.*, pp. 168-169

²⁰See Stockholm International Peace Research Institute Arms Transfer Database, "Top List TIV (trend-indicator value) Tables, years 1950–2013," "<http://armstrade.sipri.org/armstrade/page/toplist.php>. The permanent members of the United Nations Security Council have veto power. Therefore, their unwillingness to pass a single all-encompassing treaty to regulate global trade in arms has been the single most powerful drive resistance to the treaty.

²¹ 2326 U.N.T.S. 211. This treaty was opened for signature on May 31, 2001, and entered into force July 3, 2005. [hereinafter "Palermo Protocol"].

focus of curbing the manufacture and trafficking of conventional arms.²² To that end, the treaty urges its parties to criminalize the illegal manufacture, transportation, and sale of firearms within their borders.²³ Further, State Parties are urged to cooperate with each other to execute the provisions of the treaty.²⁴ Some of the most important provisions of the Palermo Protocol include the requirement to stamp weapons with serial numbers and identifiers,²⁵ the requirement to deactivate weapons no longer in service,²⁶ conveyance of information between States on every export of arms between them,²⁷ and, implementation of anti-theft measures.²⁸

The Palermo Protocol has so far been signed and ratified by all of the major exporters of arms, with a total of fifty two signatories and one hundred and four treaty parties.²⁹

As a result of the Palermo Protocol, the regulations regarding export of arms have been standardized, with basic legal requirements to authorize export of firearms being made identical for every treaty party.³⁰

²²Ibid., Art. 2 (“The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition”).

²³Ibid., Art. 5

²⁴Supra, note 18.

²⁵Supra, note 22, Art. 8. These identifiers include both serial numbers and other information about year of import and place of manufacturing.

²⁶Ibid., Art. 9.

²⁷Ibid., Art. 10(3).

²⁸Ibid., Art. 11.

²⁹United Nations, “Status of Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,”

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&lang=en)

[c&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&lang=en) (Retrieved 29 9, 2014). The Russian Federation, Israel, France, Czech Republic, Switzerland, and the United States have all refused to sign the Protocol, which account for a major number of world arms exports.

³⁰See Sarah Parker, “Devils in Diversity: Export Controls for Military Small Arms”, in Small Arms Survey 2009 pp. 70 -74.

1.1.3.2 United Nations 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 to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects³¹ is a non-binding model adopted in 2001 with an aim to urge States to adopt national, regional and global legislation to ensure small arms and light weapons do not enter grey and black markets.³² This programme has received wide applause because its scope is wide, covering the national, regional, and global levels.³³ It details numerous systems, including the criminalization of illegal manufacture of arms, export controls, and the destruction and deactivation of surplus weapons at the national, and regional levels, coordination at the global level, and, enacting tracing standards and data sharing at all three levels.³⁴

1.1.3.3 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

Outside the auspices of the United Nations, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies³⁵ stands out. The Wassenaar arrangement is aimed at promoting transparency, and accountability in transfers of conventional arms among other goods, and, technologies to prevent

³¹UN Doc. A/CONF.192/15, (2001).

³² United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, July 9–20, 2001, “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” U.N. Doc. A/CONF.192/15 (July 20, 2001), <http://www.un.org/events/smallarms2006/pdf/N0150720.pdf> (Last accessed on 30 6 2015).

³³European Union, “EU Working Paper of the Outcome of the Conference on the UN Programme of Action to Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” (July 24, 2012), <http://www.poaiss.org/RevCon2/documents/EU%20working%20paper%2024%20July%202012.pdf> (Last accessed on 30 6 2015).

³⁴Supra, note 27, Art 2.

³⁵ See The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, July 11-12, 1996 [hereinafter The Wassenaar Arrangement].

accumulations that could have destabilising effects.³⁶ The Wassenaar Arrangement promotes, among other guidelines, ‘best practice guidelines’³⁷ in the handling and export of small arms and light weapons. These practices include imposition of strict small arms and light weapons export controls³⁸ and setting licensing criteria³⁹ among Participating States. Membership to the Wassenaar Arrangement is open and voluntary.⁴⁰ Currently forty one States have chosen to comply with the regulations of the Wassenaar Arrangement.⁴¹

1.1.3.4 The Arms Trade Treaty- A New Hope?

A single all-encompassing international law regime governing global trade in arms has been long overdue. After over a decade of intense diplomatic lobbying, seemingly endless negotiations and various efforts by the United Nations since 2006,⁴² the Arms Trade Treaty (hereinafter referred to simply as “the Arms Treaty”) was adopted in April 2013 followed by a signing ceremony in June 2013.⁴³ The Arms Treaty has

³⁶ Wassenaar Arrangement on Exp. Controls for Conventional Arms & Dual-Use Goods & Techs. [WA], “Guidelines & Procedures, Including the Initial Elements,” § I(1) (Dec. 2011) [hereinafter WA Initial Elements], <http://www.wassenaar.org/guidelines/docs/5%20-%20Initial%20Elements.pdf> (Last accessed on 30 6 2015).

³⁷ WA, “Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW),” (2007) [hereinafter WA SALW Guidelines], http://www.wassenaar.org/publicdocuments/2007/docs/SA_LW_Guidelines.pdf (Last accessed on 30 6 2015).

³⁸ *Ibid.*, p. 1.

³⁹ *Ibid.*, pp. 2–3.

⁴⁰ *Ibid.*, pp. 1–2.

⁴¹ Centre for Non-Proliferation Studies, “The Wassenaar Arrangement On Export Of Conventional Arms And Dual-Use Goods And Technologies,” 1 (June 12, 2012).

⁴² See United Nations General Assembly Resolution 67/234, “The arms trade treaty”; 64/48, “The arms trade treaty”; 63/240, “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms”; 61/89, “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms”.

⁴³ See The Campaign against Arms Trade, “Arms Trade Treaty,” 30 4, 2013, <http://www.caat.org.uk/issues/att> (Last accessed on 30 6 2015).

been labelled by proponents as “the best chance the world has yet seen”⁴⁴ to regulate the illicit trade of arms.

The Arms Treaty was adopted on April 2nd, 2013 by 154 States following an overwhelming vote in favour of the treaty.⁴⁵ By the 10th day of November, 2014, 54 States had ratified the treaty.⁴⁶ It entered into force on 24th December 2014, having been ratified or acceded to by the requisite fifty States.⁴⁷

The principal objective of the treaty is to regulate the trade of conventional weapons, ranging from small arms, like the pervasive AK 47 rifle, to tanks and combat aircraft.

The treaty sets up rules and regulations for transfer of arms, including embargoes on

⁴⁴ Jerome Taylor & Eric Short, “UN approves global arms trade treaty - but how effective will it be?” 03 04, 2013, <http://www.independent.co.uk/news/world/politics/un-approves-global-arms-trade-treaty--but-how-effective-will-it-be-8558664.html> (Retrieved 16 07, 2014).

⁴⁵ See United Nations General Assembly, “Session 61 Verbatim Report 67. A/61/PV.67,” 6 12, 2006, p. 31 http://www.un.org/ga/search/view_doc.asp?symbol=A/61/PV.67 (Retrieved 28 11, 2014). Resolution 67/234B was adopted by a recorded vote of 154 in favour to 3 against, with 23 abstentions. Voting in favour were: Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, El Salvador, Eritrea, Estonia, Ethiopia, Finland, the former Yugoslav Republic of Macedonia, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Suriname, Sweden, Switzerland, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, and Zambia. Voting against were the Democratic People’s Republic of Korea, Iran, and Syria. Abstaining from the vote were: Angola, Bahrain, Belarus, Bolivia, China, Cuba, Ecuador, Egypt, Fiji, India, Indonesia, Kuwait, Lao People’s Democratic Republic, Myanmar, Nicaragua, Oman, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Swaziland, and Yemen. Absent from the vote were: Armenia, Cape Verde, Dominican Republic, Equatorial Guinea, Kiribati, Sao Tome and Principe, Sierra Leone, Tajikistan, Uzbekistan, Vanuatu, Venezuela, Viet Nam, and Zimbabwe.

⁴⁶ United Nations, “Arms Trade Treaty: Treaty Status,” 4 6, 2013, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&lang=en (Last assessed 30 6, 2015)

⁴⁷ United Nations, “Reference: C.N.630.2014.TREATIES-XXVI.8 (Depositary Notification),” 22 9, 2014, <https://treaties.un.org/doc/Publication/CN/2014/CN.630.2014-Eng.pdf> (Retrieved 20 10, 2014).

exports of a particular nature.⁴⁸ In addition to banning shipment of weapons in violation of current United Nations embargoes⁴⁹ or other prevailing international law instruments⁵⁰, the treaty creates common standards, including annual reporting from nations and manufacturers to enable monitoring of exports and imports toward the aim of promoting international peace and security and general betterment of social, economic and humanitarian conditions.⁵¹

Following its adoption, the Arms Treaty was met with mixed reviews from around the globe. Proponents of the treaty have had nothing but praise for the treaty. United Nations Secretary General Ban Ki Moon, as well as representatives of various non-governmental Organizations, such as Oxfam International, Amnesty International, and Small Arms Survey, applauded the Arms Treaty as a powerful tool and a victory in controlling global arms trade.⁵² Critics of the treaty, on the other hand, have condemned it on the grounds of its shortcomings. They opine that the shortcomings of the treaty are likely to render it an inadequate relief to the global small arms problem.⁵³ The first argument rallied against the treaty is that its provisions governing its legal-bindingness are ambiguous.⁵⁴ Further, vagueness in delineating the method for States in determining the illegality of weapon sales and the lack of

⁴⁸ U.N. Doc. A/CONF.217/2013/L.3, at Art. 7(1). Particularly, the treaty prohibits sale of arms where States and manufacturers "...have 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"

⁴⁹ Ibid., Art. 6(1).

⁵⁰ Ibid., Art. 6(2).

⁵¹ Ibid., Arts. 12–13.

⁵² See United Nations, "United Nations Secretary-General Statement 1491, States vote overwhelmingly for ground-breaking Arms Trade Treaty". See also Clare da Silva, "Arms Trade Treaty Shows Remarkable Progress," *JURIST - Hotline* (1 May 2013), <http://bit.ly/XkDeWD> (Last assessed 29 05, 2014).

⁵³ Ibid.

⁵⁴ Ibid.

comprehensiveness in its definition of its scope have been pointed out.⁵⁵ Others argue that the low threshold for the requirements of importing, transit, trans-shipment and brokering States and the high threshold for the not authorizing exports make it a failure.⁵⁶ There are additional claims that the treaty is obsolete and adds nothing to existing international law.⁵⁷

1.2 Statement of the Problem

Despite the adoption of the various international legal instruments discussed above, the control of the circulation of small arms and light weapons is yet to be achieved. Global trade in small arms and light weapons remains vibrant, and continues to frustrate international peace and conflict management efforts. The issue this study addresses is why the global trade in small arms and light weapons continues to thrive despite the existence of international legal regimes to regulate it.

1.3 Objective of the Research

In view of the ineffectiveness of the current international legal regimes in regulating trade in small arms and light weapons and curbing illegal trafficking of small arms and light weapons, this study begins by highlighting the legal and institutional challenges faced by the said regimes in regulating global trade in small arms and light weapons. The bulk of this research is dedicated to examining the provisions of the newly adopted treaty, the Arms Treaty; in order to highlight the substantive contributions the treaty makes to international legal regimes created to regulate trade

⁵⁵ Ibid.

⁵⁶ See Kirk Jackson, "The Arms Trade Treaty: A historic and momentous failure," *Ceasefire Magazine* (29 April 2013), <http://bit.ly/1tyDQ8j> (Last assessed 29 05, 2014).

⁵⁷ See Wendela de Vries, "We have an Arms Trade Treaty - What difference does it make?" *War Profiteers' News* 38. (War Resisters' International, 2013), <http://bit.ly/WP15zf> (Last accessed 30 6, 2015). See also Glenn McDonald "Worth the Paper? The Arms Trade Treaty." *E-International Relations* (17 4, 2013), <http://www.e-ir.info/2013/04/17/worth-the-paper-the-arms-trade-treaty/> (Last assessed 29 11, 2014).

in small arms and light weapons. This assessment is guided by a jurisprudential analysis of the Arms Treaty on the methodological premise of the international rules concerning the interpretation of treaties, contained in Article 31 to 33 of the Vienna Convention on the Law of Treaties.⁵⁸ Following that assessment, this study determines whether the Arms Treaty is equipped to overcome the legal challenges facing the current legal regimes, or whether it is likely suffer the same fate as the current regimes in the domain of small arms and light weapons.

1.4 Hypotheses

This research advances the following hypotheses:

1. The current international legal regimes on regulation of small arms and light weapons trade have been ineffective in regulating small arms and light weapons trade and curbing illegal trafficking of small arms and light weapons.
2. The State Parties to the current international regimes are not ready to enter into a legally binding regime to regulate trade in small arms and light weapons.
3. The Arms Treaty is likely to be faced with similar legal challenges as the current regimes in regulating global small arms and light weapons trade and eradicating illicit trafficking of small arms and light weapons.

1.5 Research Questions

The questions sought to be answered in this study are:

1. What are the current international legal regimes for regulation of trade in small arms and light weapons?

⁵⁸UN Doc. A/Conf.39/27, (1969).

2. What challenges have the current international legal regimes faced in achieving their objectives?
3. What substantive contributions does the Arms Treaty make to international
4. What are the legal challenges the Arms Treaty is likely to face that are likely to hamper the achievement of its objectives?

1.6 Theoretical Framework

1.6.1 The Early Positive Law theory

The Positive Law Theory is a theory of law that studies the law as it is and not what it ought to be. Early positivist scholars, led by Alberico Gentili, posited that treaties are an important source of international law, given that positive law is primarily determined by general consent of the members of a political society.⁵⁹ In 1650, Richard Zouche, another early positivist scholar published the manual of international law.⁶⁰ Hans Kelsen, a renowned positivist scholars point at the law as a basis for the formation of the basic norm (*grundnorm*), which spins legal order and in effect moulds societal norms.⁶¹

Article 38 of the Statute of the International Court of Justice identifies four different sources of public international law which can be summarized as: conventions (e.g. treaties), general principles, custom/norms and judicial decisions (or *opinio juris*).⁶² Out of the four, conventions and customary international law serve as the primary sources while the principles guide the interpretation of international law. It is under

⁵⁹Richard H. Steinberg & Jonathan M. Zasloff. "Power and International law." 100 American Journal of International Law 73 (2006).

⁶⁰Ibid., p. 74.

⁶¹ See generally Hans Kelsen, General Theory of Norms (London, Oxford University Press, 1990).

⁶² United Nations, Statute of the International Court of Justice, 18 April 1946, available at: <http://www.refworld.org/docid/3deb4b9c0.html> (Accessed 5 6, 2015) Art 38.

this context that the Arms Trade Treaty is studied as a source of international law, and, an influence of the global norm surrounding international trade in arms.

An important feature of treaties is that they are only binding to those who accept them, i.e., the States that ratify and incorporate it into their laws. The Arms Treaty, consequently, will influence the global norms in the arms trade sector in the countries that ratify it. The interpretation of the Arms Treaty is, therefore, important for understanding of the ways in which the treaty will transform the international law stance in respect to global arms trade.

1.6.2 The Critical Legal Theory

The Critical Legal School of thought emerged in the United States during the late 20th century.⁶³ Critical Legal School was officially started in 1977 at the conference at the University of Wisconsin-Madison, but its origins extend back to the early 1960s when many of its founding members participated in the social activism under the Civil Rights movement and during the Vietnam War. Among noted Critical Legal School theorists are Roberto Mangabeira Unger, Robert Gordon, Morton Horwitz, Duncan Kennedy, and Katharine MacKinnon.

The Critical Legal School posits a critique of the law influenced by developments in literary theory. This critique opines that international law must be analysed from a highly theoretical perspective.⁶⁴ Proponents of this theory opine that logic and structure must be a guiding feature in the interpretation of the law. As such, the theory posits that the language of the text of international legal instruments is an important consideration in the interpretation of an international law instrument.⁶⁵

⁶³Mark Kelman, A Guide to Critical Legal Studies, (Boston, Harvard University Press, 1987), p. 2.

⁶⁴Ibid., p. 3.

⁶⁵Ibid.

It is on that very premise that this dissertation uses Article 31 to 33 of the Vienna Convention on the Law of Treaties⁶⁶ as a crucial tool to interpret how the Arms Treaty's legal provisions will operate, and to describe how the international legal system can enforce the objectives of the treaty. Under the Vienna convention, intentionalism is a manifest theory of interpretation. Intentionalism focuses on the meaning that the legislature intended to give the statute.⁶⁷

Article 31(1) of the Vienna Convention on the Law of Treaties⁶⁸ requires the interpretation of treaties by States Parties to it to be in good faith and in accordance to the ordinary meaning of terms "in their context and in the light of its [the treaty's] objects and purpose". Generally, Articles 31(2) and Article 31 (3) of the treaty are keen on providing that the intentions of the parties are considered by examining other agreements and instruments made by the parties. Specifically Article 31 (4) provides that "special meaning shall be given to a term if it is established that the parties so intended". This is a clear provision for treaties to be interpreted in accordance to the parties' intentions. Intentionalism is also manifest in the rule in Article 32 of the treaty that provides for the consideration for the intention of the parties to avoid interpretation that results in absurdities. Additionally, Article 33 provides for the interpretation of texts in consideration of the meaning of terms on other authentic texts on the same subject matter where a treaty has been authenticated in two or more languages.

⁶⁶UN Doc. A/Conf.39/27, adopted in Vienna on 23 May 1969. Entered into force on 27 January 1980.1155 UNTS 331.

⁶⁷ Elmer Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths Ltd., 1983), at p. 87. See also Francis D. P. Situma, *Treaty Making and Enforcement*, a presentation made for the Council for Legal Education/Kenya School of Law Training Programme on Treaty Making, International State Obligation and enforcement held at the Kenya School of Law, Nairobi on September 6 -10, 2010, p. 18, where intentionalism is called 'the subjective approach' of interpretation of treaties (Mimeo).

⁶⁸ [in this section, simply referred to as 'the treaty']

1.7 Literature Review

Zeray Yihdegi, in The Arms Trade and International Law covers the international aspects of transfer of small arms and light weapons in their entirety.⁶⁹ This book begins by extensively discussing the workings of the arms markets across the globe. Further, this book not only discusses the international law responses to the small arms problem but tackles the legal problem of whether or not these international law regimes provide substantive responses to the problem. Definitions and issues relating to manufacturing, trade/transfer,⁷⁰ and issues state responsibility are covered extensively in respect to all the current legal regimes. This book was written at a time when negotiations toward a global arms trade treaty were still ongoing, and the author hoped to “make positive contribution towards shaping the debate”.⁷¹

Ian Brownlie discusses treaties as a source of international law.⁷² In this discussion, the legal provisions and case law in respect to the making, interpretation, implementation, and termination of treaties are discussed. Key to this study is the discussion on the interpretation of treaties in accordance to the Vienna Convention on Law of treaties.⁷³ This breakdown of the rules of interpreting treaties is the operational heart of this dissertation, as the interpretation of the substantive provisions of the Arms Treaty are the focal point of this research.

F.D.P Situma⁷⁴ provides an in-depth analysis of the process of treaty making and enforcement in Public International Law. In this presentation, the international rules

⁶⁹See generally, ZerayYihdego, The Arms Trade and International Law. (Oxford, Hart Publishing, 2007).

⁷⁰ [Including cross-border transfer].

⁷¹ Supra, note 68, Preface.

⁷² Ian Brownlie, Principles of International Law, 7th ed., (Oxford, Oxford University Press, 2008), p 3.

⁷³ Ibid.

⁷⁴Francis D. P. Situma, Treaty Making and Enforcement, a presentation made for the Council for Legal Education/Kenya School of Law Training Programme on Treaty Making, International State

of interpretation of treaties, which are the focus of the third chapter of this research and expounded upon, with emphasis made to the rules contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties.⁷⁵

Casey-Maslen Stuart, et al,⁷⁶ in their briefing, summarize the process that led to the formal adoption of the Arms Trade treaty and reviews the text of the treaty, giving brief comments on the provisions in three sections: its title, preamble, and principles; core provisions; and, final provisions.

Barry Kellman⁷⁷ wrote his article entirely in appreciation of the Arms Treaty as a contribution to advancing the international law of controlling circulation of arms. He starts by briefly describing the Arms Treaty's negotiating history and adoption. It then highlights three sets of substantive contributions the Arms Treaty makes to international weapons control law in the domain of conventional arms- the Arms Treaty's prohibitions against supplying of illegal conventional arms; the Arms Treaty's requirements for implementation of measures to curtail illicit diversions of conventional arms; and, the obligations on States to regulate aspects of the conventional arms market

1.8 Research Methodology

This research gathers relevant data from primary and secondary sources in order to analyse the material and arrive at a complete understanding of the legal challenges facing international legal regimes in regulation of trade in small arms and light

Obligation and enforcement held at the Kenya School of Law, Nairobi on September 6 -10, 2010(Mimeo).

⁷⁵ Ibid., p.18.

⁷⁶ Casey-Maslen Stuart, Giles Giacca, and Tobias Vestner, "Academy Briefing No. 3: The Arms Trade Treaty," (Geneva, Geneva Academy, June 2013).

⁷⁷ Barry Kellman, "Controlling the Arms Trade: One Important Stride for Mankind," 37 Fordham International Law Journal 687 (2014).

weapons. The primary sources examined are the relevant regimes themselves and the law governing their interpretation. Information from secondary sources such as publications, books, reports, journals, and websites was also examined to gather commentary and analysis of the effectiveness, or lack thereof, of the current and prospective legal regimes in respect to trade in small arms and light weapons.

1.9 Chapter Breakdown

Chapter 1: Introduction

1.1 Small Arms and Light Weapons

1.2 Statement of the Problem

1.3 Objective of the Research

1.4 Hypotheses

1.5 Research Questions

1.6 Theoretical Framework

1.7 Literature Review

1.8 Research Methodology

1.9 Chapter Breakdown

Chapter 2: The current international legal regimes- the legal and institutional challenges

2.1 United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms

2.1.1 Critique of the Palermo Protocol

2.2 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects

2.2.1 Critique of the United Nations Programme of Action

2.3 The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

2.3.1 Critique of the Wassenaar Agreement

Chapter 3: The Arms Trade Treaty

3.1 Negotiation and Adoption

3.2 Interpreting the Arms Trade Treaty

3.3 Prohibited Conduct under the THE ARMS TREATY

3.3.1 Prohibited Arms Transfers under Article 6

3.3.2 Prohibition Against Arms Transfers for Committing Grave International Crimes

3.3.3 Prohibition on Arms Transfers that Contribute to Human Rights and Humanitarian Law Violations or to Violations of Terrorism and Crime Conventions

3.4 Anti-diversion Measures

(i) Brokering

(ii) Use of Information

3.5 National Control Systems

Chapter 5: Conclusion and Recommendations

CHAPTER TWO

INTERNATIONAL LAW RESPONSES TO THE SMALL ARMS PROBLEM

2.1 Introduction

The United Nations ('UN') has put in a great deal of effort to addressing the small arms problem. The efforts to address the issue started in the 1990s and accelerated rapidly, leading to the United Nations Conference on the Illicit Traffic in Small arms held at the United Nations headquarters in New York in July 2001.¹ The conference, however, did not produce a legally binding instrument.

In the decade that followed, the discourse on small arms was centred on the United Nations Programme of Action which is discussed at great length in this chapter. There was an apparent lack of drive to adopt more binding instruments. However, in 2006, Member States of the United Nations agreed to initiate the negotiation process on a global arms trade treaty whose crescendo was a diplomatic conference in New York in July 2012. The conference marked the culmination of many years of work by States and civil society towards a robust and legally-binding global arms trade treaty. Despite the great progress made at this conference, no agreement was reached. However, the conference set the stage for negotiations of a stronger treaty with overwhelming state support which was adopted in 2013.²

The UN has adopted a number of international law instruments in the regulation of small arms and light weapons.

¹Robert Mungghah, "Moving Forward? Assessing Normative and Legal Progress in Dealing with Small Arms," in Thomas J Biersteker et al (eds) *International Law and International Relations: Bridging Theories and Practices* (New York, Routledge, 2007), p. 32.

² See The Campaign against Arms Trade, "Arms Trade Treaty," 30 April, 2013, (Assessed 28 5, 2015) <http://www.caat.org.uk/issues/att>.

2.2 United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms

The negotiators of the United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms (hereinafter referred to as “the Palermo Protocol”) met as the July 2001 UN Conference on Small Arms was being prepared. The 1997 Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and other Related Materials,³ was used as a model for the anticipated Protocol. The intention was to narrowly focus the new protocol on a crime and law enforcement approach, as opposed to an arms control approach. The Protocol was adopted by the UN General Assembly (hereinafter referred to simply as “the General Assembly”) on 31 May 2001,⁴ and entered into force on the 3 June 2005 as the first global, legally-binding instrument on small arms control.

The Palermo Protocol is a legally binding treaty that is part of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as “the Palermo Convention”).⁵ The Protocol’s objective is to urge ratifying States to device and implement independent action with the ultimate focus of curbing the manufacture and trafficking of conventional arms.⁶ To that end, the treaty urges its parties to criminalize the illegal manufacture, transportation, and sale of firearms within their

³CIFTA, Signed 1 January 1997, entered into force 1 July 2008), 2029 UNTS 55.

⁴UN General Assembly, Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime, 31 May 2001, A/RES/55/255, available at: <http://www.refworld.org/docid/3dec85104.html> (Accessed 28 May 2015).

⁵ UN General Assembly, United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25, available at: <http://www.refworld.org/docid/3b00f55b0.html> (Accessed 28 May 2015).

⁶Supra, note 8, Art. 2. (“The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition”).

borders.⁷ Further, State Parties are urged to cooperate with each other to execute the provisions of the treaty.⁸ Some of the most important provisions of the Palermo Protocol include the requirement to stamp weapons with serial numbers and identifiers,⁹ the requirement to deactivate weapons no longer in service,¹⁰ conveyance of information between States with every export of arms between them,¹¹ and implementation of anti-theft measures.¹² These standards and regulatory requirements, according to the treaty, must be adopted by every State Party.¹³ The Palermo Protocol has so far been signed and ratified by all of the major exporters of arms, with a total of fifty two signatories and one hundred and four treaty parties.¹⁴ It entered into force on 3 July 2005. As a result of the Palermo Protocol, the regulations regarding export of arms have been standardized, with basic legal requirements to authorize export of firearms being made identical for every treaty party.¹⁵

2.3 Critique of the Palermo Protocol

Besides the Arms Treaty, the Palermo Protocol is the only legally binding instrument that has been adopted in the domain of small arms and light weapons. However, a demerit that is revealed by analysis of this legal instrument as well as other regional

⁷Ibid., Art. 5.

⁸Ibid., Art 18.

⁹Ibid., Art. 8. These identifiers include both serial numbers and other information about year of import and place of manufacturing.

¹⁰Ibid., Art. 9.

¹¹Ibid., Art. 10(3).

¹²Ibid., Art. 11.

¹³Ibid., Art. 5(1).

¹⁴ United Nations, "Status of Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,"

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-

[c&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&lang=en)(Retrieved 29 9, 2014). The Russian Federation, Israel, France, Czech Republic, Switzerland, and the United States have all refused to sign the Protocol, which account for a major number of world arms exports.

¹⁵See Sarah Parker, "Devils in Diversity: Export Controls for Military Small Arms", *Small Arms Survey 2009* pp. 70 -74. <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/Special/SAS-Small-Arms-Control-Measures-and-ATT.pdf> (Retrieved 28 5, 2015).

legally binding treaties in the domain of small arms and light weapons¹⁶ is that these treaties lack specificity in their proscriptions, especially in determining when shipment of arms should not be authorized by the State Parties. While the adoption and ratification of the treaty is widespread and it binds many of the large exporters of arms,¹⁷ the enforcement mechanisms are ineffective and this directly affects its implementation. The enforcement mechanisms of the Palermo Protocol are negotiation and arbitration.¹⁸ Enforcement of an agreement of this nature would prove difficult in any political environment. This is because negotiations rely on the continued commitment and desire of the participants to abide by the terms of the Protocol to remain effective and to settle disputes arising from their interpretation and application. In the end, measures are more a matter of politics than adherence to the terms of the Protocol.

The second notable challenge is that the Palermo Protocol is limited in its aims. For instance, it covers a narrow scope of arms, which is, it regulates only illicitly manufactured or trafficked firearms and related materials rather than all small arms and light weapons.

The Protocol reflects the concerns of States that a regulation on firearms could undermine a State's right to self-defence as it reaffirms the inherent right to individual or collective self-defence recognized in Article 51 of the Charter of the United

¹⁶ That is, Common Position 2008/944/CFSP Defining Common Rules Governing Control of Exports of Military Technology and Equipment catering for the European Union and the Inter-American convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and other Related Materials, Organization of American States; 2029 UNTS 55.

¹⁷ These include China, Italy, Brazil, Germany, Belgium and Austria. Out of the main exporters, only the United States and Russia have not ratified the Protocol. See SIPRI database <http://www.sipri.org/databases/armstransfers> (Last accessed 23 2, 2015).

¹⁸ UN Doc. A/RES/55/255 (2001), Art. 16.

Nations.¹⁹ This fundamental right of States implies that States have the right to acquire arms with which to defend themselves against internal and external aggression. The resolution also reaffirms the right of self-determination of all peoples, in particular peoples under colonial or other forms of alien domination or foreign occupation, and the importance of the effective realization of that right.²⁰ The citations of these rights in the Resolution reflect a situation where States do not want the provisions in the Protocol to undermine the rights of self-defence and self-determination. This situation is, in turn, reflected in the lack of 'close-ended' requirements in the provisions of the Protocol. Therefore, every provision in the protocol inevitably comes with an exception, that is to say, the regulatory requirements of the treaty are ineffective in the event that either right is expressly or impliedly under threat of violation or is being violated.

Secondly, there is the problem of balancing the national sovereignty of States with their security interests. To avoid improperly usurping the sovereignty of States Parties, the language of the treaty reflects unwillingness to force definitive requirements. Instead, there are general statements that States should 'adopt measures' or consider adopting recommended measures to regulate small arms and light weapons. It is, therefore, problematic to determine the exact provisions that are mandatory on every State, and separate such provisions from those that are mere recommendations that may be taken up at the discretion of the State parties. While the Protocol provides a legal basis for a State to adopt legislation to criminalize aspects of illicit firearms trade, it does define the situations in which transfer between States is prohibited. This analysis envisions a prohibition of transfer of arms where the transfer

¹⁹ Ibid., Preambular para 4.

²⁰ Ibid.

would endanger people in the importing State as a sterling example of a situation which the Protocol ought to have expressly defined. Additionally, the Protocol does not give any hints to avoid regional instability caused by arms transfer. According to Article 4(2) of the Protocol, the objective of the Protocol is neither to ban trade in small arms and light weapons nor to tamper with the sovereign rights of States to export or import them. As such, the Palermo Protocol is inapplicable 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.

Finally, the Protocol only provides the minimum guidance in information sharing and customs enforcement between parties.²¹ It extensively provides for the various types of information that it requires States to share, but fails to set up the methodology for sharing the information and provide penal measures for failure to share information. The provisions state that States must share, firstly “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,” as well as information on other matters including the organized criminal groups, known or suspected, the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition, their means of trafficking and concealment of the said arms; their methods, means, points and routes of dispatch and destination of the firearms, their parts components and ammunition; and, their legal experiences, practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. States are

²¹Ibid., Art 12(1).

also required to scientific and technical information that could be beneficial to other States in their efforts against the illicit manufacture and trafficking of firearms, their parts and components and ammunition.²² This lack of meaningful and effective enforcement mechanisms renders the provisions of the treaty ineffective in tackling the small arms problem.

2.4 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects

As a response to concerns of the international community about the impact of small arms on peace and security, UN Member States gathered in New York City in July 2001 at a meeting on small arms. The meeting presented a splendid opportunity for global leaders to enact a tool that is able to regulate small arms trade. The result of that meeting was the adoption of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects (hereinafter “Programme of Action”).²³ Although a legally binding document would have been adopted at this meeting, the Programme of Action, as a political document, is sufficiently equipped and effective in regulating small arms trade when properly implemented.

While the Programme of Action is not legally binding, it provides an important framework for implementing adequate national laws, regulations, and administrative procedures around illicit trade in small arms thus its discussion in this study.

²²Ibid., Art. 12(2)–(3).

²³United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, July 9–20, 2001, “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” U.N. Doc. A/CONF.192/15 (July 20, 2001).

This Programme of Action, so far, is one of the most unified and comprehensive international efforts in trying to tackle the problem of small arms. The Programme of Action was adopted with an aim to urge States to adopt national, regional and global legislation to ensure small arms and light weapons do not enter grey and black markets.²⁴ It has since received wide applause because its scope is wide, covering the national, regional, and global levels.²⁵ It details numerous systems, including the criminalization of illegal manufacture of arms, export controls, and the destruction and deactivation of surplus weapons at the national, and regional levels, coordination at the global level, and, enacting tracing standards and data sharing at all levels discussed at length here below.

In its Preamble, the Programme of Action acknowledges that small arms may worsen violence in war zones and undermine respect for international law.²⁶ It then reconfirms that it is the responsibility of States to control the circulation of small arms in order to prevent them from being diverted into the wrong hands.²⁷ To aid in the achievement of the Programme's objectives, the States are requested to set up the necessary legislative and administrative mechanisms to control the circulation of small arms, including their import, export, transit and retransfer, in order to prevent their manufacture, trafficking and diversion to the wrong hands.²⁸ Additionally, at the national level, States are requested to adopt and implement the necessary legislative

²⁴ This is the general theme reflected in the provisions in Part II and III of the text.

²⁵ European Union, "EU Working Paper of the Outcome of the Conference on the UN Programme of Action to Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," 24 6, 2012, (Retrieved 28 5, 2015)

<http://www.poaiss.org/RevCon2/documents/EU%20working%20paper%2024%20July%202012.pdf>.

This paper was prepared after a review process carried out by the European Union of the Programme of Action focused on the effective implementation of the commitments agreed on by UN Member States in 2001.

²⁶ U.N. Doc. A/CONF.192/15, Preambular para 3.

²⁷ Ibid., Preambular para 13.

²⁸ Ibid., Part II, para 2.

measures to criminalize the illegal manufacture, possession, and trade of small arms, identify individuals and groups directly and indirectly involved in the illegal manufacture, trade, transfer, and prosecute them under the national laws so enacted.²⁹

The measures to control illicit trade in small arms also include the application of appropriate and reliable marking, accurate records, adoption of adequate national legislation on small arms brokering, and the use of authenticated end-user certificates.³⁰ At the regional level, States are requested to establish moratoriums on transfer and manufacture of small arms,³¹ and encouraged to support national disarmament, demobilization and reintegration programmes, especially in post-conflict situations.³²

At the global level, States are requested to cooperate to ensure the effective implementation of arms embargoes.³³ Additionally, they are required to voluntarily provide national reports on implementation of the Programme of Action.³⁴

2.5 Critique of the Programme of Action

The Programme is considered the most successful small arms and light weapons regulation deed in force in the world at the moment.³⁵ However, one of the major weaknesses of the Programme of Action is that its drafters were over-ambitious. In an attempt to impose too many new regulatory regimes, the approach is so generalized as to render it unable to provide, in significant detail, the methods or forms those

²⁹Ibid., Part II, para 3-6.

³⁰Ibid., Part II, para 7, 9, 12, and 14.

³¹Ibid., Part II, para 26.

³²Ibid., Part II, para 30.

³³Ibid., Part II, para 32.

³⁴Ibid., Part II, para 33.

³⁵Cate Buchanan and Robert Muggah, No Relief: Surveying the Effects of Gun Violence on Humanitarian and Development Personnel. (Geneva, Centre for Humanitarian Dialogue, 2005), pp. 77-78.

regulations should adopt.³⁶ For example, where it requests States to adopt and implement the necessary legislative measures to criminalize the illegal manufacture, possession, and trade of small arms, it does not provide details of the nature and extent of the laws or the crimes to be established.

The Programme of Action recommends, in Paragraph 11 of Part II, that States enact strict national regulations that are consistent with the existing responsibilities of States under international law. Questions arise as to what mechanisms of international law to regulate or prevent the diversion of weapons into illegal trade exist and why States should take interest in implementing such a mechanism. In truth, only a Security Council arms embargo and the Arms Treaty as international law mechanisms of preventing the use of weapons to undermine international humanitarian law exist currently.

2.6 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

The Coordinating Committee for Multilateral Export Controls was established in 1949 by United States, Belgium, France, Italy, the Netherlands, Luxembourg, and the United Kingdom as an institutional framework mandated with harmonizing the policy of Western countries to restrict the export of conventional weapons to the Soviet

³⁶ See United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Aug. 27–Sept. 7, 2012, Annex I: 2012 Declaration, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons, U.N. Doc. A/CONF.192/2012/RC/4 (Sept. 18, 2012). So generalised is its approach that when it was reaffirmed in 2013, the UN Conference on Disarmament requested that UN Office of Disarmament Affairs clarify what the Programme exactly recommended. While the Independent Schools Association of the Central States (ISACS) system has added new detail to the Programme of Action's recommendations, it is still too early to know how it will approach many of the more difficult regulatory issues, including export controls.

Union and Warsaw Pact countries.³⁷ This move was aimed at preventing the Soviet bloc countries from acquiring strategic goods and services that would aid their military effort as the World War II waged. Spain, Canada, Australia, Denmark, Germany, Greece, Italy, Norway, Portugal, Japan, and Turkey later joined the Coordinating Committee for Multilateral Export Controls.

The Wassenaar Arrangement succeeded the Coordinating Committee for Multilateral Export Controls after the end of the Cold War as it was recognized that the the Coordinating Committee for Multilateral Export Controls' focus on exports from Western to Eastern countries was no longer an appropriate basis for export controls.³⁸ This realization prompted a high level meeting in Wassenaar, the Netherlands, where the Coordinating Committee for Multilateral Export Controls Member States agreed to terminate the body and establish a new multilateral arrangement, which they temporarily referred to as the "New Forum".³⁹ Later, at a subsequent high level meeting held at the same location, from 29th to 30th March 1994, the decision to form the arrangement was confirmed.⁴⁰

Deviating from the cold war mentality of controlling export of weapons for use in war, the Wassenaar Arrangement represents cooperation of States to control trade of conventional arms and weaponry associated with both military and civil uses.⁴¹ The Arrangement is informal and voluntary but the legal instruments adopted following deliberations and consensus on Member States are legally binding on them.⁴² Member

³⁷ <http://www.wassenaar.org/introduction/origins.html> (Last assessed 28 5, 2015).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

States are, however, responsible for implementation of the Arrangement's agreed upon guidelines and procedures.⁴³

The Wassenaar Arrangement was to offer a meaningful contribution to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations. This aim is achieved through enactment of national policies by Participating States, to ensure that transfers of conventional arms and dual-use goods and technologies do not facilitate the strengthening of unauthorized paramilitary groups and activities.⁴⁴

Outside the auspices of the United Nations, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies⁴⁵ stands out as it is aimed at promoting transparency, and accountability in transfers of conventional arms among other goods, and, technologies to prevent accumulations that could have destabilising effects.⁴⁶ The Wassenaar Arrangement promotes, among other guidelines, 'best practice guidelines'⁴⁷ in the handling and export of small arms and light weapons. These practices include imposition of strict small arms and light

⁴³ Ibid.

⁴⁴ The Participating States of the Wassenaar Arrangement are Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.

<http://www.wassenaar.org/introduction/> (Last assessed 28 5, 2015).

⁴⁵ See The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, July 11-12, 1996 [hereinafter "the Wassenaar Arrangement"].

⁴⁶ Wassenaar Arrangement on Export Controls for Conventional Arms & Dual-Use Goods & Technologies, "Guidelines & Procedures, Including the Initial Elements," Part I (1) December 2011, <http://www.wassenaar.org/guidelines/docs/5%20-%20Initial%20Elements.pdf> (Retrieved 3 3, 2015).

⁴⁷ Wassenaar Arrangement, "Best Practice Guidelines for Exports of Small Arms and Light Weapons," 2007, http://www.wassenaar.org/publicdocuments/2007/docs/SA_LW_Guidelines.pdf (Retrieved 4 3, 2015).

weapons export controls⁴⁸ and setting licensing criteria⁴⁹ among Participating States. Membership to the Wassenaar Arrangement is open and voluntary.⁵⁰ Currently, forty one States have chosen to comply with the regulations of the Wassenaar Arrangement.⁵¹

2.7 Critique of the Wassenaar Arrangement

The plenary, which is the Wassenaar Arrangement's decision making body, is most criticized for failing to demand that its member parties take any specific acts.⁵² The organization's voluntary and non-obligatory membership position allows for virtually any State to join without having to implement any of its protocols. There is also a widespread belief that parties may join in bad faith, essentially putting their name to the Arrangement as a means of claiming an international moral high ground while ignoring the substance of the guidelines.⁵³ The guidelines also fail to help States determine which groups are supposed to be considered problematic when considering export licenses. This deficiency forces State Parties to the Arrangement to simply enforce the guidelines on nations already under sanction by the Palermo Protocol or other UN embargoes, thus making the Arrangement, at best, redundant.⁵⁴ Because the Arrangement cannot adequately specify what licenses should be denied, its guidelines lack appropriate teeth for small arms and light weapons regulation.⁵⁵

⁴⁸Ibid, p. 1.

⁴⁹Ibid, pp. 2–3.

⁵⁰Ibid, pp. 1–2.

⁵¹Wassenaar Arrangement, "The Wassenaar Arrangement on Export of Conventional Arms and Dual-Use Goods and Technologies," Inventory of International Nonproliferation Organizations and Regimes, 12 5, 2012, <http://cns.miis.edu/inventory/pdfs/wass.pdf> (Retrieved 3 3, 2015).

⁵²Michael Beck, "Reforming the Multilateral Export Control Regimes," 7 (2) *Non Proliferation Review* (2000), pp. 91-93.

⁵³Ibid., pp. 94–95.

⁵⁴Ibid, p. 97.

⁵⁵The Arrangement doesn't demand that licenses be denied for violating its guidelines. See generally Wassenaar Arrangement Small Arms and Light Weapons Guidelines, Supra, note 51, p. 2.

Despite the adoption of the various international legal instruments discussed above, the control of the circulation of small arms and light weapons is yet to be achieved. Global trade in small arms and light weapons remains vibrant, and continues to frustrate international peace and conflict management efforts. In view of the ineffectiveness of the current international legal regimes in regulating trade in small arms and light weapons and curbing illegal trafficking of small arms and light weapons, the goal of this study is to examine the provisions of the Arms Treaty in order to highlight the substantive contributions the treaty makes to international legal regimes created to regulate trade in small arms and light weapons.

CHAPTER THREE

THE ARMS TRADE TREATY

3.1 Negotiation and Adoption

After over a decade of intense diplomatic lobbying, negotiations and various efforts by the United Nations since 2006,¹ the Arms Trade Treaty (hereinafter referred to as 'the Arms Treaty') was adopted in April 2013.

The Arms Treaty was adopted by 154 States following an overwhelming vote in its favour.² By the 10th day of November, 2014, 54 States had ratified the treaty.³ It

¹ See generally United Nations, A/RES/67/234 B. General Assembly, "The arms trade treaty"; A/C.1/64/L.38/Rev.1(A/RES/64/48), 'The arms trade treaty'; A/Res/63/240, "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms"; 61/89, "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms".

² See United Nations General Assembly, "Session 61 Verbatim Report 67," A/61/PV.676 12, 2006, p. 31 http://www.un.org/ga/search/view_doc.asp?symbol=A/61/PV.67 (Retrieved 28 11, 2014). Resolution 67/234B was adopted by a recorded vote of 154 in favour to 3 against, with 23 abstentions. Voting in favour were: Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, El Salvador, Eritrea, Estonia, Ethiopia, Finland, the former Yugoslav Republic of Macedonia, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Suriname, Sweden, Switzerland, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, and Zambia. Voting against were the Democratic People's Republic of Korea, Iran, and Syria. Abstaining from the vote were: Angola, Bahrain, Belarus, Bolivia, China, Cuba, Ecuador, Egypt, Fiji, India, Indonesia, Kuwait, Lao People's Democratic Republic, Myanmar, Nicaragua, Oman, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Swaziland, and Yemen. Absent from the vote were: Armenia, Cape Verde, Dominican Republic, Equatorial Guinea, Kiribati, Sao Tome and Principe, Sierra Leone, Tajikistan, Uzbekistan, Vanuatu, Venezuela, Viet Nam, and Zimbabwe.

³ See United Nations, "Arms Trade Treaty: Treaty Status".. 4 June 2013 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XXVI-8&chapter=26&lang=en (Retrieved 4 5, 2015).

entered into force on 24th December 2014, having been ratified or acceded to by the requisite fifty States in accordance with Article 22 of the treaty.⁴

The principal objective of the treaty is to regulate the trade in conventional weapons, ranging from small arms, like the pervasive AK 47 rifle, to tanks and combat aircraft. The treaty sets up rules and regulations for transfer of arms, including embargoes on exports of a particular nature.⁵ In addition to banning shipment of weapons in violation of current United Nations embargoes⁶ or other prevailing international law instruments,⁷ the treaty creates common standards, including annual reporting from nations and manufacturers to enable monitoring of exports and imports toward the aim of promoting international peace and security and general betterment of social, economic and humanitarian conditions.⁸

This chapter highlights and discusses the relevant substantive provisions of the Arms Treaty to espouse the means by which the treaty is intended to regulate global trade in small arms and light weapons.

3.2 Interpreting the Arms Treaty

Traditionally, there are five methods that have been instrumental in the theory of interpreting treaties. The subjective method requires the examination of the document in consideration of the intentions of the drafters of the document.⁹ The

⁴ United Nations, "Reference: C.N.630.2014.TREATIES-XXVI.8 (Depositary Notification)," 25, 9 2014 <https://treaties.un.org/doc/Publication/CN/2014/CN.630.2014-Eng.pdf> (Retrieved 20 10, 2014).

⁵ U.N. Doc. A/CONF.217/2013/L.3, at Art. 7(1). Particularly, the treaty prohibits sale of arms where States and manufacturers "...have 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".

⁶ Ibid., Art. 6(1).

⁷ Ibid., Art. 6(2).

⁸ Ibid., Arts. 12–13.

⁹ Francis D. P. Situma, Treaty Making and Enforcement, A Presentation made for the Council for Legal Education/Kenya School of Law Training Programme on Treaty Making, International State

textual approach, in contrast, requires strict literal interpretation of the treaty text.¹⁰

The contextual method considers terms and provisions of the treaty in the context in which they are used in the treaty document.¹¹ The teleological method, on the other hand, interprets the treaty documents with focus on the purpose and object of the treaty.¹² Finally, the logical method favours rational reasoning techniques in the interpretation of a treaty.¹³

These methods are laid down as the rules of interpreting treaties in Articles 31 to 33 of the Vienna Convention on the Law of Treaties.¹⁴ The provisions in these articles do not lay out the process or procedure of interpreting treaties. Rather, they highlight the rules that must and may be taken into consideration in interpreting treaties. Article 31 of the Vienna Convention on the Law of Treaties sets out the general rules of interpreting treaties. Article 32 describes the supplementary means that may be employed in interpreting treaties. Article 33 envisions and provides for situations where a treaty has been authenticated in more than one language. These interpretational rules must be applied by all State Parties to the Arms Trade Treaty, as must all municipal and international courts and alternative dispute resolution fora when they settle disputes where State Parties are party to both the Arms Treaty and the Vienna Convention on the Law of Treaties.¹⁵ States that are not party to the Vienna Convention on the Law of Treaties are not under obligation to comply with these rules in interpreting the Arms Treaty. However, it is noteworthy that these

Obligation and enforcement held at the Kenya School of Law, Nairobi on September 6 -10, 2010, p. 18.

¹⁰Ibid., p 19.

¹¹ Ibid.

¹²Ibid., p 18.

¹³Ibid., p 19.

¹⁴UN Doc. A/Conf.39/27, adopted in Vienna on 23 May 1969. Entered into force on 27 January 1980;1155 UNTS 331.

¹⁵Supra , note 9, p. 3.

interpretational rules have shaped customary international law which must be applied in these situations.¹⁶

The provisions of Article 31 of the Vienna Convention on the Law of Treaties on ‘Good Faith and Ordinary Meaning of Terms’ are critical and relevant to this discussion and, thus, are the focus of this section. Article 31(1) sets out the general rule of interpreting treaties, that is to say, “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Examination of this rule reveals two principles. The first is the principle that all treaties must be interpreted in good faith. The good faith element of this principle suggests that States should take the necessary steps to comply with the object and purpose of the Arms Treaty.¹⁷ Thus, States may not invoke restrictions imposed by domestic law as justifications for not complying with the obligations set out in the Arms Treaty so long as the treaty was properly ratified and domesticated.¹⁸ This is explicit reference to *pacta sunt servanda*. *Pacta sunt servanda* is a basic principle of international law that while it does not equate with good faith, is related in good faith which required that that obligations be respected to accredit the obligations being provided for.¹⁹ This good faith principle, therefore, implies that a party to the Arms Treaty cannot invoke

¹⁶The bottom line is that the Vienna Convention on the Law of Treaties enjoys authoritative status in the realm of treaty law, and, particularly, interpretation and enforcement of treaties and it is relied upon invariably whether as where States are legally bound having ratified the treaty or not – as definitive of customary international law rules in the domain of treaty law.

¹⁷ Supra, note 9, p. 17.

¹⁸ Different legal systems set out different constitutional and statutory requirements for the ratification of a treaty including setting out the competent authorities that may ratify the treaty and the correct process of doing the same. See also Supra, note 9, Francis D. P. Situma offers a comprehensive and detailed explanation of the how treaties are made and enforced. Proper ratification and domestication may be understood to mean ratification by competent authorities and domestication of the treaty in accordance with constitutional and statutory requirements respectively(Mimeo).

¹⁹ Supra, note 9, p. 17.

provisions of its municipal as justification for a failure to perform its obligations under the treaty.

These are the two principles that will guide the interpretation of the substantive provisions of the Arms Treaty.

3.3 Prohibited Conduct under the Arms Treaty

The central objective of the Arms Treaty is to prohibit only a fraction of arms transfers. Prohibiting all arms transfers could undermine the pursuit of international peace and security.²⁰ What the Arms Treaty does is to provide that States must come up with criteria of distinction between legal and prohibited arms transfers to guide national arms export licensors.²¹

However, the Arms Treaty prohibits arms transfers that would constitute an offense against binding international obligations. Article 6 prohibits arms transfers that contravene United Nations Security Council embargoes and other international agreements relating to the international conventional arms trade, or would be used to commit grave international crimes.²² Article 7 requires an objective assessment of each arms transfer, and prohibits transfers even if not in violation of Article 6, if the State determines that the transfer poses an overriding risk of contributing to serious violations of international humanitarian or human rights law, including serious acts of gender-based violence or contraventions of international conventions relating to

²⁰ David Kopel, Paul Gallant, and Joanne D. Eisen. "The Arms Trade Treaty: Zimbabwe, the Democratic Republic of the Congo, and the Prospects for Arms Embargoes on Human Rights Violators." 114.3 *Pennsylvania State Law Review*(2010), pp.101-163.

²¹ Sears, Nathan A. "Controlling Small Arms and Light Weapons Proliferation: The Potential of the Arms Trade Treaty." 12 *Paterson Review of International Affairs* (2012), pp.35-59.

²²U.N. Doc. A/CONF.217/2013/L.3, at Art 6(3).

terrorism and transnational organized crime.²³

3.3.1 Prohibited Arms Transfers under Article 6

Article 6 of the Arms Treaty contains three major prohibitions. Article 6(1) prohibits States from authorizing the transfer of conventional arms in violation of measures, such as arms embargoes, adopted by the United Nations Security Council acting under Chapter VII of the Charter.²⁴ Article 6(2) prohibits a State from transferring arms in violation of international treaties and agreements relating to the transfer or trafficking of conventional arms. Article 6(3) prohibits arms transfers if the exporting State knows that the arms would be used to commit genocide, crimes against humanity, grave breaches of the Geneva Conventions, or other war crimes, including attacks directed against civilians.

Imposition of arms embargoes is a highly controversial subject. The United Nations Security Council (hereinafter referred to as ‘the Security Council’) has passed a number of arms embargo decisions which have had a direct effect on the circulation of small arms in specific jurisdictions as well as across the globe.²⁵ Embargoes are imposed to deny a particular state access to certain specified types or all kinds of arms, often with the aim of controlling the circulation of weapons when conflict is imminent or on-going, as arms are known to escalate conflict. For instance, the

²³Ibid., Art 7.

²⁴ See United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art 24(2) <http://www.refworld.org/docid/3ae6b3930.html> (Accessed 6 May 2015). The Security Council is given the responsibility to take necessary measures to control situations that threaten international peace and security including by taking such action as imposition of arms embargoes that prohibit all Member States from transferring certain weapons to the embargoed arms.

²⁵Based on the Charter of the United Nations, the Security Council may take measures to maintain international peace and security based on Chapter VII which include imposing an economic or arms embargo, and the use of force. For example, adoption of the UNSC Resolution 1970 of 2011 (SC/10187/Rev.1) imposed, among other sanctions, arms embargoes against Somalia. Other member States that have previously been subjected to arms embargoes include Somalia (1992), the National Patriotic Front of Liberia (NPFL), Libya (1992), Rwanda (1992), the Federal Republic of Yugoslavia (1996), Sierra Leone (1997), Afghanistan (1998), Eritrea and Ethiopia (2000), Iran (2006),

imposition of arms embargoes on Libya in 2011 by the UN was a measure of preventing the escalation of conflict in the country at that time.²⁶ However, these UN sanctioned embargoes have failed to control the flow of small arms.²⁷ Additionally, reports have been submitted by the United Nations Secretary General recommending to the Security Council various ways in which the UN can contribute to dealing with the question of illicit trade in small arms and light weapons.²⁸ Critics claim that embargoes are ineffective and have a low rate of compliance by States.²⁹ The reasoning is that since there are so many small arms available in the market, including the black and grey markets, embargoes will leave buyers with options of who to buy from. Therefore, they do not stifle purchases and supplies through clandestine/off-the-record government procurement or the black market. The reason for such ineffectiveness is that arms embargoes also have no impact on stockpiles of weapons accumulated before imposition of the embargo, by the combatants, and no Security Council arms embargo has included mechanisms for collecting and destroying the existing weapons. Where an area is already flooded with weapons, violence may continue even after an embargo is imposed.³⁰

Article 6(1) reaffirms the Security Council's authority over matters of international

²⁶U.N. Doc. SC/10200, UNSC Resolution 1973 of 2011 on the situation in Libya, adopted 17 March 2011.

²⁷Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1587 (2005), S/2005/625.

²⁸ See generally Report of the UN Secretary-General on Small Arms, S/2008/258, 17 April 2008, and Report of the Secretary-General on Small Arms, U.N. Doc. S/2011/255, 5 April 2011.

²⁹ See generally Jennifer L. Erickson "Stopping the legal flow of weapons Compliance with arms embargoes, 1981–2004," 50.2 *Journal of Peace Research* (2013), pp. 159-174. See also Michael R. Fowler, and Jessica Fryrear, "Collective Security and the Fighting in the Balkans," 30 *Northern Kentucky Law Review* (2003), p. 299. Fowler discusses how the arms embargo in the Balkans in 1992 prolonged the fighting rather than decreased it. Closer home, discussing how the arms embargo in the Balkans in 1992 only prolonged the fighting. The arms embargo imposed on Somalia since 1992 has not substantially cut off the availability of small arms there; the quantity and diversity of small arms available in Somalia are greater now than at any time since the early 1990s.

³⁰U.N. Doc. A/CONF.217/2013/L.3(2013), at Art 5(2).

peace and security, leaving the policy merits of imposing an arms embargo for the Security Council's determination, and clarifying that when an arms embargo is imposed, an arms transfer from a State's jurisdiction is an international wrong for which the Supplier State must account. Thus, the Arms Treaty links violation of Security Council arms embargoes to the legal implication of state responsibility. State responsibility under international law alludes to a level of accountability much higher than mere political responsibility, such that States have to be legally responsible for embargoes transfers from within their borders.

The Arms Treaty also requires States to establish national control systems and adopt measures to prevent small arms diversions.³¹ Thus, a Security Council arms embargo, before the Arms Treaty, was a negative command against transferring embargoed arms, but positive obligations to prevent wrongful arms transfers by private parties or unauthorized government officials went unspecified. Additionally, supplier States could not be penalized for involvement in the wrongful transfer if the transfer could be accounted for by the lack of a national infrastructure that could have worked to prevent the transfer. The requirements of the Arms Treaty impose positive obligations on State Parties to aid the prevention, minimization and remedy illicit transfers of small arms and light weapons.

3.3.2 Prohibition against Arms Transfers for Committing Grave International Crimes

“Grave international crimes” are disambiguated in Article 6(3) of the Arms Treaty as

³¹Ibid., Art 4.

the core crimes under the Rome Statute³² and prosecutable by the International Criminal Court. Article 6(3) extends responsibility for grave international crimes to the supplying State. States and their officials must, therefore, exercise more caution before authorizing transfer of arms. To escape liability, they must assess the transfer to ensure that the arms transferred are not intended for use in committing grave international crimes by the purchasing State. This is an important accretion to the law of state responsibility as authorization of such arms transfers constitutes commission of a newly pronounced international wrong which supplying States easily risk committing.

The key to establishing responsibility for this wrong is the requirement of “knowledge at the time of authorization.” The *knowledge* standard in Article 6(3) means that if an authorized official should have known about the possibility that transferred arms would be used to commit grave international crimes and still went ahead to authorize those transfers, then responsibility for an international wrong must follow.

Information produced by authorized official’s own inquiries; publicly available information, such as reports by the United Nations, other governments, the media and relevant publicists; information brought to the official by an outside source such as a non-governmental organization; and, circumstances which are as unusual as to put a reasonable official on notice of a suspicious purpose for a particular transfer should all inform the officials decision.

All this would suggest that if a wrongful activity is brought to official attention and

³²UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, <http://www.refworld.org/docid/3ae6b3a84.html> (Accessed 2 July 2015).

if relevant officials do not undertake reasonable measures to investigate and, if necessary, stop the authorization of that transfer, then the *knowledge* standard is satisfied. Failure to have an effectively operating export control system in place is no defense. In fact, it might be evidence of state responsibility for the wrongful transfer.

3.3.3 Prohibition on Arms Transfers that Contribute to Human Rights and Humanitarian Law Violations or to Violations of Terrorism and Crime Conventions

Negative consequences are defined as violations of (i) international humanitarian law; (ii) international human rights law; (iii) international conventions or protocols relating to terrorism; and (iv) international conventions or protocols relating to transnational organized crime.³³ Article 7 obliges States to assess all exports for their potential for negative consequences. If the exporting State determines that there is an overriding risk of such consequences, it shall not authorize the export.³⁴

Article 7 is a requirement for each State to consider certain implications every time it authorizes an arms transfer. Further, it requires each State to refuse to export arms that it determines to pose an overriding risk of the detailed negative consequences. This is not as strict as the prohibitions in Article 6. Where a reasonable *bona fide* assessment of the transfer and the surrounding circumstances indicates that there is even the slightest risk that the arms will be used in a wrongful manner, then, the State is required not to authorize the transaction. However, there is no obligation, simpliciter, to conduct the assessment. It follows that application of this provision will not result in liability for the supplying State where the importing State uses the

³³Ibid., Art 7(1)(b).

³⁴Ibid., Art 7 (1).

weapons to violate human rights or humanitarian law following proper assessment.

The threshold of assessment required by the Arms Treaty is that assessment be done “in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State.”³⁵ This obligation, for its lack of specificity, creates a challenge in specifying the checklist for establishing that a State has or has not complied with Article 7. However, at least it creates the baseline that all arms transfers have to be assessed to be considered legal.

The scope of Article 7 is far broader than that of Article 6(3). Article 6(3) is only concerned with the gravest international crimes which are specifically defined. Article 7 adds to Article 6(3) of the Arms Treaty by additionally requiring that State Parties assess the overriding risk of the arms export to contribute to any of the listed “negative consequences”. The Arms Treaty, in this respect, may be promising the success that environmental impact assessments have achieved in the domain of international environmental law. Both assessments require consideration of likely outcomes of engaging in a proposed activity must be officially done. While an assessment does not guarantee that the arms are not used wrongfully, it makes the authorizing of where the prospective use of the weapons is either in doubt or even slightly in contravention of the negative consequences. Additionally, the assessment removes the defense of ignorance.

The Article 7 assessment requirement will likely be complementarily executed with the Article 11(2) requirement that exporting States, in connection with any transfer of small arms, must assess the risk that the export could be diverted.

³⁵Ibid., Art 7(1).

From a technical standpoint, assessment means consideration of available and relevant information regarding all aspects of the transfer. The Arms Treaty covers the assessment requirement comprehensively by providing for extensive information gathering and exchange measures. For example, the importing State is required to provide relevant information to the exporting State to assist it in conducting its assessment.³⁶ On the other hand, the exporting State Party must ensure that it uses the information to conduct a befitting assessment, influencing the decision to issue an authorization ultimately resulting in the initiation of an export transaction.³⁷ Additionally, it must avail all appropriate information about the exported arms, upon request, to the importing State Party and the transit or trans-shipment States Parties.³⁸ In case the exporting State Party becomes aware of new relevant information after an authorization has already been granted, the Arms Treaty encourages is to cooperate with the importing State in reassessing the authorization.³⁹

3.4 Anti-diversion Measures

The illicit small arms and light weapons market is estimated to account for nearly half of all small arms and light weapons transactions.⁴⁰ For the purpose of determining state responsibility, it is important to differentiate between prohibiting certain authorized arms transfers and diversion of the arms.

³⁶Ibid., Art 8(1).

³⁷Ibid., Art 7(5).

³⁸Ibid., Art 7(6).

³⁹Ibid., Art 7(7).

⁴⁰ Ibid.

Diversion is the act of shifting small arms and light weapons from legal to illicit markets.⁴¹ It occurs through various channels and methods, depending on the type, age of the weapon, location, and the legal user's degree of control, among other factors.⁴² Often, transferors of illegal arms take advantage of trans-national smuggling networks, for instance, money-laundering, fanatical terrorism identity fraud, and human trafficking networks.⁴³ However, it is noteworthy that complacency of state officials also accounts greatly for illegal diversions.⁴⁴

The Arms Treaty's anti-diversion provisions serve to reinforce provisions already contained in the previous instruments, that is, the Palermo Protocol,⁴⁵ the United Nations Program of Action,⁴⁶ and regional and sub-regional instruments, as well as other measures taken by national, regional and international organizations to strengthen national law enforcement so as to make illegal trade in arms trading more difficult.

Article 9 requires that each State Party regulates the transit or trans-shipment of conventional arms through its territory where it deems such regulation to be necessary and practical. This provision reinforces the obligation in the Palermo Protocol that transit States must provide a written notice that there is no objection to

⁴¹ Mark Bromley, Pieter Wezeman, and Siemon Wezeman, Trends in International Arms Transfers, (Stockholm, Stockholm International Peace Research Institute, 2013) p. 22.

⁴² Ibid., p. 23.

⁴³ Ibid., p. 56.

⁴⁴ See generally Rachel Stohl, "Fighting the Illicit Trafficking of Small Arms," John Hopkins University School of Advanced International Studies Review- A Journal of International Affairs, (2005), p. 59.

⁴⁵ UN General Assembly Resolution 55/255, Protocol against Illicit Manufacturing of and Trafficking in Firearms, their Parts, and Components and Ammunition, Supplementing the UN Convention against Transnational Organized Crime, adopted 31 May 2001.

⁴⁶ United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, July 9–20, 2001, "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," U.N. Doc. A/CONF.192/15 (July 20, 2001).

the transit of arms through their territory.⁴⁷

Article 11 of the Arms Treaty prescribes measures to combat diversion of conventional arms listed in Article 2(1), in which category small arms and light weapons belong. According to Article 11(2), exporting States must assess the risks of diversion of a transfer of small arms and light weapons and consider establishing mitigation measures, such as “confidence-building measures or jointly developed and agreed programmes.”⁴⁸

Further, there is a blanket requirement on all States involved in the transfer, including exporting, importing, transit, and trans-shipment States to cooperate and exchange relevant information with the exporting State in order to mitigate the risk of diversion.⁴⁹ This includes intelligence regarding persons and organized groups of interest in the diversion, points of dispatch of illegal weapons, trafficking routes, the manner in which the weapons are concealed and their destinations.⁵⁰

The Article 11 requirement effectively denies exporting States the defense of ignorance, in that, they cannot claim that they did not know that the arms that were being exported were at risk of diversion. As a result, if small arms and light weapons are wrongfully diverted, the exporting State can only escape liability by proving that the assessment was, indeed, carried out and it was ascertained that there was no overriding risk of diversion, despite the fact that the diversion actually happened. Additionally, this requirement makes it harder for States to ignore the information on diversion provided by non-governmental organizations and other non-state actors

⁴⁷Ibid., Art. 10(3).

⁴⁸U.N. Doc. A/CONF.217/2013/L.3, Art 11(2).

⁴⁹Ibid., Art 11(3).

⁵⁰Ibid., Art 11(5).

based on their own independent research. Thus, the assessment process is an opportunity for exporting State Parties to make more transparent and informed decisions making it difficult for small arms and light weapons to end up in the wrong hands.

Besides the express anti-diversion provisions in Article 11, two additional measures in the Arms Treaty are likely to contribute to preventing diversion of small arms and light weapons. These include the provisions on regulating brokering; and those regarding information use.

(i) Regulating Brokering

Article 10 of the Arms Treaty requires each State Party to regulate small arms and light weapons brokering under its jurisdiction. A broker is “an agent employed to make bargains and contracts between other persons, in matters of trade, commerce.”⁵¹ The work of a broker is typically to negotiate and make arrangements for arms transactions. Brokers serve as the links to exporters and importers as well as local buyers and sellers in international arms transactions. They facilitate transport, logistics, warehousing, financing, insuring, and licensing of arms transfers.⁵² Put simply, brokers find the arms, mediate the commercial transaction, obtain necessary legal and other documentation, and ensure delivery.⁵³

As long as authorized users of small arms and light weapons continue to demand for weapons for use in internal security, defense and peace keeping missions among other uses, brokers will remain to be an essential element in the arms supply chain.

⁵¹ Black, Henry Campbell, *Black's Law Dictionary* [9thed, 2009], New York, Barnes and Noble, p. 256.

⁵² See generally, Ade Ebo, "Illicit Small Arms Brokering in West Africa: Beyond the Victim Paradigm." ECOWAS-Dutch Norwegian Conference on Combating Illicit Small Arms Brokering and Trafficking, Abuja. Vol. 22. 2004.

⁵³ Ibid.

However, a problem with brokering is that some brokers allow illegal purchasers to infiltrate their networks resulting in the diversion of small arms and light weapons.

For instance, the United Nations International Commission of Inquiry on Arms Flows to the Perpetrators of the Rwandan Genocide established that brokering activities were partly to blame for the illegal flow of arms to the perpetrators of the genocide in Rwanda.⁵⁴ Subsequent UN investigations on the violation of arms embargoes on Angola, the Democratic Republic of the Congo, Liberia, Sierra Leone and Somalia also made reference to brokering activities.⁵⁵

The Arms Treaty serves to reinforce the provision contained in the Programme of Action and the Palermo Protocol on regulating brokering. The Programme of Action requires Member States to develop national laws or administrative controls for arms brokers including setting up procedures for registering brokers, licensing or authorization of brokering transactions, and penalties for illicit brokering activities performed within the State's jurisdiction and control.⁵⁶ On the other hand, the Palermo Protocol requires the disclosure of identities of brokers who are involved in any arms import or export authorization.⁵⁷ This consistency in requiring the regulation of arms brokering in international legal instruments, means that this provision must be seen as emerging into a general principle of international law. It reinforces the notion of state responsibility for not adequately regulating arms brokers.

(ii) Use of Information

Record keeping and reporting obligations in Articles 12 and 13 of the Arms Treaty

⁵⁴See generally, U.N. Inst. Disarmament Resolution, „Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons—Scope and Implications, U.N. Doc UNIDIR/2006/23 (2006)

⁵⁵ Ibid.

⁵⁶UNPoA (2001), A/CONF.192/15, Part II, para 2.

⁵⁷ UN Doc. A/RES/55/255 (2001), Art. 15.

are the major enforcement and compliance mechanisms to prevent and eradicate diversion of conventional arms. Article 12 requires each State Party to maintain national records of all export authorizations it issues and actual transactions, including exports of arms, transfers to the territory as the final destination, and transit and trans-shipment of arms through its territory.

Article 13 of the Arms Treaty requires a reporting mechanism to the Secretariat within the first year after entry into force of the treaty,⁵⁸ and every succeeding year thereafter.⁵⁹ States are also encouraged to report to other States Parties through the Secretariat on the measures that have proved effective in addressing diversions.⁶⁰

There is no requirement in the Arms Treaty to record and report detected diverted arms. A record keeping and reporting mechanism is important in this realm, in order for States and international organizations to detect actors, routes, sources and destinations of the illegal diversions in order to ultimately prevent possible diversions and stop ongoing ones. In the absence of an express on record keeping and reporting in respect to diversion, the provision in Article 15(5) will be instrumental to a certain extent. Article 15(5) requires States to afford one another the “widest measure of assistance in investigations, prosecutions, and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.” This provision may be used to positively justify any positive anti-diversion measures States may take, including keeping records of detected diverted arms, sharing information on the same with other States as well as reporting to the

⁵⁸U.N. Doc. A/CONF.217/2013/L.3, at Art 13(1) This Article requires States to report on the measures undertaken to implement the provisions of the Treaty.

⁵⁹Ibid., Art 13(3) This Article requires States to report on authorized exports, actual exports and imports.

⁶⁰Ibid., Art 13(2).

Secretariat on it.

3.5 National Control Systems

The Arms Treaty provides for the development of national systems for the control of transfer of conventional arms. Article 5(2) requires each States Party to establish “a national control system including a national control list.”⁶¹ The provision does not provide any further details on the nature of such a control system. a few questions arise in that regard. Firstly, what benchmark shall be used to measure the degree of adequacy of a particular State’s control system? Will it enough if the national control system only controls one or a few of the categories of arms listed in Article 2?

The rationale behind leaving the provision in Article 5(2) so open was that States advocated and unanimously agreed that a one-size-fits-all approach for national control systems could not suffice.⁶² The argument advanced was that the type, manner and amount of arms transfers, among other parameters differ in different jurisdictions.⁶³ Further, the difference in legal and administrative systems was cited.⁶⁴ As a compromise, under the Arms Treaty, States have the discretion to implement a system of their choice. This could result in a wide variety of outcomes, ranging from the situation where a State establishes a control system that is entirely superficial to one where a State perfectly tailors its national control systems to its needs and resources.

The Arms Treaty also requires that “competent national authorities” are to be

⁶¹U.N. Doc. A/CONF.217/2013/L.3, Art 5(2).

⁶² See United Nations Conference on the Arms Trade Treaty, July 2–27, 2012, Compilation of Views on the Elements of an Arms Trade Treaty, at 27; U.N. Doc. A/CONF.217/2 (May 10, 2012).

⁶³ Ibid.

⁶⁴ Ibid.

designated⁶⁵ and national points of contact established.⁶⁶ The officials responsible for carrying out various implementation activities of the treaty should meet some minimal levels of competency and be accessible through the national points of contact to ensure that the national controls regulating small arms and light weapons transfers are effective and transparent.

It is clear from this examination that the Arms Treaty has many novel substantive provisions that make it an important contribution in control of the circulation of small arms and light weapons. Additionally, some of its provisions serve to reinforce provisions in the previous legal instruments discussed herein. While it is not a perfect document and has its shortcomings that may render it inadequate to regulate trade and to curb illegal trafficking in small arms and light weapons, it is clear that the treaty is a historic and momentous stride that is likely to make a difference in regulation of the trade in small arms and light weapons in the global sphere.

⁶⁵Ibid., Art 5(5).

⁶⁶Ibid., Art 5(6).

CHAPTER 4

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

In a nutshell, the small arms and light weapons problem is one that has called for an international regulatory structure. The Arms Treaty appears to be a promising contribution to this effort. The Arms Treaty builds upon a foundation of previous treaty obligations, general international law principles and customary international law to create a web of obligations whose implementation will enable the tracking of all transfers thus regulating them and preventing illicit transfers.

Prior to adoption of the Arms Treaty, various international legal modalities have matured as responses to the small arms problem before the Arms Treaty. The first international legal instrument to criminalize firearms trafficking was the United Nations Protocol against the Illicit Manufacturing and Trafficking of Firearms (hereinafter referred to as “the Palermo Protocol”).¹ The Palermo Protocol was adopted by the United Nations General Assembly to complement the United Nations Convention against Transnational Organized Crime,² propounding measures to control small arms, ammunition, parts, and components. The Palermo Protocol’s focus is on combating transnational organized crime, and therefore, it only propounds measures to control the illicit transfer of firearms. The Wassenaar Arrangement on Export Controls for Conventional Arms and dual-Use Goods and Technologies³ is the only other legal instrument that regulates small arms and light weapons specifically. The Wassenaar Arrangement is aimed at promoting transparency, and accountability

¹ 2326 U.N.T.S. 211 (2001).

² U.N. Doc. A/RES/25/255 (2001).

³ (1996), [hereinafter referred to simply as “the Wassenaar Arrangement”]

in transfers of conventional arms, among other goods, and technologies to prevent accumulations that could have destabilising effects. The Wassenaar Arrangement is an outstanding instrument that obliges Participating States to establish strict export controls, but does not provide for sanctions to establish liability for States in violations of its provisions. Additionally, the Wassenaar Arrangement's structure is a weak effort in regulation of small arms and light weapons as its membership is voluntary and non-obligatory. While it is not, in and of itself, a legal instrument, the United Nations Programme of Action to Prevent, combat and Eradicate the Illicit Trade in Small Arms and Light Weapons⁴ deserves special mention as it is the most accepted and implemented political document; even far more so than the two legal instruments discussed above. The Programme is considered the most successful small arms and light weapons regulation deed in force in the world at the moment.⁵ It requires Member States to set up the necessary legislative and administrative mechanisms to control the circulation of small arms, including their import, export, transit and retransfer, in order to prevent their manufacture, trafficking, and diversion to the wrong hands, and to cooperate by sharing information to bolster the regulation effort.

This study set out to determine, among other things whether the Arms Trade Treaty⁶ is sufficiently equipped to overcome the legal and institutional challenges that have rendered the past regimes ineffective in regulating the trade in small arms and light weapons. The answer lies in the approach that the Arms Treaty takes to regulate and tackle trafficking of small arms and light weapons. The Arms Treaty treats small

⁴ U.N. Doc. A/CONF.192/15 (July 20, 2001), [hereinafter referred to as "the Programme of Action"]

⁵ Cate Buchanan and Robert Muggah, No Relief: Surveying the effects of gun violence on humanitarian and development personnel, (Geneva, Centre for Humanitarian Dialogue, 2005), pp. 77-78.

⁶ U.N. Doc. A/CONF.217/2013/L.3 (hereinafter known as "the Arms Treaty").

arms and light weapons, under the blanket definition of ‘conventional arms’ as a subject upon which high common international standards for regulating transfer are established. The aim of the treaty is to contribute to international peace and security by regulating transfers to prevent and eradicate illegal transfers as well as legal transfers that are likely to be used to breach international law. Besides banning shipment of weapons in violation of current UN embargoes or other prevailing international law instruments,⁷ the treaty creates common standards, including international cooperation and assistance, to effectively implement its provisions with the aims of promoting international peace and security and general betterment of social, economic and humanitarian conditions.

The provisions contained in the text of the Arms Treaty would be sufficient to control the unregulated transfer of small arms and light weapons. Indeed, it is apparent that the treaty sets a rather high standard for such regulation, all factors being considered.⁸ The Arms Treaty urges States to, first of all, come up with criteria of distinguishing between legal and illegal arms transfers then provides for measures to regulate and curb illicit trade in small arms and light weapons. By doing this, the treaty nips the small arms and light weapons problem at the bud. Its implementation will ensure that the arms do not end up in the wrong hands, in the first place ensuring that they are not used wrongfully ultimately frustrating global peace and security.

That being said, it was clear in the negotiation stage of the Arms Treaty that State Parties to the current international regimes were not ready to enter into a legally binding regime to regulate trade in small arms and light weapons. This fact is

⁷ Ibid., Art. 6(2).

⁸ For instance the provisions of the treaty cannot be seen to infringe the principle of State sovereignty.

evidenced by the concessions removed from the final text of the treaty. Would the text of the treaty have been adopted without amendments, States would have been required to set up the legal, judicial and institutional measures to ensure enforcement and compliance to the treaty. These includes adopting measures to provide for the investigation and prosecution of those violating the treaty; take all necessary measures to prevent, counter, and prosecute corruption, as well as money laundering, by those within its territories or by its nationals; adopt legislation or other appropriate measures to ensure the ability to enforce the obligations of the treaty and to prohibit the transfer of arms from any location under that State's jurisdiction and control unless authorized in accordance with the Arms Treaty, and require an end-use certificate that provides assurance of the end-user's use of the arms issued by competent national authorities and bearing a unique serial number so that authenticity of the certificates is easily checked.⁹

These provisions were removed because States felt that the Arms Treaty should not micro-manage national implementation which should be left to each State.¹⁰ Indeed, such measures would have to an extent amounted to interference with the sovereignty and the sovereign rights of State Parties, that is, a violation of the UN Charter.¹¹ The removal of these provisions from the final text that was adopted means that the Arms Treaty's institutional structure is modest at best. States that currently have weak and ineffective legal and administrative measures are under no obligation to improve them. This represents a major loophole as, outside the auspices of the Treaty, States

⁹ OXFAM, National Implementation of the proposed Arms Trade Treaty: A Practical Guide, (2010), (Retrieved 29 5, 2015) http://www.oxfam.org/sites/www.oxfam.org/files/English_PATT_full_web.pdf.

¹⁰ ATT Thematic Statement, UN FIRST COMM. (2011), (Retrieved 29 5, 2015) <http://www.state.gov/documents/organization/194103.pdf>.

¹¹ Charter of the United Nations, 24 October 1945; 1 UNTS XVI; Art 2(7).

are not obliged to criminalize or punish violations of the treaty if the Treaty is implemented.

Secondly, the success of the Arms Treaty will largely be a political than a legal question. The proactiveness of its Conference of States Parties and the effectiveness of its Secretariat in promoting the implementation of its provisions at national level are key determinants of the treaty's success. Particularly, its Secretariat must put its foot forward and register a most assiduous commitment and effort towards implementation of the Arms Treaty. Under the treaty, the Secretariat is mandated with maintaining and availing a list of national points of contact and facilitating matching offers and requests for assistance and international cooperation. Therefore, to achieve any substantial international cooperation, the Secretariat must emerge into an information hub to enable the effective gathering and sharing of vital information rather than a passive distributor of reports that go unread and un-actioned upon.

A number of challenges may lower efficiency and effectiveness of the Arms Treaty's implementation. Firstly, the treaty's requirement that each State Party establishes and maintains a national control system to regulate arms export is problematic. The national control mechanism is meant to enable countries assess whether the arms could be used for human rights and international humanitarian law violations, diverted to the black or grey markets, or used to undermine international peace and security. The contention is that in most major arms exporting States, control systems already exist.¹² Be that as it may, these countries continue to export arms to destinations where it is likely that they are used for human rights and international humanitarian law

¹² The United States, all countries in the European Union, and a number of countries that follow EU regulations on arms trade all have such national control systems in place.

violations, diverted to the black or grey markets, or used to undermine international peace and security.¹³ As a result the Arms Treaty is only likely to impact arms trade between smaller countries. The Arms Treaty's provisions might, at best, provide for financial and technical support in the setting up of national control systems in countries where these systems are not already existent. While this is definitely an important step, a lot of the arms transferred illegally have their source in legitimate trade from the major arms exporters and the Arms Treaty is unlikely to effectively prevent or eradicate that situation.

Secondly, the obligations under the Arms Treaty seem to be intentionally formulated in a manner that leaves plenty of room for interpretation. The Arms Treaty's liberal use of qualifying language such as, 'where appropriate', and 'pursuant to their national laws',¹⁴ makes the fulfillment of these obligations too dependent on the interests and policies of States. This means that if the treaty does not receive the international community's unwavering commitment it will not be as effective in combating the devastating impacts of illicit small arms and light weapons. The case of arms trade between the United Kingdom and Libya is good example. While negotiation of the Arms Treaty was being concluded in New York, British Ministers of trade and foreign affairs were on their way to Libya, to negotiate trade in arms.

In the same vein, a criterion for the conduct of Articles 6 and 7 assessments is not provided in the treaty. The criterion that assessments should be done "in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State," is far too open. In other instances some

¹³ Pakistan, Saudi-Arabia, Libya, Israel, Egypt, Bahrain, Colombia and Sri Lanka are among the largest importers of those arms.

¹⁴ See generally U.N. Doc. A/CONF.217/2013/L.3, Arts 6-7.

key requirements are not consistently replicated through the treaty. Additionally, the Arms Treaty does not require State Parties to check transited or trans-shipped arms against national or international records to find out if they have been diverted. The obligations under Article 11 only operate in the odd chance that State officials stumble upon diverted arms, probably in the course of operations. Once those arms are detected, there is no obligation to trace them to their source or to where they might have been diverted from or by whom. There is not an obligation to destroy the arms or even to stop them from reaching a criminal recipient. Additionally, while the Arms Treaty requires that each State Party must maintain national records of its exported small arms and light weapons and maintain records of transited or trans-shipped arms, there is no requirement that States which have detected diverted small arms and light weapons check them against the records of other States Parties or inform the arms treaty Secretariat of the detected diverted arms. Such provisions would guide States in effective implementation of the Arms Treaty.

Thirdly, State support for the Arms Treaty seems to be at best, weak. For instance, in 2012, the British Government, which is known to be the biggest supporters of the Arms Treaty, sent a junior minister to the negotiations while at the same time sending a delegation of 15 high-flying ministers to an air show.¹⁵ Besides Great Britain, the United States, Russia and China do not consider the Arms Treaty to be in their best national interests, and therefore, do not support the Arms Treaty.¹⁶

Fourthly, the Arms Treaty does not provide for a prosecution or extradition, and it does not oblige sharing of records or other types of evidence between States. The

¹⁵ Ann Feltham, "Why an Arms Trade Treaty won't stop the Arms Trade," Open Democracy 18 00, 2013 (Accessed 08 05, 2015) <https://www.opendemocracy.net/opensecurity/ann-feltham/why-arms-trade-treaty-wont-stop-arms-trade>.

¹⁶Ibid.

Arms Treaty focuses its provisions on requiring an exporting State to stop the transfer of arms to the importing State and regulate the trafficker being a broker. The question of establishment of criminal jurisdiction over brokers is left unanswered.

Given these challenges, the success of the Arms Treaty will be measured not by how many direct barricades it places in illegal arms transfer networks but by how much it raises the profile of arms regulation and institutionally empowers nations to control the flow of conventional arms, including small arms and light weapons. At the very least, the people who will be able to benefit from the provisions of the Arms Treaty are those that will be in a fortunate position keep their governments accountable, and change foreign policy regarding arms trade from one that supports trade and its economic interest, to one that fully supports international peace and security by all means possible.

4.2 Recommendations

This study recommends a number of institutional measures to ensure that the best effort is made to make the implementation of the treaty is successful.

It is crucial that the Arms Treaty gets as much institutional support as possible to promote its implementation. The effort of the United Nations and other international, regional and national non-governmental organizations, as well as, national governments' commitment to the implementation of its provisions will guide its success.

To that end one of the actions that may be taken on all levels is to empower already existing institutions whose agenda is in line with the Arms Treaty's objectives to implement the Arms Treaty. Institutions like UN Office of Drugs and Crime, and the

UN Office of Disarmament Affairs whose agenda overlap with the Arms Treaty's anti-diversion objective should support the Arms Treaty's effort.¹⁷ The UN Office of Drugs and Crime is responsible for enhancing law enforcement, cooperation, confiscation of assets, and international cooperation in criminal matters. On the other hand, the UN Office of Disarmament Affairs creates transparent and accountable points of contact regarding conventional arms trade that are crucial to ensuring that the Arms Treaty is respected and upheld. These institutions could enter into memoranda of understanding with the Arms Treaty's ratifying States to give them the mandate to implement some of the treaty's provisions that relate to their mission and core objectives.

A complementary and alternative action is the establishment of new institutions and organizations in the spirit of offering support to State Parties in the implementation of the treaty are quintessential. The UN has led the way by setting up the UN Trust Facility Supporting Cooperation on Arms Regulation ("UNSCAR") as a flexible funding mechanism sponsored by a variety of donors whose aim is to improve cooperation and coordination in the ratification and implementation of the Arms Treaty.¹⁸ While this already established institution is to offer financial support to developing and under-developed nations to implement the Arms Treaty, more institutions need to emerge to provide political, technical and further economic support across the board or where necessary, to specific groups of nations.

¹⁷ See generally, Eric Rosand, Alistair Millar, and Jason Ipe. Civil Society and the UN Global Counter-Terrorism Strategy: Opportunities and Challenges. (Center on Global Counterterrorism Cooperation, New York, 2008).

¹⁸ See Lia Petridis Maiello, "UN- Initiative UNSCAR: Helping Smaller Nations Implement the Arms Trade Treaty" Huffington Post (7 10, 2013) huffpost.com/us/entry/4045529 (Assessed 2 7, 2015).

Should that kind of institutional support be replicated on the international, regional, sub-regional and national levels a number of outcomes will suffice that are likely to cancel out the challenges discussed herein. Firstly, the profile of the Arms Treaty will be raised, and this is likely to ripple into further political support for the treaty. It's Conference of Parties, Secretariat, as well as individual ratifying States proactiveness will empower the treaty even further to control the flow of conventional arms.

Secondly, institutional support is likely to result in a gradual effort to fill in the gaps left by the Arms Treaty, for instance in regard to prosecution an expedition. We may see regional and sub-regional organizations as well as individual States using the support of the institutions to formulate and adopt legal instruments, to support the implementation of the Arms Treaty.

BIBLIOGRAPHY

Books

Black, Henry Campbell, Black's Law Dictionary 9thed, (Barnes and Noble, New York, 2009).

Denise Garcia, Small Arms and Security: New Emerging International Norms(Routledge, New York, 2006).

Elmer Driedger, Construction of Statutes, 2nd ed. (Butterworths Ltd., Toronto, 1983).

Hans Kelsen, General Theory of Norms (Hartney trans., Oxford, 1990).

Ian Brownlie, Principles of Public International Law, 7th ed., (Oxford University Press, Oxford, 2008).

Mark Bromley, Pieter Wezeman, and Siemon Wezeman, Trends in International Arms Transfers, (Stockholm International Peace Research Institute, Stockholm, 2013)

Mark Kelman, A Guide to Critical Legal Studies, (Harvard University Press, Boston, 1987).

Eric Rosand, Alistair Millar, and Jason Ipe, Civil Society and the UN Global Counter-Terrorism Strategy: Opportunities and Challenges. (Center on Global Counterterrorism Cooperation Press, New York, 2008).

Zeray Yihdego, The Arms Trade and International Law. (Hart Publishing, Oxford, 2007).

Chapters in text books

Robert Mungah, "Moving Forward? Assessing Normative and Legal Progress in Dealing with Small Arms," in Thomas J Biersteker et al (eds) International Law and International Relations: Bridging Theories and Practices (Routledge, New York, 2007).

Thomas Naylor, "The Rise of the Modern Arms Black Market and the Fall of Supply-Side Control." in Frank Cass (ed.), Combating Transnational Crime: Concepts, Activities and Responses (Oxford University Press, London, 2001)

Journal Articles

Barry Kellman, "Controlling the Arms Trade: One Important Stride for Mankind," 37 Fordham International Law Journal 687 (2014).

Jennifer L. Erickson, "Stopping the Legal Flow of Weapons Compliance with Arms Embargoes, 1981–2004." 50.2 Journal of Peace Research 159 (2013).

Michael Fowler and Jessica Fryrear. "Collective Security and the Fighting in the Balkans." 30 Northern Kentucky Law Review 45 (2003).

Harold Hongju Koh, "A World Drowning in Guns", 71 Fordham Law Review 33 (2003).

David Kopel, Paul Gallant, and Joanne D. Eisen. "The Arms Trade Treaty: Zimbabwe, the Democratic Republic of the Congo, and the Prospects for Arms Embargoes on Human Rights Violators." 114.3 Pennsylvania State Law Review 101 (2010).

Matt Schroeder and Guy Lamb, "The Illicit Arms Trade in Africa: A Global Enterprise," 1 African Analyst69(2006).

Michael Beck, "Reforming the Multilateral Export Control Regimes," 7.2 Non Proliferation Review91 (2000).

Rachel Stohl, "Fighting the Illicit Trafficking of Small Arms," 25.1 John Hopkins University School of Advanced International Studies Review- A Journal of International Affairs, 59 (2005).

Richard Steinberg & Jonathan Zasloff. "Power and international law," 100 American Journal of International Law 64 (2006).

Nathan A. Sears "Controlling Small Arms and Light Weapons Proliferation: The Potential of the Arms Trade Treaty." 12 Paterson Review of International Affairs35 (2012).

Official Documents

European Union, European Union Working Paper of the Outcome of the Conference on the UN Programme of Action to Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects"(24 7, 2012),

UN, "Arms Trade Treaty: Treaty Status". 4 6, 2013 https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&lang=en (Last assessed 30 6, 2015).

UN, "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects" U.N. Doc. A/CONF.192/15 (20 7, 2001),

<http://www.un.org/events/smallarms2006/pdf/N0150720.pdf> (Retrieved 24 9, 2014).

UN, "Status of Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition".

UN, "United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," 9–20 7, 2001.

UN, "United Nations General Assembly Session 61 Verbatim Report 67," U.N. Doc. A/61/PV.67 page 31. (6 12, 2006).
http://www.un.org/ga/search/view_doc.asp?symbol=A/61/PV (Retrieved 30, 10 2014).

UN, "United Nations Secretary-General Statement 1491, States vote overwhelmingly for ground-breaking Arms Trade Treaty".

UN, Common Position 2008/944/CFSP Defining Common Rules Governing Control of Exports of Military Technology and Equipment catering for the European Union and the Inter-American convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and other Related Materials, Organization of American States; 2029 UNTS 55.

UN, Reference: C.N.630.2014.TREATIES-XXVI.8 (Depositary Notification)". 25 9, 2014 <https://treaties.un.org/doc/Publication/CN/2014/CN.630.2014-Eng.pdf>.

UN, Report of the UN Secretary-General on Small Arms, 17 April 2008 U.N. Doc. S/2008/258)

UN, Report of the Secretary-General on Small Arms, 5 April 2011 U.N. Doc. S/2011/255.

United Nations Institute on Disarmament Resolution, “Developing a Mechanism to Prevent Illicit Brokering in Small Arms and Light Weapons—Scope and Implications,” U.N. Doc UNIDIR/2006/23 (2006)

UN General Assembly, “Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime,” 31 May 2001, U.N. Doc. A/RES/55/255.

UN, United Nations Conference on the Arms Trade Treaty, July 2–27, 2012, Compilation of Views on the Elements of an Arms Trade Treaty, 10 May 2012, U.N. Doc. A/CONF.217/2.

UN, United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Aug. 27–Sept. 7, 2012, Annex I: 2012 Declaration, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons, 18 September 2012, U.N. Doc. A/CONF.192/2012/RC/4.

United Nations General Assembly Resolution 61/89, ‘Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms,’ 6 December 2006, U.N. Doc. A/RES/61/89.

United Nations General Assembly Resolution 63/240, ‘Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms,’ 23 December 2008, U.N. Doc. A/RES/63/240.

United Nations General Assembly Resolution 64/48, ‘The arms trade treaty,’ 2 December 2009, U.N. Doc. A/RES/64/48.

United Nations General Assembly Resolution 67/234, ‘The arms trade treaty,’ 24 December 2012, U.N. Doc. A/RES/67/234.

United Nations, “Status of Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.”

United Nations Security Council Resolution 1973 (2011), “Report of the Monitoring Group on Somalia pursuant to Security Council Resolution 1587 (2005),” U.N. Doc. S/2005/625.

Wassenaar Arrangement, “The Wassenaar Arrangement On Export Of Conventional Arms And Dual-Use Goods And Technologies,” 12 June 2012.

Wassenaar Arrangement, “Best Practice Guidelines for Exports of Small Arms and Light Weapons,” (2007).

Wassenaar Arrangement, “Guidelines & Procedures, Including the Initial Elements,” (2011).

Reports

Human Rights Watch, “Cote d’Ivoire, They Killed Them like It Was Nothing: The Need for Justice for Côte d’Ivoire’s Post-Election Crimes (Human Rights Watch, New York, 2011),

Richard Grimmett and Paul Kerr, “Conventional Arms Transfers to Developing Nations, 2004–2011,” (Congressional Research Service, Washington D.C., 2012).

Small Arms Survey, “Small Arms Survey 2011: States of Security” (Cambridge University Press, Cambridge, 2011).

OXFAM, “National Implementation of the proposed Arms Trade Treaty: A Practical Guide,” (2010).

https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/English_PATT_summary_web_11.pdf (Last accessed 17, 2015).

Chapters in reports

Maria Haug, “Crime, Conflict and Corruption: Global Illicit Small Arms Transfers”, in Graduate Institute Of International Studies, Small Arms Survey 2001: Profiling The Problem 165- 168 (Peter Batchelor & Keith Krause eds.) (Cambridge University Press, Cambridge, 2001).

Sarah Parker, “Devils in Diversity: Export Controls for Military Small Arms,” in Small Arms Survey 2009: Shadows of War 60-105 (Cambridge University Press, Cambridge, 2009).

Stockholm International Peace Research Institute (SIPRI), “Trends in the Arms Industry,” in Stockholm International Peace Research Institute, SIPRI Yearbook 2011 (Oxford University Press, New York, 2011).

Unpublished works

Ade Ebo, 'Illicit Small Arms Brokering in West Africa: Beyond the Victim Paradigm', (A paper presented at the ECOWAS-Dutch Norwegian Conference Combating Illicit SmallArms Brokering and Trafficking' in Abuja on 22 3, 2004).

Francis D. P. Situma, Treaty Making and Enforcement, (A Presentation made for the Council of Legal Education/Kenya School of Law Training Programme on Treaty Making, International State Obligation and enforcement held at the Kenya School of Law, Nairobi on September 6 -10, 2010).

Hathaway A.Oona, et al., Arms Trafficking: The International and Domestic Legal Framework 4 (2011) (unpublished report, Yale Law School), *available at* http://www.law.yale.edu/documents/pdf/cglc/YLSreport_armsTrafficking.pdf [Last retrieved 29 5, 2015]

Databases

Stockholm International Peace Research Institute Arms Transfer Database (SIPRI), *Top List TIV(trend-indicator value) Tables, years 1950–2013*, <http://armstrade.sipri.org/armstrade/page/toplist.php> (Last assessed 5 11, 2014).

Websites

Campaign against Arms Trade, "Arms Trade Treaty," (30 4, 2013), <http://www.caat.org.uk/issues/att/> (Last assessed 27 03, 2015)

Clare da Silva, "Arms Trade Treaty Shows Remarkable Progress," JURIST - Hotline (1 May 2013), <http://bit.ly/XkDeWD> (Last assessed 29 05, 2015).

Glenn McDonald "Worth the Paper? The Arms Trade Treaty." E-International Relations (17 4, 2013), <http://www.e-ir.info/2013/04/17/worth-the-paper-the-arms-trade-treaty/> (Last assessed 29 11, 2014).

Jerome Taylor & Eric Short, "UN approves global arms trade treaty - but how effective will it be?" 03 04, 2013, <http://www.independent.co.uk/news/world/politics/un-approves-global-arms-trade-treaty--but-how-effective-will-it-be-8558664.html> (Last assessed 29 5, 2015)

Kirk Jackson, "The Arms Trade Treaty: A historic and momentous failure," Ceasefire Magazine (29 April 2013), <http://bit.ly/1tyDQ8j> (Last assessed 29 05, 2015).

Lia Petridis Maiello, "UN- Initiative UNSCAR: Helping Smaller Nations Implement the Arms Trade Treaty" Huffington Post (7 10, 2013) huffpost.com/us/entry/4045529 (Assessed 2 7, 2015).

Ray Acheson, "The ATT: a start to challenging the status quo," Arms Trade Treaty Monitor, 6(11) Reaching Critical Will of WILPF and GAPW (2 April 2013; 2013d), <http://bit.ly/1o9aUjD> (last assessed 29 05, 2015).

Sean Gallagher, "Arms Trade Treaty Shows Remarkable Progress," JURIST - Hotline (1 May 2013) <http://jurist.org/hotline/2013/05/clare-da-silva-arms-trade.php> (Last assessed 29 5, 2015)

Talbot Rohan, "How the Arms Trade Treaty Could Prevent Future Syrias," The guardian, (27 3, 2013), <http://www.theguardian.com/commentisfree/2013/mar/27/arms-trade-treaty-prevent-future-syrias> (Last assessed 19 10, 2014).

Jerome Taylor and Eric Short, "UN approves global arms trade treaty - but how effective will it be,"(03 04, 2013), <http://www.independent.co.uk/news/world/politics/un-approves-global-arms-trade-treaty--but-how-effective-will-it-be-8558664.html>(Last assessed 16 07, 2014).

Wendela de Vries, "We have an Arms Trade Treaty - What difference does it make?"War Profiteers' News 38. (War Resisters' International, 2013), <http://bit.ly/WPI5zf>(Last assessed 1 7, 2015).