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Comparative Analysis of Global Instruments on Firearms and other Conventional Arms:

Synergies for Implementation

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Comparative Analysis of Global Instruments on Firearms and other Conventional Arms: Synergies for Implementation



UNITED NATIONS
Vienna, 2016

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This document has not been formally edited.

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

Acknowledgements

This Paper was developed by the Global Firearms Programme (GFP), Implementation Support Section, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC), with the support of Ms. Clare da Silva, under the overall coordination and supervision of Ms. Simonetta Grassi, Legal Officer and Head of the GFP.

The Paper was reviewed and received contributions and comments from various colleagues and external peer reviewers. UNODC wishes to thank in particular Sarah Parker and Glenn McDonald from the Small Arms Survey, as well as Lucía Gómez Consoli, Leonardo Lara, Jacques Ndour Seckene and Hilda-Olivia Sarkissian from the Global Firearms Programme, for their comments and support.

The development of this Paper was funded by the UNSCAR Trust Fund (United Nations Trust Facility Supporting Cooperation on Arms Regulation).

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Abbreviations and acronyms

ATT	Arms Trade Treaty
BMS	Biennial Meeting of States
CIFTA	Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials
COP-UNTOC	Conference of the Parties to the United Nations Convention against Transnational Organized Crime
ECOWAS	Economic Community of West African States
ECOWAS Convention	Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials of the Economic Community of West African States
EU	European Union
Firearms Protocol	Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (“Firearms Protocol”)
GGE	Group of Governmental Experts
ITI	International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (“International Tracing Instrument”)
MLA	Mutual legal assistance
Model Law on Firearms	UNODC Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.
Nairobi Protocol	Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
OSCE	Organization for Security and Cooperation in Europe
PoA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (“Programme of Action”)
SADC	South African Development Community

SADC Protocol	Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region
SALW	Small arms and light weapons
UNIDIR	United Nations Institute for Disarmament Research
UNODC	United Nations Office on Drugs and Crime
UNODA	United Nations Office for Disarmament Affairs
UNSCAR	United Nations Trust Facility Supporting Cooperation on Arms Regulation
UNTOC	United Nations Convention against Transnational Organized Crime (“Organized Crime Convention”)

Executive summary

The international community for many years has sought to address the adverse effects of illicit trafficking of conventional arms, as well as the threats posed by its links to organized and other serious crimes. This has resulted in a number of treaties and agreements at the international level. The Arms Trade Treaty (ATT), approved on 2 April 2013 by the United Nations General Assembly, is the latest instrument in continuing efforts at the international level to contribute to peace, security and stability through preventing and countering illicit trafficking, and complements previous global instruments, including the United Nations Convention against Transnational Organized Crime (UNTOC or Organized Crime Convention, adopted in 2000), its supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol); the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (PoA) of 2001; and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument or ITI) of 2005.

The purpose of this Paper is to review and analyse each of these instruments, to identify synergies and complementarities between them, and to assist States parties to these instruments, or those considering accession to them, in implementing the relevant provisions at the national level. The ATT, the UNTOC and its supplementary Firearms Protocol are multi-lateral treaties. They contain legally binding and mostly mandatory provisions, as discussed below. The PoA and the ITI are not legally binding treaties, therefore they do not establish legal obligations, but instead call for political commitment. Despite the differing legal status, they all have broadly similar, or even compatible objectives: to control different categories of conventional arms and to prevent and combat illegal activities.

With respect to synergies, this Paper focuses on the commonalities with regard to domestic regulatory frameworks, authorization/licensing of arms transfers, import systems, brokering, national focal points, international cooperation and enforcement measures. The differences between these instruments are also analysed with respect to divergence in terms of the scope of applications and the items covered, in addition to the types of activities in the international arms trade. The differences in obligations related to marking, record-keeping, deactivation and trans-shipment are also analysed.

This Paper includes several illustrative tables that will help guide the reader, and concludes with a number of recommendations on policy and legislative choices that States parties to these instruments, or those considering accession, may wish to consider. General recommendations are set out, as well as specific recommendations relating to the national points of contact, legislation regulating brokering, addressing illicit trafficking through the establishment of criminal offences, addressing corruption, the development of national control systems to regulate transfers of conventional arms, as well as using the Organized Crime Convention to support investigations and enforcement, including export violations and serious crimes.

Introduction

The illicit manufacturing, trafficking and diversion of firearms and other conventional arms are major threats to human security and development. Often linked to other forms of organized crime and terrorist activities, illicit trafficking in particular is a transnational phenomenon requiring coordinated action at the international, regional and national levels. To address these challenges, and to help guide State responses,¹ increased efforts on the part of the international community and evolving initiatives over the past two decades led to the adoption of several international and regional instruments.

This Paper primarily focuses on the international framework, comprised of three legally binding treaties and two political instruments of global scope. On 2 April 2013, the United Nations General Assembly voted to adopt the Arms Trade Treaty (ATT).² The ATT entered into force on 24 December 2014 and represents the latest instrument in continuing efforts at the international level to contribute to peace, security and stability through conventional arms control. Other previous efforts covered in this Paper include: the United Nations Convention against Transnational Organized Crime (UNTOC or Organized Crime Convention, adopted in 2000);³ its supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol);⁴ the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (Programme of Action or PoA) of 2001⁵ and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Small Arms and Light Weapons (International Tracing Instrument or ITI) of 2005.⁶

Developed at different moments and in varied thematic contexts, these instruments, although different in scope, have overlapping and compatible objectives, and form the basis for a broad international legal framework on firearms, small arms and light weapons (SALW), as well as conventional arms. This framework seeks to create global standards to address international trade that essentially involves all States. The need for such measures stems from concerns expressed by the global community about the growing threats posed by organized crime and the problem of illicit manufacturing and trafficking in firearms, their parts and components and ammunition on the one hand, as well as the impacts that the poorly or underregulated

¹ A detailed list of regional and international agreements and instruments is contained in annex I to this Paper.

² General Assembly resolution 67/234 B.

³ United Nations, *Treaty Series*, vol. 2225, No. 39574.

⁴ *Ibid.*, vol. 2326, No. 39574.

⁵ Report of the United Nations Conference on Illicit Trade in Small Arms and Light Weapons in All its Aspects, New York, 9-20 July 2001 (A/CONF/192/15), chap. IV, para. 24.

⁶ A/60/88 and Corr.2 annex; see also General Assembly decision 90/519.

international arms trade has on undermining economic, social and political stability, while fuelling conflict and armed violence.

The purpose of this Paper is to review and analyse each of these instruments, with a view to exploring their relationships, identifying possible synergies and commonalities, and providing guidance to States parties to these instruments, or those considering accession to them, in developing a cohesive and comprehensive conventional arms/firearms regime at the national level. The Firearms Protocol (and its parent, the Organized Crime Convention), the Programme of Action, the International Tracing Instrument and the Arms Trade Treaty are all distinct instruments; however, there are areas of particular relevance and, given their subject matter, inevitable overlap between them. Therefore, States parties, when developing their national regulatory and policy frameworks, should not view these instruments in isolation. Rather, the instruments should be seen as enhancing and expanding interconnecting provisions to be integrated into national practice.

This Paper explores the legal obligations and optional provisions, as well as the relationship between these global instruments. It seeks to identify possible gaps, overlap or synergies, as well as to propose concrete policy and legislative options and recommendations for States parties to build on in their implementation of the instruments. This Paper will:

- Set out a general overview of instruments
- Outline the main mandatory obligations and optional provisions of each instrument
- Identify differences in the instruments
- Identify possible synergies
- Set out policy and legislative recommendations for States parties

1. General overview

1.1 Legal nature of instruments

The Arms Trade Treaty (ATT), the Organized Crime Convention (UNTOC) and its supplementary Firearms Protocol are multilateral treaties. They contain legally binding and mostly mandatory provisions, as discussed below. States accede to these instruments through a formal accession process of ratification, acceptance or approval,⁷ following which the States become party to the instruments and commit to comply with the obligations under them. As of January 2016, there are 186 parties to the UNTOC,⁸ 114 to the Firearms Protocol and 78 to the ATT.

The Programme of Action (PoA) and the International Tracing Instrument (ITI) are not legally binding treaties and do not require a formal accession process. They therefore do not establish legal obligations, but do require political commitment. The PoA is, as the name suggests, a programme setting out measures States endeavour to undertake at the national, regional and global levels. Similarly, the ITI may be termed a standard-setting tool to facilitate tracing processes.

Each of these instruments addresses aspects of international trade in conventional arms from different perspectives—crime prevention and criminal justice, regulatory standards for the legal trade and actions to address illicit trade. This Paper analyses each of them in the order of their adoption.

Organized Crime Convention

The first global instrument in the field is the Organized Crime Convention (officially, the United Nations Convention against Transnational Organized Crime), which opened for signature in Palermo, Italy, in December 2000 and entered into force on 29 September 2003. The Convention is the first international instrument to address transnational organized crime in all its forms and manifestations. It is the result of a process begun in the early 1990s in the United Nations aimed at responding to the growing threats posed by organized crime.

⁷ See *United Nations Treaty Handbook*, 2012 (revised edition), Office of Legal Affairs, Treaty Section (<https://treaties.un.org/doc/source/publications/THB/English.pdf>). See also *UNODC Ratification Kit for the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*, UNODC 2012.

⁸ The Organized Crime Convention is open for accession by any State, as well as by any regional economic integration organization of which at least one member State is a party to the Convention (article 36, UNTOC). This is, for example, the case of the European Union, which became a party to the UNTOC in May 2004, and to the Firearms Protocol in March 2014, both by approval of its member States.

Its statement of purpose is to promote cooperation to prevent and combat transnational organized crime more effectively (article 1). The Convention and its supplementary Protocol reinforce each other and must therefore be interpreted in conjunction. As explained further below, the Convention is applicable to a broad range of offences linked to transnational organized crime.

Firearms Protocol

Its supplementary Firearms Protocol followed shortly after in May 2001 and entered into force on 3 July 2005. As its preamble notes, the Protocol is a response to the “urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, owing to the harmful effects of those activities on the security of each State, region and the world as a whole...”. The purpose of the Firearms Protocol as set out in article 2 is “to promote, facilitate and strengthen cooperation among States parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition”. The obligations that follow in the Firearms Protocol all aim towards achieving this objective. This crime prevention and criminal justice approach supports the broader aims of the Organized Crime Convention. The Firearms Protocol is the first legally binding instrument on firearms that introduced at a global level specific obligations for States parties to prevent and combat illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

Programme of Action

The Programme of Action (PoA) was developed almost concurrently with the Firearms Protocol and was agreed by the United Nations General Assembly in July 2001. It is a policy framework addressing a wide range of issues related to preventing the illicit trade in small arms and light weapons. Given that the PoA is a voluntary framework, many of the commitments are open-ended without setting out the specific steps that States should take to meet its objectives. For example, the PoA says that States should adopt “adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons [...] and over the export, import, transit and retransfer of such weapons”.⁹ However, the PoA does not elaborate what “adequate laws” are, or what “effective controls” require. In this regard, the other instruments are crucial to enabling the effective implementation of the PoA, as they provide more specific measures that State parties are required, or encouraged, to take.

International Tracing Instrument

In 2005, in the context of the Programme of Action review, Member States developed and adopted the International Tracing Instrument (ITI). Although not legally binding, the ITI further specifies existing obligations under other legal instruments and introduces voluntary commitments to mark, keep records, trace small arms and light weapons and cooperate to prevent and restrain illicit activity relating to these weapons. The ITI is complementary to, and consistent with, the existing commitments of States under relevant international instruments, in particular the Firearms Protocol.

⁹ Programme of Action, section II, paragraph 2.

Arms Trade Treaty

Twelve years after the adoption of the Firearms Protocol and the Programme of Action, the international community adopted the Arms Trade Treaty (ATT). It evolved from initial calls in the mid-1990s to develop common international standards regulating the global arms trade. In 2006, the United Nations General Assembly began the formal process towards establishing a treaty with the adoption of its resolution 61/89, which led to the adoption of the Treaty by a vote in the United Nations General Assembly on 2 April 2013. The ATT sets out two objectives: to establish the “highest possible common international standards” in the regulation of the international trade in conventional arms; and to “prevent and eradicate the illicit trade in conventional arms and prevent their diversion” (article 1). In setting these standards, the ATT establishes a regulatory framework for international transfers of conventional arms and related items as defined in the Treaty. It also sets out a range of measures that States parties are required, or encouraged, to undertake to prevent diversion.

Instrument	Legal nature	Date of adoption	Entry into force	Status of ratification/ accession ^a
Organized Crime Convention	Legally binding	15 Nov. 2000	29 Sept. 2003	186 parties
Firearms Protocol	Legally binding	8 June 2001	3 July 2005	114 parties
Programme of Action	Not legally binding	20 July 2001	n/a	n/a
International Tracing Instrument	Not legally binding	8 Dec. 2005	n/a	n/a
Arms Trade Treaty	Legally binding	2 April 2013	24 Dec. 2014	82 parties

^aAs of 1 January 2016.

2. Overview of key elements

Organized Crime Convention

The Organized Crime Convention is, as noted by the United Nations Secretary-General at the time of its adoption, a tool to “address the scourge of crime as a global problem”,¹⁰ namely transnational organized crime. Although the Convention does not explicitly formulate a general criminal policy to address organized crime, its provisions are geared towards a basic underlying principle aimed at targeting criminal organizations and networks, and their individual members, regardless of the concrete criminal offences committed by those groups or individuals, and to dismantle these organizations completely, as well as to prevent them from reorganizing elsewhere by depriving them of their assets. This fundamental theory is strategically reflected in all substantive and procedural criminal law and administrative law provisions contained in the Convention. In other words, the criminological pivot of the Convention is essentially the concept of the organized crime group per se, rather than particular criminal behaviours or discrete interests to be protected.¹¹

To do this, the Organized Crime Convention adopts a broad definition of an “organized criminal group”, which includes a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes” and in order to gain some financial benefit. The definition of “serious crime” is then simply defined as an offence that is “punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (article 2).

As also noted by the United Nations Secretary-General, “if crime crosses borders, so must law enforcement”.¹² In this regard, the Organized Crime Convention provides a strategic framework to prevent and combat organized crime effectively through a set of interrelated provisions that enable prosecution and compel international judicial and law enforcement cooperation to support cross-border investigations that are within the scope of the Convention.

¹⁰ Foreword, Organized Crime Convention, 15 November 2000.

¹¹ See *Digest of Organized Crime Cases. A compilation of cases and lessons learned*, p.5 ff., UNODC, 2012.

¹² Foreword, Organized Crime Convention, 15 November 2000.

Organized Crime Convention — Main mandatory and optional requirements

Use of terms	<p>Definitions of:</p> <ul style="list-style-type: none"> • Organized crime group • Serious crime • Structured group • Proceeds of crime • Confiscation and seizure
<p>Substantive criminal law: Obligation to create criminal offences</p>	<p>A State party shall establish as criminal offences, when committed intentionally:</p> <ul style="list-style-type: none"> • Participation in an organized criminal group (art. 5) • Laundering the proceeds of crime (art. 6) • Corruption (art. 8) • Obstruction of justice (art. 23) <p>and establish sanctions that take into account the grave nature of these offences (art. 11).</p> <p>Criminal offences established under domestic law in accordance with the UNTOC shall be regardless of the transnational nature of the organized crime group.</p>
<p>Procedural and administrative measures to combat criminal offences</p>	<p>A State party shall, inter alia:</p> <ul style="list-style-type: none"> • Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (art. 7 (1) (a)) (measures against money-laundering). • Ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at the national and international levels (art. 7 (1) (b)). • Adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials (art. 9) (measures against corruption). • Establish the civil, administrative or criminal liability of legal persons for participation in serious crimes (art. 10). • Take adequate measures to facilitate the prosecution, adjudication and sanctions of offences that involve an organized crime group (art. 11). • Take broad measures that allow establishment of jurisdiction over the offences established in the Convention and its Protocols, and not create safe havens for criminals (art. 15).
<p>Enable confiscation and seizure</p>	<p>States parties shall adopt measures to enable confiscation of proceeds of crimes derived from Convention offences and confiscation of property, equipment and other instrumentalities used in or destined to be used in Convention offences (art. 12).</p>
<p>Measures to strengthen criminal investigations</p>	<ul style="list-style-type: none"> • Maintain criminal records (art. 22). • Create incentives for cooperation with law enforcement authorities (art. 26). • Ensure the protection of victims and witnesses including through international cooperation arrangements (art. 24). • Exchange information.

<p>Cooperate at the international level</p>	<ul style="list-style-type: none"> • Cooperate in requests from and to other States parties to enable international confiscation (art. 13). • Extradition: Consider the offences established in the Convention and its Protocols as extraditable offences under the UNTOC; and consider using it as the basis for extradition in the absence of a specific extradition treaty (art. 16). • Mutual Legal Assistance (MLA): States parties are to afford one another the widest measure of assistance in investigations, and consider using the UNTOC as the legal basis for such cooperation even in the absence of a specific agreement (art. 18). • Designate a competent national authority for MLA and extradition (arts. 16 and 18). • States parties to consider concluding agreements to establish joint investigative bodies (art. 19). • Take measures to enable the use of special investigative techniques domestically and internationally (e.g. controlled delivery) (art. 20). • Consider the possibility of transferring criminal proceedings to other States parties to facilitate international cooperation (art. 21). • Law enforcement cooperation with other States parties, including measures to enhance communication and collaboration (art. 27).
<p>Take effective measures to prevent and combat transnational organized crime</p>	<ul style="list-style-type: none"> • States parties shall, inter alia, take measures and develop standard procedures and codes of conduct to protect the integrity of public and private entities and professional categories, to reduce the risk of criminal organizations participating in lawful markets with proceeds of crime and misusing public tender processes (art. 31). • States parties may adopt more strict or severe measures than those [provided for by the UNTOC] for preventing and combating transnational organized crime (art. 34.3, UNTOC).

Firearms Protocol

As it is a supplementary protocol to the Organized Crime Convention, the Firearms Protocol focuses on crime prevention and, in particular, prevention of the illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition. The Protocol establishes a comprehensive regulatory framework to ensure effective control over certain activities relating to firearms, their parts and components, and ammunition, and allow their tracing throughout their lifetime—from the time of manufacturing, to their import and export, and until their final disposal. As such, the Protocol includes specific provisions related to security measures, marking, deactivation and disposal, confiscation and controls on the international transfer of these weapons. Moreover, similar to the Organized Crime Convention, the Firearms Protocol requires States parties to also establish certain criminal offences in their national laws, and international cooperation is given similar substantive weight.

Since the specific focus is on transnational transactions, the Protocol sets out procedures for the import, export and transit of firearms, their parts and components, and ammunition. It is a system based on reciprocity between States, requiring them to provide authorizations to one another before permitting shipments of firearms to leave, arrive or transit their territory.

To prevent and reduce illicit trafficking in firearms, law enforcement must be able to track and trace individual firearms. The Protocol requires that firearms be uniquely identified to enable this.

There are additional, enforced criminalization provisions that require States parties to establish criminal offences for illicit manufacturing, illicit trafficking, and the illicit alteration or obliteration of markings. Criminal offences cannot be detected or prosecuted effectively without the appropriate evidence; therefore the Protocol requires comprehensive record-keeping on the transnational movement of firearms. The Protocol also provides for additional associated “optional” offences, inter alia: with regard to records; illicit reactivation; illicit brokering; import, export and transit control. Moreover, the provisions in the UNTOC are also critical in that regard. In particular, the articles dealing with mutual legal assistance and extradition for commission of offences covered by the Protocol are essential tools for law enforcement.

Firearms Protocol — Mandatory and optional requirements

Use of terms

Definitions of:

- Firearms, parts and components, ammunition
- Illicit manufacturing
- Illicit trafficking
- Tracing
- Confiscation and seizure

Substantive criminal law:

States parties are required to criminalize:

Obligation to create offences

- Illicit manufacturing (as defined in the Protocol).
- Illicit trafficking (as defined in the Protocol).
- Falsifying or removing or altering markings of a firearm.
- Attempting to commit or participating as an accomplice in these offences (art. 5).
- Organizing, directing, aiding, abetting, facilitating or counselling the commission of the above offences (art. 5, para. 2); illicit reactivation of firearms (“optional” offence) (art. 9).

Firearms control measures:

Enable seizure and confiscation

Adopt measures to enable confiscation, seizure and disposal of illicitly manufactured or trafficked firearms, ammunition and related components (art. 6).

Keep records

Maintain, for not less than ten years, information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those items which are illicitly manufactured or trafficked, and to prevent and detect such activities

Such information shall include records of markings at manufacture and at import, and information on international transactions (art. 7), brokering activities (art. 15) and methods of disposal other than destruction (art. 6).

Mark firearms	<p>States parties to ensure appropriate markings at:</p> <p>(a) Manufacture</p> <ul style="list-style-type: none"> (i) Uniquely identify each weapon (in conjunction with other characteristics, such as make, model, type, and calibre). (ii) Enable anyone to determine country of origin. (iii) Permit country of origin experts to identify the individual firearm. <p>(b) Import</p> <ul style="list-style-type: none"> (i) Enable identification of the country of import and, where possible, the year of import. <p>(c) Transfer from government stocks to permanent civilian use</p> <ul style="list-style-type: none"> (i) Must meet the same basic marking requirements of unique identification (art. 8).
Address de-activated firearms	<p>States parties are to prohibit or regulate deactivated firearms, including through specific criminalization provisions (art. 9).</p>
Establish national import and export control system and transit measures	<p>States parties to establish or maintain an effective system of export and import licensing or authorization, as well as measures on international transit, for the transfer of firearms, their parts and components, and ammunition:</p> <ul style="list-style-type: none"> • No authorizations without verifying that import authorization has been given and that transit States have no objections (art. 10). • Specific information required on authorizations. • Consider introducing simplified procedures possible for temporary import or export for “verifiable lawful purposes” (art. 10). <p>States parties shall consider regulating brokers and brokering activities (art. 15).</p>
Take adequate border control and security measures	<p>States parties shall take security measures to prevent “theft, loss or diversion” of firearms (art.11).</p>
Exchange information and cooperate internationally	<ul style="list-style-type: none"> • States parties to share information on: <ul style="list-style-type: none"> – Relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition (art. 12). – Matters such as organized criminal groups known to take part in illicit trafficking (art. 12). • States parties to cooperate in tracing (art. 12). • Identify a national point of contact (art. 13). • Provide technical assistance to other States parties (art. 14).

Programme of Action

The Programme of Action (PoA) is a non-binding political framework that sets out measures States undertake to perform at the national, regional and global levels. This tiered approach, similar to the approach taken in the Organized Crime Convention, the Firearms Protocol and the Arms Trade Treaty, recognizes that States need to work at all levels and cooperate internationally to prevent, combat and eradicate the illicit trade in small arms and light weapons. The PoA framework is grounded in the awareness that the illicit manufacture,

transfer and circulation of small arms and light weapons, and their excessive accumulation and uncontrolled spread in many parts of the world, undermines human security and development. The PoA sets out 23 actions at the national level, 8 at the regional level and 10 at the global level, and an additional 17 actions regarding “implementation, international cooperation and assistance”. The table below highlights a few of those actions that are particularly relevant to the Firearms Protocol and the ATT.

Programme of Action — Brief summary of framework

National level

States undertake to:

- Exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons.
- Establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction.
- Establish or designate a national point of contact to act as liaison between States on matters relating to the implementation of the PoA.
- Identify groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition, of illicit small arms and light weapons, and take action under appropriate national laws.
- Ensure that licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon. This marking should be unique and should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number so that the authorities concerned can identify and trace each weapon.

Regional level

States undertake to:

- Encourage negotiations, where appropriate, with the aim of concluding relevant legally binding instruments aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, and where they do exist, to ratify and fully implement them.
- Establish, where appropriate, subregional or regional mechanisms, in particular transborder customs cooperation and networks for information-sharing among law enforcement, border and customs control agencies, with a view to preventing, combating and eradicating the illicit trade in small arms and light weapons across borders.
- Encourage regions to develop, where appropriate and on a voluntary basis, measures to enhance transparency with a view to combating the illicit trade in small arms and light weapons in all its aspects.

Global level

States undertake to:

- Cooperate with the United Nations system to ensure the effective implementation of arms embargoes decided by the United Nations Security Council, in accordance with the Charter of the United Nations.
- Strengthen the ability of States to cooperate in identifying and tracing, in a timely and reliable manner, illicit small arms and light weapons.
- Encourage States to consider ratifying or acceding to international legal instruments against terrorism and transnational organized crime.

International Tracing Instrument

The International Tracing Instrument (ITI) is the other political instrument developed under the auspices of the Programme of Action. The ITI was developed in light of the fact that, as its preamble notes, “the tracing of illicit small arms and light weapons, including but not limited to those manufactured to military specifications, may be required in the context of all forms of crime and conflict situations”. Its main purpose is to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

International Tracing Instrument — Brief summary of framework

Use of terms	<p>Definitions of:</p> <ul style="list-style-type: none"> • Small arms • Light weapons • Tracing • Illicit small arms and light weapons
Marking	<ul style="list-style-type: none"> • All marks required to be on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as is technically possible, recoverable. • At the time of manufacture of each small arm or light weapon a unique marking is required providing the name of the manufacturer, the country of manufacture and the serial number, or maintain any alternative unique user-friendly marking permitting identification of the country of manufacture. • Require, to the extent possible, appropriate simple marking on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import. • Ensure, at the time of transfer from government stocks to permanent civilian use of a small arm or light weapon, the appropriate marking permitting identification of the country from whose stocks the transfer of the small arm or light weapon is made. • Found illicit small arms and light weapons are uniquely marked and recorded, or destroyed, as soon as possible.
Record-keeping	<ul style="list-style-type: none"> • Accurate and comprehensive records are established for all marked small arms and light weapons within their territory and maintained to enable their competent national authorities to trace illicit small arms and light weapons. • Manufacturing records to be kept for at least 30 years; and all other records, including records of import and export, for at least 20 years.
Cooperation in tracing	<ul style="list-style-type: none"> • Ensure capability to undertake tracing and respond to tracing requests. • Respect all restrictions placed on the use of tracing requests.
Tracing requests	<p>Tracing requests will contain:</p> <ul style="list-style-type: none"> • Information describing the illicit nature of the small arm or light weapon. • Markings, type, calibre and other relevant information, to the extent possible. • Intended use of the information being sought.

Arms Trade Treaty

The Arms Trade Treaty (ATT) focuses on measures to regulate the international legal trade in conventional arms, with a view to preventing and eradicating their illicit trade and diversion into the illicit market or for unauthorized end use. It establishes a framework for national control systems, to take measures to control arms exports and to prevent and detect their diversion into the hands of organized crime or terrorist groups, on the basis of commonly identified criteria set out in its article 7. It also sets out the specific circumstances when a transfer of the items included within the scope of the Treaty (the categories of conventional arms, and related ammunition/munitions and parts and components) must be prohibited by article 6. “Transfer” is broadly defined to include import, export, transit, trans-shipment and brokering. The prohibitions in the Treaty apply to all these forms of transfer, whereas the criteria and risk assessment procedures apply to exports only. Importing States are to take measures to ensure that appropriate and relevant information is provided, when requested, to the exporting State party to assist the exporting State party in conducting its export risk assessment process (article 8). While parts and components and ammunition/munitions are included within the scope of the Treaty, they only apply to the obligations relating to prohibited transfers and exports and export risk assessment in articles 6 and 7.

Whereas the Firearms Protocol encourages States parties to regulate brokering in firearms, the ATT is the first international treaty that introduces the mandatory requirement for its States parties to take measures, pursuant to its national law, to regulate brokering taking place within their jurisdiction.¹³ In this sense, the ATT is an important advancement on progress made in the Firearms Protocol. States parties are also required to take measures to prevent diversion. Additionally, States parties must report annually on the preceding year’s authorized or actual imports and exports.¹⁴

Some provisions in the ATT leave States parties with discretion as to the most appropriate way to implement certain obligations. For example, article 14, on “Enforcement”, requires a State party to take “appropriate measures” to enforce national laws and regulations so as to implement the Treaty’s provisions. In determining what would be appropriate measures, the other instruments, particularly the Firearms Protocol, with its crime prevention and criminal justice perspective, can provide useful guidance.

¹³ Article 10, Arms Trade Treaty.

¹⁴ Article 13, Arms Trade Treaty.

Arms Trade Treaty — Main requirements

Use of terms	<ul style="list-style-type: none"> National definitions of any of the categories covered under article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of the Treaty. For small arms and light weapons, national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of the ATT.
Basic requirements for general implementation	<p>A State party shall:</p> <ul style="list-style-type: none"> Establish and maintain a national control system for the export, import, transit, and trans-shipment of and brokering activities related to the eight categories of conventional arms covered by the ATT, as well as exports of related ammunition/munitions and of parts and components as defined in the Treaty (arts. 3, 4, and 5 (2)). Establish and maintain a national control list (art. 5 (3)). Designate competent national authorities responsible for maintaining this system (art. 5 (5)). Designate at least one national contact point responsible for exchanging information related to the implementation of the ATT (art. 5 (6)).
Prohibit certain transfers	<p>A State party shall prohibit transfers (export, import, transit, trans-shipment, brokering) of conventional arms and related items covered by ATT:</p> <ul style="list-style-type: none"> That would violate obligations under Chapter VII of the United Nations Charter or international agreements relating to the transfer or illicit trafficking of conventional arms; or Where there is knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, or other war crimes (art. 6).
Assess export risks	<ul style="list-style-type: none"> Assess applications for exports of the conventional arms and related items covered by the Treaty on the risk that the export could contribute to or undermine peace and security. Deny arms export if the assessment finds an overriding risk that the exported arms would undermine peace and security or will be used to commit or facilitate a serious violation of international humanitarian or human rights law (taking into account the risk of the exported arms being used to commit or facilitate serious acts of gender-based violence or violence against women and children) or offences under international conventions or protocols relating to terrorism or international organized crime (art. 7).
Import, transit, trans-shipment and brokering	<p>A State party shall:</p> <ul style="list-style-type: none"> Take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State party, to assist the exporting State party in conducting its national export assessment under article 7. Such measures may include end use or end user documentation (art. 8 (1)). Take measures, where necessary, to regulate imports (art. 8). Take measures, where necessary and feasible, to regulate transit and trans-shipment under its jurisdiction (art. 9). Take measures to regulate brokering taking place under its jurisdiction (art. 10).

Arms Trade Treaty — Main requirements (*cont.*)

Prevent diversion

- Each State involved in a transfer of conventional arms covered under article 2 (1) shall take measures to prevent diversion (art. 11 (1)).
- The exporting State party shall assess the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States (art. 11 (2)).
- Importing, transit, trans-shipment and exporting States parties are to cooperate and exchange information in order to mitigate the risk of diversion of the transfer of conventional arms covered under article 2 (1).
- If a State party detects a diversion of transferred conventional arms covered under article 2 (1), the State party shall take appropriate measures to address such diversion. (Such measures may include, for example, alerting potentially affected States parties.)

Maintain records

- A State party shall maintain national records of its issuance of export authorizations or its actual exports of the conventional arms covered by the Treaty (art. 12).
- Records to be kept for at least 10 years.

Report annually

- Provide annual reports to the secretariat on authorized or actual exports and imports of conventional arms to be made available to States parties (art. 13).

Enforce national laws implementing the Treaty

- States parties to take appropriate measures to enforce national laws and regulations to implement the Treaty (art. 14).

Cooperate internationally

- Cooperate with other States parties in order to implement the ATT effectively (art. 15 (1)).
- Facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of the ATT (art. 15 (2)).
- Afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the ATT.
- States parties encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under article 2 (1) becoming subject to corrupt practices.

3. Analysis

As noted above, there are inevitable similarities between these instruments, given their subject matter. There are also differences that States parties need to be aware of to ensure that the specific requirements under each instrument are met in their national implementation efforts.

These instruments set the minimum standards that must be complied with in domestic law. With each instrument, States parties can legislate with respect to a broader range of weapons and impose increased or stricter measures in domestic law, if they wish. This principle is explicitly evoked for example, in article 34(3) of the Organized Crime Convention, which provides that a State party can adopt more strict or severe measures than those provided by the UNTOC for preventing and combating transnational organized crime. States parties might choose to take this route given overlapping obligations between the instruments or if a State party wants to strengthen its national legislation and regulatory procedures beyond what is required. However, States parties should bear in mind that certain provisions—such as international cooperation between States parties—may not extend to provisions that go beyond the standards set in the instruments.

3.1 Commonalities

A useful starting point in the analysis of these instruments is to note their similar objectives. With the exception of the Firearms Protocol and its parent, the Organized Crime Convention, these instruments have not been purposefully negotiated or constructed as interconnecting instruments. However, they all have broadly similar or compatible objectives: to control different categories of conventional international arms trade and prevent illegal activities.

The broader aims of these instruments are equally similar—mitigating the negative impacts of illicit trafficking in conventional arms on national, regional and international security. For example, the Firearms Protocol notes “the harmful effects of those activities [illicit manufacturing and trafficking of firearms] on the security of each State, region and the world as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace”.¹⁵ Similarly, the Programme of Action refers to the “wide range of humanitarian and socioeconomic consequences and pose a serious threat to peace, reconciliation, safety, security, stability and sustainable development at the individual, local, national, regional and international levels”.¹⁶ The preamble of the ATT notes that “civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence”.¹⁷

¹⁵ Preamble, Firearms Protocol.

¹⁶ Section I, paragraph 2, Programme of Action.

¹⁷ Preamble, Arms Trade Treaty.

3.2 Complementarity

The instruments clearly reinforce each other. This is evident in the way in which the instruments refer to the other treaties, affirming obligations or noting their complementarity.

For example, the preamble of the Programme of Action (PoA) recognizes that the Firearms Protocol “establishes standards and procedures that complement and reinforce efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects”. The PoA foreshadows the Arms Trade Treaty (ATT) in its commitment by States to “encourage negotiations, where appropriate, with the aim of concluding relevant legally binding instruments aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, and where they do exist to ratify and fully implement them”.¹⁸

The ATT specifically contains a provision on the relationship between the ATT and other international agreements in article 26:

The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.

Given that the ATT specifically mentions other international agreements in its preamble, including the Firearms Protocol, suggests that States view the Firearms Protocol as an international agreement with obligations that are consistent with the ATT.

Additionally, the ATT draws upon States parties’ existing obligations, affirming those obligations and restating them within a different legal framework. Article 6(2) prohibits transfers that violate a State party’s “relevant international obligations under international agreements to which it is a Party”. Article 6(2) also makes specific reference to international treaties concerning the authorization and “transfer of, or illicit trafficking in, conventional arms” and related items. This includes the Firearms Protocol. It is noteworthy that article 6(2) does not create new substantive obligations, as it refers to obligations that a State party already has. But the significance of referencing these other obligations is that the ATT subjects those obligations to its regulatory mechanisms required for “transfers”. For example, a State party will be required under article 13(1) of the ATT to report on how it implements article 6(2) in its national laws.

Under the PoA, at the national level, States undertake “To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients.”¹⁹ As noted above, the PoA is a policy framework and largely does not provide the details on what are “adequate laws, regulations and administrative procedures”. However, the preamble of the PoA specifically mentions the Firearms Protocol; in fact it is the only treaty specific to small arms that is noted. It would appear that when the PoA speaks of having “adequate laws” in place, it is referring at least in part to the framework provided by the Firearms Protocol.

¹⁸ Section II, paragraph 25, Programme of Action.

¹⁹ Section II, paragraph 2, Programme of Action.

4. Differences

4.1 Scope of application and definitions

Each of the instruments relate to different types of conventional arms, though there is overlap between them.

The specific scope of application of the Arms Trade Treaty is set out in article 2(1): the seven categories of weapons according to which States report their imports and exports for the United Nations Register of Conventional Arms, in addition to the category of small arms and light weapons. Ammunition/munitions and parts and components are defined in articles 3 and 4 in relation to these eight categories. Ammunition/munitions covered by the Treaty are those that are fired, launched or delivered by the conventional arms covered under article 2(1). Parts and components are regulated under the ATT to the extent that they are in a form which provides the capability to assemble the conventional arms covered under article 2(1). However, under article 5(3) of the ATT, and to reflect existing State practice, a State party is encouraged to apply the provisions of this treaty to the broadest range of conventional arms.

The ATT does not provide specific definitions of the items it covers. However, article 5(3) states that definitions for categories of the seven major weapons systems covered by the scope of the Treaty must, at a minimum, reflect those in the United Nations Register of Conventional Arms. The United Nations Register does not provide a definition of small arms and light weapons (SALW), as these items are not a formal category of the United Nations Register. For SALW, national definitions must “not cover less” than the descriptions and definitions contained in existing United Nations instruments when the ATT entered into force on 24 December 2014. The only instruments that are relevant then are the descriptions in the Firearms Protocol and the International Tracing Instrument.

Arms Trade Treaty — Scope of application

Article 2 (1): This Treaty shall apply to all conventional arms within the following categories:

- (a) Battle tanks;
 - (b) Armoured combat vehicles;
 - (c) Large-calibre artillery systems;
 - (d) Combat aircraft;
 - (e) Attack helicopters;
 - (f) Warships;
 - (g) Missiles and missile launchers; and
 - (h) Small arms and light weapons.
- Certain obligations relating to ammunition/munitions fired, launched or delivered by the conventional arms covered under article 2 (1)
 - Certain obligations relating to parts and components in a form that provides the capability to assemble the conventional arms covered under article 2 (1)

While the Organized Crime Convention is applicable more broadly to transnational organized crime offences, the Firearms Protocol addresses specific firearms-related crimes. The Firearms Protocol aims to prevent, control and combat the illicit manufacturing of and trafficking in firearms, parts and components and ammunition (article 2).

Clearly then, firearms are the main physical subject matter of the Protocol. The scope of the Firearms Protocol is set out in article 4. The general principle established in article 4 (1) of the Protocol is that the instrument applies to the “prevention of illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition” and to the “investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group”.

The Firearms Protocol applies to firearms, their parts and components and ammunition, as defined in article 3 (a)-(b). In this sense, “firearms” are defined more specifically than the broader category of small arms and light weapons. According to the definition in the Protocol, a firearm:

- (a) Is portable;
- (b) Is a barrelled weapon; and
- (c) Expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive.

The definition explicitly excludes antique firearms and their replicas manufactured before 1899.

The 2015 UNODC Study on Firearms provides further clarity on the definitions of “firearms” and “small arms and light weapons”. The study states:

The definition of “firearm” adopted by the Firearms Protocol overlaps greatly with that of “small arms”, and covers many “light weapons”, particularly barreled weapons such

as heavy machine guns, which are too large to be transported and used by a single person. The term “firearms” excludes light weapons that employ a tube or rail as opposed to a barrel, such as man-portable air defence systems (MANPADS). Another difference lies in the fact that firearms must “expel” the projectile, which contrasts with the definition of “small arms and light weapons” in the International Tracing Instrument, which covers any weapon that “expels or launches” the projectile. Self-propelled projectiles, such as rockets or missiles, seem therefore to be excluded from the definition of firearms. Only light weapons that use cartridge-based ammunition qualify as firearms under the Firearms Protocol.²⁰

In practice, the terms “firearms” and “small arms” tend to be used in an interchangeable way, as several international and regional instruments refer to one or the other term.

Firearms Protocol — Definitions

Article 3 (a): “Firearm” shall mean any portable barreled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

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

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

The PoA, while setting out a broad range of mechanisms to address illicit trade in small arms and light weapons, does not provide a definition for these weapons. However, the implementation of the policy framework provided by the PoA has resulted in further agreements, including the International Tracing Instrument (ITI). The latter is a non-binding instrument adopted to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons. The ITI does contain a definition of small arms and light weapons. This definition is broader than the term “firearms”, as it covers any weapon that “expels or launches” the projectile, whereas a “firearm” in the Firearm Protocol must, in stricter terms, “expel” the projectile.

²⁰ 2015 UNODC Study on Firearms, p. 78.

ITI definition of “small arms and light weapons”

Article 4: For the purposes of this instrument, small arms and light weapons will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

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

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

Comparative table — Scope of application (items)

Organized Crime Convention	n/a
Firearms Protocol	<ul style="list-style-type: none"> • Firearms • Firearms parts and components • Firearms ammunition
Arms Trade Treaty	<ul style="list-style-type: none"> • Battle tanks • Armoured combat vehicles • Large-calibre artillery systems • Combat aircraft • Attack helicopters • Warships • Missiles and missile launchers • Small arms and light weapons • Certain obligations relating to ammunition/munitions fired, launched or delivered by the conventional arms covered by the ATT • Certain obligations relating to parts and components in a form that provides the capability to assemble the conventional arms covered under the ATT
Programme of Action	<ul style="list-style-type: none"> • Small arms • Light weapons
International Tracing Instrument	<ul style="list-style-type: none"> • Small arms • Light weapons

4.2 Types of activities in the international arms trade

In addition to the differences and overlap in the types of conventional arms covered by each instrument discussed above, there are also differences regarding the types of activities that are regulated by each. The focus on different activities in each instrument is connected to the different natures and contexts of each. The Firearms Protocol, as a crime prevention tool, addresses only certain activities that can be linked to the specific criminal offences included within the Protocol. The Arms Trade Treaty regulates the international trade in conventional arms and is therefore focused on activities related to the trade and the possible diversion into the illegal trade. As a result, the Arms Trade Treaty does not focus on enforcement activities or on activities that are not related to the trade (for example, possession). The Programme of Action seeks to address a broad range of activities to prevent, combat and eradicate the illicit trade in small arms and light weapons.

Firearms Protocol

The provisions in the Firearms Protocol apply to the “prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition” and to the “investigation and prosecution of offences established in accordance with article 5 of this Protocol where those offences are transnational in nature and involve an organized criminal group” (article 4).

The following activities are included:²¹

- Manufacturing
- Marking (of firearms only)
- Record-keeping
- Tracing
- Import, export and transit
- Temporary import and temporary export
- Brokers and brokering activities
- Information exchange and international cooperation in the investigation and prosecution of the offences of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, as established under article 5 of the Protocol

Additionally, “illicit trafficking” is defined to include the “import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State party to that of another State party if any one of the States parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol”.²² Here then, the additional activities of “acquisition, sale, delivery, movement or transfer” are also included

²¹The Protocol also refers to a broad range of other activities including: manufacturing; deactivation of firearms; security and preventive measures; and seizure, confiscation and disposal of firearms, their parts and components and ammunition.

²²Article 3 (e), Firearms Protocol.

within the scope of the Firearms Protocol. The Firearms Protocol does not provide definitions for these activities, though the intent of this wording is clearly to cover all forms of cross-border movement of firearms and related items, and to ensure that firearms and related items are sent to and through States only if the latter have agreed to receive the shipments.

The Firearms Protocol does not apply to “state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations”.²³ The Interpretative Notes indicate that the words “state-to-state transactions” refer only to transactions by States in a sovereign capacity, thereby excluding States acting in their commercial capacity.²⁴ Therefore, the Firearms Protocol does not apply to those transactions or transfers that involve States purely in a sovereign capacity, only when acting in the context of national security and consistent with the United Nations Charter.

Programme of Action

The Programme of Action (PoA) makes reference to a broad range of activities. Those within the international trade mentioned in the PoA include:²⁵

- Import
- Export
- Transit
- Retransfer
- Marking and tracing

No definitions for these activities are included and no exclusions are specifically set out in the PoA.

International Tracing Instrument

The purpose of the International Tracing Instrument (ITI) is to identify and trace illicit small arms and light weapons (section 1, paragraph 1). Given this, its primary focus is on marking and tracing activities. Record-keeping, responding to tracing requests and international cooperation are also key activities in the ITI.

Arms Trade Treaty

The Arms Trade Treaty (ATT) applies to these activities of the international trade, defined as “transfers”:²⁶

- Export
- Import

²³ Article 4(2), Firearms Protocol.

²⁴ Interpretative Notes—Firearms Protocol; Travaux Préparatoires, p. 630.

²⁵ The PoA also refers to a broad range of other activities including: manufacturing, trade, stockpile management, possession, financing, disarmament, demobilization and reintegration, and weapons collection.

²⁶ Article 2(2), Arms Trade Treaty.

- Transit
- Trans-shipment
- Brokering

The ATT does not provide definitions for these activities. However, there are several sources that can assist States in defining them.²⁷ In general, transfers are defined in terms of both the physical movement from one State’s territory to another, or in terms of a change in title and/or control from one State’s jurisdiction to another. In this regard, article 2(3) provides that a “transfer” does not exist, for the purposes of the ATT, if conventional arms cross an international border but remain under that State party’s ownership.

Comparative table — Types of activities in international trade	
Organized Crime Convention	n/a
Firearms Protocol	<ul style="list-style-type: none"> • Manufacturing • Marking (of firearms only) • Record-keeping • Tracing • Import, export and transit of firearms • Temporary import and temporary export • Brokers and brokering activities • Information exchange and international cooperation in the investigation and prosecution of the offences of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition
Arms Trade Treaty	<ul style="list-style-type: none"> • Export • Import • Transit • Trans-shipment • Brokering
Programme of Action	<ul style="list-style-type: none"> • Import • Export • Transit • Retransfer • Marking and tracing
International Tracing Instrument	<ul style="list-style-type: none"> • Marking and tracing • Record-keeping • Tracing requests and responses • International cooperation

²⁷ For example, the 2015 European User’s Guide to assist with implementation of the “EU Common Position on Exports of Military Technology and Equipment” provides definitions of transit, trans-shipment and brokering, p. 11.

4.3 Other differences

4.3.1 Marking

The purpose of marking is to provide a unique set of marks to a firearm or other small arms that identifies it and forms the basis on which records are kept and tracing can be done. The implementation of adequate marking requirements responds to multiple purposes. For example, in the case of the Firearms Protocol, where a firearm is recovered in the course of illicit manufacturing or trafficking, the markings can be used by that State party to search its own records and as the basis of a request for the tracing of that firearm. Furthermore, markings may be used as the basis for mutual legal assistance under the Organized Crime Convention, for the purpose of tracing those arms, and/or to locate and seize them from where they are. The Firearms Protocol has a number of marking requirements at different stages of the supply chain of a firearm—manufacture, import, and transfer from government stock. The Programme of Action focuses on marking at the time of manufacture. The International Tracing Instrument focuses on marking of small arms and light weapons.

Interestingly, none of the international instruments that establish marking requirements apply them to parts and components and ammunition.

Firearms Protocol

Article 8 of the Protocol requires States parties to take measures to ensure that firearms that are manufactured in or imported into their jurisdictions are marked. The Protocol also makes additional provisions for the marking of firearms transferred from government stocks, as State-owned firearms may be marked differently from commercially available firearms.

There are three basic marking requirements at the time of manufacture. The marking must:

- (a) Uniquely identify each weapon (in conjunction with other characteristics, such as make, model, type, and calibre);
- (b) Allow anyone to determine country of origin; and
- (c) Permit country-of-origin experts to identify the individual firearm.

On import, article 8(1) (b) requires the marking of each imported firearm with additional information. The content of such markings must enable identification of the country of import and, where possible, the year of import. Legislators must generally require import markings on all imported firearms, but are permitted to make an exception for firearms imported temporarily for a “verifiable lawful purpose”.

In order to conform to article 8(1) (c), firearms transferred from government stocks to permanent civilian use must meet the same basic marking requirements of unique identification. If not already marked sufficiently to permit the identification of the transferring country by all States, the firearms must be so marked at the time of transfer. The marking requirements of the Protocol only apply to firearms, and not to parts and components, or ammunition.

Programme of Action

Under the Programme of Action, States have undertaken, at the point of manufacture, to ensure that “licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon as an integral part of the production process. This marking should be unique and should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number so that the authorities concerned can identify and trace each weapon.”²⁸

International Tracing Instrument

The International Tracing Instrument (ITI) provides further details on the marking requirements. The ITI enables States to choose their method for marking small arms and light weapons, though regardless of the method, all marks must be on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as is technically possible, recoverable.²⁹

Building on the marking provisions of the Firearms Protocol and the Programme of Action, the ITI provides further details on the markings for each stage. In terms of marking, States will:

(a) *At the time of manufacture:* Either require unique marking providing the name of the manufacturer, the country of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code. The marking of additional information such as the year of manufacture, weapon type/model and calibre is encouraged.

(b) *On import:* To the extent possible appropriate simple marking on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import; and require a unique marking, if the small arm or light weapon does not already bear such a marking. Markings are not required for temporary imports of small arms and light weapons for verifiable, lawful purposes, nor does the permanent import of museum artefacts require markings.

(c) *Transfer from government stocks to permanent civilian use:* In the case of a small arm or light weapon that is not marked in a manner that allows tracing, an appropriate marking is required, permitting identification of the country from whose stocks the transfer of the small arm or light weapon is made.

(d) *Small arms and light weapons in the possession of government armed and security forces for their own use:* Ensure these weapons are duly marked.

States are also to encourage manufacturers of small arms and light weapons to develop measures against the removal or alteration of markings. Additionally, States are also to ensure that all illicit small arms and light weapons that are found on their territory are uniquely marked and recorded, or destroyed, as soon as possible. The ITI does not provide for the marking of parts and components and ammunition.

²⁸ Section II, paragraph 7, Programme of Action.

²⁹ Article 7, ITI.

Arms Trade Treaty

The Arms Trade Treaty (ATT) does not contain any provisions on marking. While some States initially raised marking as an issue to consider including within the Treaty during the early deliberations, it was never included as an element in any of the draft papers that eventually formed the treaty text. This may be due in part to the scope of conventional arms pertaining to the ATT—the seven categories of the Conventional Register plus small arms and light weapons. Marking would therefore apply to only one category of the ATT’s scope—small arms and light weapons, and the International Tracing Instrument already provides detailed provisions on marking for such weapons, alongside the requirements specifically for firearms as set out in the Firearms Protocol.

Comparative table — Marking

Organized Crime Convention	n/a
Firearms Protocol	<ul style="list-style-type: none"> • At the time of manufacture: <ul style="list-style-type: none"> (a) Uniquely identify each weapon (in conjunction with other characteristics, such as make, model, type and calibre); (b) Allow anyone to determine country of origin; and (c) Permit country of origin experts to identify the individual firearm. • On import: <ul style="list-style-type: none"> (a) Markings must enable identification of the country of import and, where possible, the year of import. • On transfer from government stocks to permanent civilian use: <ul style="list-style-type: none"> (a) Basic marking requirements for unique identification.
Arms Trade Treaty	None
Programme of Action	<ul style="list-style-type: none"> • Licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon. • Marking should be unique and should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number.

International Tracing Instrument**Marking required:**

(a) At the time of manufacture: Unique marking providing the name of the manufacturer, the country of manufacture and the serial number, or maintain any alternative unique user-friendly marking.

(b) On import: Simple markings on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import.

(c) Transfer from government stocks to permanent civilian use: A small arm or light weapon that is not marked in a manner that allows tracing, an appropriate marking is required permitting identification of the country from whose stocks the transfer of the small arm or light weapon is made.

(d) Small arms and light weapons in the possession of government armed and security forces for their own use: Ensure these weapons are duly marked.

4.3.2 Deactivation

Deactivation is the process that renders a weapon permanently inoperable. Many States allow the possession (and display) of deactivated firearms by collectors, museums, rifle clubs, etc. Such deactivated firearms are generally subject to fewer controls. Once a State has determined the circumstance in which it is lawful to possess deactivated firearms, it must regulate the manner of deactivation.

Firearms Protocol

The only instrument that addresses deactivation is the Firearms Protocol. The deactivation standards set by article 9 of the Protocol require a firearm to be rendered permanently inoperable (and thus incapable of reactivation or conversion into a firearm). Article 9 sets out the general principles of deactivation:

- All essential parts of a deactivated firearm are to be rendered permanently unusable.
- Arrangements are to be made for deactivation measures to be verified.
- Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

4.3.3 Record-keeping

Record-keeping is a fundamental requirement under all instruments. It is required to enable many other activities to take place. For example, in the case of the Firearms Protocol, record-keeping is essential to enable identification and tracing of a firearm to occur. Records can also form the evidentiary basis of criminal prosecution of offences under the Protocol. Under the Arms Trade Treaty, record-keeping is required in part because it forms the basis of the content of the mandatory annual reports on actual or authorized imports and exports of a State party.

Firearms Protocol

The basic record-keeping obligation of the Protocol is set out in article 7. States parties must ensure the maintenance of information in relation to complete “firearms” and, where appropriate and feasible, their parts and components and ammunition. Those records are to be kept for no less than 10 years. This minimum is meant to ensure that records are kept for a sufficient length of time so as to ensure the identification and tracing³⁰ of firearms (and where possible their parts and components and ammunition) that are illicitly manufactured or trafficked, and to prevent and detect such activities. These must include at least the following types of records:

- The record-keeping requirement applicable to all firearms is that the record must contain the “appropriate markings” required by the Protocol. Article 8(1)(a) requires that such markings include the “name of the manufacturer, the country or place of manufacture and the serial number”.
- Article 7(b) requires additional records for firearms, their parts and components and ammunition that are the subject of international transactions. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiry, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit.
- Together with article 10(3), article 7(b) determines the information to be included in import/export documentation. Generally, that information will include sufficient information to allow the countries involved in the transaction to identify other involved countries, the individual importer and exporter, the items for which they sought the import/export documentation, as well as the validity period for the licence or authorization. The “final recipient” must be identified, whether or not it is a party to the immediate transaction itself. The requirement that the “description and quantity” of the articles involved be documented will mean, in the case of complete firearms, the same information listed in article 7(a).

³⁰ Tracing is defined in the Firearms Protocol article 3(f) as “the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking”.

Firearms Protocol — What information must be/is encouraged to be recorded?	
Records of marking at manufacture:	<ul style="list-style-type: none"> • Name of the manufacturer, • The country or place of manufacture • The serial number
Records of international transactions	<ul style="list-style-type: none"> • The issuance and expiry dates of the appropriate licences or authorizations • The country of export • The country of import • The transit countries, where appropriate • The final recipient • Description and quantity of the articles
Records of seized and confiscated firearms	There is no indication under the Protocol of the exact nature and type of information that must be recorded, though records must be kept.
Records of disposed firearms other than destruction	Information on the method of disposal to be recorded with respect to firearms disposed of by any means other than destruction.
Records of brokers	Additionally, States parties may choose to establish and keep records of brokers and their activities.
Length of record-keeping	At least 10 years

Programme of Action

In the Programme of Action (PoA), record-keeping is in respect of “manufacture, holding and transfer of small arms and light weapons” under a State’s jurisdiction. States undertake:

To ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of small arms and light weapons under their jurisdiction. These records should be organized and maintained in such a way as to ensure that accurate information can be promptly retrieved and collated by competent national authorities.³¹

Reference to “promptly retrieved” could mean, in some circumstances, retrieval for tracing purposes. Given that a small arm could be found in a crime situation at least 10 years after its manufacture or transfer to a lawful owner, holding records for as long as possible makes very good sense. Therefore the PoA does not provide a minimum number of years for holding records. Rather, it takes a different approach in suggesting that States keep their records for as long as possible.

³¹ Section II, paragraph 7, Programme of Action.

Programme of Action — What information is to be recorded?

Records of marking at manufacture	<ul style="list-style-type: none"> • Name of the manufacturer • The country or place of manufacture • The serial number
Records of international transactions	<ul style="list-style-type: none"> • The issuance and expiry dates of the appropriate licences or authorizations • The country of export • The country of import • The transit countries, where appropriate • The final recipient • Description and quantity of the articles
Records of seized and confiscated firearms	Ensure that all confiscated, seized or collected small arms and light weapons are destroyed, unless another form of disposition or use has been officially authorized, and provided that such weapons have been duly marked and registered.
Length of record-keeping	As long as possible

International Tracing Instrument

The International Tracing Instrument, a by-product of the Programme of Action, requires record-keeping in order to enable competent national authorities to trace illicit small arms and light weapons in a timely and reliable manner.

International Tracing Instrument — What information is to be recorded?

Method	Method of record-keeping is a national prerogative
Manufacturing records	Kept for at least 30 years, ideally as long as possible
All other records, including import and export	Kept for at least 20 years, ideally as long as possible
Company-held records	Records pertaining to small arms and light weapons held by companies that go out of business are to be forwarded to the State in accordance with its national legislation.

Arms Trade Treaty

Record-keeping obligations in the Arms Trade Treaty (ATT) are set out in article 12. The provision contains both mandatory and non-mandatory requirements. A State party is required to maintain national records of its issuance of export authorizations or its actual exports of the conventional arms covered under article 2(1) of the Treaty. States parties are encouraged, but not obliged, to keep records of actual imports and transit or trans-shipment authorizations.

These records must be kept for a minimum of 10 years. Therefore, the ATT and the Firearms Protocol are aligned in terms of the length of the record-keeping requirements, though both differ from the PoA and the International Tracing Instrument, which employ a more pragmatic approach in extending the time requirements (20 years in the case of the International Tracing Instrument) or for as long as possible (in the case of the PoA).

While not specifically stated in article 12, States are also required to keep records of authorized or actual imports. This obligation derives from article 13(3), which requires a State party to report annually on this, and the only way to be able to do so is to keep records of such imports. Therefore States parties to the ATT, although not explicitly obliged to keep records of arms imports, nevertheless have the obligation to report on actual or authorized arms imports. Therefore, it follows that the obligation to maintain records on import authorizations and/or actual arms imports is also implicitly included in the ATT.

Record-keeping of arms brokering activities is not explicitly mentioned. However, States parties are encouraged in article 12(3) to include in their records the “authorized international transfers” of conventional arms, as appropriate, and the definition of “transfer” in article 2(2) includes brokering.

Arms Trade Treaty — What information must be recorded?	
Exports	Maintain national records on export authorizations or actual exports of conventional arms covered in article 2(1).
Imports	Maintain records of actual or authorized imports of conventional arms covered in article 2(1).
Suggested (not required) content of records	<ul style="list-style-type: none"> • Quantity • Value • Model/type • Authorized international transfers of conventional arms covered under article 2(1) (including brokering) • Conventional arms actually transferred • Exporting State • Importing State • Transit and trans-shipment State(s) and end users, as appropriate
Length of record keeping	At least 10 years

Comparative table — Record-keeping	
Organized Crime Convention	n/a
Firearms Protocol	<ul style="list-style-type: none"> • Records of marking at manufacture • Records of international transactions • Records of seized and confiscated firearms • Records of disposed firearms other than by destruction • Records of brokers (optional) • Length of record-keeping—at least 10 years
Arms Trade Treaty	<ul style="list-style-type: none"> • Maintain national records on export and import authorizations or actual exports and imports of conventional arms covered in article 2 (1)^a • Length of record-keeping—at least 10 years
Programme of Action	<ul style="list-style-type: none"> • Records of marking at manufacture • Records of international transactions • Records of seized and confiscated firearms • Length of record-keeping—as long as possible
International Tracing Instrument	<ul style="list-style-type: none"> • Keep manufacturing records for at least 30 years • Keep all other records including import and export records for at least 20 years

^aArticle 13(3) of the ATT requires each State party to report annually on its authorized or actual exports and imports of conventional arms for the preceding year. Detailed record-keeping is essential for enabling States parties to produce these annual reports. Article 12(1) obliges States parties to keep records of export authorizations or actual exports. Article 12(2) only encourages States parties to keep records of its actual conventional arms imports. However, to meet the obligations in article 13 (3), States parties need to keep records of authorized or actual imports.

4.3.4 Trans-shipment

Trans-shipment is specifically regulated only in the ATT and not specifically mentioned in the Firearms Protocol or the Programme of Action (PoA). However, trans-shipment is a specific form of transit and therefore potentially subsumed into “transit” when mentioned in the Firearms Protocol and the PoA. According to the Revised Kyoto Convention of the World Customs Organization, “trans-shipment” is defined as the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office, which is the office of both importation and exportation.

Article 9 of the ATT requires each State party to take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under article 2(1) through its territory in accordance with relevant international law.

Article 6, which requires that certain types of transfers be prohibited, also applies to transit and trans-shipment. Fulfilling this ATT obligation presupposes that a State party has the capacity to, where required, prohibit transit and trans-shipments of conventional arms and related items.

5. Synergies

5.1 National transfer control systems

The Firearms Protocol, the Programme of Action (PoA) and the Arms Trade Treaty (ATT) all require States to establish and maintain national control systems. All three instruments are not directive on the particulars of those systems, though the Firearms Protocol requires an “effective system” of export and import authorization or licensing, as well as of measures on international transit for the transfer of firearms, their parts and components and ammunition.³² In the PoA, States undertake to “put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients”.³³ Article 5(2) of the ATT requires each State party to “establish and maintain a national control system including a national control list, in order to implement the provision of this Treaty”.

As the name suggests, a “control” system is an essential element in being able to monitor the movement of conventional arms, creating delineation between legal and illicit trade and enabling criminal justice activities to prosecute such illicit activities. A national control system is a cornerstone of compliance with the ATT and many of the provisions of the Firearms Protocol. However, each of these instruments provides a varying degree of detail on what a national control system should entail.

Firearms Protocol

Article 10(1) of the Firearms Protocol requires States to establish or maintain an effective system of licensing or authorization to control the import and export of firearms, their parts and components and ammunition. The Protocol also requires that States take “measures” on the international transit of firearms, their parts and components and ammunition. Such a system must ensure that firearms are not exported to or through countries that have not authorized the transfer,³⁴ and that the content of the documents used for legal import and export is sufficient to support the prosecution of the offence of trafficking.³⁵

³² Article 10(1), Firearms Protocol.

³³ Section II, paragraph 2, Programme of Action.

³⁴ Article 10, paragraphs 2 and 4, Firearms Protocol.

³⁵ Article 10(3), Firearms Protocol.

States must also take measures to enhance accountability and security associated with their import and export systems.³⁶

The Protocol does not specify in detail the form the system of licensing of import and export or the measures on international transit a State must take. This is left largely to the discretion of the States parties. In addition to ensuring that legislation incorporates all the mandatory provisions of the Protocol, States might have existing obligations under other multilateral, regional and subregional agreements that have application to the international import, export or transit of firearms, their parts and components and ammunition.³⁷

Programme of Action

At the national level, States implementing the Programme of Action have undertaken to “establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons”.³⁸ No particulars on such a national system are set out, though the Firearms Protocol, and now the ATT, provide further elaboration on the possible content of such a system.

Arms Trade Treaty

In addition to establishing and maintaining a national control system, article 5(2) stipulates that States parties must establish a national control list. Control lists are the basic tool in any national trade control system, setting out the range of conventional arms and related items that are subject to national trade controls as well as the definitions for them. The ATT, in recognizing that a national control system will require definitions (and none are provided in the Treaty itself) requires that national definitions reflect, at the very least, existing definitions in the United Nations Register of Conventional Arms and those used in relevant United Nations instruments when the ATT entered into force. Competent national authorities are to be designated and the control system must be “effective” and “transparent”.

³⁶ Article 10(5), Firearms Protocol.

³⁷ These include for example the Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community; 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 Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Related Materials; and the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly.

³⁸ Section II, paragraph 11, Programme of Action.

Comparative table — National control systems	
Organized Crime Convention	n/a
Firearms Protocol	<ul style="list-style-type: none"> • Establish or maintain an effective system of licensing or authorization to control the import and export of firearms, their parts and components and ammunition. • Take “measures” on international transit for firearms, their parts and components and ammunition. • Such a system must: <ul style="list-style-type: none"> – Ensure that firearms are not exported to or through countries that have not authorized the transfer. – Ensure that the content of the documents used for legal import and export is sufficient to support the offence of trafficking. • States must also take measures to enhance accountability and security associated with their import and export system.
Arms Trade Treaty	<ul style="list-style-type: none"> • Establish and maintain a national control system, including a national control list. • Designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under article 2(1) and of items covered under articles 3 and 4.
Programme of Action	Establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons.
International Tracing Instrument	n/a

5.2 Authorization/licensing of arms transfers

The authorization or licensing of arms transfers is a fundamental aspect of control in the international trade of conventional arms. Creating a process for applying for authorization or a licence, as well as the legislative requirements to be met prior to issuing authorizations or licences, is a key component of all the instruments.

Firearms Protocol

The Firearms Protocol and its system of authorizations of international transfers of firearms is based on reciprocity, requiring States to provide authorizations to one another before permitting shipments of firearms to leave, arrive or transit across their territory. The Firearms Protocol sets out procedural requirements that must be in place. Before an export licence or

authorization for a shipment of firearms, their parts and components and ammunition, a State party must verify that:

- The importing States have issued import licences or authorizations.
- Without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

The Firearms Protocol contains no export criteria against which to assess a potential licence or authorization for security or arms control purposes. However, the ATT does contain export criteria, and also sets out the circumstances under which a transfer must be prohibited (discussed below). In addition, many States already have provisions in their national legislation on the export of military conventional weapons that set out the criteria under which licence applications will be assessed for approval or rejection. States might also have obligations under one of the numerous multilateral, regional or subregional documents that provide elaborated criteria for the review of licence applications.³⁹ Such provisions would not normally appear in legislation dealing solely with firearms, but would be part of export control legislation dealing with exports of a broad range of conventional arms (as set out in a national control list), particularly with respect to the export of arms for military end use or end users.⁴⁰

Programme of Action

The Programme of Action (PoA) provides broadly that States undertake to “assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade”.⁴¹ What the body of “relevant international law” is specifically in relation to exports of small arms and light weapons is not made clear. However, the PoA clearly suggests that there is a body of law directly relevant to exports of small arms and light weapons. In this regard, the subsequent adoption of the ATT fills in the details in setting out a range of relevant bodies of law, including international human rights law and international humanitarian law.

Arms Trade Treaty

One of the objectives of the Arms Trade Treaty (ATT) is to “Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms”.⁴² In this sense, the ATT is quite different from the Firearms Protocol. The Firearms Protocol seeks in part to constrain the possibility of illicit trade through procedural licensing and authorization requirements. The ATT establishes global

³⁹ For example, the 2006 ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials; the EU Common Position defining common rules governing control of exports of military technology and equipment; and the 2004 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.

⁴⁰ See the UNODC Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

⁴¹ Section II, paragraph 11, Programme of Action.

⁴² Article 1, Arms Trade Treaty.

benchmarks for the circumstances when an export or transfer is permitted or prohibited, based on its potential negative consequences. This is done primarily through two articles in the Treaty.

Article 6 on prohibitions creates new, and codifies existing, standards on the international transfer of conventional arms, ammunition/munitions and parts and components, reflecting the international law standards alluded to in the Programme of Action. Article 6 sets out three circumstances when a transfer of all items included in the ATT is prohibited:

1. Where the transfer would violate a State party's obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.
2. Where the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
3. Where a State party has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Article 6 (2) makes specific reference to relevant international treaties concerning the authorization of transfers of, or the illicit trafficking in, conventional arms and related items. The Firearms Protocol must be a relevant international obligation for the purposes of article 6 (2), given that it is an international treaty concerning illicit trafficking. Authorization of exports in accordance with the terms of the Protocol is set out in article 10 and requires, inter alia, prior import authorization before issuing the export licence or authorization, and verification from transit States that there is no objection to the transit. Minimum information is required on export and import documentation.⁴³ States parties are also obliged to require appropriate simple markings on each imported firearm.⁴⁴

Article 7 sets out the conditions when a State party shall not authorize an export of conventional arms and related items. If the exporting State party determines that there is an "overriding risk" that the export would result in any of the negative consequences set out in article 7 (1), then the exporting State party must not authorize the export.

These include those situations where there is an overriding risk that the export would undermine peace and security, or could be used to commit or facilitate a serious violation of international humanitarian law, a serious violation of international human rights law, or a terrorism, or transnational organized crime offence under international conventions or protocols to which the exporting State is a party (including the Firearms Protocol).

By referring to transnational organized crime offences under international conventions or protocols to which the exporting State is a party, the ATT is reiterating and reaffirming existing obligations a State might have. In terms of the ATT, the offences related to firearms as set out in the Firearms Protocol are particularly relevant. In assessing the risk of the offence of illicit trafficking being committed, for example, the exporting State party should

⁴³ Article 10 (2)-(3), Firearms Protocol.

⁴⁴ Article 8 (1) (b), Firearms Protocol.

consider whether the marking of firearms as required by article 8 of the Protocol has been done (at manufacture) and will be done (on import).

The distinction between article 6 and article 7 must be understood particularly in regard to the incorporation of existing obligations under other instruments, and in particular the Firearms Protocol. Article 6(2) imposes a strict obligation not to authorize a transfer, imposing a “strict liability” standard—meaning where certain conditions are not met (and thus violating existing obligations in relevant international agreements), the transfer is prohibited. This is different from the standard of knowledge required in article 6(3) or the assessment of risk required in article 7, which presumes a due diligence standard on the part of the State party to consider possible risky outcomes—for example, that the export would result in illicit trafficking in firearms.

5.3 Import systems

All three arms control instruments—the Firearms Protocol, the Programme of Action and the Arms Trade Treaty—require some form of control over imports. Systems for importing conventional arms of a State take into account a number of factors: a State will control what type of conventional arms and related ammunition/munitions enter its territory as well as control who can receive and use which types of weapons. In order to import in the first place, a State is required to provide varying degrees of information to the exporting State.

Firearms Protocol

States parties to the Firearms Protocol are required to establish or maintain an effective system of import licensing or authorization for firearms, their parts and components and ammunition. While not overly prescriptive, the Firearms Protocol does set out some requirements:

- Require appropriate simple marking on each imported firearm, permitting identification of the country of import, therefore the national system must accommodate this obligation.
- Import authorizations are to be obtained before an export authorization can be issued, therefore the national system must be able to provide such authorizations issued within a national legal framework.
- Minimum information must be included on import authorization: the place and the date of issuance, the date of expiry, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit.
- Information contained in the import licence must be provided in advance to the transit States.
- The importing State party, when requested, is to inform the exporting State party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.
- States parties may adopt simplified procedures for the temporary import (and export and transit) of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Programme of Action

The Programme of Action (PoA) requires States to exercise “effective control over the import of small arms and light weapons with the aim to prevent illegal manufacture or illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients”. The PoA also requires States to establish a national system of import licensing or authorization.

International Tracing Instrument

The International Tracing Instrument (ITI) does not refer to import control systems but does require simple marking on imported small arms and light weapons permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking. This provision is stated in article 8 (*b*) with reference to the import marking requirements set out in the Firearms Protocol.

Arms Trade Treaty

While import controls were discussed throughout the negotiations as an element of the Arms Trade Treaty, there are more detailed provisions on exports than imports. However, articles 6 and 8 set out requirements for importing States:

- Upon request, an importing State party is to provide appropriate and relevant information to assist an exporting State party in its export assessment under article 7.
- Take measures to regulate imports where necessary, which may include establishing “import systems”.
- Where the importing State party is the final destination of the arms, it can request information from the exporting State party on pending or actual export authorizations of those arms.
- A State party will need to ensure that its national control system enables the thorough assessment of all imports of conventional arms and related items in order to effectively implement the article 6 prohibitions.

Comparative table — Requirements for arms transfer authorizations, export and import controls

	Firearms Protocol	Programme of Action	Arms Trade Treaty
Export	<ul style="list-style-type: none"> Establish or maintain an effective system of export licensing or authorization (art. 10 (1)). Verify: (a) importing States have issued import licences or authorizations; and (b) written notice that transit States do not object (art. 10 (2)). Documentation must include: place and date of issuance, date of expiry, country of export, country of import, final recipient, description and quantity of the items, and transit countries (if relevant) (art. 10 (3)). 	<ul style="list-style-type: none"> Establish an effective system of export licensing or authorization (sect. II, para. 11). Take appropriate measures, including legal and administrative ones, against activities that violate arms embargoes (sect. II, para. 15). Assess export applications according to strict national regulations and procedures that are consistent with international law and that take into account the risk of diversion (sect. II, para. 11). 	<ul style="list-style-type: none"> Establish and maintain a national control system, including a national control list (art. 5 (2)). Establish and maintain national control systems to regulate export of ammunition/munitions (art. 3) and parts and components (art. 4). A State shall not authorize transfers⁶¹ that would: <ul style="list-style-type: none"> Violate United Nations Security Council Chapter VII obligations (in particular arms embargoes) (art. 6 (1)). Violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms (art. 6(2)). If it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party (art. 6 (3)). Each exporting State party must make a national assessment of whether the arms under consideration: <ul style="list-style-type: none"> (a) Would contribute to or undermine peace and security; or (b) Could be used to commit or facilitate a serious violation of international humanitarian law or of international human rights law; or an act constituting an offence under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party. Also, under article 7 (4), when making the national assessment the exporting State is required to take into account the risk of the arms and other items under consideration being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

- The exporting State must consider whether there are measures that can be taken in conjunction with the importing State to mitigate the risks of any negative consequences identified in the assessments under article 7 (1) (a) and (b).
- Under article 7 (3), if the exporting State party determines that there is an "overriding risk" that the export would result in any of the negative consequences foreseen under article 7 (1) (a) and (b), then the exporting State party must not authorize the export.

- The importing State shall ensure that relevant information (which may include end use or end user documentation) is provided, upon request, to assist the exporting State party (art. 8 (1)).
- The importing State shall take measures to allow it to regulate, where necessary, imports under its jurisdiction. Measures may include import systems (art. 8 (2)).
- The importing State may request information from the exporting State regarding relevant pending or actual export authorizations (art. 8 (3)).
- Importing States required to apply the prohibitions on imports set out in art. 6.

- States parties to take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment through their territory (art. 9).
- States parties must apply article 6 to transit and trans-shipment.

- Establish an effective system of import licensing or authorization (sect. II, para. 11).

- Each State party shall establish or maintain an effective system of import licensing or authorization (art. 10).

- The importing State party shall, upon request, inform the exporting State party of the receipt of the dispatched shipment (art. 10 (4)).

- Establish or maintain measures on international transit (sect. II, para. 11).

- Establish or maintain effective measures on international transit (art. 10 (1)).

Transit

⁴Article 6 applies to all "transfers" defined in article 2 (2) as exports, imports, transit, trans-shipment and brokering.

5.4 Brokering

Both the Firearms Protocol and the Programme of Action were the first initiatives at the global level to address brokering. The inclusion of suggested controls on brokering activities in the international trade in conventional arms recognizes that often brokering is done with little or no regulation by States. Since the development of the Firearms Protocol and the PoA, there has been an increased understanding within the United Nations on the activities that are encompassed by brokering and the need for States to control such activities strictly. This shift is represented by the fact that the ATT includes a mandatory provision for States parties to regulate brokering pursuant to its national laws.

Firearms Protocol

The Firearms Protocol requires States to consider establishing a system to regulate those who participate in brokering activities. Three suggested measures are given:

- Registration of brokers operating within their territory
- Requiring licensing or authorization of brokering
- Requiring disclosure of import and export licences or authorizations, or accompanying documents of the names and locations of brokers involved in the transaction⁴⁵

The Firearms Protocol also suggests that States include information on brokers and brokering in their exchanges of information under article 12 of the Protocol and retain records regarding brokers and brokering as part of their record-keeping obligations set out in article 7.

The Firearms Protocol does not explicitly suggest establishing appropriate penalties for illicit brokering activities (as the Programme of Action does). However, the ancillary offences contained in article 5(2) of the Firearms Protocol can provide some support for the investigation and prosecution of illicit brokering activities. Moreover, the provisions of the Organized Crime Convention apply *mutatis mutandis* to the Protocol. The Organized Crime Convention can therefore be relevant to prosecuting and establishing appropriate penalties for illicit brokering to the extent that those activities are deemed to be “serious” offences as defined under the Convention.

Programme of Action

The Programme of Action (PoA) encourages States “to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering”.⁴⁶

The PoA sets out three suggested measures that should be included in national legislation or procedures:

- Registration of brokers
- Licensing or authorization of brokering transactions
- Appropriate penalties for all illicit brokering activities performed within the State’s jurisdiction and control (para. 14)

⁴⁵ Article 15, Firearms Protocol.

⁴⁶ Section II, paragraph 14, Programme of Action.

Arms Trade Treaty

The Arms Trade Treaty (ATT), as noted, represents an increased recognition by the international community of the necessity of regulating brokering by requiring States parties to take measures, pursuant to its national laws, to regulate brokering “taking place under its jurisdiction for conventional arms covered under article 2 (1)”.⁴⁷

While the ATT requires States parties to take measures, the treaty provides less direction on suggested measures than either the Firearms Protocol or the Programme of Action. The ATT suggests two possible measures:

- Requiring brokers to register
- Requiring brokers to obtain written authorization before engaging in brokering

In considering the necessary measures in implementing the ATT, States should therefore draw on the additional suggestions in the Firearms Protocol and the Programme of Action (see recommendations below in section 6).

Comparative table — Brokering	
Firearms Protocol	Consider regulating brokers by establishing a system that requires: registration; licensing or authorization of brokering; and/or disclosure of brokers on documentation.
Arms Trade Treaty	Take measures, pursuant to its national laws, to regulate brokering taking place within its jurisdiction, such as registration or brokering authorizations.
Programme of Action	Develop legislation and administrative procedures on brokering, including registration, licensing or authorization of brokering transactions, and appropriate penalties for illicit brokering.

5.5 National focal points

Establishing a focal point (or points) is common to all three instruments. Broadly, the role of a focal point is to act as a national liaison office between their State and the international community. Generally, the role of a national focal point is to exchange information on the implementation of the treaties or the PoA with other States and regional and international organizations.

Firearms Protocol

Article 13 (2) requires each State party to identify a national body or a single point of contact to act as liaison between it and other States parties on matters relating to this Protocol.

⁴⁷ Article 10, Arms Trade Treaty.

Programme of Action

The Programme of Action suggests that States designate two points of contact:

- A national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action.⁴⁸
- A point of contact within subregional and regional organizations to act as liaison on matters relating to the implementation of the Programme of Action.⁴⁹

In terms of implementation, a number of States have reported that they have established a National Coordination Agency (NCA) (also known as National Commissions) on small arms, and a number of States have also established a National Point of Contact (NPC) (also known as a National Focal Point) on the PoA.⁵⁰

International Tracing Instrument

The International Tracing Instrument also requires the establishment of a national focal point. States are to designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of this instrument.

Arms Trade Treaty

The Arms Trade Treaty, as part of general implementation obligations, requires each State party to designate one or more national points of contact to exchange information on matters related to the implementation of the Treaty (art. 5(6)).

Comparative table — Points of contact

Firearms Protocol	Each State party to identify a national body or a single point of contact to act as liaison between it and other States parties on matters relating to this Protocol.
Arms Trade Treaty	Each State party to designate one or more national points of contact to exchange information on matters related to the implementation of the Treaty.
Programme of Action	Suggests designation of: <ul style="list-style-type: none"> • A national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action. • A point of contact within subregional and regional organizations to act as liaison on matters relating to the implementation of the Programme of Action.
International Tracing Instrument	States are to designate one or more national points of contact to exchange information and act as a liaison on all matters relating to the implementation of ITI.

⁴⁸ Section II, paragraph 5, Programme of Action.

⁴⁹ Section II, paragraph 24, Programme of Action.

⁵⁰ *A Decade of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of National Reports*, UNIDIR, p. 12.

5.6 International cooperation

What is common across all three instruments is the promotion of international (or regional) cooperation to tackle the challenges posed by the proliferation of weapons and their negative consequences. This is considered one of the primary means through which the obligations are to be implemented. International cooperation and assistance emanating from such cooperation is limited to the boundaries of the treaty.

Organized Crime Convention

The Organized Crime Convention (UNTOC) provides significant and broad-ranging tools for international cooperation. States parties to the UNTOC shall afford one another “the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings” in relation to the offences covered by the Convention, *inter alia*, the offences established under the Firearms Protocol (article 18). A broad range of legal assistance may be requested: taking evidence or statements; serving judicial documents; executing search and seizure; examining objects and sites; providing information, evidence and expert evaluations; documents and records; tracing proceeds of crime; facilitating the appearance of witnesses; and any other kind of assistance not barred by domestic law. Article 18 of the Convention applies also to international cooperation in the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation (as set out in article 13).

Specific international cooperation mechanisms are also necessary to enable countries to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property. Article 13 sets out the procedures for international cooperation in confiscation matters. A State party that receives a request from another State party is required by article 13 to take particular measures to identify, trace and freeze or seize proceeds of crime for purposes of eventual confiscation. Article 13 also describes the manner in which such requests are to be drafted, submitted and executed.

Article 18(1) establishes the scope of the obligation to provide mutual legal assistance. States parties are required to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention as provided in article 3 (this includes the offences established under the Firearms Protocol). Each State party must ensure that its mutual legal assistance treaties and laws provide for assistance to be provided for cooperation with respect to investigations, prosecutions and judicial proceedings. Article 18(1) requires the provision of mutual legal assistance where the requesting State party has reasonable grounds to suspect that the offence is transnational in nature and that the offence involves an organized criminal group. The fact that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party constitutes in itself a sufficient reasonable ground to suspect that the offence is transnational. Importantly, States parties do not need to enter into new agreements to cooperate with each other where the UNTOC is the basis of the cooperation.

Firearms Protocol

The Firearms Protocol requires States parties to cooperate at the bilateral, regional and international levels to combat illicit manufacturing and trafficking⁵¹ (art. 13). Particulars of

⁵¹ Article 13(1), Firearms Protocol.

such cooperation are not detailed, however cooperation that involves information-sharing is set out in detail in article 12. Under this article, more specific forms of cooperation are delineated, including sharing information on:

- Case-specific matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.
- Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition.
- The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition, and ways of detecting them.
- Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition.
- Legislative experiences and practices related to prevention of illicit manufacturing and illicit trafficking.
- Relevant scientific and technological information useful to law enforcement authorities.

States parties are also required to cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked (article 12 (4)).

In addition, the United Nations Office on Drugs and Crime (UNODC) has been mandated by the Conference of the Parties (COP) to the UNTOC to conduct a study on the transnational nature, routes and *modi operandi* used in firearms trafficking and to continue gathering information from States parties on illicit trafficking in firearms on a regular basis (COP resolutions 5/4, 6/2 and 7/2). Subsequently, the intergovernmental Working Group on Firearms, established by the Conference of the Parties, further reiterated the request to UNODC to continue collecting information from Member States on firearms trafficking. and recommended that the Conference consider requesting the Secretariat to produce a biennial study on the dimension, patterns and flows of trafficking at the national and, if appropriate, regional and international levels.⁵²

Programme of Action

Cooperation figures prominently in the PoA. For example, section III of the Programme of Action (PoA) is dedicated to “implementation, international cooperation and assistance”. The PoA recognizes that States need “close” international cooperation to prevent, combat and eradicate the illicit trade in small arms.⁵³ In this regard, the PoA provides, *inter alia*, that:

- States should enhance cooperation, the exchange of experience and training among competent officials, including customs, police, intelligence and arms control officials, at the national, regional and global levels in order to combat the illicit trade in small arms and light weapons in all its aspects.⁵⁴

⁵² UNODC Working Group on Firearms, June 2015, CTOC/COP/WG6/2015/3. .

⁵³ Section III, paragraph 1, Programme of Action.

⁵⁴ Section III, paragraph 7, Programme of Action.

- States are encouraged to consider international cooperation and assistance to examine technologies that would improve the tracing and detection of illicit trade in small arms and light weapons.⁵⁵
- States are encouraged to exchange information on a voluntary basis on their national marking systems on small arms and light weapons.⁵⁶

At the regional level, States undertake to create mechanisms for transborder customs cooperation and networks for information-sharing among law enforcement, border and customs control agencies.⁵⁷ Importantly, the PoA emphasizes the need for coordinated cooperation, noting that States undertake “to cooperate and to ensure coordination, complementarity and synergy in efforts to deal with the illicit trade in small arms and light weapons in all its aspects at the global, regional, subregional and national levels [...]”.⁵⁸

International Tracing Instrument

The International Tracing Instrument (ITI) has extensive provisions on international cooperation, which is not surprising since the successful tracing of illicit small arms and light weapons is highly dependent on cooperation at all levels. In this regard, the ITI contains the basic requirement that States cooperate on a bilateral and, where appropriate, on a regional and international basis to support the effective implementation of the ITI.⁵⁹

States that are able to do so are to consider rendering technical, financial and other assistance, both bilaterally and multilaterally, in building national capacity in the areas of marking, record-keeping and tracing,⁶⁰ as well as assistance to examine technologies that would improve the tracing and detection of illicit small arms and light weapons, and measures to facilitate the transfer of such technologies.⁶¹

States are also to cooperate with the International Criminal Police Organization (INTERPOL) to support the effective implementation of the ITI, including by promoting such implementation.⁶² States are encouraged to use INTERPOL’s mechanisms to facilitate tracing operations and investigations to identify and trace illicit small arms and light weapons, and to build national capacity to initiate and respond to tracing requests.⁶³

Arms Trade Treaty

The Arms Trade Treaty (ATT) requires cooperation between its States parties to implement the Treaty (art. 15). Article 15 sets out a number of cooperative measures States are encouraged to undertake. This includes:

⁵⁵ Section III, paragraph 10, Programme of Action.

⁵⁶ Section III, paragraph 12, Programme of Action.

⁵⁷ Section II, paragraph 27, Programme of Action.

⁵⁸ Section III, paragraph 2, Programme of Action.

⁵⁹ Article 26, ITI.

⁶⁰ Article 27, ITI.

⁶¹ Article 28, ITI.

⁶² Articles 33 and 34, ITI.

⁶³ Article 35, ITI.

- Exchanging information on matters of mutual interest regarding the implementation and application of the ATT.
- Consulting on matters of mutual interest and to share information, as appropriate, to support ATT implementation.
- Sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under article 2(1).
- Cooperating with each other to prevent the transfer of conventional arms covered under article 2(1) becoming subject to corrupt practices.
- Exchanging experience and information on lessons learned in relation to any aspect of the Treaty.

The ATT requires specifically that States parties “afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.”⁶⁴ However, the ATT does not serve as a legal basis for the purpose of such cooperation. In the absence of an existing or sufficiently broad cooperation agreement, States parties to the Organized Crime Convention may want to explore the possibility of using the Convention as the legal basis. This relates directly to enforcement provisions (discussed below).

Comparative table — International cooperation

Organized Crime Convention

- States parties to ensure “the widest measure of mutual legal assistance” in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention, and mutatis mutandis, the offences established under the Firearms Protocol (article 18).
- A broad range of legal assistance may be requested: taking evidence or statements; serving judicial documents; executing search and seizure; examining objects and sites; providing information, evidence and expert evaluations; documents and records; tracing proceeds of crime; facilitating the appearance of witnesses; and any other kind of assistance not barred by domestic law.
- International cooperation in the identification, tracing and seizure of proceeds of crime, property and instrumentalities for the purpose of confiscation (as set out in article 13).
- States parties do not need to enter into new agreements to cooperate with each other where the UNTOC is the basis of the cooperation.

⁶⁴ Arms Trade Treaty, article 15 (5).

Firearms Protocol	<ul style="list-style-type: none"> • States parties to cooperate at the bilateral, regional and international levels to combat illicit manufacturing and trafficking (art. 13). • Specific sharing of information on: <ul style="list-style-type: none"> – Case-specific information. – Organized criminal groups known to take part or suspected of taking part in illicit manufacturing or trafficking. – The means of concealment used in illicit manufacturing or trafficking. – Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking. – Legislative experiences and practices related to prevention of illicit manufacturing and illicit trafficking. – Relevant scientific and technological information (art. 12). • Required to cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked (article 12 (4)).
Arms Trade Treaty	<ul style="list-style-type: none"> • Requires cooperation between its States parties to implement the Treaty (art. 15). Encourages: <ul style="list-style-type: none"> – Exchanging information on matters of mutual interest. – Sharing information regarding illicit activities and actors to prevent diversion. – Cooperation to prevent transfers being subject to corrupt practices. – Exchanging experience and information on lessons learned. • States parties to afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to the Treaty.
Programme of Action	<ul style="list-style-type: none"> • Cooperation at the regional and global level emphasized, including the exchange of experience and training, examining technologies, information on marking systems, etc. • At the regional level, create mechanisms for transborder customs cooperation and networks for information-sharing among law enforcement, border and customs control agencies. • Emphasizes the need for coordinated cooperation.
International Tracing Instrument	<ul style="list-style-type: none"> • States to cooperate on a bilateral and, where appropriate, on a regional and international basis to support the effective implementation of the ITI. • States to consider rendering technical, financial and other assistance in the areas of marking, record-keeping and tracing, and technologies that would improve the tracing and detection of illicit small arms and light weapons. • States to cooperate with INTERPOL to support the effective implementation of the ITI.

5.7 Enforcement

Enforcement is a basic requirement in instruments that aim to establish legal controls and adopt criminal law approaches to counter illegal activities. However, the instruments take different approaches.

Organized Crime Convention

The Organized Crime Convention has broad application and can also be invoked for other “serious crimes” if they are transnational in nature and involve an organized criminal group (Organized Crime Convention, article 2 (a) and (b) and article 3 (b)). A serious crime is defined in article 2 (b) to be any offence carrying a maximum penalty of four years deprivation of liberty or a more serious penalty.

The Organized Crime Convention is not limited to a list of predetermined offences. Rather it adopts an approach that takes into account the seriousness of the acts it covers. While the Convention applies to offences that are transnational in nature and involve organized criminal groups, this does not mean that these elements themselves are to be included as elements of the domestic offences. On the contrary, drafters must not include a transnational element in the definition of domestic offences unless expressly required by the Convention or its Protocols. The definition of “serious crime” facilitates a more uniform approach at the global level, and considerably enhances the potential use of the Convention for the purposes of international cooperation. States parties that establish as “serious crimes” certain offences (for example, illicit brokering) can then use the law enforcement and international cooperation provisions of the UNTOC (such as mutual legal assistance, extradition, etc.) to facilitate their investigation and prosecution.

Firearms Protocol

The Firearms Protocol sets out the specific criminal offences that must be established in national law by States parties with the presumption that prosecution of those offences (i.e. enforcement) should occur. The Protocol requires the criminalization of three groups of central offences:

- (a) Illicit manufacturing:
 - (i) Any manufacturing or assembly of firearms without marking; and
 - (ii) Any manufacturing or assembly from illicit (trafficked) parts and components; and
 - (iii) Any manufacturing or assembly without legal permit or authorization.
- (b) Illicit trafficking:
 - (i) Any transnational transfer without legal authorization; and
 - (ii) Any transnational transfer if firearms are not marked.
- (c) Removing or altering serial numbers of other markings.

The Firearms Protocol must be read in conjunction with its parent Convention, the UNTOC, especially in relation to the criminal offences and their enforcement. The provisions of the

Convention apply *mutatis mutandis* to the Protocol (Protocol, art. 1, paras. 2 and 3), and offences established pursuant to the Protocol are to be considered offences established under the Convention. This means that States must also criminalize the Convention offences of participation in an organized criminal group (Convention, art. 5), laundering of proceeds of crime (Convention, art. 6), corruption (Convention, art. 8), and obstruction of justice (Convention, art. 23) and apply them to firearms-related offences. This also requires States to take a number of measures into consideration with respect to the offences established by the Protocol. These are set out in article 11 of the Convention and include, for example, conditions of release for people accused of Protocol offences, general conditions for parole or early release, and statute of limitations.

Programme of Action

The Programme of Action refers to the establishment of offences and their subsequent enforcement. For example, at the national level, States undertake “to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes” (para. 3). States also undertake “to adopt where they do not exist and enforce, all the necessary measures to prevent the manufacture, stockpiling, transfer and possession of any unmarked or inadequately marked small arms and light weapons” (para. 8). Such necessary measures could include criminal provisions relating to marking.

International Tracing Instrument

Tracing is fundamentally a law enforcement tool and so in this sense, the International Tracing Instrument (ITI) is essentially about enforcement. The main purpose of the ITI is to identify and trace illicit small arms and light weapons. Under article 6 of the ITI, small arms and light weapons are “illicit” if:

- (a) They are considered illicit under the law of the State within whose territorial jurisdiction the small arm or light weapon is found;
- (b) They are transferred in violation of arms embargoes decided by the Security Council in accordance with the Charter of the United Nations;
- (c) They are not marked in accordance with the provisions of this instrument;
- (d) They are manufactured or assembled without a licence or authorization from the competent authority of the State where the manufacture or assembly takes place; or
- (e) They are transferred without a licence or authorization by a competent national authority.

While the ITI does not specify offences, the elements of “illicit” as set out in article 6 support the offence of illicit trafficking as set out, for example, in the Firearms Protocol.

Arms Trade Treaty

During the negotiations for the Arms Trade Treaty (ATT), discussions on enforcement measures suggested specific forms of measures, including the establishment of penalties and the

ability to inspect and seize shipments. However, the final treaty text does not proscribe any particular enforcement measures. In determining what may constitute “appropriate measures”, States can draw on the other instruments for guidance. For example, States parties to both the ATT and the Organized Crime Convention can establish as “serious crimes” offences to enforce the ATT, and are able to use the Organized Crime Convention provisions for its enforcement.

Comparative table — Enforcement

Firearms Protocol	<p>States parties to create the offences of:</p> <ul style="list-style-type: none"> • Illicit manufacturing of firearms, their parts and components and ammunition. • Illicit trafficking in firearms, their parts and components and ammunition. • Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by the Protocol. • Attempting to commit or participating as an accomplice in these offences. • Organizing, directing, aiding, abetting, facilitating or counselling the commission of the above offences (art. 5, para. 2); illicit reactivation of firearms (“optional” offence) (art. 9).
Arms Trade Treaty	<p>States parties are required to enforce national laws and regulations that implement the provisions of the Treaty (without further specifications).</p>
Programme of Action	<p>Establish as national offences:</p> <ul style="list-style-type: none"> • Illegal manufacture • Illegal possession • Illegal stockpiling • Illegal trade (no description of the criminal conduct provided)
International Tracing Instrument	<p>No specific offences set out, though tracing to assist in enforcement of offences.</p>

6. Applying synergies for implementation

As the previous discussion highlights, there are a number of areas of interplay as well as differences between the Organized Crime Convention, the Firearms Protocol, the Programme of Action (PoA) and the Arms Trade Treaty (ATT).

Some understanding and widening support for certain issues, such as brokering, have advanced in the intervening years between the adoption of the Firearms Protocol and the PoA. Other issues are less extensively covered in the newest instrument to address the international trade in conventional arms, the ATT (for example, enforcement measures). This could be a reflection of the political dynamics of the negotiations or because States wanted to emphasize other areas of control (for example, export assessment in the ATT). In this regard, the different instruments are important in their potential to complement each other and become “building blocks” in elaborating control regimes anticipated by these instruments.

Applying the identified synergies is not automatic, and may require careful consideration by law and policymakers. The next section makes a number of recommendations to assist legislators and policymakers in the implementation of their obligations at the national level, where they have multiple obligations under the different instruments to which they are a State party. They relate to the following areas:

- General recommendations
- Establishment of national points of contact
- Developing legislation regulating brokering
- Criminalizing illicit trafficking as a serious crime
- Addressing corruption in international transfers
- Implementing preventive measures:
 - National control systems
 - Marking requirements
- Expanding enforcement measures: criminalization
- Facilitating international cooperation

6.1 General recommendations⁶⁵

As a first general recommendation, States that have not yet done so are encouraged to consider becoming party to the three legally binding instruments (ATT, UNTOC and the Firearms Protocol) and to afford full implementation to all international instruments as complementary and mutually reinforcing building blocks of a single comprehensive framework.

6.1.1 Conduct thorough reviews of the domestic legal frameworks in light of all international instruments

When developing their national regulatory and policy frameworks, States wishing to comply with their international obligations and commitments, should not consider them in isolation, but as a complementary suite or ensemble, enhancing and expanding provisions to be integrated into their national practices.

When conducting a legislative review in light of their obligations under these treaties or commitments, States are encouraged to be as holistic as possible and consider all relevant pieces of legislation in order to avoid conflicting or contradictory provisions. This includes reviews of relevant codes and other secondary legislation.

Furthermore, when reviewing their legislation, States should address as a matter of priority the appropriate synergies with regards to transfer controls, criminalization of illicit trafficking and other related offences, as well as the adoption of enabling measures for international cooperation.

States parties may also find it useful to conduct comparative studies on good legislative practices among countries in the region and beyond, as well as broad-based, non-mandatory stakeholder consultation processes, to prepare the ground for legislative reforms.⁶⁶

6.1.2 Take relevant regional instruments into account

When seeking to comply with the international instruments, States should also take into account obligations that they may have under other regional instruments on firearms/small arms and light weapons (SALW) to which those States may also be a party.⁶⁷

⁶⁵ As part of the UNSCAR-funded activities to promote the ratification and implementation of the Arms Trade Treaty and related instruments, UNODC organized, in October 2015, in Abidjan (Côte d'Ivoire) and in San José (Costa Rica), two regional meetings with policy- and lawmakers from 13 Latin American and 11 West and Central African countries. The outcomes of the discussion and recommendations stemming from the two regional meetings have been in part reflected in the present Paper. See <http://www.unodc.org/unodc/en/firearms-protocol/news.html>

⁶⁶ See above. Outcome documents of the two regional meetings held in October 2015 in Abidjan (Côte d'Ivoire) and in San José (Costa Rica) (available upon request).

⁶⁷ These include, for example, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA), the Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community (SADC Protocol); 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 (Nairobi Protocol); the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Related Materials (ECOWAS Convention); the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention), as well as several binding EU Common Positions, Directives and Regulations on SALW, on transfer control regulations and on the implementation of the Firearms Protocol. A detailed list of international and regional instruments on firearms and SALW is included in annex I to this Paper.

In this regard, participants at the regional meeting in Abidjan further considered whether they should revise and expand the scope of the ECOWAS Convention and the mandate of its Commission on SALW in order to incorporate the conventional arms covered by the ATT as well.⁶⁸

6.1.3 Should States develop one comprehensive law or separate laws on firearms and conventional arms?

Recurrent questions raised by Member States included how best to address the synergies between global instruments and apply them to their domestic legal frameworks, as well as the fundamental question of whether States should maintain or develop separate pieces of legislation on firearms and other conventional weapons, or whether they should aim at one comprehensive law that addresses most aspects covered in the ATT and in the other more specific firearms/SALW control instruments.

Both approaches can be applied and present different advantages:

- On the one hand, States parties to both the ATT and the Firearms Protocol may find it easier to maintain a firearms act and a conventional arms act that address the Firearms Protocol and the ATT obligations separately—while taking into account where the different instruments can support or enhance those obligations, as this Paper discusses. The rationale behind this approach is based on the fact that the specific nature of firearms and the firearms-related cross-border crimes that the Firearms Protocol addresses are in part distinct and more specific than the ones contained in the ATT. The distinct obligations contained in the Protocol would be best implemented in firearms-specific legislation—and this reflects widespread State practice—whereas the ATT applies to a broad range of conventional arms. Furthermore, many States already regulate a much broader range of arms, many with a specific military use.
- On the other hand, combining under one consolidated and coherent arms transfer act the requirements applicable to firearms/SALW and other conventional arms covered by the ATT overtly acknowledges the fact that the greatest synergies between these global instruments apply in particular to the field of transfer controls. As a matter of fact, many States already apply export and import controls and other measures not only to firearms, but also to other categories of arms. Aiming at one consistent international arms transfer control regime for all arms categories would facilitate the joint implementation of the instruments and contribute to higher levels of harmonization at the national and international levels between the various instruments (notwithstanding the intrinsic differences that exist and have been highlighted in the present Paper). Those laws and regulations would need to be revised by States in order to ensure compliance with the obligations in the ATT and the Firearms Protocol, at the least—again taking into consideration the areas of possible overlap and complementarity with the other instruments.

This question was also intensively debated during two regional seminars organized by UNODC in October 2015 in Abidjan (Côte d’Ivoire) and in San José (Costa Rica) among national practitioners, where diverging views emerged: Some participants were inclined to work on one comprehensive law—while keeping the specificities for the different arms categories—whereas

⁶⁸ See above. Outcome documents of the regional meeting held in Abidjan.

some others, cognizant of the efforts already displayed in reforming their firearms legislation, were more inclined to keep separate laws, but to ensure strong connecting provisions among them.⁶⁹

Participants considered that one way to ensure respect for the substantive differences among international instruments could be to develop a comprehensive law with separate sections for the different categories of weapons and common sections for overlapping requirements, such as those involving transfer controls and the criminalization provisions.

To ease their task, States parties could also consider drawing upon the UNODC Model Law for the Firearms Protocol for additional guidance in developing a national control system and specific legislative suggestions for implementing all the obligations in the Protocol, as well as specific ATT provisions.⁷⁰

6.2 Establishment of national points of contact

The Firearms Protocol, the PoA, the ITI and the ATT all require States to identify a national point of contact to act as liaison with other countries on matters relating to these instruments. In the case of the PoA, regional points of contact are also suggested.

It is recommended that, where appropriate and feasible, a State should designate the same national point(s) of contact for the different instruments. Where this is not possible or feasible, States parties should ensure that there is internal coordination between the different points of contact. For example, in the case of the Firearms Protocol, a majority of States parties have notified UNODC that their National Points of Contact are authorities responsible to the Ministers of the Interior and Justice. In the case of the ATT, States parties might consider that authorities responsible to the Minister of Defence would be most appropriate. Regardless of what a State decides, it should be made clear who the national point(s) of contact is (are) both at the national level for internal coordination, and at the multilateral level, so other States know who to contact and how to contact them. The ATT requires that this information be provided to the Secretariat.

Where a new body is established as the national point of contact, legislation may be needed to do so. In cases where a new unit is created within an existing national agency, such as law enforcement, the need for legislation will depend on whether this is authorized by existing legislation or not.

Beyond the broad mandatory obligation that the national point(s) of contact liaise with other States parties on matters relating to implementation, the Protocol, the PoA and the ATT do not set out any specific responsibilities of the national point of contact.

It is at the discretion of the State to determine the specific scope of its functions and activities. It is recommended that, where a State has more than one national point of contact, the specific responsibilities of each should be clearly delineated to avoid duplication of roles.

⁶⁹ See above. Outcome documents of the two regional meetings.

⁷⁰ See UNODC Model Law on Firearms, 2nd revised version, in particular the provisions on transfer control, criminalization and international cooperation. United Nations publication, Sales No. E.14.V.8 (Vienna 2014).

6.3 Developing legislation regulating brokering

States parties to the ATT are required to take measures to regulate brokering. While not a mandatory obligation under the Firearms Protocol or the PoA, both of these instruments provide detail on what such measures might include, beyond what is set out in article 10 of the ATT.

States parties to the ATT should consider these measures in their implementation of article 10. Equally, those States that are party only to the Firearms Protocol should consider implementing measures to control brokering, given that there is now widespread acknowledgement of the need to regulate such activities, including:

- Registration of brokers
- Licensing or authorization of brokering transactions
- Ensuring that there are appropriate penalties for all illicit brokering activities performed within the state's jurisdiction and control

Where a State chooses to regulate the activities of brokers, it should ensure that brokers are also required to maintain records.

States parties will also need to define “brokering” in their national law.

The report of the United Nations Group of Governmental Experts (GGE)⁷¹ on illicit brokering of small arms and light weapons provides a basis for a definition:

(a) “Broker” shall mean a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT] in return for some form of benefit, whether financial or otherwise;

(b) “Brokering activities” shall mean:

- (i) Serving as a finder of business opportunities to one or more parties to a transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT];
- (ii) Putting relevant parties to a transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT];
- (iii) Assisting parties in proposing, arranging or facilitating agreements or possible contracts involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT];
- (iv) Assisting parties to a transaction involving [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT]; or
- (v) Assisting parties to a transaction [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT] in arranging the necessary payments.

⁷¹ Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapon (A/62/163).

The 2015 European Union User's Guide on its Common Position for Arms Exports also provides a suggested definition. Here, "brokering activities" are activities of persons and entities:

- Negotiating or arranging transactions that may involve the transfer of items on the EU Common Military List from a third country to any other third country; or
- Who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.⁷²

Regional instruments also contain definitions of brokering that States might consider. For example, the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials defines "brokering" as "work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons".⁷³

6.3.1 Registration of brokers

Legislation could include the following:

1. Any person who is a citizen of or resident in [insert name of State] and any person located in [insert name of State] who engages in brokering activities [as defined in article X] with respect to [items on the national control list reflecting at a minimum the conventional arms included in article 2 of the ATT] is required to be registered with [insert name of designated authority].

6.3.2 Requirement for brokering licence

Legislation could include the following:

1. No brokering activity or proposal to engage in a brokering activity from or within the territory of [insert name of State] may be carried out or pursued by any person who is a citizen of or resident in [insert name of State], and any person otherwise subject to the jurisdiction of [insert name of State] without the prior receipt of a licence [written authorization] issued in writing by [insert name of licensing authority] for the negotiation or arrangement of transactions involving [items on the national control list reflecting at a minimum the conventional arms included in article 2 of the ATT] between [insert name of State] and another country, or to a third country and any other third country.
2. No brokering activity or proposal to engage in a brokering activity from or within the territory of another country may be carried out or pursued by any person who is a citizen of or resident of [insert name of State] without complying with the requirements of paragraph 1.⁷⁴

⁷² Available from <http://data.consilium.europa.eu/doc/document/ST-10858-2015-INIT/en/pdf>.

⁷³ Article 1(8), ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials

⁷⁴ This suggested legislation is adapted from the UNODC Model Law on the Firearms Protocol.

Registration of brokers will also require a delineated application procedure as well and the legal requirements as to who qualifies to be a broker. The licence or authorization procedures for discreet brokering activities will also require procedures (including the application, validity of licences, licence conditions, and revocation or amendment of licence procedures).

6.3.3 Offences for illicit brokering activities

Should a State adopt a regime for brokering, it should also create an associated offence for illicit brokering. Where a State chooses to implement a system of registration or authorization of those who engage in activities as a broker, it should also consider the inclusion of an offence of operating as a broker without registration.

The Organized Crime Convention (UNTOC) can also be drawn upon in the prosecution of illicit brokering. For example, certain violations should be classified as “serious crimes” incurring the minimum sentences as set out in the UNTOC. Such violations could include brokering activities that violate an arms embargo. Creating “serious crimes” will also make other UNTOC provisions applicable to enforcing these offences (including mutual legal assistance, extradition, etc.).

Legislation could include the following:

1. Every person who [insert level of intent, as appropriate] engages in any brokering activity without legal authorization or a licence issued within the terms of [insert name of this Act] commits an offence.
2. A person guilty of an offence under paragraph (1) shall upon conviction be subject to [imprisonment for...] and/or [a fine of/up to...] and/or [a fine of the ... category].

6.4 Criminalizing illicit trafficking as a serious crime

Article 14 leaves it to States parties to determine the appropriate measures required to enforce national laws that implement the ATT.

Given its grounding in criminal justice, States parties should draw upon the Firearms Protocol in developing its national enforcement measures.

Given that one of the purposes of the ATT is to prevent and eradicate the illicit international trade in conventional arms and prevent their diversion (article 1), States parties to the ATT should adopt legislation that creates offences for illicit activities, both criminal and administrative, that adequately reflect the seriousness of the offence. Specifically States parties should include the provisions on illicit trafficking applicable to a broad range of conventional arms. Legislation could include the following:

1. Every person who [insert level of intent, as appropriate] imports, exports or otherwise acquires, sells, delivers, moves or transfers [items included in the national control list incorporating conventional arms as set out in article 2 of the ATT] from or across the territory of [insert name of country] to another State, without legal authorization or a licence issued within the terms of [insert name of this Act] commits an offence.

2. A person guilty of an offence under paragraph (1) shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] and/or [a fine of the ... category].⁷⁵

States parties should bear in mind that corporate entities that violate arms control legislation may consider the imposition of significant fines a greater deterrence. Additionally, States parties should consider national legislation criminalizing other offences related to the licence application process, such as providing false statements or documentation. Failure to keep required records should also be criminalized. Different violations may involve differing levels of involvement, differing levels of intent or negligence, and penalties should take all these into account.

The creation of this offence should meet the standard of a “serious crime” under the UNTOC to enable States that are party to both the ATT and the Firearms Protocol to draw upon the wide-ranging investigatory and enforcement provisions such as mutual legal assistance and extradition.⁷⁶

6.5 Address corruption in international transfers

The ATT encourages States parties “to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2(1) becoming subject to corrupt practices” (art. 15(6)). The UNTOC also requires that States parties criminalize corruption (art. 8) and adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

States should consider the development of specific offences relating to corruption within arms transfers applicable to the full supply chain of a transfer. For example, in implementing enforcement measures pursuant to the ATT, States parties could make corruption a “serious crime”, thereby opening up the application of the UNTOC provisions to those States that are also party to the Convention.

6.6 Enhance preventive measures: national control systems

The Firearms Protocol requires that States parties establish and maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition. Beyond the requirements of import and transit authorizations prior to issuing an export authorization and minimum informational requirements on import and export documentation, the Firearms Protocol does not elaborate further on the contents of a national control system.

⁷⁵ This suggested legislation is adapted from the UNODC Model Law on the Firearms Protocol.

⁷⁶ The importance of introducing adequate criminalization offences was also widely discussed during the two regional meetings mentioned earlier, where participants recommended undertaking comprehensive reviews of domestic legal frameworks, and comparative analysis of existing criminalization offences, with a view to fostering regional harmonization, and to introduce adequate offences to give full effect to the Protocol and to the illicit conducts considered in the ATT.

Here, States parties can draw on the ATT, which provides more details. These elements can be incorporated into a control system that a State has to specifically deal with firearms, their parts and components and ammunition (such as a Firearms Act). These include:

- A national control list.
- Incorporate the prohibitions in article 6 and the export risk assessment procedures in article 7 of the ATT into the control system specifically for firearms.
- Incorporate controls for the trans-shipment of firearms, their parts and components and ammunition into the national control system anticipated by the ATT.
- Measures to address diversion as set out in article 11 of the ATT could also be incorporated—such as assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate, examining parties involved in the export, requiring additional documentation, certificates, assurances, or other appropriate measures.

6.6.1 Incorporate existing Firearms Protocol obligations into prohibitions under the ATT

As discussed, the ATT specifically refers to existing obligations that a State has if it is party to the Firearms Protocol. These are referenced in articles 6(2) and 7(1) of the ATT.

Article 6(2) prohibits a State party from authorizing any international transfer of conventional arms covered under article 2(1) or of items covered under article 3 or 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms. While the full extent of what would be included within “relevant international obligations” is not made clear, the Firearms Protocol is most certainly included.

As mentioned in the discussion above, article 6(2) imposes a form of strict liability on prohibitions, in the sense that the transfer authorization must be prohibited in an existing international obligation without any knowledge requirement as in article 6(3) or risk assessment as in article 7(1).

Authorization of exports in accordance with the terms of the Protocol is set out in article 10. Specifically, two elements are required to meet the obligations of the Protocol for authorization. The first is prior import authorization before issuing the export licence or authorization, and second is verification from transit States that there is no objection to the transit.

This obligation applies only to the export of firearms and/or their parts and components and/or ammunition. Article 6(3) applies to all forms of international transfer (export, import, transit, trans-shipment, brokering) and all conventional arms and related items covered by the Treaty. However, while the relevant international obligations existing in the Firearms Protocol have selective application in the ATT, this should still be reflected in the national control systems set up by States parties in accordance with article 5 of the ATT.

States' legislation could incorporate the article 6(2) prohibition either in obligations directed to the export licence authority or the applicants of export licences. Regardless of the form chosen, legislation could include the following provision:

1. No export licence [for firearms and/or their parts and components and /or ammunition] shall be granted without:

(a) A copy of the import licence or authorization. The licence or authorization must state the country of issuance, date of issuance and expiry, identification of authorizing agency, the final recipient and a description and the quantity of the firearms, and/or parts and components, and/or ammunition [included in the national control list incorporating conventional arms as set out in article 2 of the ATT]; or a copy of documentation demonstrating that an application for an import licence or authorization has or will be made; and

(b) Copies of in-transit authorizations (as applicable).

6.6.2 Incorporate Firearms Protocol offences in ATT export assessment criteria

The assessment required by article 7(1)(a) of the ATT involves a weighing up of both the positive and the negative consequences of an export in terms of its impact on peace and security. Article 7(1)(b) sets out the range of possible negative consequences to be considered in a State's deliberations on whether to authorize a transfer. Here, each exporting State party must make a national assessment of whether the arms under consideration could be used to commit or facilitate a serious violation of international humanitarian law or of international human rights law or an act constituting an offence under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a party.

Reference to "an act constituting an offence under international conventions or protocols relating to terrorism or transnational organized crime to which the exporting State is a Party" envelopes the mandatory offences set out in the Firearms Protocol within the legal framework of the ATT.

In developing implementing legislation for the ATT a State party that is also party to the Firearms Protocol should specify the full range of offences that an exporting State should consider as a potential risk in its assessment under article 7(1). Article 5 of the Protocol establishes a series of mandatory offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and tampering with firearms markings. These offences will need to be specified in national export criteria. For example, legislation could include the following:

1. The [insert appropriate competent authority] will consider an export licence application on a case by case basis and shall not issue such a licence [authorization]:

(a) Where there is an [overriding]⁷⁷ risk that the export could be used to commit or facilitate:

⁷⁷ Article 7(3) of the ATT states: "If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export."

- (i) Illicit manufacturing of firearms or firearms parts and components, including:
 - a. Any manufacturing or assembly of firearms without marking; or
 - b. Any manufacturing or assembly from illicit (trafficked) parts and components; or
 - c. Any manufacturing or assembly of firearms or firearms parts and components without legal permit or authorization;
- (ii) Illicit trafficking, including:
 - a. Any transnational transfer without legal authorization; or
 - b. Any transnational transfer if firearms are not marked.

6.6.3 Implement marking requirements

The Firearms Protocol and the International Tracing Instrument (ITI) both set out provisions and requirements for marking. States are encouraged to apply the provisions of the ITI as fully as possible to facilitate the identification and tracing, in a timely and reliable manner, of illicit small arms and light weapons.

In this regard, States parties should, in line with the ITI,:

- Ensure that, whatever method is used, all marks required under this instrument are on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as technically possible, recoverable.
- Mark small arms and light weapons at the time of manufacture in line with the ITI provisions.
- Require markings on imported small arms and light weapons permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm or light weapon; and require a unique marking, if the small arm or light weapon does not already bear such a marking.
- Ensure markings that enable tracing at the time of transfer from government stocks to permanent civilian use of a small arm or light weapon.
- Ensure that all small arms and light weapons in possession of government armed and security forces for their own use are duly marked.
- Ensure that illicit small arms and light weapons are found on a State's territory are uniquely marked and recorded, or destroyed, as soon as possible.

States should also promote the systematic tracing at the national and international levels in line with the provisions of the ITI.

6.7 International cooperation: using the Organized Crime Convention to support investigations and enforcement, including export violations and “serious” crimes

The Organized Crime Convention (UNTOC) can be used by its States parties to support investigations and enforcement, for example, export enforcement investigations. States parties have used the UNTOC in the past and it is an important tool in such investigations. A 2010 UNTOC report on Mutual Legal Assistance and International Cooperation for the Purpose of Confiscation, and the Establishment and Strengthening of Central Authorities reported on (then) ongoing investigations where States parties had requested assistance. One Member State, for example, reported that it received a request in an ongoing investigation under the UNTOC for mutual assistance from another Member State in relation to “suspected trading of military goods without appropriate export licensing”.

The instrument has been used by law enforcement and prosecutors in trade investigations and States parties should continue to use it in their export enforcement activities. The definitions in the UNTOC are sufficiently broad to allow for States parties to assess that in certain situations, international business arrangements (suppliers, freight-forwarders, financial institutions) form a structured group—regardless of whether there were formally defined roles, and provided that the subjects of investigation acted for financial benefit.

States parties to the ATT and the Firearms Protocol should use the international cooperation and mutual legal assistance tools provided by the UNTOC in investigating and enforcing “serious crimes” such as illicit trafficking in the context of the ATT. Importantly, as described above, the UNTOC can serve as an alternative to mutual legal assistance treaties and extradition treaties, as the UNTOC forms the basis for such assistance without the need for specific bilateral treaties.

7. Conclusions

This Paper, in reviewing and analysing the Organized Crime Convention, the Firearms Protocol, the Programme of Action, the International Tracing Instrument and the Arms Trade Treaty, demonstrates that there are a number of synergies between them. Given this, States parties to these instruments, or those considering accession to them, need to consider the various obligations and commitments in each in order to develop a cohesive and comprehensive conventional legal framework at the national level.

These instruments address the proliferation and misuse of firearms and other conventional arms, their diversion and illicit manufacturing and trafficking from different perspectives. This has resulted in some instruments emphasizing particular elements more than others. For example, the Firearms Protocol takes a crime prevention approach in setting out various offences relating to manufacturing, trafficking and marking of firearms. The Organized Crime Convention provides a significant array of enforcement mechanisms to enable its States parties to address “serious” crimes, including the offences in the Firearms Protocol. The Arms Trade Treaty, in emphasizing regulatory frameworks, provides details on the content of national control systems that enable effective regulation of international transfers. It is these different perspectives that States should draw upon in considering their national laws. As previously mentioned, these different instruments are important in their potential to complement each other and become “building blocks” in elaborating comprehensive national framework.

Annex I. Multilateral and regional instruments

1. United Nations

United Nations treaties and other international instruments

- United Nations Convention against Transnational Organized Crime¹
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime²
- Arms Trade Treaty³
- Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects⁴
- International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons⁵

Other documents

- Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto⁶
- UNODC, Technical Guide to the Implementation of the Protocol against Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime⁷
- Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition⁸

¹ United Nations, *Treaty Series*, vol. 2225, No. 39574.

² *Ibid.*, vol. 2326, No. 39574.

³ See General Assembly resolution 67/234 B.

⁴ Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001 (A/CONF.192/15), chap. IV, para. 24.

⁵ A/60/88 and Corr.2, annex; see also General Assembly decision 60/519.

⁶ United Nations publication, Sales No. E.05.V.2.

⁷ United Nations Office on Drugs and Crime, Technical Guide to the Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Vienna, 2011).

⁸ *Ibid.*, *Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*, second revised edition. United Nations publication, Sales No. E.14.V.8 (Vienna 2014).

- Model Legislative Provisions against Organized Crime⁹
- United Nations Coordinating Action on Small Arms, project on International Small Arms Control Standards¹⁰

2. Regional organizations

Africa

Treaties

- Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly¹¹
- Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials
- Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
- Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region

Other documents

- Regional Centre on Small Arms and Light Weapons, Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons
- Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons¹²
- Decision on the illicit proliferation, circulation and trafficking of small arms and light weapons¹³
- Declaration of a Moratorium on Importation, Exportation and Manufacture of Light Weapons in West Africa
- Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
- Plan of Action on Small Arms and Light Weapons

⁹ _____, Model Legislative Provisions against Organized Crime (Vienna, 2012).

¹⁰ United Nations Coordinating Action on Small Arms (CASA) project. See <http://www.smallarmsstandards.org/isacs/>

¹¹ A/65/517-S/2010/534, annex (not yet entered into force).

¹² A/CONF.192/PC/23, annex.

¹³ Organization of African Unity, document AHG/Dec.137 (XXXV), July 1999.

Americas

Treaties

- Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials¹⁴
- Inter-American Convention on Transparency in Conventional Weapons Acquisitions¹⁵

Other documents

- Draft Model Legislation and Commentaries on Legislative Measures to Establish Criminal Offences in Relation to the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials¹⁶
- Model Legislation and Commentaries in Relation to Confiscation and Forfeiture of Firearms, Ammunition, Explosives, and Other Related Materials¹⁷
- Proposed Model Legislation and Commentaries for Strengthening Controls at Export Points for Firearms, Ammunition, Explosives and Other Related Materials¹⁸
- Model Legislation on the Marking and Tracing of Firearms¹⁹
- Guidelines for Controlling and the Security of Man-Portable Air Defence Systems (MANPADS)
- Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Material
- Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition²⁰
- Amendments to the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition: Broker Regulations²¹
- Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects²²
- Andean Chart for Peace and Security and Limitation and Control of the Expenditure on Foreign Defence
- CARICOM Declaration on Small Arms and Light Weapons
- Inter-American Drug Abuse Control Commission (CICAD) Model Regulations.
- CMC Decision No. 7/98: Joint Register Mechanism of Consumers and Sellers of Firearms, Ammunition, Explosives, and Other Related Materials for MERCOSUR

¹⁴ United Nations, *Treaty Series*, vol. 2029, No. 35005.

¹⁵ A/CONF.217/2013/L.3.

¹⁶ Organization of American States, document OEA/Ser.L/XXII.6.3-GE/CIFTA/doc.2/07 rev.3.

¹⁷ ____, document OEA/Ser.L/XXII.2.11-CIFTA/CC-XI/doc.12/10.

¹⁸ ____, document OEA/Ser.L/XXII.6.2-GE/CIFTA-CICAD/doc.2/06 rev.4.

¹⁹ ____, document OEA/Ser.L/XXII.6.1-GE/CIFTA-CICAD/doc.3/06 rev.3.

²⁰ ____, document OEA/Ser.L/XIV.2.34-CICAD/doc1281/03.

²¹ ____, document OEA/Ser.L/XIV.2.34-CICAD/doc1271/03.

²² Andean Community, Andean Council of Foreign Ministers, Quirama, Colombia, 25 June 2003, decision 552.

- Southern Cone Presidential Declaration on Combating the Illicit Manufacture and Trafficking in Firearms, Ammunition and Related Materials
- CMC Decision No. 15/04: Memorandum of Understanding for Information Exchange on the Manufacture and the Illicit Traffic of Firearms, Ammunition, Explosives and Other Related Materials

Arab States

Other documents

- Resolution on Arab coordination for combating the illicit trade in small arms and light weapons²³
- Report of the first meeting of Arab national focal points on small arms and light weapons²⁴
- Resolution on Arab coordination for combating the illicit trade in small arms and light weapons²⁵
- Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material²⁶

Asia and the Pacific

Other documents

- Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime²⁷
- “Towards a common approach to weapons control” (the Nadi Framework)²⁸

Europe

Instruments

- European Parliament and Council of the European Union regulation 258/2012 implementing article 10 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and establishing export authorization, and import and transit measures for firearms, their parts and components and ammunition²⁹

²³ League of Arab States, Ministerial Council resolution 6625, 4 March 2006.

²⁴ ____, 2005.

²⁵ ____, Ministerial Council resolution 6447, 14 September 2004.

²⁶ ____, Council of Arab Ministers of the Interior, Tunisia, 2002.

²⁷ See the Joint Communiqué of the Special Association of Southeast Asian Nations (ASEAN) Ministerial Meeting on Terrorism, Kuala Lumpur, 20-21 May 2002.

²⁸ South Pacific Chiefs of Police Conference and Oceania Customs Organization, 2000.

²⁹ Official Journal of the European Union, L 94, 30 March 2012.

- Council of the European Union regulation 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items³⁰
- Council of the European Union common position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment³¹
- European Parliament and Council of the European Union directive 2008/51/EC amending Council directive 91/477/EEC on control of the acquisition and possession of weapons³²

Other documents

- European Union strategy to combat illicit accumulation and trafficking of SALW and their ammunition³³
- Council of the European Union common position 2003/468/CFSP on the control of arms brokering³⁴
- Council of European Union joint action on the European Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons and repealing joint action 1999/34/CFSP³⁵
- European Union Code of Conduct on Arms Exports
- Joint Action on the EU contribution to combating the destabilizing accumulation and spread of small arms and light weapons
- European Union Development Council Resolution on Small Arms
- European Union Plan of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
- European Union Council Decision 2010/765/CFSP on European Union Action to Counter the Illicit Trade of SALW by Air
- Stability Pact Regional Implementation Plan for combating the proliferation of Small Arms and Light Weapons in South East Europe
- EAPC Workshop on Combating Illicit Brokering in Small Arms and Light Weapons

Organization for Security and Cooperation in Europe (OSCE)

Other documents

- Plan of Action on Small Arms and Light Weapons³⁶
- Handbook of Best Practices on Conventional Ammunition³⁷

³⁰ Ibid., L 134, 29 May 2009.

³¹ Ibid., L 335, 13 December 2008.

³² Ibid., L 179, 8 July 2008.

³³ Council of the European Union, document 5319/06.

³⁴ Official Journal of the European Union, L 156, 25 June 2003.

³⁵ Official Journal of the European Communities, L 191, 19 July 2002.

³⁶ Organization for Security and Cooperation in Europe, document FSC.DEC/2/10.

³⁷ _____, *Handbook of Best Practices on Conventional Ammunition* (Vienna, 2008).

- Principles on the Control of Brokering in Small Arms and Light Weapons³⁸
- Standard Elements of End-User Certificates and Verification Procedures for SALW Exports³⁹
- Handbook of Best Practices on Small Arms and Light Weapons⁴⁰
- Document on Small Arms and Light Weapons⁴¹
- Principles Governing Conventional Arms Transfers⁴²
- “Best practice guide on marking, record-keeping and traceability of small arms and light weapons”⁴³
- OSCE Document on Small Arms and Light Weapons
- OSCE Handbook of Best Practices on Small Arms and Light Weapons
- OSCE Document on Stockpiles of Conventional Ammunition
- OSCE Principles for Export Controls of MANPADS
- OSCE Standard Elements of End-user Certificates and Verification Procedures for Small Arms and Light Weapons Exports
- OSCE Principles on the Control of Brokering in Small Arms and Light Weapons.
- FSC Decision 7/06 Combatting the Illicit Trafficking of Small Arms and Light Weapons by Air
- OSCE Handbook of Best Practices on Conventional Ammunition.
- Plan of Action on Small Arms and Light Weapons

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

Other documents

- Best Practice Guidelines for Exports of Small Arms and Light Weapons
- Elements for Effective Legislation on Arms Brokering

³⁸ _____, Forum for Security Cooperation, decision No. 8/04, 24 November 2004.

³⁹ _____, Forum for Security Cooperation, decision No. 5/04, 17 November 2004.

⁴⁰ _____, *Handbook of Best Practices on Small Arms and Light Weapons* (Vienna, 2003).

⁴¹ A/CONF.192/PC/20, annex, appendix.

⁴² Programme for Immediate Action Series No. 3 (DOC.FSC/3/96), 1993.

⁴³ Organization for Security and Cooperation in Europe, “Best practice guide on marking, record-keeping and traceability of small arms and light weapons”, in *Handbook of Best Practices ...*, part II.

	UNTOC	Firearms Protocol	ATT	PoA	ITI
Control measures					
Marking	None	<ul style="list-style-type: none"> At the time of manufacture On import At transfer from government stocks to permanent civilian use 	None	Manufacturers to apply an appropriate and reliable marking on each SALW	<ul style="list-style-type: none"> At the time of manufacture On import On transfer from government stocks to permanent civilian use Found illicit SALW to be uniquely marked and recorded, or destroyed
Record-keeping	None	Maintain records for at least 10 years of markings at manufacture/information on international transactions	<ul style="list-style-type: none"> Maintain records of export authorizations or actual exports of the conventional arms covered by the Treaty Records to be kept for at least 10 years 	Records kept for as long as possible on the manufacture, holding and transfer of SALW	<ul style="list-style-type: none"> Records for all marked SALW within their territory Manufacturing records to be kept for at least 30 years; all other records, including records of import and export, for at least 20 years.
Deactivation	n/a	States parties are to prohibit or regulate deactivated firearms	n/a	n/a	n/a
Stockpile and other security measures	n/a	<ul style="list-style-type: none"> Enhance security of import and export systems Take security measures to detect theft, loss or diversion, illicit manufacturing and trafficking Increase the effectiveness of border controls, and customs trans-border cooperation 	International assistance could include stockpile management	Ensure that anybody authorized to hold SALW establish standards and procedures on the management and security of their stocks	n/a

International transfers					
Import/export/ transit control system	None	Establish or maintain an effective system of export and import licensing or authorization, as well as measures on international transit	Establish and maintain a national control system, including a national control list	Establish or maintain an effective system of export and import licensing or authorization, as well as measures on international transit	None
Transfer prohibitions/risk assessments	None	Assess export applications consistent with existing international law, taking into account the risk of diversion	<ul style="list-style-type: none"> Prohibit transfers: <ul style="list-style-type: none"> (a) That violate United Nations arms embargoes or treaties on the transfer or illicit trafficking of conventional arms; (b) If the State party has knowledge at the time of authorization that the transfer of arms or other items will be used for genocide, crimes against humanity, grave breaches of the Geneva Conventions, or other war crimes Deny export if overriding risk it would undermine peace and security or will be used for a serious violation of international humanitarian or human rights law or offences in treaties relating to terrorism or organized crime 	Assess export applications consistent with existing international law, taking into account the risk of diversion	None

	UNTOC	Firearms Protocol	ATT	PoA	ITI
Trans-shipment	None	None	Take measures to regulate the transit or trans-shipment of conventional arms through its territory	None	None
Brokering	None	Consider regulating those who participate in brokering activities	Take measures to regulate brokering taking place under its jurisdiction for conventional arms covered under Treaty	To develop adequate national legislation or administrative procedures regulating SALW brokering	None
Enforcement					
Criminalization (offences)	<ul style="list-style-type: none"> Participation in an organized crime group Corruption Money-laundering Obstruction of justice 	<ul style="list-style-type: none"> Illicit manufacturing Illicit trafficking Falsifying or removing or altering markings of a firearm 	None	None	None
Seizure and confiscation	Measures to enable seizure and confiscation at national and international level	Measures for seizure, confiscation and disposal of firearms and ammunition	None	Ensure that all confiscated, seized or collected SALW are destroyed, subject to any criminal prosecutions, unless another form of disposition or use authorized	None
Investigation and prosecution	<ul style="list-style-type: none"> Special investigative techniques Protection of witnesses and testimonies Liability of legal persons 	None	None	None	None

International cooperation					
International cooperation in criminal matters	<ul style="list-style-type: none"> • Broad list of international cooperation: extradition, MLA, transfer of proceedings, cooperation in confiscation, etc., extradition, law enforcement cooperation • Serves as legal basis in the absence of bilateral treaties 	<ul style="list-style-type: none"> • Cooperation in investigations • Information exchange • Cooperation in tracing 	<ul style="list-style-type: none"> • Cooperate with States parties in effective implementation • Exchanging information on matters of mutual interest • Widest measure of assistance in investigations, prosecutions and judicial proceedings in violations of national measures • Take national measures to prevent transfers becoming subject to corrupt practices 	<p>Enhance MLA and other forms of cooperation in order to assist investigations and prosecutions in relation to the illicit trade in SALW</p>	<p>Cooperation in tracing</p>
Points of contact	<p>Competent national authority for MLA and extradition</p>	<p>Designate a single point of contact</p>	<p>Designate at least one national contact point responsible for exchanging information related to the implementation of the ATT</p>	<ul style="list-style-type: none"> • A national point of contact to act as liaison between States • A point of contact within subregional and regional organizations to act as liaison 	<p>Designate one or more national points of contact to act as a liaison on all matters relating to implementation</p>

	UNTOC	Firearms Protocol	ATT	PoA	ITI
	Data collection and reporting obligations				
National reports	Voluntary reporting through comprehensive self-assessment software (no periodicity established)	Voluntary reporting through comprehensive self-assessment software (no periodicity established)	<ul style="list-style-type: none"> Annual reports on authorized or actual exports and imports of conventional arms Within the first year after entry into force provide an initial report of measures to implement the ATT 	Voluntary biannual reports	<ul style="list-style-type: none"> Voluntary biannual reports Report national marking practices to UNODA
Data collection	None	UNODC mandated to collect data on firearms from Member States	None	Use, support and provide relevant information on the illicit trade in SALW to INTERPOL's International Weapons and Explosives Tracking System database	Invites States to collect data for the purpose of tracing firearms
	Implementation support				
Interstate mechanisms	Conference of the Parties to the UNTOC and working groups	Conference of the Parties to the UNTOC and Working Group on Firearms	Conference of the Parties to the ATT	Biennial Meeting of States (BMS)	Biennial Meeting of States (BMS)
Review of implementation	No mechanism adopted yet	No mechanism adopted yet	Treaty implementation review done in Conference of the Parties	Review conferences	Review conferences





UNODC

United Nations Office on Drugs and Crime

For more information about UNODC's work on firearms, contact:

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www.unodc.org/unodc/en/firearms-protocol/introduction.html