



ARMS TRANSFER CONTROLS

THE EXAMPLE OF FRENCH-SPEAKING
STATES IN SUB-SAHARAN AFRICA

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Introduction

In 2012, the United Nations will be organising an International Conference on the Arms Trade Treaty (ATT). Prior to the conference, a Preparatory Committee will meet up for four sessions, to make recommendations to the future UN Conference, “on the elements that would be needed to attain an effective and balanced legally binding instrument on the highest possible common international standards for the transfer of conventional arms”¹. Implementation of these common standards should help to ensure a certain level of coherence in the decisions made by the states on whether arms transfers should be authorised or not. At the same time, it is also hoped that the arbitrary nature and lack of transparency in these decisions will therefore become less apparent. Regulating the international arms trade, particularly the process for assessing and granting transfer authorisation/licences, is also expected to help reduce the number of irresponsible and, indirectly, illegal transactions².

The international community now recognises that the absence of international standards, “is a contributory factor to armed conflict, the displacement of people, organized crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development”³. This description corresponds to the difficulties that the African continent has encountered throughout its history and which it still has to confront today. These difficulties involve wars of independence, more recent conflicts or post-conflict situations and/or those linked to the existence of non-state armed groups. The irresponsible transfer of conventional weapons⁴ and the excessive accumulation of these weapons by certain states, combined with the fact that these arms are sometimes diverted to inexpedient recipients, have undeniably affected this situation and will continue to do so.

Establishing common international standards on the transfer of arms requires prior knowledge of the regulation and practices currently in force at national level. This is even more the case in parts of the world, which, like Africa, have been particularly affected by these disastrous illicit arms transfers. This analysis helps to provide an

understanding of the strengths and weaknesses in this regulation and procedures. It also takes into account the different aspects involved in the ATT negotiations and aspects that need to be enhanced in order for these systems to fully function.

This study analyses the national conventional arms control systems in twenty-two French-speaking states in sub-Saharan Africa: Benin, Burkina Faso, Burundi, Cameroon, the Comoro Islands, Ivory Coast, Djibouti, Gabon, Guinea, Equatorial Guinea, Madagascar, Mali, Mauritania, Niger, Central African Republic (CAR), Democratic Republic of the Congo (DRC), Rwanda, Senegal, the Seychelles, Chad and Togo⁵. The first part of the study outlines the role played by these states in the international arms trade. The national arms control systems are then analysed by comparing the regulation, legislation and procedures in place in each of the sixteen countries for which information is available⁶. In the third part of the study, the four regional legal instruments on Small Arms and Light Weapons (SALW)⁷ in Africa are presented, as well as the possible impact on conventional arms-related issues. Finally, the main challenges confronting these countries in the context of ATT negotiations are tackled.

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I. Africa and arms transfers

It is very difficult to accurately assess the role played by French-speaking Sub-Saharan Africa states in the international arms trade because information on this subject is disparate and incomplete. Although it has been established that these countries import military material, data on their production capacity and exports is particularly scarce. It is likely that the quantity of these transfers to and from these countries, on a global scale, is insignificant. Despite this, some of these transactions have had and continue to have significant ramifications on regional security and socio-economic development. These countries have also frequently been at the centre of irresponsible or illegal transfers.

Imports of conventional weapons and SALW from the states examined are partly documented and quantified. According to the SIPRI database on arms transfers, governments from this region imported military equipment worth USD 949 million between 2000 and 2009 (see Annex I)⁸. The United Nations Register on Conventional Arms also identifies a variety of conventional weapons and SALW imports for the same period⁹. Nonetheless, the end-use and the end-users of the arms acquired often remain obscure and it is very difficult to assert that the weapons delivered are not redistributed afterwards or appropriately protected and stockpiled, to prevent them being stolen or diverted¹⁰. Quantifiable information on exports from the states examined is almost inexistent and there is little data on the production of arms in Sub-Saharan Africa. South Africa and Nigeria are often identified as the main producers and exporters of arms. Other exclusively English-speaking states are also part of this equation: Kenya, Uganda, Tanzania and Zimbabwe¹¹. Arms production capacity of French-speaking western and central Africa is very limited and is likely to be based on imported technology¹². Information on the industrial manufacturing of SALW and their ammunition in these states is quite scarce. Between 1997 and 2006, factories manufacturing small arms, light weapons and their ammunition, were identified in Burkina Faso, Cameroon, Guinea and the Republic of the Congo¹³. To a lesser extent, the development of a small-scale cottage industry over recent years has

led to an increase in small arms flows within these national territories and from one African country to another¹⁴.

One of the major obstacles obscuring a clear depiction of arms production and transfers to and from these countries is the lack of transparency in these states. Their low and irregular rate of participation in the United Nations Register on Conventional Arms reveals a deep-rooted culture of secrecy in some African government departments with regard to the question of arms¹⁵.

Despite there being practically no data on production and exports from these states, it should be underlined that many of them have accumulated large, indeed disproportionate arms stockpiles since their independence (mainly SALW and ammunition)¹⁶. From a strictly economic point of view, it is more profitable for these countries to exchange surplus stocks rather than destroy them. Therefore, in 2002, Angola sold Soviet manufactured T-55 battle tanks¹⁷ to the Ivory Coast (at the time, in the throes of civil war). During the “Second Congo War”, Congolese government forces mainly obtained arms from Zimbabwe but also from Angola, Namibia and Chad, while the rebel groups were supplied by Uganda and Rwanda. Most of these weapons were manufactured in Central and Eastern Europe and Asia and not in these African countries themselves¹⁸.

In addition to the question of stockpiling, the number of “irresponsible” exports or re-exports to and from French-speaking Sub-Saharan Africa is relatively high¹⁹. Therefore, at the beginning of the current century, the conflict in the Ivory Coast (subject to a United Nations embargo since 2004) was fuelled by the delivery of arms to local rebel groups by Liberia²⁰. In the DRC (subject to an embargo since 2003)²¹, the United Nations Group of Experts responsible for monitoring sanctions accused Rwanda on several occasions of having violated the arms embargo by supplying weapons to rebel groups²². In 2010, the Group of Experts examined information regarding arms trafficking networks operating between Tanzania, Burundi and the DRC²³. The Group of Experts on Sierra Leone also highlighted the existence of arms supply routes to the Front révolutionnaire uni (RUF) through Burkina Faso, Niger and Liberia. In the Group of Experts’ 2000 report, a Burkina Faso general is mentioned on several occasions as the person in charge

of financial transactions and diamond and arms transfers between the RUF, Liberia and Burkina Faso²⁴. In 2006, the Monitoring Group on Somalia (created three years earlier to specifically focus its action on arms embargo violations) exposed Djibouti government involvement in supplying military uniforms and medicines to an opposition group, the Union of Islamic Courts (UIC) and its use of an Djibouti Airlines aeroplane to this end²⁵. Conflict in the Sudanese region of Darfur led to the introduction of an arms embargo. Armed groups in the area have benefited from arm supplies from the Chad government, which has subsequently been involved in a “war by proxy” with the Sudan. The Group of Experts reported a typical case of “triangulation”. Small arms were delivered to the Chad armed forces (including assault rifles and ammunition exported by Israel and Serbia between July and September 2006). These arms fell into the hands of the National Redemption Front (NRF) and then the Movement for Equality and Justice (MJE) in Darfur in March 2007 and July 2008²⁶.

Different reports by the United Nations Group of Experts emphasise that some states’ transfer documents were regularly used in irresponsible transfers of arms. This mainly involves the End-User Certificate (EUC) in certain countries, where it is apparently easy to falsify²⁷. Certain documents from Burkina Faso and Guinea were used inappropriately or falsified in arms transfers to countries under embargo, such as Sierra Leone and Liberia. In 1999, for example, Burkina Faso issued an EUC authorising a Gibraltar-registered broker to obtain around 68 tonnes of military equipment and ammunition. The Group of Experts demonstrated that this material was subsequently re-exported from Burkina Faso to Liberia²⁸. In 2001, the Group of Experts also obtained copies of forged Guinean End-User Certificates used by East European nationals operating in Guinea and involved in busting sanctions imposed on Liberia²⁹.

On 1 October 2010, three French-speaking Sub-Saharan African countries were subject to partial or total sanctions on arms transfers imposed by international and regional organisations: the Ivory Coast and the Democratic Republic of the Congo (UN) and Guinea (the Economic Community of West African States and the European Union)³⁰.

II. Analysis of national arms transfer control systems

This chapter analyses national arms transfer control systems by comparing regulation, legislation and current procedures in practice in 16 countries for which information is available (see Annex II for a list of national regulation examined)³¹. It particularly focuses on aspects of the control systems likely to be at the centre of negotiations during meetings of the Preparatory Committee of the International Conference on the ATT: the categories of arms covered; the kind of transaction and activities covered; procedures and practices involving authorisation/licenses linked to operators and operations, the documents used, the criteria taken into account during prior assessment of a transfer, simplified procedures and monitoring and follow-up mechanisms; sanctions and responsible bodies (see Annex III for a comparative table of the main aspects contained in the national regulation examined). Certain specific points in these national control systems are then analysed.

1. Outmoded and incomplete regulation

Although there are significant national differences according to the region of the continent (particularly between Central and West Africa), two commonalities should be underlined: regulation in all regions is often outmoded and incomplete³².

Much of the regulation was drafted shortly after these countries achieved independence³³, whilst other laws date from before independence³⁴.

Certain regulation was drafted or updated during the 1990s³⁵ and during the first few years of the new century³⁶ but failed to take into account recent developments in international standards on SALW and arms transfers. This regulation is often incomplete or only covers certain kinds of weapons (such as firearms) or activities (imports, for example). Provisions in this legislation are sometimes obsolete. In Djibouti, import authorisations should, in theory, be granted by the Governor General, a post that disappeared when the former French colony gained independence.

Although this state of affairs depends upon the ability and determination of each state to amend

its legislation on such a sensitive subject, recent developments involving standards in sub-regions of the continent also have a binding effect on states to update their respective regulation. In many of these countries, draft amendments to legislation were launched following negotiations of regional legal instruments on SALW. In West Africa, the majority of National Commissions on SALW recently decided to freeze these updating processes, whilst awaiting publication of the Guide for the Harmonisation of National Legislation of States in the Sub-region, which should help facilitate the task of the national authorities (see Chapter III).

Recent experience, however, demonstrates that a cautious approach is required. Certain states have amended their national regulation in an effort to comply with commitments made at a regional level³⁷. Nonetheless, several of them have clearly failed to take into account all of the provisions in the appropriate legal instrument. This is, for example, the case with Burundi, which has not provided details on the mechanism for granting import/export licences or the criteria that should be taken into account when making prior assessments of the appropriateness of a specific transfer. This is, however, recommended by the Nairobi Protocol, to which Burundi is a state party.

2. Arms categories covered

A minor part of the national regulation examined seeks to provide comprehensive coverage of conventional arms³⁸. In general, there are two examples of this kind: legislation covering conventional arms, apart from those for the security forces or regulation exclusively covering firearms (and excluding other kinds of conventional weapons).

In many French-speaking Sub-Saharan African countries, the arms held by the security forces (and sometimes by other public forces maintaining security and order) are not included in the scope of national legislation on arms and ammunition³⁹. These arms are therefore covered by separate texts, to which public access is extremely difficult or indeed impossible. Whatever the reason for this is (culture of secrecy at some government departments or inadvertent communication-related problems), this almost total lack of transparency drastically limits information that other countries, industry, civil society or even other national authority re-

representatives can obtain about what is likely to be the bulk of arms transferred to and from the countries concerned⁴⁰.

Some of the regulation appears to exclusively focus on firearms (and in some cases, bladed weapons) but does not take into account other conventional weapons⁴¹.

The definition of arms categories varies significantly from one country to another. It is rare for two states to adopt a similar listing. Moreover, this is generally very rudimentary and ranges from the category of, “all arms”⁴² and even “arms and ammunition of any kind”⁴³ to a relatively complex subdivision: the Ivory Coast has therefore created eight different categories⁴⁴, whereas the Democratic Republic of the Congo has established nine of them⁴⁵. In these two states, categories are divided between “warfare materials” and “arms and ammunition not considered for warfare”.

It is interesting to note that all the different countries examined have included ammunition in the articles covered by the regulation. In most of these cases, the parts, elements and components of the weapons are also included. One national regulation analysed contains an explicit reference to anti-personnel mines and implementation of the International Anti-Personnel Landmines Convention of 1997⁴⁶.

None of the regulation examined covers dual-use goods and technology or intangible transfers. This can partly be explained by the fact that some of this legislation in many cases is very old.

3. Transactions and activities covered

Main activities: imports, exports and transit

All of the national regulation analysed covers arms imports affected by legislation. This is not the case with exports, which are sometimes totally absent from national regulation⁴⁷. There are two explanations for this. According to a very widespread but, nonetheless, misguided opinion (see Chapter 1), African countries do not manufacture weapons and therefore do not export them. Legal provisions on the subject would therefore be superfluous. Some of the legislation in these countries only focuses on arms for civilian use: due to socio-economic conditions, the latter would be even less likely to export arms than the state authorities. Little of the legislation covers the question of transit⁴⁸.

Notions about imports and exports are rarely defined other than in legislative texts distinguishing these notions and those on entry/exit⁴⁹.

Any mention in regulation regarding transit, fails to define what transit actually is. It therefore remains difficult to distinguish between strictly transit or trans-shipment cases. The law in force in the DRC regulates transit but does not define what this is. Application requirements (established during the same year as the law), however, use this term to frame temporary import activities, which subsequently creates even greater confusion.

Finally, it should be noted that several states clearly use the term transfer (without providing any definition of what this entails) to tackle issues involving the flow of arms on national territory⁵⁰.

Other activities

There are only two recent examples of legislation on brokering that also provide a definition of what this is⁵¹. Questions involving temporary imports (or admission)/exports are sometimes tackled but not defined⁵². One legislation focuses on “re-exports”⁵³. None of the regulation analysed contains clauses regarding other activities and transactions that are likely to be raised during ATT negotiations, such as the loan, gift, intangible transfers, technical assistance or even licensed production⁵⁴.

4. Operational mechanisms

This part of the report tackles operational mechanisms in four major activities covered by national legislation, such as: imports, exports, transit and brokering. Particular attention focuses on the following aspects: approvals/licenses for operators, authorisations/licenses for operations, the documents used, the process and criteria for assessing the appropriateness of an operation and certain specific points.

There are two ways to regulate transfers in the different states analysed: their authorisation is subject to certain conditions⁵⁵ or the transfers are banned, except for cases covered by legislation⁵⁶. These two approaches can also be identified in regional legal instruments on SALW (see Chapter III).

Imports

Almost all states require an import licence (authorisation or a permit) for each operation carried out. Most of them require a prior operator license (also called approval or authorisation)⁵⁷. Only one state requires an operator license but not an operations licence⁵⁸. Regulation stipulates that these documents can only be used once and that their validity is only temporary⁵⁹. For the two kinds of licenses/authorisations, some states provide a minimum of information about what a request for authorisation/license should contain⁶⁰ and two countries appear to have an import authorisation model⁶¹. Rwanda and Burundi have recently revised their legislation and demand that import authorisations contain the end-user, in addition to the country involved in the importing, exporting and transiting operation.

All legislation specifies the body responsible for assessing authorisation requests and granting authorisation. In the majority of cases, there is a single body in charge of this matter: generally the Home Office or department responsible for internal security and, more rarely, the Ministry of Defence. Sometimes, however, there are two competent authorities: one in charge of arms for civilian use and the other for so-called military weapons or those to whom the recipients are responsible for law and order⁶². The body responsible for the latter is often the Ministry of Defence. Legislation in Gabon stipulates that military weapons are the exclusive remit of the Head of State.

The operational criteria upon which the authority or authorities decide whether to grant a license to an operator are rarely defined. When these criteria are actually defined, they exclusively involve character or age-based requirements relating to the operator (stipulating a clean legal record, for example)⁶³. None of the legislation outlines criteria for granting import licences.

There are a few examples of national legislation on imports for civilian purposes that do not distinguish between purchase and import authorisations⁶⁴.

Some regulation demands that all imported firearms or SALW should be marked at entry into a given territory⁶⁵ or that the quantity of arms imported for civilian purposes should not exceed the quota annually set out by the competent authorities⁶⁶.

Some countries also require a quality inspection certificate by the relevant bodies⁶⁷.

Legislation in several states stipulates that arms must enter the country through official customs offices⁶⁸ and that the customs services take charge of them as soon as they enter national territory, until responsibility for them is handed over to the appropriate person⁶⁹. In one case, regulation stipulates that customs must carry out systematic physical verification of the imported arms and report back to the ministries responsible for the armed forces and the interior⁷⁰.

Exports

In legislation that takes arms exports into account, there is coherency between the systems governing exports and imports. The observations made above therefore apply *mutatis mutandis*⁷¹. Nonetheless, legislation in some countries remains unclear and does not clarify the competent authority in charge of authorising exports⁷². Other legislation stipulates that arms exports are subject to inspection by the state when they leave the country's territory⁷³.

None of the regulation analysed outlines criteria upon which export requests can be evaluated. There is only one country that imposes a strict ban on arms exports to states subject to arms embargoes⁷⁴.

Transit

In two of the three countries regulating the issue of transit, authorisation is stipulated in the respective legislation⁷⁵. Only one country provides minimum authorisation information required⁷⁶. The authority responsible for granting transit authorisation is the same as the one responsible for granting import and export authorisations. In two states, transit authorisation for crossing the territory of the state in question is subject to a declaration from the country receiving the arms⁷⁷. Nonetheless, this legislation stipulates that the state has the right to temporarily halt transit over its territory if it is suspected of involving a danger to national security. Finally, there are conditions incumbent upon the entity transiting arms through national territory, such as the sealing of boxes containing arms and ammunition.

Brokering

The two examples of legislation regulating arms brokering provide a comprehensive definition of it, in compliance with regional standards on SALW (see Chapter III)⁷⁸. In addition to the definition, Rwandan provisions clarify the kind of operations that can be carried out by brokers, such as the procurement, sale or transport of arms. Prior to requests being made for all brokering operation authorisations, the provisions require brokers to be registered with the state. Authorisation must be obtained for each individual transaction. Each of the two legislations outlines a specific body responsible for granting authorisation (in both cases, the Home Office). The legislation also suggests that certain information should accompany authorisation, particularly information about the brokers involved in the transaction in question. Rwanda requires specific documents, such as customer authorisation and approval for arms import, export and transport purposes. It also requires brokers to be registered in a national register.

5. Sanctions

All the legislation analysed includes sanctions (fines and/or prison sentences) for violation of legislative provisions. There are also penalties for attempts to commit an offence.

6. Specific points

Certain specific points in the regulation examined should be highlighted.

All French-speaking states in West Africa⁷⁹ and a majority of them in Central Africa⁸⁰ have in compliance with respective regional instruments created a National Commission responsible for coordinating the fight against the proliferation of SALW. This body is not responsible for granting licences for transferring SALW. Nevertheless, they do work with national governmental bodies, particularly when this involves reviewing regulation on flows of SALW. They are therefore likely to take part in future discussions on transfers of conventional weapons.

Due to the role played by some of its nationals in the conflict in Sierra Leone (see Chapter I) and on the basis of a recommendation by the United Na-

tions Security Council (UNSC)⁸¹, Burkina Faso set up the High Authority to Control Arms Imports and their Use (HACIAU)⁸². This body brings together eight government departments, as well as the Prime Minister's Office. It is responsible for inspecting all arms imports from the country and preventing any kind of illicit trafficking on its territory. All imports must include a clause precluding re-exports and be sent to the UN Secretariat General. HACIAU also had to elaborate an "End-Use Certificate" (EUC) and an "End-User Certificate"⁸³. It was also obliged to send the UNSC "specimen signatures of EUC signatories", "specimens of dated and confidential seals and other seals used for EUC", "specimens of documents used by EUC signatories and "specimens from the seals". The UN, "can check any information provided by the HACIAU throughout the territory of Burkina Faso".

It should be underlined that none of the legislation analysed requires the competent authorities responsible for arms transfers to communicate with the legislative power before or after the transfer of arms. No periodic reporting procedure is included either.

III. Regional legal instruments on SALW

In an attempt to restrict the uncontrolled proliferation of SALW and mitigate their devastating impact, Sub-Saharan Africa has been involved in the process regulating SALW flows for around ten years⁸⁴. These initiatives reflect a very broadly shared perception amongst the local authorities, international institutions and civil society organisations that SALW cause the most damage in Africa and regulating their movement, therefore represents a priority for improving security in the continent⁸⁵.

The four regional instruments for controlling SALW were elaborated in a relatively independent way and contain specific provisions on the transfer of SALW. Even in the regions where these instruments have entered into force, few states have transposed these provisions into their national legislation and applied them effectively. Nevertheless, there are many ongoing review processes, which are expected to lead to the adoption of new laws and procedures in the next few years. Furthermore, it is possible that some states decide to extend the majority of the measures on SALW (particularly those on the system for controlling transfers or the definition of certain terms such as transit or brokering) to their entire national systems for controlling the transfer of conventional weapons.

Despite the many commonalities, the systems for controlling the transfer of SALW, which were created by these legal instruments, sometimes display a number of significant differences. These differences can create problems for external observers and the authorities in certain African states associated with a number of these texts and for which they are therefore responsible for transposing and applying at national level (see Annex IV). This is particularly the case in several Central African countries, particularly the DRC, which is associated with three instruments. On the other hand, states such as the Comoro Islands and Mauritania have not signed or ratified any of the regional legal instruments on SALW⁸⁶.

1. Southern Africa

The Southern Africa Development Community (SADC) is the first region in Africa to have adopted a binding legal instrument on SALW⁸⁷. The SADC Protocol was signed by the countries in the region on 9 March 2001 and entered into force on 8 November 2004⁸⁸. Three French-speaking states ratified it: Madagascar, the DRC and the Seychelles.

The main provisions in the protocol involving the transfer of SALW require State Parties to:

- Sanction the violation of arms embargoes mandated by the Security Council of the United Nations; (Art. 5 §2);
- Coordinate procedures for the import, export and transit of firearm shipments; standardised marking and identification of firearms at the time of manufacture, import or export; regulate firearm brokering in the territories of State Parties (Art. 5 §3);
- Establish and improve national databases, communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders (Art. 6); and
- Harmonise relevant import, export and transfer documents and end-user control certificates and establish systems to verify the validity and authenticity of documents (Art. 8).

The Protocol is the first legal instrument on SALW adopted in Africa but is particularly handicapped by the lack of a mechanism to ensure implementation and follow-up. For a number of years, the SADC has been working in collaboration with the Southern African Police Chiefs Cooperation Organisation (SARPCCO), the sub-regional police cooperation organisation, in an attempt to offset these shortcomings⁸⁹. Implementation of the Protocol provisions, however, could be improved. Its transposition into national legislation and practices is experiencing delays in several states and no initiative has been taken to harmonise national practices and documents. The SARPCCO Handbook on Standard Operating Procedures on the Implementation of the SADC Protocol, should, nonetheless, be highlighted⁹⁰.

2. The Great Lakes region and the Horn of Africa

Eleven states in the Great Lakes region and the Horn of Africa have reached an agreement to develop an instrument that displays marked similarities to the SADC Protocol⁹¹. The Nairobi Protocol was signed on 21 April 2004 and entered into force on 5 May 2006⁹². Five French-speaking countries are State Parties: Burundi, Djibouti, the DRC and Rwanda. The Seychelles signed the protocol but has not ratified it.

Much of the inspiration for drafting of the Nairobi Protocol was based on the SADC Protocol, which explains why the majority of provisions contained within it are identical to those in the latter. There are, however, a number of innovations. One of the important points includes the obligation of State Parties to:

- Adopt the necessary legislative or other measures to sanction... the violation of arms embargoes mandated by the Security Council of the United Nations and/or regional organisations (Art. 3);
- Incorporate in their national laws... provisions promoting legal uniformity and minimum standards regarding... import, export, re-export, transit; provisions ensuring the standardised marking and identification of small arms and light weapons manufactured or imported into states; provisions regulating brokering (Art. 3c);
- Strengthen sub-regional co-operation among police, intelligence, customs and border control officials (Art. 4a); cooperate with each other to afford mutual legal assistance in a concerted effort to eradicate the illicit trafficking of SALW (Art. 14) and
- Mark each small arm or light weapon at the time of manufacture... ensure the maintenance, for not less than ten years, of information in relation to small arms and light weapons (Art. 7).

Contrary to the SADC Protocol, the Nairobi Protocol contains an article exclusively focusing on arms transfers (Art. 10) and whose main provisions are:

- "Each State Party shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit". Accompanying documentation

- must contain certain minimum information;
- Each State Party shall verify, before every transaction, that each importer state has granted an appropriate licence and that the transit states have given their written agreement;
- The importing State Party shall inform the exporting State Party of the receipt of the dispatched shipment of small arms and light weapons; and
- Each State Party shall ensure that appropriate documentation can be verified or validated.

Finally, the Protocol urges states to:

- Establish a national system for regulating dealers and brokers (Art. 11) and
- Establish mechanisms for promoting transparency, the exchange of information and harmonisation by setting up National Focal Points and regional systems to verify the validity of appropriate documents and harmonise them, in an effort to facilitate the exchange of information about possible violations (Art. 16).

In order to facilitate implementation of the Nairobi Protocol, the State Parties created the Regional Centre on Small Arms (RECSA). This inter-governmental organisation is responsible for coordinating action taken by the member states' National Focal Points to apply the Protocol and implement national Action Plans⁹³.

3. West Africa

On 14 June 2006, the 15 members of the Economic Community of West African States (ECOWAS)⁹⁴ adopted the ECOWAS Convention on SALW⁹⁵. This replaces the Moratorium on the Import, Export and Manufacture of Light Weapons in West Africa, which is the oldest international initiative on SALW and was set up in 1998. This Convention entered into force on 20 November 2009. Six French-speaking states have ratified it (Benin, Burkina Faso, Mali, Niger, Senegal and Togo) and two others have signed but not ratified it (Ivory Coast and Guinea).

The Convention contains several provisions that are relatively similar to those in other regional legal instruments: brokering, visitors' certificates for temporary imports, marking manufactured and imported arms, the harmonisation of legislation and the implementation of National Commissions on

SALW. Its provisions on arms transfers, however, appear to be both ambitious and original. The principle of a total ban on the transfer of SALW has been established and exemption conditions (legitimate national defence and security needs, maintaining order and participating in peacekeeping operations) are defined (Art. 3 and 4). Exemption requests must be sent by the state making the request to the ECOWAS Executive Secretary (Art. 5). The latter must assess the requests on the basis of several criteria: the quality of information provided, respect or non-respect of international obligations and international law, aspects relating to end-use (violation of human rights, acts of terrorism, implications for the internal security of the country or for regional stability, etc.) or risks of diverting arms transfers (Art. 6). When requests are approved, the ECOWAS Executive Secretary provides an exemption certificate for the license request and End-User Certificate. The Executive Secretary is also obliged to inform all ECOWAS states of the decision within 90 days and compile exemptions and refusals in an annual report, which is sent to the different states (Art. 5). In an effort to help such a robust and complex system function effectively, the Convention requires states to implement a rigorous national transfer control system, capable of verifying and validating the authenticity of the documents used (Art. 4). It also calls for a centralised SALW database to be set up. The Executive Secretary of ECOWAS is responsible for establishing a sub-regional register on SALW, on the basis of information provided by the states, as well as a register of arms used in peacekeeping operations (Art. 10 and 11). Finally, all transfers to non-state groups are banned (Art. 3§2).

This ambitious regional system for controlling the transfer of SALW is currently developing at a steady pace. ECOWAS is strengthening its structures and its member states have agreed on a regional Action Plan. The transfer exemption document has been standardised and the End-User Certificate is expected to follow the same trajectory. At the same time, a Memorandum of Understanding has been signed between ECOWAS and the Wassenaar Arrangement. This stipulates that requests for transfers to ECOWAS states must go through the ECOWAS Executive Secretary. The latter is planning on obtaining similar agreements with other bodies⁹⁶. A Guide for the harmonisation of

national legislation is due to be presented to the states soon.

4. Central Africa

Central Africa will soon have a legal instrument for combating uncontrolled flows of SALW⁹⁷. The so-called Kinshasa Convention will open with the official signatures of the heads of state from the Economic Community of Central African States (ECCAS) and Rwanda⁹⁸ at the United Nations Standing Advisory Committee on Security Questions in Central Africa (UNSAC) in November 2010. An Action Plan is expected to be ratified at this event. The Convention will enter into force once six states have ratified it.

The Convention has drawn inspiration from many of the points contained in the ECOWAS instrument. It defines SALW, munitions, parts and components, transfers, brokering, in addition to the new End-User Certificate (Art. 2). Similarly to West Africa, transfers to non-state groups are totally banned (Art. 4). Overall, transfers are only authorised when they are justified by legitimate national defence and security needs, maintaining order or participating in peacekeeping operations (Art. 3). The Convention also outlines procedures that need to be followed and conditions met when granting transfer authorisation: each state must set up an authorisation system and create a body responsible for granting these authorisations; each authorisation request and authorisation must contain certain minimum of information. Finally, appropriately succinct criteria to be taken into account before transfers are authorised, are also listed (the risk of diversion, violation of international law or embargoes and international commitments) (Art. 5). The Convention contains a brief article on the End-User Certificate: national obligations and regional harmonisation (Art. 6). Operational mechanisms are fairly similar to those in the ECOWAS Convention (temporary import certificate, brokering, marking and record-keeping). It should also be noted that State Parties are required to define specific border entry points for SALW (Art. 18). The creation of national and regional databases, as well as the harmonisation of legislation and implementation of a regional action plan is also required.

5. The impact of regional instruments on SALW

The analysis of national regulation and procedures in French-speaking countries of Sub-Saharan Africa has demonstrated, overall, that these states that do not have transfer control systems that are up to speed with the current international arms situation (see Chapter II). The lack of transparency and flaws in these systems have on several occasions, led to irresponsible indeed illicit transfers (see Chapter I). Regional legal instrument provisions on SALW are on many levels significantly robust and some of them set an example at an international level: ammunition is, for example, systematically included (contrary to most of the international instruments on SALW). It is also possible that they have a significant impact on controlling the transfers of conventional weapons in African states and in ATT discussions.

The legal instruments described above, particularly those elaborated in West and Central Africa, present a relatively comprehensive framework of SALW transfer requirements. These involve the setting up of a single responsible authority, an authorisation/license system for imports, exports and transit, brokering measures, the use of specific documents (such as the EUC), marking, record-keeping, reporting and cooperation obligations in states and between them. Implementation of these SALW provisions could help to encourage African countries extend them to all conventional weapons and subsequently rectify the many shortcomings in their national transfer control systems.

Some of the provisions in these legal instruments represent genuine international level standards and can provide the basis for discussions in the negotiations for a robust and comprehensive ATT. This will also involve the obligation of granting transfer licences, the question of transfer assessment criteria, the ban on arms transfers to states subject to embargoes, the use of EUC (and the importance of validating and authenticating them), examining the issue of brokering, creating follow-up and implementation structures and the total ban on arms transfers to non-state groups.

ATT challenges

1. Views of French-speaking Sub-Saharan African countries on the ATT

Following the United Nations General Assembly's adoption of the first resolution on the ATT in December 2006, the Secretary General asked member states to give their opinions, "on the feasibility, scope and draft parameters" of an ATT⁹⁹. Almost one hundred states answered this appeal, including 10 of the 22 French-speaking countries in Sub-Saharan Africa¹⁰⁰.

Overall, these states expressed the wish for the ATT to cover all conventional weapons, including heavy weaponry, SALW, spare parts and components, munitions and explosives, as well as the technology used to manufacture arms. These states consider the issue of light weapons and ammunition as a fundamental challenge, due to the impact of uncontrolled flows of these weapons in these states. Few of these states expressed an interest in including dual-use goods or arms used for internal security in this treaty.

These countries expressed a general interest in including arms imports, exports, brokering and transit in the activities that ought to be covered by an ATT. It should also be noted that states differentiate between transit and trans-shipment (which is also mentioned). Other activities such as transport, re-exports, intangible transfers and loans/gifts were also mentioned by some of these states. Some of them also highlighted the necessity of controlling arms transfers as soon as they are manufactured.

A number of states mentioned the kind of transactions that should be covered by an ATT, such as transactions between states, transactions between state and private end-user and commercial sales. Only one state expressed a wish for a ban on arms transfers to non-state actors.

French-speaking African states expressed a general wish for the ATT to define the circumstances in which a transfer should be banned. They therefore approved export criteria for common standards used by states when making their decisions on transfer authorisations. According to the majority of these countries, these export criteria should focus on

international commitments made by states when assessing respect for arms embargoes, the principles of the United Nations Charter and United Nations Security Council resolutions, as well as international commitments made by the states. They will also have to take into account the likely end-use of these arms, particularly when assessing respect for human rights and international humanitarian law, as well as crimes of genocide. Export criteria should also focus on the likely end-user of the arms (crime, terrorism, the risk of diversion) and the impact that the transfer could have on the internal stability of the transfer recipient country, regional stability, developments and other conflicts.

In the context of operational mechanisms, several states underlined the importance of the ATT providing clear definitions for transactions. Certain states also expressed the wish that this treaty should outline import and export procedures and appropriate documentation. Several states stated that this documentation should include the use of End-User Certificates. The majority of French-speaking African respondent states called for greater transparency through national periodic reports and registration of all transfers carried out, in addition to penalties.

Overall, French-speaking Sub-Saharan African states reiterated these declarations during the first meeting of the ATT Preparatory Committee held in July 2010 in New York (see Annex V).

2. ATT challenges for French-speaking sub-Saharan African states

The ATT is a challenge for the states analysed (but also for other states in Africa) in many different respects. Firstly, over recent years, they have focused their energy on issues linked to uncontrolled SALW flows, which they consider, quite rightly, as a major security problem. There is therefore a risk that the ATT is ignored by these countries or considered as "less a priority" than SALW-related processes. Secondly, in certain African countries, defence issues still remain shrouded in secrecy and considered by the executive power or by the head of state alone, as their own private domain. They may be tempted to oppose some of the measures likely to be included in the ATT (particularly the way in which transfer authorisations are structured and transparency and reporting). Thirdly, recent

experience in some African states illustrates that the transposition of international or regional regulation into national law frequently poses a major problem for these countries. This will prove to be even more the case if application of an ATT requires them to combine international obligations on conventional weapons with regional commitments on one of their subcategories, SALW. Finally, the greatest and most glaring SALW-related challenge for the ATT, involves the practical implementation of the commitments made. Due to difficult socio-economic conditions and chronic security and political instability, it is not easy for these states to locate the human and financial resources required for ensuring that the national arms transfer control systems set up, function effectively.

Annexe I

Recent imports into French-speaking Sub-Saharan African states in millions of USD (2000-2009)

State	Imports of military material in millions of USD (2000-2009)
Benin	11
Burkina Faso	24
Burundi	5
Cameroon	12
CAR	9
Chad	154
Comoro Islands	5
Djibouti	14
DRC	190
Equatorial Guinea	95
Gabon	70
Guinea	27
Ivory Coast	117
Madagascar	-
Mali	37
Mauritania	61
Niger	21
Republic of the Congo	5
Rwanda	37
Senegal	45
Seychelles	10
Togo	-
Total	949

Note: The symbol – means that no public information is available on this subject.

Source: SIPRI Arms Transfers Database¹⁰¹.

Annex II

List of national legislation studied

State	National regulation
Benin	<ul style="list-style-type: none"> Decree No. 61/39/PR/MI/AM of 7 February 1961 establishing the system for arms and ammunition in the People's Republic of Benin
Burkina Faso	<ul style="list-style-type: none"> Decree No. 2006-174/PRES/PM/MAECR/DEF/SECU governing the composition, functions, organisation and functioning of the National Commission for the fight against the proliferation of small arms (CNLPAL) Decree No. 2007-049/PRES/PM/DEF/MAECR/MFB governing the composition, functions, organisation and functioning of the High Authority for the Control of Arms Imports and their Use Decree No. 2009/301/PRES/PM/SECU/MATD/MEF/DEF/MECV/MJ/MCPEA of 8 May 2009 governing the system for arms and munitions in Burkina Faso
Burundi	<ul style="list-style-type: none"> Law No. 1/14 of 28 August 2009 governing the system for small arms and light weapons
Cameroon	<ul style="list-style-type: none"> Decree No. 73/658 of 22 October 1973 regulating the import, sale, transfer, possession and carrying of firearms and ammunition
CAR	
Chad	<ul style="list-style-type: none"> Judicial Decree No. 26/PG-INT of 28 October 1968 governing the import, transit, sale and possession of firearms and ammunition in the Republic of Chad Decree No. 226 of 1 August 1969 on the modalities for applying Judicial Decree No. 26/PG/INT of 28 October 1968 governing the import, transit, sale and possession firearms and ammunition in the Republic of Chad
Comoro Islands	
Djibouti	<ul style="list-style-type: none"> Law No. 62-621 of 2 June 1962 provisions related to the import, export, transfer, carrying and possession of arms, weapon items, ammunition and military materials in French Somaliland Decree No. 64-407 of 5 May 1964 regulating the import, sale, transport, transfer, carrying and possession of arms, weapon items, ammunition and military materials in French Somaliland
DRC	<ul style="list-style-type: none"> Decree-law No. 85-035 of 3 September 1985 on the system for arms and ammunition Decree-law No. 85-212 of 3 September 1985 on measures for implementing Decree-Law No.85-035 of 3 September 1985 on the system for arms and ammunition
Equatorial Guinea	
Gabon	<ul style="list-style-type: none"> Law No. 15/82 of 24 January 1983 governing the system for arms and ammunition in the Republic of Gabon
Guinea	
Ivory Coast	<ul style="list-style-type: none"> Law 98-749 of 23 December 1998 governing the repression of violations of the regulation on arms, ammunition and explosive material Decree No. 99-183 of 24 February 1999 regulating arms and ammunition Decree No. 2009-154 of 30 April 2009 governing the creation, organisation, functions and functioning of the National Commission on the fight against the proliferation and illicit trade in small arms and light weapons

Madagascar	<ul style="list-style-type: none"> • Law No. 69-011 of 22 July 1969 on the system for arms, excluding bladed weapons • Decree No. 70-041 of 13 January 1970 governing application of Law No. 69-011 dated 22 July 1969 on the system on arms, excluding bladed weapons • Ruling No. 1545 of 14 April 1970 governing arms categories in the territory of the Republic of Madagascar
Mali	<ul style="list-style-type: none"> • Decree No. 05-441/P-RM of 13 October 2005 with the modalities of application for Law No. 04-50 of 12 November 2004 governing arms and ammunition in the Republic of Mali • Decree No. 08-681/P-RM of 11 November 2008 governing the composition, functions, organisation and functioning of the National Commission for the fight against the proliferation of small arms
Mauritania	
Niger	<ul style="list-style-type: none"> • Law No. 61-27 of 15 July 1961 on the institution of the Penal Code • Decree No. 63.074/MI of 23 April governing the conditions for the possession, introduction, transfer and sale of sporting rifles on the territory of the Republic of Niger, excluding arms for the armed forces or police • Decree No. 99-417/PCRN of 8 October 1999 on the creation, functions, organisation and functions of a National Commission for the collection and control of illicit arms • Law No. 2004-044 of 8 June 2004 on implementation of the Convention banning the use, stockpiling, manufacture and transfer of anti-personnel mines and their destruction
Republic of the Congo	<ul style="list-style-type: none"> • Decree-law No. 62-24 of 16 October 1962 establishing the system for military materials, arms and ammunition
Rwanda	<ul style="list-style-type: none"> • Law No. 33/2009 of 18/11/2009 on the arms system
Senegal	<ul style="list-style-type: none"> • Law No. 66-03 of 18 January 1966 on the system for arms and ammunition • Decree No. 66-889 of 17 November 1966 establishing the application modalities for Law No. 66-03 of 18 January 1966 on the system for arms and ammunition
Seychelles	
Togo	<ul style="list-style-type: none"> • Law No. 59-8 of 6 January 1959 on the system for arms, ammunition and military materials in Togo • Decree No. 62-2 of 8 January 1962 governing the import, possession and transfer of manufactured arms and their ammunition • Decree No. 93-060/PR of 19 May 1993 on the creation and functions of an advisory committee to the Ministry of Territorial Administration and Security • Decree No. 95-011/PR of 19 April 1995 governing the import, possession and transfer of manufactured and improvised hunting firearms and their ammunition

Annex III

Comparison of the main regulatory aspects examined

Table I: Main aspects of national regulation

Table II: Operational mechanisms (I)

Tableau III: Operational mechanisms (II)

Table of national regulation

STATE	DATE OF LEGISLATION	CATEGORY OF ARMS	ACTIVITIES				AUTHORITY RESPONSIBLE	SANCTIONS	COMMENTS
			Import	Export	Transit	Brokering			
Benin	1961	"Arms and ammunition", except those "used by the troops, police or other public forces"	X				X		
Burkina Faso	(2006)* (2007)* (2009)*	"Any category of arms likely to be acquired by Burkina Faso"	X				X	Exports not covered but "re-exports" banned	
Burundi	2009	"Small arms and light weapons"	X	X	X	X	X	Provisions on marking and record-keeping; Provisions on tracing	
Cameroon	1973	"Firearms and ammunition", excluding arms and ammunition classified as military materials, air/gas spring-powered weapons, hunting arms	X				X		

Chad	1968 (1969)*	"Firearms and ammunition"	X				Home Office special delegations acting on behalf of the President of the Republic	X	
DRC	1985 (1985)*	"Arms and ammunition of any kind"	X	X	X		State Commissioner for territorial administration; State Commissioner for national defence if they are military weapons	X	Imports of military arms and their ammunition prohibited, except for special dispensation by the President (this ban does not apply to equipment for the armed forces and police); Export authorisations for bladed weapons, hunting weapons, sport or personal protection
Djibouti	1962 (1964)*	All arms, except those for public forces	X				Head of French Somaliland territory	X	Legislation dating back to before independence
Gabon	1983	All conventional weapons	X	X			Ministry for territorial administration and local authorities authorising the import of hunting weapons; The Head of State is exclusively responsible for authorising military and defence arms imports; Government authorising exports	X	
Ivory Coast	1998 (1999)* (2009)*	All conventional weapons	X				Ministry "in charge of applying regulation on arms and ammunition". This ministry grants arms import authorisations following "investigation and assent from the Ministry of Defence".	X	Imports banned, except for derogations
Madagascar	1969 (1970)*	All arms, excluding side arms and those for the armed forces	X	X			Ministry responsible for the armed forces and the Home Office responsible for military weapons; Home Office responsible for other arms	X	Simplified procedures for temporary imports and exports (entries and exits)

Mali	2004 (2005)* (2008)*	"Arms and ammunition, excluding military materials"	X	X	X	Governor of the region responsible for smooth-bore firearms; Ministry for internal security responsible for single-barrel weapons		Transit banned
Niger	1961 (1963)* (1999)*	Firearms, excluding those for the armed forces, police and other public forces	X			Home Office	X	
Republic of the Congo	1962	All conventional weapons	X	X	X	Imports of military materials: by government decision and the minister responsible for the armed forces, in liaison with the Home Office for equipment used by police forces or government agents	X	Authority non-defined for export authorisations; Authority non-defined for arms imports not considered as military arms
Rwanda	2009	All conventional weapons ("all forms of arms and ammunition")	X	X	X	Ministry responsible for national police functions; Ministry of Defence for arms to the Rwandan Defence Forces	X	Provisions on marking and record-keeping arms; Certificate of arms quality control, entering, leaving or manufactured in the country
Senegal	1966 (1966)*	"Arms, the ammunition, spare parts and specialised material that can be used in their manufacture"	X		X	Home Office	X	Imports and exports banned, unless subject to derogation (established in accordance with an annual quota)
Togo	1959 (1962)* (1993)* (1995)*	All firearms "except those for the public forces"	X			Home Office	X	National register on imported arms; Specific border entry points

(*): application texts

Table of operational mechanisms (I)

STATE	IMPORTS				EXPORTS				TRANSIT				COMMENTS
	Approval	Licence	Decision-Making Process	Criteria (*)	Approval	Licence	Decision-Making Process	Criteria (*)	Approval	Licence	Decision-Making Process	Criteria (*)	
Benin	X	X											Conditions incumbent on the operator for import authorisations: proof of good character
Burkina Faso	X	X											Simplified procedures for temporary imports to civilians; The term "transfer" is used for transactions within the national territory
Burundi		X	Circumstances in which authorisations can be cancelled or suspended			X				X			Authorisations limited to one year; Certain minimum information is requested in import and export documents, including the end-user; Imported firearms must be marked
Cameroon		X											Conditions incumbent on the operator for import authorisations: proof of good character and age; Introduction of arms into the Cameroon must be subject to prior inspection by the customs services Firearms can only be imported in areas where customs offices exist
Chad		X				X							Border entry points
Djibouti		X											All exports are subject to state controls when leaving the territory of the country;
Gabon (Only for imports of hunting weapons and ammunition)	X				X								Conditions for granting importer approval (authorisation for managing arms stock piles) established by decree (not available); Export authorisation granted by decree

Ivory Coast	X								<p>The term "transfer" is used for transactions within the national territory;</p> <p>The ministry "in charge of applying regulation on arms and ammunition" can grant military arms import authorisations, following "investigation and assent from the Ministry of Defence"</p>
Madagascar	X	X	X	X	X	X	X	X	<p>The Home Office verifies the frequency of requests. It proceeds to an investigation and reaches an opinion with the ministry responsible for the armed forces, foreign affairs and finance for each request;</p> <p>Approval is granted by decree</p>
Mali	X								<p>Model of import authorisation request (unavailable);</p> <p>Import authorisation conditions incumbent on the operator: proof of good character</p>
Niger									
RDC	X	X	X		X	X	X	X	<p>Model of import authorisation (unavailable);</p> <p>Imports through official customs offices;</p> <p>Conditions incumbent on the operator: age and proof of good character;</p> <p>Transit: packaging conditions required for transiting arms and ammunition across national territory</p>
Republic of the Congo	X								<p>Authorisations for imports of arms and ammunition not considered as military materials are granted according to the limitations set out in an annual quota</p>

Rwanda		X			X		X		<p>A minimum of information is required for import, export and transit licenses and End-Users;</p> <p>A ban exists on arms exports to countries subject to UN embargoes or organisations of which Rwanda is a member</p>
Senegal	X	X		X	X				The term "transfer" is used for transactions within national territory
Togo	X	X							

(*) : operational criteria

Table of operational mechanisms (II)

State	Brokering				Comments
	Approval	Licence	Decision-Making Process	Criteria (*)	
Burundi	X	X			The details of all brokers involved in a transaction are required for authorisation Documents required for special authorisation: customer authorisation, procurement, list of brokers involved in the transaction
Rwanda	X	X			

(*): operational criteri

Annex IV

Regional commitments of French-speaking Sub-Saharan African countries on SALW

State	Sub-regional instrument	Commitment progress
Benin	ECOWAS Convention	Ratified
Burkina Faso	ECOWAS Convention	Ratified
Burundi	Nairobi Protocol Central African Convention	Ratified Opened for signature at the end of 2010
Cameroon	Central African Convention	Opened for signature at the end of 2010
CAR	Central African Convention	Opened for signature at the end of 2010
Chad	Central African Convention	Opened for signature at the end of 2010
Comoro Islands		
Djibouti	Nairobi Protocol	Ratified
DRC	Nairobi Protocol SADC Protocol Central African Convention	Ratified Ratified Opened for signature at the end of 2010
Gabon	Central African Convention	Opened for signature at the end of 2010
Guinea	ECOWAS Convention	Signed
Equatorial Guinea	Central African Convention	Opened for signature at the end of 2010
Ivory Coast	ECOWAS Convention	Signed
Madagascar	SADC Protocol	Ratified
Mali	ECOWAS Convention	Ratified
Mauritania		
Niger	ECOWAS Convention	Ratified
Republic of the Congo	Central African Convention	Opened for signature at the end of 2010
Rwanda	Nairobi Protocol Central African Convention	Ratified Opened for signature at the end of 2010
Senegal	ECOWAS Convention	Ratified
Seychelles	Nairobi Protocol SADC Protocol	Signed Ratified
Togo	ECOWAS Convention	Ratified

Sources: ECOWAS¹⁰², GRIP, RECSA¹⁰³.

102. Interview with a member of the ECOWAS Commission "SALW" Unit.

103. RECSA website. URL: <http://www.recsasec.org/ratification.htm>

Annex V

Declarations from French-Speaking Sub-Saharan African countries during the first ATT Preparatory Committee

During the first ATT Preparatory Committee in July 2010, in New York, French-speaking Sub-Saharan African states tended to reiterate the positions that they had put forward when the United Nations Secretary General requested member states to give their opinions “on the viability, scope and general parameters” of an ATT (see above).

Declarations from these states (the majority of them from West Africa) indicate that by reducing arms proliferation, the ATT should be a way of reducing human suffering, instability and conflict in Africa. It is important to these countries that the principles and objectives of an ATT reflect the impact of arms transfers. They also highlighted the responsibility of states manufacturing and exporting arms.

They expressed broad support for a significantly extensive scope of application for arms categories and transactions that should be covered by an ATT. They therefore emphasised that in addition to the conventional weapons as defined by the UN Register, SALW, ammunition and related elements also be included in an ATT. These states consider that it is very important to include SALW in an ATT because they account for most arms transfers in Africa and threaten national and regional stability. With regard to the kind of transactions covered, these states support a very broad definition of transfers to include imports, exports, transit, trans-shipment, transport and any other flow to and from the territory of a state, including brokering activities. The ECOWAS Representative also insisted that arms transfers in an ATT be considered as a state-to-state activity and that consequently, arms cannot be transferred to non-state actors, without the authorisation of the importing state. With regard to the parameters, particularly the criteria upon which states will have to carry out a specific arms transfer risk-assessment, these states primarily support the inclusion of criteria linked to respect for international humanitarian law and human rights. They also highlight criteria on regional stability.

In the discussions on implementation, French-speaking African states were concerned that the ATT took into account African regional and sub-regional initiatives on SALW. This could include initiatives such as the ECOWAS Convention (which could serve as a guide for implementing an ATT), as well as sanctions imposed by sub-regional bodies. They would like this reference to be included in an ATT. They also considered that an ATT should help improve transparency in arms transfers and help build confidence between states. To this end, they propose that mechanisms such as databases or arms registers be included and updated by member states. International assistance and cooperation, as well as information exchange, are also considered as particularly important for French-speaking African countries in the implementation of an ATT.

Endnotes

1., UN GA, 2009. Arms Trade Treaty, A/C.1/64/L.38/Rev.1, 28 October 2009, § 7.

2. "Irresponsible transfers, also called grey market transfers, are transfers that are authorized by a government, but are nevertheless of doubtful legality, at least with reference to international law (significant risk of misuse), or irresponsible in some other sense (significant risk of diversion to unauthorized recipients). Illegal transfers are synonymous with black market transfers. (...) Illicit transfers comprise both irresponsible and illegal transfers (grey/black market)." Small Arms Survey, Small Arms Survey 2007: Guns and the City, 2007, p. 74.

3. UN GA, 2009. *Idem*, p. 2.

4. Unless there is explicit mention of "small arms and light weapons" or "firearms", the terms "arms" and "weapons" refer, in this study, to "conventional weapons".

5. Sub-Saharan African states where French is the official language or one of the official languages.

6. GRIP had been unable to obtain the legislation and regulation for six states at the time this study was completed (1 October 2010): the Comoro Islands, Guinea, Equatorial Guinea, Mauritania, CAR and the Seychelles.

7. According to the definition used by the United Nations Group of Governmental Experts on SALW, small arms are "revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns", whilst light weapons are, "heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a caliber of less than 100 millimetres". In this study, "small arms and light weapons" infer both arms and their ammunition.

8. The Swedish institute database is exclusively based on publicly accessible sources and only takes into account transfers of major conventional weapons. For further details, see the footnote in Annex I.

9. United Nations Register of Conventional Arms website. URL: <http://www.un.org/disarmament/convarms/Register/HTML/RegisterIndex.shtml>

10. Pieter Wezeman, Arms transfers to Central, North and West Africa, SIPRI Background Paper, April 2009, p. 5. URL: <http://books.sipri.org/files/misc/SIPRIBP0904b.pdf>

11. SIPRI Yearbook 2009, SIPRI, 2009, p. 330. Between 2004 and 2008 South Africa was the 18th largest weapons exporter in the world.

12. Pieter Wezeman, *loc. cit.*, p. 2-3.

13. Eric G. Berman, Illicit trafficking of Small Arms in Africa: Increasingly a home-grown problem, presentation before the Africa Partnership Forum Support Unit, 14 March 2007, p. 9. Holger Anders, Silencing the guns? The Scope for Ammunition Controls in Africa, non-published Draft Paper, November 2007, p. 6.

14. Alex Vines, Combating light weapons proliferation in West Africa, International Affairs, vol. 81, No. 2, March 2005, p. 352-353.

15. States are requested to annually provide the Register with information about their conventional weapons exports and imports. Since 2003, states are also invited to provide additional information about their SALW transfers.

The Republic of the Congo, Guinea and Equatorial Guinea have never submitted a report on their transfers to the Register. In 2009, only two of the countries covered in this study (Burundi and the Seychelles) were Register participants. Notification frequency varies sharply, ranging from 12 reports provided by the Seychelles

(over the 17 years of the Register's existence) to 1 for Mali and the CAR. It is interesting to note that the majority of reports provided are "nil" and correspond to the absence of imports and exports from the country during the previous year. Nevertheless, a cross-analysis of the Register reports provided by other states provides information about transfers involving these countries. For example, Djibouti provided "non-applicable" reports for 2005-2007 and Belarus informed the register that in 2005 it had exported two Mi-24 attack helicopters to Djibouti.

16. In certain cases, the national authorities only have a limited idea of the extent of arms stockpiles available to their armed forces and police. This can, in particular, be explained by the lack of controls on the acquisition of military materials. This kind of situation has a significant impact in promoting non-expedited small or large-scale diversion and re-exports. See, for example, the report from the Group of Experts on the situation in the DRC in 2008, explaining that, "the (Congolese) Government does not know how many of its arms are stored at which depots and with which units. There are accordingly few safeguards in place to prevent the illegal sale of weapons and ammunition to non-governmental armed groups..." United Nations, Security Council, Final report of the Group of Experts on the ... Republic of the Congo, annex to S/2008/773, 12 Dec. 2008, para. 138.

17. See the Global Security report. URL: <http://www.global-security.org/military/world/war/ivory-coast-2002.htm>

18. Georges Berghezan, Arms Transfers to the Embargoed DR Congo, intervention for the COST meeting on SALW violence, March 2008, p. 2. URL: http://www.prio.no/projects/a25cost/COST0308_Brussels/Berghezan%20DRC%20arms%20COST%200308.pdf

19. GRIP has published several studies on the subject. See study by Georges Berghezan (Ed.), *Traffic d'armes vers l'Afrique - Pleins feux sur les réseaux français et le « savoir-faire » belge*, GRIP-Complexe, 2002. On the DRC see Georges Berghezan, Arms Trafficking and Transfers to the DRC, GRIP analysis, 5 December 2007. URL: <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=299> On UN sanctions against Liberia and Sierra Leone, see Damien Callamand, Embargos de l'ONU sur les armes en Afrique. Deux cas d'espèce : Sierra Leone et Liberia, GRIP analysis, 28 October 2008. URL: <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=623>

20. The Usual Suspects - Liberia's Weapons and Mercenaries in Côte d'Ivoire and Sierra Leone, Global Witness, March 2003. URL: http://www.globalwitness.org/media_library_get.php/157/1278664638/The%20Usual%20Suspects.pdf

21. UN website on sanctions against Ivory Coast. URL: <http://www.un.org/sc/committees/1572/index.shtml>

UN website on sanctions against Democratic Republic of the Congo. URL: <http://www.un.org/sc/committees/1533/index.shtml>

22. United Nations Security Council, letter dated 15 July 2004, addressed to the President of the Security Council, established by Resolution 1533 (2004) on the Democratic Republic of the Congo, S/2004/551, 14 July 2004. Also see the United Nations Security Council, Final Report of the Group of Experts on the Democratic Republic of the Congo, S/2008/773, 21 November 2008. The accusations, denied by the Rwandan government, focus on multiple infringements including the provision of technical military support and organising transfers of military equipment to the National Congress for the Defence of the People (CNDP).

23. United Nations the Security Council, Final Report of the Group of Experts on the Democratic Republic of the Congo, S/2009/603, 23 November 2009, § 81.

24. United Nations Security Council, Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone, S/2000/1195, 20 December 2000.

25. United Nations Security Council, Report by the Monitoring Group on Somalia pursuant to application of Resolution 1676 (2006) of the Security Council, S/2006/913, 22 November 2006, § 10.

26. United Nations Security Council, Report by the Group of Experts established by Resolution 1591 (2005) on Sudan, S/2008/647, 11 November 2008, § .205.

27. For examples of improper use of transfer documents see Mark Bromley and Hugh Griffiths, End-user certificates: Improving Standards to Prevent Diversion, SIPRI Insights 2010/3, SIPRI.

28. United Nations Security Council, Report of Panel of Experts on Liberia submitted in accordance with resolution 1408 (2002), S/2002/1115, 25 October 2002.

29. United Nations Security Council, Report of the Panel of Experts on Liberia submitted in accordance with resolution 1458 (2003), S/2003/498, 24 April 2003.

30. Final communiqué from the ECOWAS Summit of Heads of State and Government, Abuja, 17 October 2009, point 13. URL: <http://centrafrique-presse.over-blog.com/article-communique-final-du-sommet-de-la-cedeao-d-abuja-37724884.html> and Position of the European Union imposing restrictive measures against the Republic of Guinea, EU Official Journal, 27 October 2009, 2009/788/PESC. URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:281:0007:0011:FR:PDF>

31. The study is based on the analysis and comparison of national regulation and procedures of French-speaking Sub-Saharan African countries, to which the GRIP had access before the conclusion of the study (1 October 2010). This analysis also contains interviews (by telephone, mail and in person) with representatives from the national authorities (executive power, legislative power and National Commissions on SALW etc.), sub-regional and international institutions (for example, ECOWAS), as well as local and international civil society organisations.

32. The table of national legislation in Annex II specifies the date of promulgation of each legislative text.

33. Benin, Cameroon, Madagascar, Niger, Republic of the Congo, Senegal and Chad.

34. Djibouti and Togo.

35. Ivory Coast.

36. Burkina Faso, Burundi, Mali and Rwanda.

37. Burundi and Rwanda in the Nairobi Protocol (see Chapter 3).

38. Those for Burkina Faso, Ivory Coast, Djibouti, Gabon, Republic of the Congo, DRC and Rwanda.

39. For example, Benin, Djibouti, Madagascar, Mali, Niger and Senegal.

40. In many African states, the trade and possession of arms by civilians is strictly regulated or banned; most of the acquisitions and sales of arms involves military and paramilitary forces, as well as the police.

41. For example, Benin, Burundi, Cameroon, Mali, Niger and Chad.

42. Djibouti.

43. DRC.

44. These categories are: No.1) "Firearms and their ammunition for war on land, sea and air"; No. 2) "Materials for the field of armed combat or use in armed combat"; No. 3) "Protective materials against war gas and products for chemical or incendiary warfare"; No. 4) "So-called defensive arms and their ammunition and components"; No. 5) "Hunting firearms and their ammunition"; No. 6) "Bladed weapons"; No. 7) Arms for sporting, exhibitions or decorative use and No. 8)

45. These categories are: No.1) "Firearms and their ammunition for war on land, sea and air"; No.2) "Materials for the field of armed combat or use in armed combat"; No.3) "Rifled barrel hunting arms and their ammunition; No.4) "So-called defensive

arms and their ammunition and components"; No.5) "Smooth-bore hunting guns and their ammunition"; No.6) So-called "legally traded" arms and their ammunition; No.7) "Bladed weapons"; No.8) "Arms for sporting, exhibitions or decorative use" and No.9) "Historical and collectors arms".

46. Niger.

47. For example, Benin, Cameroon, Ivory Coast, Djibouti, Mali, Niger, Chad and Togo.

48. For example, Burundi, Mali, Democratic Republic of the Congo and Rwanda.

49. For example, in Madagascan regulation, "imports involve the operation of introducing weapons into the territory of the Republic for: internal trade; police or public services requirements", while "the introduction involves the operation of: a) bringing arms into national territory for an individual, which were acquired for the latter's use prior to the individual's arrival; b) bringing in arms onto national territory, acquired for a commercial or industrial enterprise prior to the latter being established in Madagascar for security requirements". Law No. 69-011 of 22 July 1969 on the weapons regime, excluding bladed weapons, Madagascar, Art. 10-11.

50. For example, Burundi and Chad.

51. Burundi and Rwanda.

52. For example, Burkina Faso, Cameroon and Chad.

53. Burkina Faso.

54. Sarah Parker, Analysis of States' View on an Arms Trade Treaty, UNIDIR, October 2007, p. 7. URL: <http://www.unidir.org/pdf/ouvrages/pdf-1-92-9045-008-A-en.pdf>

55. For example, Benin.

56. For example, Ivory Coast.

57. Benin, Burkina Faso, Gabon, Madagascar, Mali, Republic of the Congo, DRC and Togo.

58. Ivory Coast.

59. For example, Benin, Burundi, Ivory Coast, Niger.

60. Benin, Burkina Faso, Burundi, Djibouti, Mali, Niger and Rwanda.

61. Mali and the DRC. The GRIP has been unable to obtain the models mentioned in the legislation.

62. Burkina Faso, Burundi, Mali, Republic of the Congo, DRC and Rwanda.

63. For example, Burkina Faso, Cameroon and the DRC.

64. For example, Burkina Faso.

65. Burundi.

66. For example, Senegal and the Republic of the Congo.

67. For example, Rwanda.

68. For example, Cameroon, Gabon, DRC, Chad and Togo.

69. For example, Cameroon, DRC and Chad.

70. Madagascar.

71. For example, Burundi and Rwanda.

72. For example, Gabon and the Republic of the Congo.

73. For example, Gabon.

74. Rwanda.

75. Burundi and Rwanda.

76. Rwanda.

77. DRC and Rwanda.

78. Burundi and Rwanda.

79. Quarterly Information Bulletin, ECOSAP (ECOWAS Small Arms Control Programme), January 2010, p. 16.

80. For example, Burundi, DRC and Rwanda.

81. See Resolution 1132 (1997) and Resolution 1306 (2000) of the United Nations Security Council.

82. Decree No. 2007-049/PRES/PM/DEF/MAECR/MFB on the composition, functions, organisation and functioning of the High Authority for Arms Imports and their Use. This decree replaces Decree No.2001-005/PRES/PM/MAET of 24 January 2001.

83. The legislation does not define these two documents and does not explain the reason for their co-existence.

84. It should be emphasised that the first of these initiatives were begun even before the UN Programme of Action for combating the illicit trafficking in SALW was adopted by its General Assembly.

85. Declarations of this sort are made regularly. For example, see the Secretariat General of the United Nations press release, eradicating arms trafficking will further peace in Central Africa, say UN officials, 19 March 2010. URL: <http://www.un.org/apps/news/story.asp?Cr=weapons&Cr1=&NewsID=34134>

In his address to the G8 and G20 meetings in 2010, the president of Nigeria, Goodluck Jonathan, declared that he intended to raise the question of SALW proliferation during the summit because of the effect that this would have on the African economy. See Nigeria wants G8 to tackle small arms menace, Agence France-Presse, 26 June 2010. URL: <http://www.google.com/hostednews/afp/article/ALeqM5jrPSTPtn0T9Tnu25ZsOQAmNjDP6g>

86. Mauritania left ECOWAS in 2002.

87. The 14 members of the SADC are South Africa, Angola, Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, DRC, Swaziland, Tanzania, Zambia and a Zimbabwe.

88. The full name is the SADC Protocol on Control of Firearms, Ammunition and other related materials. The full text is available in English at: <http://www.poa-iss.org/RegionalOrganizations/SADC/Instruments/SADC%20Protocol.pdf>

89. SARPCCO website: <http://www.interpol.int/public/Region/Africa/Committees/SARPCCO.asp>

90. Standard Operating Procedures on the Implementation of the SADC Protocol on the control of firearms, ammunition and other related materials, SARPCCO, August 2008. See: <http://www.armsnet africa.org/sites/default/files/SARPCCO.pdf>

91. These states are Burundi, Djibouti, Ethiopia, Eritrea, Kenya, Uganda, DRC, Rwanda, the Seychelles, Sudan and Tanzania.

92. The Nairobi Protocol for the prevention, control and reduction of small arms and light weapons in the Great Lakes region and the Horn of Africa. The full text is available at: <http://www.poa-iss.org/RegionalOrganizations/RECSA/Nairobi%20Protocol.pdf>

93. RECSA site: <http://www.recsasec.org/>

94. ECOWAS consists of the following states: Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Mauritania left the organisation in 2002.

95. The full name is The ECOWAS Convention on Small Arms, Light Weapons, their ammunition and other associated material. URL: <http://www.poa-iss.org/RegionalOrganizations/ECOWAS/ECOWAS%20Convention%202006.pdf>

For a detailed analysis of the legal instrument, see I. BERKOL, The ECOWAS Convention on Small Arms, Light Weapons: GRIP analysis, 1 April 2007. Available at: <http://www.grip.org/en/siteweb/images/RAPPORTS/2007/2007-2.pdf>

96. Interview with a member of the ECOWAS Commission "SALW" Unit.

97. The full name of the legal instrument is the "Convention for the control of small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair or assembly".

98. Rwanda is no longer part of ECOWAS. The new Convention, however, "shall be opened for signature by States members of the Economic Community of Central African States (ECCAS) and by the Republic of Rwanda" (Art. 35).

99. UNGA, 2006. Towards an Arms trade Treaty: establishing common international standards for the import, export and transfer of conventional arms, A/RES/61/89, 18 December 2006.

100. These states are Benin, Burkina Faso, Burundi, Ivory Coast, Djibouti, Mali, Niger, DRC, the Seychelles and Togo. The

contributions made by these states are available at the UN Office of Disarmament Affairs website. URL: <http://www.un.org/disarmament/convarms/ArmsTradeTreaty/html/ATT-ViewsMS.shtml>

101. The SIPRI valuation system is based on the aggregation of data on, "deliveries of major conventional weapons". Although these statistics are compiled with the utmost precision and internationally recognised, they must, nonetheless, be used with caution, for two reasons. The figures published are global-trend indicators identified by SIPRI according to its own price index based on 1990 dollar exchange rates (it is therefore impossible to compare them with the GDP of a state or even with the annual national export reports or those produced by the European Union). SIPRI statistics focus on "major conventional weapons" divided into 7 categories: aircraft, armoured vehicles, artillery, radar systems, missiles, warships and power units. Technology and services transfers, as well as the transfer of certain equipment – including small arms, light weapons and artillery parts with a calibre of less than 100mm, as well as munitions – are not included in SIPRI statistics. URL: <http://www.sipri.org/research/armaments/transfers/databases/armstransfers>

ARMS TRANSFER CONTROLS

THE EXAMPLE OF FRENCH-SPEAKING STATES IN SUB-SAHARAN AFRICA

In Africa, perhaps more than elsewhere, the absence of common international standards on arms transfers fuels the flames of armed violence. The war and crime fanned by these flames significantly impede economic and social development.

While United Nations member states are currently involved in negotiations for an Arms Trade Treaty (ATT), this GRIP report provides a comprehensive portrayal of national regulation and practices in French-speaking countries of Sub-Saharan Africa.

It demonstrates that, overall, these countries do not have arms transfer control systems that are up to speed with the international arms trade. The lack of transparency and flaws in the system (or lack of systems) have on several occasions led to irresponsible or indeed illicit arms transfers. Several sub-regions of Africa have, however, recently adopted very robust legal instruments for controlling small arms and light weapons, which could have a significant impact within the framework of discussions on the ATT. Finally, the report underlines the challenges posed by the ATT for these countries.

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