

AFRICAN UNION

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African Union Common Position on an Arms Trade Treaty

Preamble

We, the Executive Council of the African Union;

1. *Considering* the Constitutive Act of the African Union, and the Protocol relating to the Establishment of the Peace and Security Council of the African Union;
2. *Reaffirming* the inherent right of all States to individual or collective self-defence in accordance with the Constitutive Act of the African Union and the Charter of the United Nations, including the right of States to manufacture, import, export, transfer and retain conventional arms for self-defence and security needs, and to participate in peace keeping operations;
3. *Concerned* that the poorly regulated international legal trade in conventional arms, and particularly small arms and light weapons, can have an undermining effect on the economic, social and political stability of African States, including fueling conflict and armed violence, and *aware* that the unregulated trade in conventional arms can have an adverse impact on development, human security, democracy, the rule of law and the full enjoyment of human rights, as well as on international humanitarian law;
4. *Concerned* also about the threat of the diversion of conventional arms, including small arms and light weapons, from the legal to the illicit market;
5. *Reaffirming* the prohibition against the use of force and the peaceful settlement of disputes and non-interference in the internal affairs of all States in accordance with the Constitutive Act of the African Union and the Charter of the United Nations ;
6. *Guided* by Decision Assembly/AU/Dec.369(XVII) 32, July 2011, AHG/Dec. 137 (LXX), July 1999, Executive Council Decision EX.CL/Dec.255 (VIII) of January 2006;
7. *Convinced* that the feasibility of an Arms trade Treaty (ATT) would be dependent on ensuring its collectively agreed objectives, applicability, resistance to political abuse and potential for universality;
8. *Recalling* the Conventions and Protocols, Codes of Conduct, Declarations, Decisions, Principles, Guidelines and Regimes in the field of conventional arms control of the various United Nations, African Union and African Regional Economic Communities (RECs), particularly small arms and light weapons;
9. *Taking note* of United Nations General Assembly Resolutions 61/89 (6 December 2006), 63/240 (24 December 2008) and 64/48 (12 January 2010) to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms;

10. *Taking note* also of common positions on an ATT adopted by the Central African states and Rwanda, and the states of the Economic Community of West African (ECOWAS);
11. *Welcoming* the convening by the United Nations of a Conference on an Arms Trade Treaty, to be held in July 2012 and undertaken in an open and transparent manner on the basis of consensus; and resolving for African Union Member States to participate in a coordinated, constructive and engaged manner in the United Nations negotiations;
12. *Commit* ourselves to adopt an African Union Common Position on an Arms Trade Treaty as follows;

Principles

13. The African Union agrees that an Arms Trade Treaty shall be based on the following principles:
14. The principles enshrined in the Charter of the United Nations, the Constitutive Act of the African Union and the Treaties and Charters creating the African Regional Economic Communities;
15. The inherent right of all States to individual or collective self-defence in accordance with the Charter of the United Nations and the Constitutive Act of the African Union;
16. The right of all States to manufacture, develop, acquire, import, export, transfer and retain conventional arms, related materials and capabilities for self-defence and security needs as well as to participate in humanitarian and peace support operations in accordance with international law;
17. The peaceful settlement of disputes and the non-interference in the internal affairs of all States; and the prohibition of the use of force in accordance with the Constitutive Act of the African Union and the Charter of the United Nations;
18. The recognition of the full responsibility of all States to regulate the manufacture and transfer of conventional arms in their simultaneous and changing roles as exporters or importers;
19. The prohibition to transfer conventional arms, including SALW to unauthorized non-State armed groups and/or unauthorized non-State actors;
20. Their complementary nature and non-interference with existing arrangements within the framework of the United Nations in regards to conventional weapons;

21. The obligation and accountability of all States to fully comply with arms embargoes decided by the United Nations Security Council and by the African Union;
22. The respect by all States involved in an arms transfer of relevant regional and sub-regional treaties, conventions and control regimes, particularly on small arms and light weapons control or disarmament;
23. The respect for international law, including international human rights law and international humanitarian law;

Goals and Objectives of the ATT

24. The African Union believes that the goal of an Arms Trade Treaty shall be the establishment of the highest possible common international standards for the transfer of conventional arms, including small arms and light weapons;
25. The African Union believes that the objectives of an Arms Trade Treaty shall include:
 - a) preventing the diversion of licit conventional arms into the illicit market and into the hands of unauthorized users, including criminal organisations,
 - b) preventing the trade in conventional arms, especially small arms and light weapons, from fuelling armed violence, armed conflicts and terrorism, and from contributing to violations of human rights and international humanitarian law;
 - c) preventing violations of international arms embargoes or sanctions;
 - d) building trust and confidence between States through increased transparency, accountability and information on the production, stockpiles, imports and export of conventional arms;
 - e) contributing to international and regional peace, security, safety and stability;
 - f) providing an international, cooperation and assistance framework which addresses, inter alia, the implementation of the Treaty.

Scope

26. The African Union believes that the scope of an Arms Trade Treaty shall include:
 - a) Tanks;
 - b) Armoured combat vehicles;
 - c) Artillery systems;
 - d) Military aircraft;
 - e) Military helicopters;
 - f) Naval vessels;
 - g) Missiles and missile systems;
 - h) Small arms;
 - i) Light weapons;
 - j) Ammunition for use with weapons defined in subparagraphs (a) – (i));

- k) Parts or components specifically and exclusively designed for any of the categories in subparagraphs (a) – (j);
- l) Technology and equipment specifically and exclusively designed and used to develop, manufacture, maintain or upgrade any of the categories in subparagraphs (a) – (k).

27. Transactions and activities that shall be included in an Arms Trade Treaty shall be as follows:

- a) import;
- b) export;
- c) transit;
- d) trans-shipment;
- e) re-export;
- f) transfers and forwarding;
- g) brokering and related activities or services;
- h) leases, loans, gifts and technical assistance and expertise;
- i) production under foreign license;

28. Conventional arms transactions between States shall be undertaken only within the framework of the Treaty;

29. Transfers to authorized non-State armed groups and/or authorized non-State actors shall be regulated strictly;

Parameters and Criteria

30. The parameters and criteria for an ATT shall be applied in an open, transparent, non-discriminatory, objective and consistent manner in the determination of the authorization to transfer conventional arms;

31. The ATT should provide for collectively agree, unambiguous, detailed, measurable and relevant parameters that can be enforced by states exporting, transferring and importing conventional weapons covered under the scope of the Treaty;

32. Such parameters should be consistent with those acknowledged within the UN and its specialized agencies;

33. In deciding on these parameters, the Member States should be guided by multilaterally agreed mechanisms, such as the decisions of relevant UN bodies;

34. In assessing the compliance of any state with the agreed-upon criteria, States will rely on information provided by the Member State, in accordance with decisions and agreed-upon practices of the UN bodies and specialized agencies;

35. Conventional arms transfers shall not be authorized if they violate the objectives of an Arms Trade Treaty, as expressed in this common position, and will be assessed using the following parameters:

- a) risk of non-respect of international and regional legally-binding obligations such as United Nations Security Council (UNSC) arms embargoes and sanctions, in provisions of African Regional Economic Communities' (RECs) conventions and treaties, in customary international law, and other conventions and treaties to which States involved in the transaction are party;
- b) risk for the transfer to adversely impact on national, regional and international stability, peace and security, and to provoke or fuel armed and sexual violence against women and children, and armed conflict;
- c) risk of non-respect for international law and use of the transfer to perpetrate terrorist acts;
- d) risk of the transfer to contribute to serious violations of human rights and international humanitarian law, including the perpetration of genocide, war crimes (including sexual violence in situations of armed conflict), crimes against humanity and violations of non-derogable rights;
- e) risk for the arms transferred to be diverted to unauthorized end-users, including unauthorized non-State armed groups and unauthorized non-State actors, and to illicit markets;

36. In applying these criteria, the following shall be considered:

- i. the international obligations of States Parties and their commitments to enforce UNSC or other arms embargoes;
- ii. the international obligations of States, particularly under international, regional and sub-regional arms control and disarmament instruments,;
- iii. the likelihood of the use of the transfer to pursue an act of aggression against another State;
- iv. the existence of a claim against the territory of a neighbouring State which the recipient has attempted or threatened to pursue by means of force in the past;
- v. the nature and cost of the arms to be transferred in relation to the circumstances of the recipient State, including its legitimate security and defence needs;
- vi. the recipient State's support or encouragement of terrorism and transnational organized crime in accordance with UN Security Council resolutions;
- vii. the recipient State's compliance with its international obligations, in particular on the non-use of force;
- viii. the recipient State's commitment to avoiding the proliferation of armaments and other areas of arms control and disarmament;
- ix. whether the transfer would exacerbate gender based violence in violation of UNSC Resolutions 1325, 1820, 1889;
- x. whether a recipient State which is or has been engaged in an armed conflict has committed serious violations of international humanitarian law;
- xi. whether a recipient State which is or has been engaged in an armed conflict has taken all feasible measures to prevent violations of international humanitarian law;

- xii. whether the recipient State has made commitments to apply the rules of international humanitarian law and has taken appropriate measures for their implementation;
 - xiii. whether the recipient State disseminates international humanitarian law, in particular to its armed forces and security forces, and has integrated international humanitarian law into its military doctrine, manuals and instructions;
 - xiv. whether the recipient State has taken relevant measures to prevent the recruitment of children into the armed forces or armed groups, and their participation in hostilities;
 - xv. whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
 - xvi. the legitimate defense and domestic security interests of the recipient State, including any involvement in United Nations or other peacekeeping activities;
 - xvii. the risk of the arms being re-transferred or diverted to terrorist organizations and unauthorized non-State armed groups or unauthorized non-State actors;
37. Guidelines for the application of parameters and criteria to be annexed to the Arms Trade Treaty to guide States in making transfer decisions, including a set of indicators and factors to be taken into consideration;
38. The parameters and criteria of an Arms Trade Treaty shall respect the spirit and the provisions of regional and sub-regional arms control regimes that may be stricter than the Treaty, and thus not diminish these commitments;

Implementation

39. The African Union is of the view that the primary responsibility to implement an Arms Trade Treaty lies with States and shall take the appropriate national measures in this regard;
40. The potential ATT will require a Secretariat to serve, promote and verify the effective, fair and accountable implementation of the Treaty. Such a Secretariat could be funded from funds charged on revenues from arms sales from major producers, on an agreed percentage.
41. States shall agree on a minimum requirements for the issuance of end-use and end-user certificates and ensure they are used in an effective and efficient manner;
42. The implementation of an Arms Trade Treaty shall be reviewed at regular intervals at meetings of States Parties. A review cycle of the Treaty shall be provided for, in particular to allow for adjustments due to technological developments in conventional arms systems;
43. Provisions of international capacity-building, cooperation and assistance shall be made for States to implement an Arms Trade Treaty;

44. Provisions shall be made for regular reporting of States Parties on their transfers of conventional arms covered by the Treaty;
45. Provisions shall be made to provide assistance to victims of conventional arms;
46. Provisions shall be made for settlement of disputes in case of disagreement between Parties, and for sanctions in case of non-compliance;
47. Provisions shall be made to promote transparency and the exchange of information on conventional arms transfers;
48. Implementation of an Arms Trade Treaty shall respect the spirit and the letter of regional and sub-regional arms control regimes that may be stricter than the Treaty;

Implementing the African Union Common Position on an Arms Trade Treaty

49. Member States are invited to ensure that the decisions, principles and positions outlined in this the Common Position of the African Union on an Arms Trade Treaty are used as guidelines for delegations of African Union Member States to the 2012 United Nations Conference on an Arms Trade Treaty to be held in New York.
50. The Common Position is expected to facilitate the adoption of a meaningful, strong and balanced United Nation Arms Trade Treaty that is non-discriminatory, transparent and multilateral establishing the highest possible common international standards for the import, export and transfer of conventional arms, including small arms and light weapons.
51. African Union Member States and the African Union Commission, in collaboration with civil society, shall deploy every effort to promote the African Union Common Position and shall, to this end, reach out to other regional groups members of the United Nations and other relevant stakeholders with a view to securing their support.