

COMISSÃO DA CEDEAO



ECOWAS COMMISSION

COMMISSION DE LA CEDEAO

ECOWAS COMMON POSITION ON THE ARMS TRADE TREATY

COTONOU, DECEMBER 2010

BACKGROUND AND JUSTIFICATION

1. During its 55th plenary meeting on 2nd December 2009, the United Nations General Assembly adopted Resolution A/RES/64/48 by which it resolved to convene in 2012, a UN Conference on the Arms Trade Treaty (ATT) with a mandate to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.
2. Paragraph 7 of the Resolution requests the Preparatory Committee at its four sessions in 2010 and 2011, to make recommendations to the UN Conference on Arms Trade Treaty on elements that would be needed to attain an effective and balanced legally binding instrument.
3. The Resolution in its paragraph 10 authorizes intergovernmental organizations, having received a standing invitation to participate as observers in the work of the General Assembly, to participate as observers in the sessions of the Preparatory Committee.
4. The Economic Community of West African States is committed to playing a key role during the ATT negotiations in order to ensure that regional concerns, especially the human security and development dimensions of the trade in conventional arms, particularly small arms and light weapons (SALW) and ammunition, are taken into consideration during the development of the ATT.
5. Towards this end, ECOWAS member states are resolved to adopt a Common Position within the framework of a coordinated approach to the development of the ATT in order to ensure that the interests of the region are captured in the future Arms Trade Treaty.

POLITICAL AND LEGAL BASIS

6. Within the framework of the United Nations General Assembly Resolution A/RES/64/48, which provides for the mandate to negotiate an Arms Trade Treaty by 2012, ECOWAS member states are resolved to adopt a coordinated approach to the ATT as the most effective and efficient way to ensure that the interests of the ECOWAS region are strongly expressed and protected in the future ATT. The ECOWAS common position on the ATT is based on the following political and legal framework:-

- a) The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects adopted in 2001
- b) The United Nations Protocol against the illicit manufacturing and trafficking in firearms, their parts and components and ammunition supplementing to the United Nations Convention against transnational organized crime adopted in May 2001

- c) International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons of 2007
- d) The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons adopted on 1st December 2000
- e) ECOWAS Protocol on Non-Aggression of 1978
- f) ECOWAS Protocol on Mutual Assistance on Defence of 1981
- g) The ECOWAS 1993 Revised Treaty (and Amendment)
- h) The ECOWAS Protocol relating to the Mechanism on Conflict Prevention, Management, Resolution, Peace-keeping and Security of 1999
- i) The ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials of 2006

PRINCIPLES

7. Recognizing that arms control, disarmament and non-proliferation are essential for the maintenance of international peace, security and development;

ECOWAS member states reaffirm that an effective and balanced Arms Trade Treaty shall be based on the following:

- a) the purposes and principles enshrined in the United Nations Charter and the Constitutive Act of the African Union
- b) the inherent right of all States to individual and collective self-defense in accordance with Article 51 of the United Nations Charter; as well as the ECOWAS Protocol on Non-Aggression, and the Protocol on Mutual Assistance on Defense;
- c) the general prohibition against the use of force and the principles of peaceful settlement of disputes and non-interference in the internal affairs of States, as embodied under Article 2 of the United Nations Charter;
- d) the purposes and principles enshrined in the ECOWAS Protocol on the Mechanism Relating to Conflict Prevention, Resolution, Management Peace-keeping and Security and the ECOWAS Convention on Small Arms and light Weapons, their ammunition and other Related Materials;
- e) the recognition of the primary responsibility of States in the trade and transfer of conventional arms and the respective responsibilities of exporters and importers;

- f) the transfer of conventional arms, particularly small arms and light weapons and ammunition, which must be expressly authorized by competent government authorities as well as a clear prohibition of transfers to unauthorized non-State actors
- g) the right of all States to manufacture, import, export, transfer and retain conventional arms for legitimate defense, security and law enforcement needs in order to participate in peace support operations;
- h) the obligations of all States to fully comply with United Nations Security Council arms embargoes and other decisions in accordance with the United Nations Charter;
- i) respect for other international, regional or sub-regional commitments or decisions made or agreements on non-proliferation, small arms and light weapons control, and disarmament to which States involved in the transfer are a Party;
- j) respect for international law, including international human rights law and international humanitarian law, and the rights and responsibilities of every State under United Nations Charter;
- k) the obligation of states to take measures to prevent diversion of conventional arms from legal into the illicit market;
- l) the need to prevent, combat and eradicate the illicit trade of conventional arms, including small arms and light weapons, their ammunition and other related materials;

GOAL AND OBJECTIVES

8. The goal of an ATT shall be to establish the highest common international standards for international transfer of conventional arms, particularly SALW and ammunition, in order to reduce human suffering resulting from the misuse of these arms.

The objectives of an ATT shall include:

- a) preventing diversion of conventional arms from legal markets to illicit markets and unauthorized uses and users;
- b) preventing conventional arms from being used to contribute to or facilitate armed conflicts, serious violations of international human rights law and international humanitarian law, violations of UN sanctions and arms embargoes

and other international obligations, organized crime, terrorist acts, all of which undermine peace, security, stability as well as sustainable social and economic development;

- c) promoting transparency and accountability in transfers of conventional arms, including SALW and ammunition;
- d) reducing human suffering caused by the destructive effects of unregulated Arms Trade;
- e) contributing to international and regional peace, security and stability.

SCOPE

9. The scope of an ATT should be consistent with paragraph 4 of the UN General Assembly Resolution 64/48 which calls for the elaboration of a “legally binding instrument with the highest possible common international standards for the transfer of conventional arms”.

10. The Resolution does not limit itself to any particular type or types of conventional weapons, and therefore, an ATT should cover all types of conventional weapons, particularly small arms and light weapons, ammunition, parts and components and related materials, and transfer of technology..

11. The transactions or activities to be covered by an ATT include import, export, transit, trans-shipment, transport, brokering, licensing, re-export, transfers, leases, loans, gifts and technical assistance..

12. In addition, only transactions among States should be permitted, and therefore arms should not be transferred to non-state actors without express authorization by the importing country.

PARAMETERS/COMMON CRITERIA

13. The ATT should contain a set of criteria through which any arms transfer should be assessed with the requirement of denying a transfer when any of the agreed criteria is not met. These criteria should include among others, consideration of the following:

- a) consistency of the arms transfer with the State's international legal obligations, including obligations such as those under the UN Charter, Security Council Resolutions including arms embargoes, other legally binding international and regional instruments to which the State is a party and customary international law;

- b) the risk that weapons to be transferred may have an adverse impact on national, regional and international stability, peace, security as well as sustainable socio-economic development;
- c) the risk that weapons to be transferred may provoke, exacerbate or prolong existing tensions or conflict , or be used to commit terrorist acts;
- d) the risk of diversion of the arms, including diversion to illicit markets, unintended uses or unauthorized end-users or non-State actors;
- e) the risk that arms to be transferred may be used to commit serious violations of international human rights law and of international humanitarian law;

IMPLEMENTATION AND APPLICATION

14. ECOWAS Member States shall adhere to a Treaty which imposes national obligations and relies on an international body to assist in its implementation, enforcement, verification and/or monitoring.

15. Therefore, there is a need to:

- a) identify national obligations to be imposed by an ATT and set a precise deadline for the enactment or amendment of legislative and administrative measures in this respect by States parties to the ATT;
- b) identify under national legislation or regulation, authorities responsible for controlling and licensing arms transfer;
- c) agree on minimum requirements for the issuance of an end-use and end-user certificate and ensure its security;
- d) report on a biennial basis on transfer decisions or activities to a dedicated body;
- e) agree on the level of detail, nature and extent of information required for reporting;
- f) build national capacity, where needed, for effective reporting;
- g) agree on procedures for recordkeeping;
- h) agree on procedures and mechanisms for dispute settlement;
- i) establish an implementation support secretariat whose nature, cost and mandate should be agreed upon;

- j) establish a fund to finance victim assistance and other activities associated with the promotion of the purpose of the ATT;
- k) include international cooperation and assistance in the implementation of ATT;
- l) establish verification mechanism/procedure and sanctions associated with non-compliance with the provisions of ATT

PROMOTION AND IMPLEMENTATION OF THE ECOWAS COMMON POSITION

16. The coordinated approach should cover the negotiation phase and later on the implementation and monitoring of the future ATT and comprises the following elements:

Negotiations and adoption of the ATT

17. From the negotiation phases up to the adoption of the ATT, ECOWAS member States are resolved to:

- a) ensure their full and effective participation in all the different phases of the negotiation as well as in the relevant forum debating ATT;
- b) increase within their respective jurisdictions and, with the support of the ECOWAS Commission, the understanding of the stakes, challenges and opportunities provided by an ATT for the region;
- c) consult each other with the view to harmonize their different positions on key elements that would be needed to attain an effective and balanced ATT;
- d) liaise with the Permanent Mission of the Chair of ECOWAS at the United Nations to technically prepare and coordinate the interventions during the negotiations, and when required, to entrust the Chair with the responsibility of speaking on their behalf;
- e) use the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials as reference and as the point of convergence for the positions of member states;
- f) promote a coordinated approach with the African Union Commission and other Regional Economic Communities to adopt a Common African Position so as to reinforce an active participation in the ATT negotiations;
- g) reach out to other Groups such as the EU, CARICOM, Latin America, other African RECs or individual states, etc, through the embassies and Permanent Missions of ECOWAS member States and with the support of the ECOWAS

Commission, in order to garner support for their position in relation to the future ATT;

- h) promote greater synergy between the ECOWAS Commission and member States' embassies and Permanent Missions in order to foster effective information sharing and promotion of ECOWAS Common Positions.

Signing and ratification of the ATT

18. ECOWAS member States commit themselves to signing a strong and balanced ATT with the highest possible common international standards for the transfer of conventional arms which will be agreed upon by the largest possible members of the United Nations in an open and transparent manner.

19. ECOWAS member States are resolved to ratifying the ATT within the shortest possible time in accordance with their national legal procedures.

20. ECOWAS member States shall call upon the ECOWAS Commission to take appropriate measures to launch an effective and efficient advocacy and awareness raising campaign towards a quick ratification of the ATT when adopted.

Implementation of the ATT

21. The implementation of the ATT at the national level is the sole responsibility of member States. However, ECOWAS member States may seek, with the support of the ECOWAS Commission, international cooperation and assistance for an efficient implementation of the ATT.

22. The ECOWAS Commission should work with the International Secretarial body in monitoring and supervising implementation by member States of obligations within the ATT.

23. The ECOWAS Commission shall undertake urgent measures to adequately provide necessary capacity for the ECOWAS Small Arms Division to enable it carry out its monitoring responsibility both in relation to the implementation of the ECOWAS Small Arms and light Weapons Convention as well as that of the ATT when adopted.

Partnership with Civil Society

24. ECOWAS member States as well as the ECOWAS Commission shall facilitate the mobilization of civil society organizations with which they shall work in partnership to:

- a) support a strong and robust ATT
- b) promote the ratification and implementation of the ATT