

ARMS TRADE TREATY:
Model Law





Introduction

On 2 April 2013, the UN General Assembly adopted the Arms Trade Treaty (ATT) (UNGA resolution A/RES/67/234 B). Pacific countries were strong supporters of the ATT throughout the negotiations, consistent with the common position on the ATT adopted by the Pacific Islands Forum, and participated in a positive and united fashion on many issues.

The implementation of the ATT will be facilitated if states have clarity on the obligations and requirements under the Treaty. Pacific countries – with the exception of Australia and New Zealand – are predominantly transit states, not exporters of arms, and as such do not require elaborate export control mechanisms.

In an effort to support Pacific states in their ratification and implementation of the ATT, the New Zealand Government has sponsored the development of model legislative provisions to assist in identifying and translating ATT commitments into national legislation. The main objective was to design legislative provisions that are appropriate to ATT requirements as they relate to the Pacific region, and to meet the aspirations and security objectives of our part of the world.

Model Law to Assist Pacific States to Implement the Arms Trade Treaty

The Model Law consists of:

- **Part I (Preliminary)** contains the short title and commencement as well as an interpretation section, including definitions.
- **Part II (Export)** includes provisions on export licensing and the risk assessment to be conducted by the relevant authority.
- **Part III (Import)** contains provisions on import licensing.
- **Part IV (Transit and Transshipment)** contains provisions on regulating transit and transshipment.
- **Part V (Brokers and Brokering Activities)** contains provisions on registering brokers as well as licensing brokering activities.
- **Part VI (Record-keeping)** contains provisions for the keeping of records by the state as well as by brokers and other actors engaged in importing and exporting arms.
- **Part VII (Administration of the Act)** provides for the adoption of relevant regulations including in relation to the forms for the various licences under the Act and details of the records to be kept.
- **Schedule (List of Controlled Goods)** includes a list of goods controlled under the Act to serve as the national control list under Article 5(4) of the ATT.
- **Annex (Model Regulations)** contains model regulations that could be adopted in conjunction with the main legislation.

Each Part of the Model Law contains an overview of the relevant ATT provisions as well as model legislative provisions and an explanatory commentary in the footnotes.

NOTE: This Model Law covers the provisions in the ATT that are suited to implementation through national legislation. States Parties to the ATT will need to implement their other ATT commitments – including those involving diversion prevention, reporting, and international cooperation and assistance – through other measures.

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Model Law

Part I – Preliminary

MODEL LEGISLATIVE PROVISIONS

Section 1. Short title and commencement

- (1) This Act may be cited as the Arms Trade Treaty Implementation Act [*insert date*].
- (2) This Act comes into force on [*insert date/procedure*].

Section 2. Interpretation

- (1) In this Act -

“ammunition” means

- (a) in relation to small arms and light weapons, a complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a small arm or light weapon¹, including the items listed in Part 2(A) of the Schedule;
- (b) in relation to the conventional arms listed in Part 2(B)(a) to (g) of the Schedule, munitions fired, launched or delivered by these arms, including the items listed in Part 2(C) of the Schedule;

“antique small arms and light weapons” means small arms and light weapons manufactured during or before 1899 [OR *insert existing definition in national legislation*];²

“Authority” means the competent national authority prescribed by the regulations;

“authorised officer” means [*insert description of the persons who will have authority to grant permits for the temporary import and/or export of small arms and ammunition e.g. police or customs officers*];

“broker” means a person who engages in one or more brokering activities [in return for some form of benefit, whether financial or otherwise];

¹ Adapted from the definition in Art. 3(c) of the Firearms Protocol.

² (*Mandatory provision, ATT Article 5(3)*). The definition of ‘small arms and light weapons’ is taken from the International Tracing Instrument in accordance with the requirements of Art. 5(3) of the ATT. Antique small arms and light weapons are excluded from the definition of ‘small arms and light weapons’, and thus must be defined. The International Tracing Instrument and the Firearms Protocol stipulate that antique firearms and their replicas shall be defined in accordance with domestic law, but must not include firearms manufactured after 1899 (Para. II.4 and Art. 3(a) respectively).

“brokering activities” means negotiating, facilitating or arranging transactions that may involve the export, import, transit or transhipment of conventional arms [ammunition, or parts and components]³ to, from or through [insert country], or from a place outside [insert country] to another place outside [insert country];⁴

“conventional arms” means any of the items listed in Part 2(B) of the Schedule;⁵

“export” means to take out or cause to be taken out of [insert country];⁶

“exporting country” means the country from which the conventional arms, ammunition, or parts and components are being exported;

“import” means to bring into or cause to be brought into [insert country];⁷

“importing country” means the country of final destination for the conventional arms, ammunition, or parts and components that are being exported;

³Throughout the Model Law, where the phrase ‘[ammunition, or parts and components]’ appears in square brackets and red text, this indicates that the ATT does not require states to include ammunition or parts and components in the context under consideration. For example, while under Article 10 of the ATT states are obliged to take measures to regulate the brokering of conventional arms covered under Article 2(1) of the Treaty, they are not obliged to regulate the brokering of ammunition or parts and components. Hence in Part V of this model law on brokering, references to ammunition or parts and components appear in square brackets and red text. A reference to ammunition or parts and components is included throughout the Model Law to enable those states that wish to regulate ammunition and parts and components in the same way as conventional arms to do so. For those states that do not wish to regulate ammunition and parts and components where they are not required to do so under the Treaty, the reference to these items can be removed where it appears in red, bracketed text.

⁴This definition is adapted from the EU Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering and sections 15 and 16 of Australia’s Defence Trade Controls Act 2012. The ATT does not define the terms ‘broker’ or ‘brokering activities’. However, the report of the 2008 Group of Governmental Experts (GGE) on brokering provides a description of the nature of brokering activities and some guidance on the matter (A/62/163 and Corr.1, paras. 8–11) noting that a broker ‘can be described as a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction... in return for some form of benefit, whether financial or otherwise’ (para. 8). The report lists the following as examples of the activities a broker might engage in:

(a) Serve as a finder of business opportunities to one or more parties; (b) Put relevant parties in contact; (c) Assist parties in proposing, arranging or facilitating agreements or possible contracts between them; (d) Assist parties in obtaining the necessary documentation; (e) Assist parties in arranging the necessary payments (para. 9).

The report also highlights that brokering activities can take place in the broker’s country of nationality, residence or registration or another country; and that the weapons ‘do not necessarily pass through the territory of the country where the brokering activity takes place, nor does the broker necessarily take ownership of the small arms and light weapons’ (para. 11).

States may choose to include a list of the types of activities that fall within the definition of brokering activities to make it clear what activities are covered. They may also wish to exclude certain activities such as transport, freight forwarding, storage, finance and insurance (described as ‘closely associated activities’ in paragraph 10 of the GGE report on brokering) as the actors involved in these activities (such as banks or insurance or transport companies) may be regulated under existing legislation.

⁵This term is included to cover larger conventional arms as well as small arms and light weapons. If a state decides to prohibit the transfer of conventional arms other than small arms and light weapons in its legislation, this term can be deleted and references to ‘conventional arms’ replaced with ‘small arms and light weapons’ throughout. Note: the term ‘conventional arms’ is used (rather than ‘arms’) because many Pacific states use the term ‘arms’ rather than ‘firearms’ in their national legislation governing small arms.

⁶This definition is adapted from the existing definition in the Interpretation Acts of several Pacific states. Where a definition of ‘export’ is included in a state’s existing Interpretation Act, it will not need to be included in the legislation implementing the ATT.

⁷This definition is adapted from the existing definition in the Interpretation Acts of several Pacific states. Where a definition of ‘import’ is included in a state’s existing Interpretation Act, it will not need to be included in the legislation implementing the ATT.

“parts and components” means any element or replacement element specially designed for one or more conventional arms and essential to its operation,[including the items listed in Part 2(D) of the Schedule];⁸

[“person” means any natural or legal person;]⁹

“small arms and light weapons” means 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, including any of the items listed in Part 2(B)(h) and (i) of the Schedule, and excluding antique small arms and light weapons or their replicas;¹⁰

“transit” means the conveyance or movement through [*insert country*] to another country where there is no change in the means of transport while in the territory of [*insert country*];

“tranship” or “transshipment” means the conveyance or movement of goods through [*insert country*] to another country, where the goods are unloaded from one means of transport and re-loaded to a different means of transport while in the territory of [*insert country*].

Section 3. Exemption from application¹¹

- (1) This Act does not apply to the international movement of conventional arms [**ammunition, or parts and components**] for use by the Government of [*insert country*], to the extent that these items remain under [*insert country*]'s ownership.
- (2) Nothing in this Act shall affect or be interpreted as limiting the relevant rights under international law applicable to:
 - (a) any ship exercising the right of innocent passage (in accordance with international law) through the territorial sea[or archipelagic waters [*in the case of an archipelagic state*] of [*insert country*]; or
 - (b) any ship or aircraft exercising the right of transit passage (in accordance with international law) through or over any strait used for international navigation; or
 - (c) any ship or aircraft in distress.

⁸ Drafters may choose to include a separate list of specific parts and components covered by the Act in addition to a general definition.

⁹ Most Pacific states have a definition of ‘person’ in existing legislation and accordingly will not need to include such a definition in the legislation implementing the ATT.

¹⁰ (**Mandatory provision, ATT Article 5(3)**). The ATT does not include definitions of the arms or activities covered by the Treaty. However, Article 5(3) stipulates that national definitions for the category covered under Article 2(1)(h) (small arms and light weapons) ‘shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty’. The above definition is taken from the International Tracing Instrument, para. II.4, and constitutes the only definition of ‘small arms and light weapons’ included in a UN instrument.

Note: The Firearms Protocol does include a definition of ‘firearms’, however, in Art. 3(a): “Firearm” shall mean any portable barrelled 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’.

¹¹ (**Mandatory provision, ATT Article 2(3)**). Article 2(3) provides that the Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership. The Treaty does not specify that ammunition and parts and components are also exempt from the application of the Treaty in these circumstances but states may choose to also exempt these items from the application of their legislation.

Part II - Export

OVERVIEW

Under the ATT, States Parties are required to establish a national control system to regulate the export of conventional arms, ammunition, and parts and components. As part of that national control system, states must apply certain criteria when deciding whether to grant a licence to export arms or other items.

ATT Article 6 – Prohibitions requires States Parties to refuse to authorise the transfer of conventional arms, ammunition, or parts and components if:

- (1) the transfer would violate their obligations under measures adopted by the UN Security Council acting under Chapter VII of the UN Charter (such as arms embargoes);
- (2) the transfer would violate their obligations under international agreements to which they are a Party; or
- (3) the arms or items would be used in the commission of genocide, crimes against humanity, or war crimes.

ATT Article 7 – Export and Export Assessment requires states to conduct a risk assessment before authorising the export of conventional arms, ammunition, or parts and components to assess the potential that the arms or items:

- (1) would contribute to or undermine peace and security;
- (2) could be used to:
 - (a) commit or facilitate a serious violation of international humanitarian law;
 - (b) commit or facilitate a serious violation of international human rights law;
 - (c) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or
 - (d) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime to which the exporting State is a Party.

If a state determines that there is an overriding risk of any of the negative consequences listed, it must refuse to authorise the export.

States are also required to assess the risk of the arms or items to be exported being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children (Article 7(4)), as well as their risk of being diverted (Article 11(2)).

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Section 4. Restriction on export¹²

- (1) The export of any goods listed in Part 1 of the Schedule from [insert country] is prohibited.
- (2) The export of any goods listed in Part 2 of the Schedule from [insert country] is prohibited, unless an export licence has been granted by the Authority.
- (3) A person who wishes to export goods listed in Part 2 of the Schedule shall apply to the Authority in the prescribed manner for an export licence.
- (4) Subject to section 5, the Authority may grant or refuse to grant an export licence to an applicant mentioned in subsection (3), and shall inform the applicant of its decision.¹³
- (5) An export licence is subject to any conditions specified.

¹² (Mandatory provision, ATT Articles 2, 3, 4, and 5). Articles 3 and 4 require States Parties to establish and maintain a national control system to regulate the export of ammunition/munitions and parts and components, respectively. Article 5 requires States Parties to establish a national control system to implement the Treaty, including provisions regulating the export of conventional arms and a national control list.

Model section 4 contemplates that a state will list items to be controlled in the Schedule to the Act, which could form the national control list States Parties are required to establish in accordance with Article 5(2) of the Treaty. Model section 4 gives a state the option to absolutely prohibit the export of some items (to be listed in Part 1 of the Schedule) while allowing the export of other conventional arms (to be listed in Part 2 of the Schedule), subject to a licence from the competent authority. For example, some States Parties may consider that it is not appropriate (or desirable) for anyone other than the state itself to export battle tanks, armoured combat vehicles, etc., and accordingly may prohibit the export of these items outright, while allowing the export of small arms and light weapons. If a state already controls the export of small arms and light weapons through national legislation but wants to prohibit the export of all other conventional arms in the scope of the Treaty by anyone other than its state agencies, it could simply omit small arms and light weapons from the Schedule.

If a state does not want to absolutely prohibit the export of certain items, it could simply subject all items listed in the Schedule to an export licence as follows:

The export of any goods listed in the Schedule from [insert country] is prohibited, unless an export licence has been granted by the Authority.

¹³ (Mandatory provision, ATT Article 5(5)). Article 5(5) of the Treaty requires States Parties to designate competent national authorities to have an effective and transparent national control system. Such competent national authorities should be responsible for considering export licence applications. The ATT does not prescribe, however, how applications for export licences should be made and what documentation should be required. States wishing to implement an effective export control system should consider the following: 1) What documents must be submitted by the applicant as part of the export licence process? 2) What information or particulars will be included in an export licence? Suggestions and examples of the types of information and documentation that could be sought are included in Part 2 of the model regulations in the Annex.

ATT Article 12 – Record keeping requires States Parties to maintain records of export authorisations granted or actual exports of conventional arms (but not ammunition or parts and components). It stipulates that such records should include: ‘the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2(1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and transshipment State(s), and end users, as appropriate’ (Article 12(3)). Accordingly, states should ensure they require this information as part of the export licence application and include it in the particulars of the export licence granted and recorded by the relevant state agency.

Section 5. Consideration of export licence application

- (1) The Authority shall refuse an application¹⁴ for a licence to export conventional arms, ammunition, or parts and components if:
 - (a) the export would violate [*insert country*]'s obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;
 - (b) the export would contravene [*insert country*]'s other international obligations[under international agreements to which [*insert country*] is a Party];¹⁵ or
 - (c) it has knowledge at the time of considering the application for the export licence that the conventional arms, ammunition, or parts and components would be used in the commission of genocide, crimes against humanity, or war crimes.

*Alternative drafting (section 5(1)(c))*¹⁶

(c) it has reliable information that provides substantial grounds for believing that the conventional arms, ammunition, or parts and components 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 committed in international and in non-international armed conflict, and including serious violations of Common Article 3 to the Geneva Conventions of 1949, as well as war crimes as described in the Hague Convention IV of 1907 and its Regulations, the Additional Protocols of 1977 to the Geneva Conventions and the Rome Statute of the International Criminal Court of 1998.

- (2) If the application is not refused under subsection (1), the Authority shall assess the risk¹⁷ that conventional arms, ammunition, or parts and components to be exported:
 - (a) would undermine peace and security; or
 - (b) could be used to commit or facilitate:
 - i. a serious violation of international humanitarian law;
 - ii. a serious violation of international human rights law;
 - iii. an act constituting an offence under international conventions or protocols relating to terrorism[to which [*insert country*] is a Party];

¹⁴ (*Mandatory provision, ATT Article 6*). Under Article 6 of the Treaty, the transfer of conventional arms, ammunition, or parts and components is prohibited if the circumstances described in model section 5(1)(a) to (c) exist.

¹⁵ Under Article 6(2) a State Party must not authorise the transfer of conventional arms, ammunition, or parts and components 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'. The text in model section 5(1)(b) therefore reflects the language of the Treaty. However, should a state wish to extend the obligation to prohibit transfers that violate any of its international obligations (including those that may not be in international agreements, such as customary international law), they should delete the text in square brackets.

¹⁶ The alternative drafting in model section 5(1)(c) draws from a 'Model Interpretative Declaration for the ATT' circulated by Switzerland to UN Member States on 22 October 2013. The alternative drafting provides greater detail of the international obligations that most Pacific states have undertaken relating to war crimes. States may, however, choose to replicate the exact language of Article 6(3) of the Treaty.

¹⁷ (*Mandatory provision, ATT Articles 7(1), 7(4) and 11(2)*). Under Article 7(1) of the Treaty, if an export is not prohibited outright because the circumstances in Article 6 are not present, States Parties must then assess the potential that the conventional arms, ammunition, or parts and components to be exported could contribute to peace and security or could lead to the consequences outlined in model section 5(2)(a) to (b)(iv). In addition, under Article 7(4) of the Treaty, as part of the risk assessment, States Parties must take into account the risk that the items could be used to commit or facilitate the acts outlined in model section 5(2)(b)(v). And, under Article 11(2) of the Treaty, States Parties must assess the risk of diversion of an export (as per model section 5(2)(c)), and may consider not authorising the export as a diversion prevention measure.

- iv. an act constituting an offence under international conventions or protocols relating to transnational organised crime [to which *[insert country]* is a Party]; or
 - v. serious acts of gender-based violence or serious acts of violence against women and children; or
- (c) could be diverted prior to, or after, delivery to their intended end-user.
- (3) If on the basis of the assessment conducted under subsection (2) the Authority determines that there is a substantial¹⁸ risk that the conventional arms, ammunition, or parts and components:
- (a) would undermine peace and security;¹⁹ or
 - (b) could be used to commit or facilitate:
 - i. a serious violation of international humanitarian law;²⁰
 - ii. a serious violation of international human rights law;²¹
 - iii. an act constituting an offence under international conventions or protocols relating to terrorism [to which *[insert country]* is a Party];²² or
 - iv. an act constituting an offence under international conventions or protocols relating to transnational organised crime [to which *[insert country]* is a Party];²³
- and the risk cannot be mitigated,²⁴ the Authority shall refuse the application for an export licence.

¹⁸ Under Article 7(3) of the Treaty, a State Party must not authorise an export if, having conducted a risk assessment, it determines that there is an 'overriding' risk of certain consequences. The term 'overriding' risk is not defined in the Treaty. During the ATT negotiations, many states – including Pacific states – called for the term 'substantial' risk to be used instead. States may choose to revert to the Treaty language and replace 'substantial' with 'overriding'.

¹⁹ (*Mandatory provision, ATT Article 7(1)(a) and (3)*). Under Article 7(3) of the Treaty, if, having conducted a risk assessment, a State Party determines that there is an 'overriding' risk that the items to be exported would undermine peace and security, it must not authorise the export.

²⁰ (*Mandatory provision, ATT Article 7(1)(b)(i) and (3)*). Under Article 7(3) of the Treaty, if, having conducted a risk assessment, a State Party determines that there is an 'overriding' risk that the items to be exported could be used to commit or facilitate a serious violation of international humanitarian law, it must not authorise the export.

²¹ (*Mandatory provision, ATT Article 7(1)(b)(ii) and (3)*). Under Article 7(3) of the Treaty, if, having conducted a risk assessment, a State Party determines that there is an 'overriding' risk that the items to be exported could be used to commit or facilitate a serious violation of international human rights law, it must not authorise the export.

²² (*Mandatory provision, ATT Article 7(1)(b)(iii) and (3)*). Under Article 7(3) of the Treaty, if, having conducted a risk assessment, a State Party determines that there is an 'overriding' risk that the items to be exported could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which it is a Party, it must not authorise the export.

²³ (*Mandatory provision, ATT Article 7(1)(b)(iv) and (3)*). Under Article 7(3) of the Treaty, if, having conducted a risk assessment, a State Party determines that there is an 'overriding' risk that the items to be exported could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime to which it is a Party, it must not authorise the export.

²⁴ (*Mandatory provision, ATT Article 7(1) and (2)*). Under Article 7(2) of the Treaty, a State Party must consider whether there are measures that could be taken to mitigate the risks identified in model section 5(2)(a) and (b)(i)-(iv).

- (4) If on the basis of the assessment conducted under subsection (2) the Authority determines that there is a substantial²⁵ risk that the conventional arms, ammunition, or parts and components:
- (a) could be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children;²⁶ or
 - (b) could be diverted prior to, or after, delivery to their intended end-user,²⁷ and the risk cannot be mitigated,²⁸ this would result in a presumption that the Authority will refuse the application for an export licence.

Section 6. Revocation or amendment of an export licence²⁹

- (1) The Authority shall revoke an export licence if, after the licence was granted and prior to the export of any items covered by the export licence:
- (a) an arms embargo has been imposed on the importing country or the final recipient of the conventional arms, ammunition, or parts and components covered by the export licence; or
 - (b) the Authority acquires:
 - i. knowledge that the conventional arms, ammunition, or parts and components would be used in the commission of genocide, crimes against humanity, or war crimes;³⁰ or
 - ii. information that leads the Authority to assess that there is a substantial risk of any of the consequences in section 5(2).
- (2) The Authority may revoke or amend an export licence prior to its expiration [if:
- (a) false or misleading information has been supplied in order to obtain the licence;
 - (b) the conditions on the licence are not fully complied with; or
 - (c)]in any [other] circumstances that the Authority considers appropriate.
- (3) The Authority shall inform the holder of the export licence of the revocation or amendment, which takes effect immediately.

²⁵ See footnote 18.

²⁶ (*Non mandatory provision*). Under Article 7(4) of the Treaty, as part of the risk assessment, States Parties must take into account the risk that the arms or items could be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children. The Treaty does not require States Parties to refuse the export if such a risk exists except to the extent that any such acts would constitute a serious violation of international human rights law or international humanitarian law.

²⁷ (*Optional provision, Article 11(2)*). Under Article 11(2), States Parties must assess the risk of diversion of an export. The Treaty does not require States Parties to refuse the export if such a risk exists, but it does suggest States Parties consider not authorising the export as a diversion prevention measure.

²⁸ (*Mandatory provision, ATT Article 7(1) and (2)*). Under Article 7(2) of the Treaty, a State Party must consider whether there are measures that could be taken to mitigate the risks identified in model section 5(2)(a) and (b)(i)-(iv).

²⁹ (*Encouraged provision, ATT Article 7(7)*). Article 7(7) of the Treaty encourages a State Party to reassess an export authorisation after it has been granted if it becomes aware of new relevant information that may alter or affect its decision to grant the licence. Accordingly, States Parties should ensure they have the power under national legislation to revoke or amend an export licence after it has been granted. Model section 8 includes an obligation on the part of the relevant authority to revoke an export licence if circumstances have changed viz. an arms embargo has been put in place since the export licence was granted; the Authority acquires knowledge that indicates the items to be exported would be used to commit genocide, crimes against humanity, or war crimes; or the Authority acquires information that indicates one of the consequences in model section 5(2) might arise. Drafters may choose to list examples of the other circumstances in which the Authority may revoke or amend an export licence, or the Authority may be given absolute discretion to revoke or amend an export licence without specifying the circumstances when such action may be taken.

³⁰ If the alternative drafting in model section 5(1)(c) is adopted, this should be inserted here.

Section 7. Export offences³¹

- (1) A person who contravenes section 4 commits an offence and is liable upon conviction to:
 - (a) in the case of an individual, imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both;
 - (b) in the case of a body corporate, a fine not exceeding [...].
- (2) Where an offence under subsection (1) is committed by a body corporate, each director, manager or other similar officer of the body corporate shall be guilty of that offence and punishable under subsection (1)(a) if:
 - (a) that person knowingly authorised or permitted the commission of the offence; or
 - (b) the offence is attributable to any negligence on the part of that person.
- (3) Any court which convicts a person under subsection 1(a) or (b) may order that any arms, ammunition, or parts and components involved in the commission of the offence be forfeited to the State [*for destruction*]³².

Section 8. Temporary export licence³³

OPTION A

- (1) Persons in either of the following categories may export a maximum of [*insert appropriate number*] small arms without obtaining an export licence from the Authority under section 4:
 - (a) citizens and permanent residents of [*insert country*] taking small arms overseas for their own use [*for less than 30 days*] for sporting or recreational purposes; or
 - (b) persons other than citizens and permanent residents of [*insert country*] who have been in [*insert country*] for sporting or recreational purposes may export their small arms which they originally imported with a temporary import licence granted under section 11.

³¹ (*Suggested provision*). The Treaty does not expressly require States Parties to establish criminal offences in their national laws for illegal trafficking offences, including the export of conventional arms without a licence. However, it does require States Parties to take the measures necessary to implement the provisions of the Treaty (Article 5(5)). Establishing criminal offences for illegal trafficking of conventional arms forms part of an effective national control system. In addition, the UN Programme of Action on Small Arms (PoA) and the Firearms Protocol call for states to establish illicit trafficking and illicit trade (respectively) as criminal offences.

It is assumed that Pacific states' criminal codes already cover attempts to commit offences, conspiracy to commit offences, and aiding and abetting the commission of offences. Drafters should ensure that this is the case but if it is not, they should expand the types of associated offences and applicable penalties in model section 7 accordingly. This applies to all offences contemplated in the Model Law.

³² (*Suggested provision*). The Treaty does not stipulate that when arms are exported without an export licence they should be forfeited to the state and destroyed. The Firearms Protocol provides that illicitly trafficked arms should be seized and destroyed to prevent them falling into the hands of unauthorised persons (Art. 6(2)).

³³ (*Suggested provision*). There is no requirement under the Treaty that States Parties include simplified procedures governing the temporary export of small arms from their territories. However, the focus of the ATT is on trade-related activities. The temporary export of small arms for recreational and sporting purposes where there is no change in ownership lies outside this context. Moreover, paragraph 13 of the Treaty Preamble does acknowledge the 'legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law'.

- (2) Persons exporting small arms covered by subsection (1)(a) may export up to a maximum of [insert appropriate quantity] of related ammunition for such arms.
- (3) Persons exporting small arms covered by subsection (1)(b) may export up to a maximum of [insert appropriate quantity] of related ammunition and/or used cartridges for such arms.
- (4) For the purposes of this section only, the term ‘small arms’ means [insert the types of small arms permitted for temporary export....], and ‘related ammunition’ means ammunition used for those small arms.

OPTION B

- (1) A person departing from [*insert country*] for a stay of less than [30] days who exports small arms and related ammunition for his or her own sporting or recreational use shall, in the prescribed manner, apply to an authorised officer for a temporary export licence for the small arms and related ammunition.
- (2) A person who fails to obtain a temporary export licence for any small arms and related ammunition exported under subsection (1) commits an offence and is liable upon conviction to imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both.
- (3) No person may export more than [...] small arms, and more than [*insert appropriate quantity*] of related ammunition for such arms, under subsection (1).
- (4) A temporary export licence remains in force for [...] days from the date of issue and may be renewed by an authorised officer.
- (5) For the purposes of this section only, the term ‘small arms’ means [*insert the types of small arms permitted for temporary export....*], and ‘related ammunition’ means ammunition used for those small arms.

Part III - Import

OVERVIEW

ATT Article 8 - Import includes commitments that are specific to the import of conventional arms, although there are other provisions in the Treaty that are also relevant to the import of conventional arms. The obligations and entitlements that importing States Parties have under Article 8 can be summarised as follows:

- (1) they must take measures to provide exporting States Parties with the information they require to make an export assessment;
- (2) they must take measures to regulate, where necessary, the import of conventional arms;
- (3) they are entitled to request information from an exporting State Party regarding an export decision (pending or complete) if the importing State Party is the country of final destination for the arms in question.

Only certain elements of Article 8 are appropriate for inclusion in national legislation, such as the requirement in paragraph 2 to take measures to regulate imports of conventional arms. Other elements may be better suited to policy guidelines or administrative procedures adopted by States Parties, such as the entitlement in paragraph 3 to request information from an exporting State Party regarding an export decision.

MODEL LEGISLATIVE PROVISIONS

Section 9. Restriction on import³⁴

- (1) The import of any goods listed in Part 1 of the Schedule into [*insert country*] is prohibited.

³⁴ (*Mandatory (qualified) provision, ATT Article 8(2)*). Article 8(2) requires States Parties that import conventional arms to take measures, where necessary, to regulate these imports. The Treaty does not specify what 'measures' States Parties should take to fulfil this commitment, although Article 8(2) does note that '[S]uch measures may include import systems'. Accordingly, states have discretion to determine how they wish to regulate or control the import of conventional arms. International instruments including the PoA and the Firearms Protocol call on states to establish a system of import 'licensing or authorisation' (PoA, II.11; FP, Art. 10(1)). In the context of the Firearms Protocol, this extends to ammunition and parts and components (Art. 10(1)). The Pacific Legal Framework for a Common Approach to Weapons Control (the 'Nadi Framework') also contemplates the establishment of a system of import licensing or authorisation by Member States (para. 6).

Model section 9 contemplates that a state will list items to be controlled in the Schedule, which could form the national control list States Parties are required to establish in accordance with Article 5(2) of the Treaty. Model section 9 gives a state the option to absolutely prohibit the import of some items (to be listed in Part 1 of the Schedule) while allowing the import of other conventional arms (to be listed in Part 2 of the Schedule), subject to a licence from the competent authority. For example, some States Parties may consider that it is not appropriate (or desirable) for anyone other than the state itself to import battle tanks, armoured combat vehicles, etc., and accordingly may prohibit the import of these items outright, while allowing the import of small arms and light weapons. If a state already controls the import of small arms and light weapons through national legislation but wants to prohibit the import of all other conventional arms in the scope of the Treaty by anyone other than its state agencies, it could simply omit small arms and light weapons from the Schedule.

If a state does not want to absolutely prohibit the import of certain items, it could simply subject all items listed in the Schedule to an import licence as follows:

'The import of any goods listed in the Schedule into [*insert country*] is prohibited, unless an import licence has been granted by the Authority.'

- (2) The import of any goods listed in Part 2 of the Schedule into [*insert country*] is prohibited, unless an import licence has been granted by the Authority.
- (3) A person who wishes to import goods listed in Part 2 of the Schedule shall apply to the Authority in the prescribed manner for an import licence.
- (4) Subject to subsection (5), the Authority may grant or refuse to grant an import licence to an applicant mentioned in subsection (3), and shall inform the applicant of its decision.³⁵
- (5) The Authority shall refuse an application³⁶ for a licence to import conventional arms, ammunition, or parts and components if:
 - (a) the import would violate [*insert country*]'s obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;
 - (b) the import would contravene [*insert country*]'s other international obligations [under international agreements to which [*insert country*] is a Party];³⁷ or
 - (c) it has knowledge at the time of considering the application for the import licence that the conventional arms, ammunition, or parts and components would be used in the commission of genocide, crimes against humanity, or war crimes.³⁸
- (6) An import licence is subject to any conditions specified.

Optional extras

Article 8(2) of the Treaty only requires States Parties to regulate (where necessary) the import of conventional arms. So these items must, as necessary, be included in the list of controlled items in the Schedule. Should states also wish to regulate the import of ammunition, munitions and parts and components, these should be included as controlled items in the Schedule.

³⁵ (*Suggested provision*). As noted above, the Treaty requires States Parties to regulate, where necessary, imports of conventional arms, but it is not prescriptive in terms of how this is done. States wishing to implement an effective import control system should consider the following: 1) What documents must be submitted by the applicant as part of the import licence process (e.g. name and physical address of the final recipient or end-user)? 2) What information will be included in an import licence (e.g. place and date of issuance of the licence; expiry date; country of export; name and physical address of the applicant; name and physical address of the final consignee or end-user; a description of the items; any conditions imposed on the licence; details of the transport route and countries of transit, where known)? Suggestions and examples of the types of information and documentation that could be sought are included in Part 2 of the model regulations in the Annex.

ATT Article 12 – Record keeping does encourage States Parties to maintain records of conventional arms that are transferred to their territory as the final destination, including information on: ‘the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and transshipment State(s), and end users, as appropriate’ (Article 12(3)). Accordingly, states should ensure they require this information as part of the import licence application and include it in the particulars of the import licence granted and recorded by the relevant state agency.

³⁶ (*Mandatory provision, ATT Article 6*). Under Article 6 of the Treaty, the transfer of conventional arms, ammunition, or parts and components is prohibited if the circumstances described in model section 9(5)(a) to (c) exist.

³⁷ See footnote 15.

³⁸ See model section 5(1)(c) for alternative drafting for this subsection.

Section 10. Import offences³⁹

- (1) A person who contravenes section 9 commits an offence and is liable upon conviction to:
 - (a) in the case of an individual, imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both;
 - (b) in the case of a body corporate, a fine not exceeding [...].
- (2) Where an offence under subsection (1) is committed by a body corporate, each director, manager or other similar officer of the body corporate shall be guilty of that offence and punishable under subsection (1)(a) if:
 - (a) that person knowingly authorised or permitted the commission of the offence; or
 - (b) the offence is attributable to any negligence on the part of that person.

Section 11. Temporary import licence⁴⁰

- (1) A person arriving in [*insert country*] for a stay of less than [30] days who imports small arms and related ammunition for his or her own sporting or recreational use shall:
 - (a) deposit the small arms and ammunition with [*insert name of competent authority e.g. Police or Customs*], at or nearest to the place of entry; or
 - (b) in the prescribed manner, apply to an authorised officer for a temporary import licence for the small arms and related ammunition.
- (2) A person who fails to deposit the small arms and related ammunition or obtain a temporary import licence for any small arms and related ammunition imported under subsection (1) commits an offence and is liable upon conviction to imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both.
- (3) No person may import more than [...] small arms, and more than [*insert appropriate quantity*] of related ammunition for such arms, under subsection (1).
- (4) A temporary import licence remains in force for [...] days from the date of issue and may be renewed by an authorised officer.
- (5) For the purposes of this section only, the term ‘small arms’ means [*insert the types of small arms permitted for temporary import...*], and ‘related ammunition’ means ammunition used for those small arms.

³⁹ (*Suggested provision*). See footnote 31.

⁴⁰ (*Suggested provision*). There is no requirement under the Treaty that States Parties include simplified procedures governing the temporary import of small arms into their territories. However, the focus of the ATT is on trade-related activities. The temporary import of small arms for recreational and sporting purposes where there is no change in ownership lies outside this context.

Part IV - Transit and Transshipment

OVERVIEW

ATT Article 9 – Transit or transshipment requires States Parties to ‘take appropriate measures to regulate, where necessary and feasible, the transit or transshipment’ of conventional arms (but not ammunition or parts and components) through their territories ‘in accordance with international law’. States have discretion to determine whether and how they wish to regulate the transit or transshipment of arms.

MODEL LEGISLATIVE PROVISIONS⁴¹

Section 12. Provision of information on transit

- (1) If the [*insert relevant authority*] has reasonable grounds to suspect that a ship in transit through the territorial sea or aircraft in transit through the airspace of [*insert country*] is carrying conventional arms, ammunition, or parts and components:
 - (a) in contravention of obligations [*insert country*] has under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;
 - (b) in contravention of [*insert country*]'s other international obligations[under international agreements to which [*insert country*] is a Party];⁴² or
 - (c) that may be used in the commission of genocide, crimes against humanity, or war crimes;

it may request any relevant information or documentation from any person on board the ship or aircraft including the person in charge of the ship or aircraft, a crew member, or a passenger on it.

- (2) A person who receives a request from the [*insert relevant authority*] in accordance with subsection (1) shall:

⁴¹ It is important that any regime extending to transit and transshipment be consistent with states' rights and obligations under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), including with respect to the right of innocent passage under Article 17. Accordingly, model section 12 does not require a ship or aircraft in transit through a state's territory to obtain a licence or permit but rather gives the relevant authority the power to request information and documentation from such a vessel or aircraft in certain circumstances.

However, a state may require that ships or aircraft carrying goods that will be transhipped in its territory (i.e. the goods will be transferred onto another vessel, aircraft or means of transport) obtain a transshipment permit, since it has full jurisdiction in such circumstances. Model section 13 allows states to regulate the transshipment of arms, ammunition, and parts and components by requiring ships and aircraft carrying such items to obtain a transshipment permit. States not wanting to operate a transshipment permit scheme could consider extending model section 12 relating to transit to cover also transshipment by including in that text the phrase 'or that is carrying goods that are being transhipped through [*insert country*],' prior to the phrase 'is carrying conventional arms...'

⁴² See footnote 15.

- (a) answer any question asked by the *[insert relevant authority]*⁴³ relating to the carriage of conventional arms, ammunition, or parts and components on the ship or aircraft; and
- (b) produce to the *[insert relevant authority]* any documents within that person's possession or control relating to such matters.

Section 13. Restriction on transshipment

The transshipment of any goods listed in Part 2 of the Schedule through an airport, the internal waters, or port facilities outside the internal waters of *[insert country]* is prohibited, unless a transshipment permit has been granted by the *[insert relevant authority]*.

Section 14. Transshipment permit

- (1) A person may apply to the *[insert relevant authority]* in the prescribed manner for a transshipment permit.
- (2) Subject to subsection (3), the *[insert relevant authority]* may grant or refuse to grant a transshipment permit to an applicant mentioned in subsection (1), and shall inform the applicant of its decision.
- (3) The *[insert relevant authority]* shall refuse an application for a transshipment permit if:
 - (a) the transshipment would violate *[insert country]*'s obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;
 - (b) the transshipment would contravene *[insert country]*'s other international obligations[under international agreements to which *[insert country]* is a Party];⁴⁴ or
 - (c) it has knowledge at the time of considering the application for the transshipment permit that the conventional arms, ammunition, or parts and components would be used in the commission of genocide, crimes against humanity, or war crimes.
- (4) A transshipment permit is subject to any conditions specified.

⁴³The relevant authority to request information from a ship or aircraft that is transiting through a state may not be the 'Authority' established or nominated under the ATT Implementation Act. It may be Customs or the Ministry of National Security or the Prime Minister's Office etc. Each state should determine the relevant authority to request such information in its jurisdiction.

⁴⁴ See footnote 15.

Section 15. Transshipment offences

- (1) A person who contravenes section 13 commits an offence and is liable upon conviction to:
 - (a) in the case of an individual, imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both;
 - (b) in the case of a body corporate, a fine not exceeding [...].
- (2) Where an offence under subsection (1) is committed by a body corporate, each director, manager or other similar officer of the body corporate shall be guilty of that offence and punishable under subsection (1)(a) if:
 - (a) that person knowingly authorised or permitted the commission of the offence; or
 - (b) the offence is attributable to any negligence on the part of that person.

Section 16. Seizure warrants

The [*insert relevant authority*] may issue, or request the [*relevant agency*] to issue, a warrant to seize arms, ammunition, or parts and components, if such items are being transhipped through [*insert country*], and the [*insert relevant authority*] has:

- (a) reasonable grounds for suspecting that the transfer of the items would:
 - i. violate [*insert country*]'s obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;
 - ii. contravene [*insert country*]'s other international obligations[under international agreements to which [*insert country*] is a Party],⁴⁵ or
- (b) knowledge that the conventional arms, ammunition, or parts and components would be used in the commission of genocide, crimes against humanity, or war crimes.

⁴⁵ See footnote 15.

Part V – Brokers and Brokering Activities

OVERVIEW

ATT **Article 10** requires each State Party to take measures to regulate brokering taking place under its jurisdiction with respect to conventional arms (but not ammunition or parts and components). Such measures are to be ‘pursuant to’ national laws. The measures suggested in Article 10 include requiring brokers to register or obtain authorisation before engaging in brokering activities.

The following model provisions are provided to guide those states that wish to regulate brokers. An alternative option is for a state to prohibit brokering within its jurisdiction altogether.

MODEL LEGISLATIVE PROVISIONS⁴⁶

OPTION A⁴⁷

Section 17A Conducting brokering activities

Any engagement in brokering activities in [*insert country*] is prohibited, unless a person is a registered broker and the person has been granted a brokering activity permit for the brokering activity by the Authority under section 22A.

Section 18A. Registration application

- (1) A person who wishes to engage in brokering activities shall apply to the Authority to be registered as a broker in the prescribed manner.
- (2) Subject to section 19A, the Authority may register or may refuse to register the applicant mentioned in subsection (1) as a broker and shall inform the applicant of its decision.
- (3) A broker’s registration is subject to any conditions specified.
- (4) Registration of a person as a broker is valid for a period of [...years], unless cancelled earlier.

⁴⁶The model sections are adapted from the brokering provisions contained in Australia’s Defence Trade Controls Act 2012 and the UN Office on Drugs and Crime (UNODC) Model Law on the Firearms Protocol. States that wish to establish a more elaborate or comprehensive process for regulating brokers are encouraged to consult pages 73–84 of the UNODC Model Law (http://www.unodc.org/documents/legal-tools/Model_Law_Firearms_Final.pdf), which, for example, includes a process enabling a registered broker to notify the Authority of any change in information and suggested provisions on the conditions that could be attached to licences authorising brokering activities.

⁴⁷The drafting provided in *Option A* is intended to guide those states that want to permit brokers to operate from their territory and to regulate brokering activities. It includes the elements to regulate brokering suggested in Article 10 of the ATT: registration of brokers and written authorisation for brokering activities.

Section 19A. Registration criteria and process

- (1) The Authority may register the applicant as a broker if the Authority is satisfied that the applicant is a fit and proper person.
- (2) In determining whether the applicant is a fit and proper person, the Authority shall have regard to:
 - (a) if the person has been previously registered as a broker—whether the person breached a condition of that registration or whether that registration was cancelled or whether the person has breached a condition of a permit granted under section 22A;
 - (b) the financial position of the person or, where the person is a body corporate, the financial position of the director, manager or other similar officer; and
 - (c) any criminal record of the person or, where the person is a body corporate, the criminal record of the director, manager or other similar officer; and
 - (d)]any [other]matters that the Authority considers appropriate.

Section 20A. Register of brokers

- (1) The Authority will maintain a register in which the Authority includes the following details:
 - (a) the name and contact details of every registered broker;
 - (b) the date on which each broker’s registration is due to expire;
 - (c) any conditions that apply to each broker’s registration; and
 - (d) each permit granted in accordance with section 22A.
- (2) The register is to be made publicly available [upon request].⁴⁸

⁴⁸ (*Suggested provision*). There is no requirement in the Treaty that, if a register of brokers is maintained by a state, it be made publicly available. States may also want to include a requirement that it be kept electronically:

(3) The register is to be maintained by electronic means.

Section 21A. Cancellation of registration as a broker

- (1) The Authority may cancel the registration of a registered broker:
 - (a) if false or misleading information has been supplied in order to obtain the registration;
 - (b) if the conditions on the registration or a brokering activity permit granted under section 22A are not fully complied with;
 - (c) if the broker is convicted of an offence; or
 - (d)]in any [other] circumstances that the Authority considers appropriate.
- (2) The Authority shall inform the broker of the cancellation, which takes effect immediately.
- (3) If the Authority cancels the registration any brokering activity permit held by the person under section 22A is taken to be revoked at the time that cancellation takes effect.

Section 22A. Brokering activity permit application

- (1) A registered broker shall apply to the Authority in the prescribed manner for a permit to conduct one or more brokering activities.
- (2) Subject to section 23A, the Authority may grant or refuse to grant a brokering activity permit to an applicant mentioned in subsection (1) and shall inform the applicant of its decision.
- (3) A brokering activity permit is subject to any conditions specified.

Section 23A. Consideration of the brokering activity permit application

- (1) The Authority shall refuse an application⁴⁹ for a brokering activity permit if:
 - (a) the brokering activity relates to a transfer that would violate [*insert country*]'s obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes;
 - (b) the brokering activity relates to a transfer that would contravene [*insert country*]'s other international obligations [under international agreements to which [*insert country*] is a Party];⁵⁰ or
 - (c) it has knowledge at the time of considering the application for the brokering activity permit that the conventional arms, ammunition, or parts and components would be used in the commission of genocide, crimes against humanity, or war crimes.⁵¹

⁴⁹ (*Mandatory provision, ATT Article 6*). Under Article 6 of the Treaty, the transfer of conventional arms, ammunition, or parts and components is prohibited if the circumstances listed in model section 23A(1)(a) to (c) exist.

⁵⁰ See footnote 15.

⁵¹ See model section 5(1)(c) and footnote 16 for alternative drafting for this subsection.

- (2) If the brokering activity permit is not refused under subsection (1), the Authority shall assess the risk⁵² that conventional arms[, ammunition, or parts and components] that are the subject of the brokering activity permit application:
- (a) would undermine peace and security; or
 - (b) could be used to commit or facilitate:
 - i. a serious violation of international humanitarian law;
 - ii. a serious violation of international human rights law;
 - iii. an act constituting an offence under international conventions or protocols relating to terrorism [to which *[insert country]* is a Party];
 - iv. an act constituting an offence under international conventions or protocols relating to transnational organised crime [to which *[insert country]* is a Party];or
 - v. serious acts of gender-based violence or serious acts of violence against women and children; or
 - (c) could be diverted prior to, or after, delivery to their intended end-user.
- (3) If on the basis of the assessment conducted under subsection (2) the Authority determines that there is a substantial⁵³ risk that the conventional arms[, ammunition, or parts and components]:
- (a) would undermine peace and security; or
 - (b) could be used to commit or facilitate:
 - i. a serious violation of international humanitarian law;
 - ii. a serious violation of international human rights law;
 - iii. an act constituting an offence under international conventions or protocols relating to terrorism [to which *[insert country]* is a Party];
 - iv. an act constituting an offence under international conventions or protocols relating to transnational organised crime [to which *[insert country]* is a Party],and the risk cannot be mitigated, the Authority shall refuse the application for a brokering activity permit.

(4) If on the basis of the assessment conducted under subsection (2) the Authority determines that there is a substantial risk that the conventional arms[, ammunition, or parts and components]:

 - (a) could be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children; or
 - (b) could be diverted prior to, or after, delivery to their intended end-user,
 - (c) and the risk cannot be mitigated, this would result in a presumption that the Authority will refuse the application for a brokering activity permit.

⁵² (*Suggested provision*). The Treaty does not require States Parties to conduct a risk assessment prior to authorising a brokering activity. However, given that the activities of a broker (arranging financing, putting parties to a transaction into contact etc.) may result in the export of arms, ammunition, or parts and components, it would be prudent for a state to consider the risks involved in the transaction prior to authorising any related brokering activity.

⁵³ See footnote 18.

Section 24A. Brokering offences⁵⁴

- (1) Any person who:
 - (a) engages in brokering activities without:
 - i. being registered under section 18A; and
 - ii. holding a valid permit for the activity under section 22A; or
 - (b) breaches a condition of:
 - i. registration granted under section 18A; or
 - ii. a permit the person holds under section 22A;commits an offence.
- (2) A person who contravenes subsection (1) is liable upon conviction to:
 - (a) in the case of an individual, imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both;
 - (b) in the case of a body corporate, a fine not exceeding [...].
- (3) Where an offence under subsection (1) is committed by a body corporate, each director, manager or other similar officer of the body corporate shall be guilty of that offence and punishable under subsection (2)(a) if:
 - (a) that person knowingly authorised or permitted the commission of the offence; or
 - (b) the offence is attributable to any negligence on the part of that person.

OPTION B

Section 17B. Conducting brokering activities⁵⁵

Any engagement in brokering activities in [*insert country*] is prohibited.

Section 18B. Brokering offences

- (1) A person who contravenes section 17B commits an offence and is liable upon conviction to:
 - (a) in the case of an individual, imprisonment for a term not exceeding [...] years or to a fine not exceeding [...] or both;
 - (b) in the case of a body corporate, a fine not exceeding [...].
- (2) Where an offence under subsection (1) is committed by a body corporate, each director, manager or other similar officer of the body corporate shall be guilty of that offence and punishable under subsection (1)(a) if:
 - (a) that person knowingly authorised or permitted the commission of the offence; or
 - (b) the offence is attributable to any negligence on the part of that person.

⁵⁴ (*Suggested provision*). See footnote 31. In addition, under the PoA, UN Member States have undertaken to establish legislation to regulate the activities of brokers, including 'appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control' (para. II.14).

⁵⁵ The drafting provided in *Option B* is intended to guide those states that wish to prohibit brokers from operating within their jurisdiction. If a prohibition on brokering is adopted, then model sections 17A to 24A and 27 are redundant and the model sections that appear in Part VI – Record-keeping should be renumbered accordingly (i.e. commence at section 19 rather than section 25).

Part VI – Record-keeping

OVERVIEW

ATT Article 12 – Record keeping requires States Parties to maintain records of their issuance of export authorisations or their actual exports of conventional arms (but not ammunition or parts and components) (Art. 12(1)), and encourages them to keep records of conventional arms (but not ammunition and parts and components) that are imported into or that are authorised to transit or tranship their territories (Art. 12(2)). The keeping of comprehensive and accurate records by States Parties will facilitate the provision of annual reports on exports and imports, as required under **Article 13 – Reporting** of the Treaty.

MODEL LEGISLATIVE PROVISIONS

Section 25. Records to be kept by the State

- (1) [*insert name of licensing authority*] shall keep records of all licences and permits granted under this Act.
- (2) [*insert relevant authority*] shall keep records of all information provided to it under section 12 of this Act.
- (3) [*insert name of licensing authority*] will keep records of all brokering activity permits granted under section 22A of this Act.⁵⁶

Section 26. Records of export, import and transhipment⁵⁷

- (1) Every holder of an export licence, import licence or transhipment permit granted under this Act shall keep records of all conventional arms [, ammunition, and parts and components] transferred under such licences or permits.
- (2) Records under this section shall contain the information prescribed.

⁵⁶ This is only applicable if Option A of Part V is adopted.

⁵⁷ (*Mandatory/encouraged provision, Article 12*). The ATT requires States Parties to keep records of exports and encourages them to keep records of imports as well as those authorised to transit or tranship. Notably, states are required to report on their imports of conventional arms (but not ammunition and parts and components) on an annual basis. Accordingly they will need to keep records of imported weapons. Note: although the ATT does not require states to keep records of information pertaining to ammunition or parts and components, the Firearms Protocol stipulates that States Parties to the Protocol should keep records of such items 'where appropriate and feasible' (Art. 7). The Treaty does not specify whether such records should be kept by the state itself or by persons and entities engaged in importing, exporting and so on. It is up to each state to determine whether records should be kept by the state and/or by persons and entities engaged in transfer-related activities. The provisions in the Model Law contemplate that the licensing authority will keep records of all licences granted, and in addition all licensed importers and exporters will keep records of all transactions. Many Pacific states already have provisions in their firearms legislation requiring dealers to keep and submit records of imports and exports.

Section 27. Record-keeping by brokers⁵⁸

- (1) Every registered broker shall keep records of activities carried out under a brokering activity permit granted to the broker under section 22A.
- (2) Records under this section shall contain the information prescribed.

Section 28. Duration of record-keeping

All records kept in accordance with this Act shall be retained for a minimum of 10 years.⁵⁹

Section 29. Submission of records⁶⁰

- (1) Every person who is required to keep records under section 26 or 27 shall submit copies of all records relating to the relevant period to the Authority on [insert date or timeframe e.g. for six-monthly returns: 31 January and 31 July every year].
- (2) Where any holder of an export or import licence or a registered broker ceases to carry on business, that person shall submit all records maintained in accordance with this Act to the Authority within [14 days] after cessation of the business.

Section 30. Record-keeping offences⁶¹

- (1) A person who contravenes section 26, 27, 28, or 29 commits an offence and is liable upon conviction to a fine not exceeding [...].
- (2) Where an offence under subsection (1) is committed by a body corporate, each director, manager or other similar officer of the body corporate shall be guilty of that offence and punishable under subsection (1) if:
 - (a) that person knowingly authorised or permitted the commission of the offence; or
 - (b) the offence is attributable to any negligence on the part of that person.

⁵⁸ (*Suggested provision*). The ATT does not require States Parties to keep records of brokers or brokering activities, though it does suggest that brokers be registered as a possible measure to regulate their activities, and a system of registration implies keeping a record of brokers operating in one's territory. The Firearms Protocol does stipulate that States Parties that do establish a system for controlling brokers are 'encouraged to include information on brokers and brokering in their exchanges of information' with other states and 'to retain records regarding brokers and brokering' (Art. 15(2)).

⁵⁹ (*Mandatory provision, Art. 12(4)*). Article 12(4) of the Treaty stipulates that records that are kept 'shall be kept for a minimum of ten years'. The International Tracing Instrument provides (II.12(a)) that records 'be kept indefinitely', to the extent possible, but in any case manufacturing records must be kept for at least 30 years and all other records – including records of import and export – for at least 20 years. The PoA (II.9) provides that records on the manufacture of small arms and light weapons should be kept 'for as long as possible'. States may consider including provisions requiring records to be kept for longer than is required under the ATT.

⁶⁰ (*Suggested provision*). The ATT does not require States Parties to ensure that businesses submit records to the state on a regular basis, or that persons or companies that go out of business submit their records upon cessation of business. Paragraph IV.13 of the International Tracing Instrument stipulates that states 'will require that records pertaining to small arms and light weapons held by companies that go out of business be forwarded to the State'. Such a requirement ensures that the relevant state agency has records of all transactions and all the necessary information to submit reports under the ATT.

⁶¹ (*Suggested provision*). See footnote 31.

Part VII – Administration of the Act

Section 31. Regulations

The [*insert name of regulation-making authority*] may make regulations to give effect to the provisions of this Act.

Section 32. Act binding on the State

This Act binds the State.

Section 33. Savings and transitional provisions

[Savings or transitional provisions may be needed.]

Schedule [to the Act] – List of controlled goods

Part 1 – Prohibited goods⁶²

[Insert as appropriate.]

Part 2 – Restricted goods

A. AMMUNITION

[Insert as appropriate.]

B. CONVENTIONAL ARMS⁶³

(a) **Battle tanks**

Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high-level of self-protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre.

(b) **Armoured combat vehicles**

Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either: (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 12.5 millimetres calibre or a missile launcher.

(c) **Large-calibre artillery systems**

Guns, howitzers, artillery pieces, combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above.

⁶² The ATT does not prohibit the transfer of specific arms or items. However, States Parties are required to establish a national control system to regulate the export of all items covered by the Treaty and the import, transit or transshipment and brokering of some items. As part of that national control system, states may choose to prohibit the transfer of certain conventional weapons by or to persons or entities that are not state entities. For example, states may deem it inappropriate for anyone other than national defence or security forces to import and possess battle tanks, attack helicopters etc.

⁶³ These definitions are taken and adapted (slightly) from the SIPRI 2007 Information booklet (http://www.sipri.org/databases/embargoes/un_arms_embargoes/north_korea/UNROCA_Informationbooklet2007), which only incorporates amendments by Groups of Government Experts up to 2006. Additional amendments to the definitions by subsequent GGEs are also included here, and indicated. It will be necessary to update these definitions to reflect the definitions in place at the time of entry into force of the ATT for the ratifying state (as per Art. 5(3) of the Treaty).

(d) Combat aircraft⁶⁴

Combat aircraft includes manned and unmanned aerial vehicles as defined below:

- i. Manned fixed-wing or variable-geometry wing aircraft, designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defence or reconnaissance missions.
- ii. Unmanned fixed-wing or variable-geometry wing aircraft, designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction.

The term ‘combat aircraft’ does not include primary trainer aircraft, unless designed, equipped or modified as described above.

(e) Attack helicopters⁶⁵

Attack helicopters include manned and unmanned aerial vehicles as defined below:

- i. Manned rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions;
- ii. Unmanned rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons.

(f) Warships

Vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or above, and those with a standard displacement of less than 500 metric tons, equipped for launching missiles with a range of at least 25 kilometres or torpedoes with similar range.

(g) Missiles and missile launchers

- i. Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories (a) through (f). Including: remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.
- ii. Man-Portable Air-Defence Systems (MANPADS).

⁶⁴This definition is taken from the Report of the 2013 GGE to the UN Register (http://www.un.org/ga/search/view_doc.asp?symbol=A/68/140).

⁶⁵This definition is taken from the Report of the 2013 GGE to the UN Register (http://www.un.org/ga/search/view_doc.asp?symbol=A/68/140).

(h) **Small arms**⁶⁶

Revolvers and self-loading pistols, rifles and carbines, shotguns, sub-machine guns, assault rifles and light machine guns.

(i) **Light weapons**⁶⁷

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.

C. MUNITIONS

[Insert as appropriate.]

[D. PARTS AND COMPONENTS]⁶⁸

[Insert as appropriate by listing the parts and components (relating to each conventional arm in Part 2(B)(a)-(i)) that will be covered by the Act.]

⁶⁶ The list of weapons included in the definition of 'small arms' is drawn from the International Tracing Instrument, para. II.4, and constitutes the only definition of 'small arms and light weapons' included in a UN instrument. See footnote 10.a

⁶⁷ The list of weapons included in the definition of 'light weapons' is drawn from the International Tracing Instrument, para. II.4, and constitutes the only definition of 'small arms and light weapons' included in a UN instrument. See footnote 10.

⁶⁸ See footnote 8. For example, Article 3(b) of the Firearms Protocol defines 'parts and components' of a firearm as including 'a barrel, frame, receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm'.



Annex

Model Regulations

Part 1 – Preliminary

1 Name of regulations

These regulations may be cited as the Arms Trade Treaty Implementation Regulations [insert year].

2 Commencement

These regulations come into force on [insert date/procedure].

3 Authority

These regulations are made under the Arms Trade Treaty Implementation Act [insert year].

4 Definitions

In these regulations:

“Act” means the Arms Trade Treaty Implementation Act [insert date].

Part 2 – Licence and permit applications

5 Competent national authority

The authority responsible for granting licences and permits and for registering and keeping a register of brokers under the Act is [*insert name of competent authority*].⁶⁹

6 Export licence application

The following documents and information⁷⁰ shall be submitted as part of an application for an export licence under section 4 of the Act:

- (a) a completed Export Licence Application Form (Form A of the Schedule);
- (b) a copy of the import licence or authorisation granted by the competent authority in the importing country, including date of issuance and expiration, name of the importing country and identification of the competent authority that granted the licence or authorisation;
- (c) the final recipient/end-user;
- (d) a description and the quantity, value and types of the conventional arms [*ammunition, or parts and components*];
- (e) details of transit and transshipment states (if known); and
- (f) copies of transit licences or authorisations (if applicable).

⁶⁹ If a different Ministry or authority will be responsible for different parts of the Act (e.g. if one Ministry is responsible for granting export licences but a different Ministry is tasked with keeping a register of brokers), this provision can be divided. E.g.:

- (1) The authority responsible for granting an export licence under section 4 of the Act is [*insert name of competent authority*].
- (2) The authority responsible for granting an import licence under section 9 of the Act is [*insert name of competent authority*].
- (3) The authority responsible for granting a temporary export licence under section 8 of the Act is [*insert name of competent authority*]. [*If Option B of model section 8 is used.*]
- (4) The authority responsible for granting a transshipment permit under section 14 of the Act is [*insert name of competent authority*].
- (5) The authority responsible for registering brokers under section 18A of the Act is [*insert name of competent authority*]. [*If Option A of Part V is used.*]
- (6) The authority responsible for granting a brokering activity permit under section 22A of the Act is [*insert name of competent authority*]. [*If Option A of Part V is used.*]

⁷⁰ (*Suggested provision*). The ATT does not require States Parties to ensure that the information listed here is required as part of an export authorisation licence application. However, Article 12 – Record keeping does require States Parties to maintain records of export authorisations granted or actual exports of conventional arms (but not ammunition or parts and components). It encourages States Parties to include: ‘the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2(1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and transshipment State(s), and end users, as appropriate’ (Article 12(3)). Accordingly, states should ensure they require this information as part of the export licence application and include it in the particulars of the export licence granted and recorded by the relevant state agency, at least with respect to exports of conventional arms.

Article 11(2) of the Treaty also requires States Parties to seek to prevent the diversion of transferred conventional arms, including through the following suggested measures, where appropriate: ‘examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures’. In addition, under the Nadi Framework, Pacific states have undertaken to ‘notify one another when firearms, explosives, other related materials and prohibited weapons are in transit through their respective territories’ (para. 6.1(b)). Requiring information on transit countries as part of the export authorisation licence application process will enable states to notify other states in the region that weapons may be transiting their territories so they may fulfil this commitment.

7 Temporary export licence application⁷¹

A completed Temporary Export Licence Application Form (Form C of the Schedule) shall be submitted as part of an application for a temporary export licence under section 8 of the Act.

8 Import licence application

The following documents and information shall be submitted as part of an application for an import licence under section 9 of the Act:

- (a) a completed Import Licence Application Form (Form E of the Schedule);
- (b) a copy of any end-user certificate;
- (c) the name of the exporting country;
- (d) details of transit and transshipment states (if known); and
- (e) copies of transit licences or authorisations (if applicable).

9 Temporary import licence application

A completed Temporary Import Licence Application Form (Form G of the Schedule) shall be submitted as part of an application for a temporary import licence under section 11 of the Act.

10 Transshipment permit application

A completed Transshipment Permit Application Form (Form I of the Schedule) shall be submitted as part of an application for a transshipment permit under section 14 of the Act.

11 Broker registration application

A completed Broker Registration Application Form (Form K of the Schedule) shall be submitted as part of an application to register as a broker under section 18A of the Act.

12 Brokering activity permit application

A completed Brokering Activity Permit Application Form (Form M of the Schedule) shall be submitted as part of an application for a brokering activity permit under section 22A of the Act.

⁷¹This is only applicable if *Option B* of model section 8 is adopted.

Part 3 – Record-keeping⁷²

13 Records of exports and imports

The following information shall be recorded with respect to the export, import, transit and transshipment of conventional arms[, ammunition, or parts and components]⁷³ under sections 25 and 26 of the Act:

- (a) where the conventional arms[, ammunition, or parts and components] are exported from [*insert country*]:
 - i. date of issuance of the export licence;
 - ii. date of expiration of the export licence;
 - iii. the name and contact details of the exporter including the name of the director, manager or other similar officer if the exporter is a body corporate;
 - iv. the name and contact details of any broker, dealer or supplier involved in the transaction;
 - v. the name and contact details of the manufacturer of the conventional arms [, ammunition, or parts and components] and country of manufacture;
 - vi. the importing country;
 - vii. a copy of the import licence or authorisation, including date of issuance and expiration and identification of the competent authority that granted the licence or authorisation;
 - viii. copies of transit licences or authorisations (if applicable);
- (b) where the conventional arms[, ammunition, or parts and components] are imported into [*insert country*]:
 - i. date of issuance of the import licence;
 - ii. date of expiration of the import licence;
 - iii. the exporting country;
 - iv. the import markings that have been applied to the small arms and light weapons (where applicable);

⁷² (*Mandatory provision, Article 12*). ATT Article 12 – Record keeping requires States Parties to maintain records of exports and encourages them to maintain records of conventional arms that are transferred to their territory as the final destination or that transit their territory. Article 12(3) encourages States Parties to keep information on: 'the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2(1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and transshipment State(s), and end users, as appropriate'. The list included in model regulation 12 has been adapted from the UNODC Model Law on the Firearms Protocol and includes more detail than is required under the ATT. The items that appear in grey text in this provision, and also in model regulation 14, are suggested to ensure comprehensive records are maintained, but they not required under the ATT.

⁷³ (*Suggested provision*). States Parties are not required to keep records of information on transfers of ammunition or parts and components under the ATT. The Firearms Protocol, however, does require States Parties to keep records of transfers of these items 'where appropriate and feasible' (Article 7).

- (c) where conventional arms[, ammunition, or parts and components] are transited or transhipped through [*insert country*]:
 - i. any relevant information or documentation provided under section 12 of the Act;
 - ii. [date of issuance of the transshipment permit granted under section 14 of the Act;]
 - iii. [date of expiration of the transshipment permit granted under section 14 of the Act;]
- (d) full details of the route to be taken to the importing country, including any transit and transshipment countries and ports of entry and exit (where known);
- (e) name and contact details of the final recipient/end-user;
- (f) a description of the quantity, value, model and types of the conventional arms [, ammunition, or parts and components];
- (g) the name and contact details of any other party involved in the transaction, including brokers and transport agents;
- (h) a copy of any end-user certificate or other relevant documentation; and
- (i) details of the safety and security arrangements, including safe storage and transportation, preventing the conventional arms[, ammunition, or parts and components] from coming into the possession of unauthorised individuals or entities.⁷⁴

⁷⁴ (*Suggested provision*). States Parties are not required to keep records of safety and security arrangements in place during transportation. However, such measures do constitute efforts to prevent diversion, as required under Article 11 of the Treaty.

14 Records to be kept by registered brokers⁷⁵

The following information shall be recorded by every registered broker under section 27 of the Act:

- (a) a description of the quantity, value, model and types of the conventional arms [, ammunition, or parts and components] the subject of the brokering activity permit;
- (b) the name of any person that the broker arranges to supply conventional arms [, ammunition, or parts and components] to under the brokering activity permit;
- (c) the place and date at which the conventional arms[, ammunition, or parts and components] are to be delivered;
- (d) the name and contact details of any dealer or supplier involved in the transaction;
- (e) the name and contact details of the manufacturer of the conventional arms [, ammunition, or parts and components] and country of manufacture;
- (f) a copy of any end-user certificate or other relevant documentation;
- (g) the importing country;
- (h) a copy of the import licence or authorisation, including date of issuance and expiration and identification of the competent authority that granted the licence or authorisation;
- (i) the exporting country;
- (j) a copy of the export licence or authorisation, including date of issuance and expiration and identification of the competent authority that granted the licence or authorisation;
- (k) details of the safety and security arrangements, including safe storage and transportation, preventing the conventional arms[, their ammunition, or parts and components] from coming into the possession of unauthorised individuals or entities; and
- (l) details of all the parties involved in the transaction including the financial/ insurance arrangements.

⁷⁵ (*Suggested provision*). States Parties are not required to keep records of information pertaining to brokers and brokering activities under the ATT. This list has been adapted from the UNODC Model Law on the Firearms Protocol.

Schedule [to the Regulations] – Forms⁷⁶

- (1) Form A: Export Licence Application Form
- (2) Form B: Form of Export Licence
- (3) Form C: Temporary Export Licence Application Form
- (4) Form D: Form of Temporary Export Licence
- (5) Form E: Import Licence Application Form
- (6) Form F: Form of Import Licence
- (7) Form G: Temporary Import Licence Application Form
- (8) Form H: Form of Temporary Import Licence
- (9) Form I: Transshipment Permit Application Form
- (10) Form J: Form of Transshipment Permit
- (11) Form K: Broker Registration Application Form
- (12) Form L: Form of Broker Registration [Certificate]
- (13) Form M: Brokering Activity Permit Application Form
- (14) Form N: Form of Brokering Activity Permit

⁷⁶ Note: Forms A-N are not included in this Model Law.



Arms Trade Treaty

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as 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 the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including nongovernmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate

trade in materiel, equipment and technology for peaceful purposes,
Emphasizing the desirability of achieving universal adherence to this Treaty,
Determined to act in accordance with the following principles;

Principles

- The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;
- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;
- Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;
- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;
- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;
- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;
- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;
- Implementing this Treaty in a consistent, objective and non-discriminatory manner,

Have agreed as follows:

Article 1

Object and Purpose

The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Contributing to international and regional peace, security and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

Article 2

Scope

- (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.
- (2) For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.
- (3) This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3

Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4

Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5

General Implementation

- (1) Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.
- (2) Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
- (3) Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. 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 this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.
- (4) Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
- (5) Each State Party shall take measures necessary to implement the provisions of this Treaty and shall 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 Article 3 and Article 4.
- (6) Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6

Prohibitions

- (1) A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its 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) A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 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.
- (3) A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, 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.

Article 7

Export and Export Assessment

- (1) If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:
 - (a) would contribute to or undermine peace and security;
 - (b) could be used to:
 - i. commit or facilitate a serious violation of international humanitarian law;
 - ii. commit or facilitate a serious violation of international human rights law;
 - iii. commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or
 - iv. commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.
- (2) The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.
- (3) 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.

- (4) The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
- (5) Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.
- (6) Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.
- (7) If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8

Import

- (1) Each importing State Party shall 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.
- (2) Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.
- (3) Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

Article 9

Transit or trans-shipment

Each State Party shall 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 10

Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11

Diversion

- (1) Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
- (2) The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by 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, not authorizing the export or other appropriate measures.
- (3) Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
- (4) If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.
- (5) In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.
- (6) States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 12

Record keeping

- (1) Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).
- (2) Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.
- (3) Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.
- (4) Records shall be kept for a minimum of ten years.

Article 13

Reporting

- (1) Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
- (2) States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
- (3) Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14

Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15

International Cooperation

- (1) States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.
- (2) States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
- (3) States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
- (4) States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
- (5) States Parties shall, where jointly agreed and consistent with their national laws, 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.
- (6) States Parties are 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.
- (7) States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16

International Assistance

- (1) In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.
- (2) Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.
- (3) A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17

Conference of States Parties

- (1) A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.
- (2) The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.
- (3) The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
- (4) The Conference of States Parties shall:
 - (a) Review the implementation of this Treaty, including developments in the field of conventional arms;
 - (b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;
 - (c) Consider amendments to this Treaty in accordance with Article 20;
 - (d) Consider issues arising from the interpretation of this Treaty;
 - (e) Consider and decide the tasks and budget of the Secretariat;
 - (f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and
 - (g) Perform any other function consistent with this Treaty.
- (5) Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

Article 18

Secretariat

- (1) This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.
- (2) The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.
- (3) The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:
 - (a) Receive, make available and distribute the reports as mandated by this Treaty;
 - (b) Maintain and make available to States Parties the list of national points of contact;
 - (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;

- (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
- (e) Perform other duties as decided by the Conferences of States Parties.

Article 19

Dispute Settlement

- (1) States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the interpretation or application of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.
- (2) States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20

Amendments

- (1) Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.
- (2) Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.
- (3) The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depositary shall communicate any adopted amendment to all States Parties.
- (4) An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depositary of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

- (1) This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.
- (2) This Treaty is subject to ratification, acceptance or approval by each signatory State.
- (3) Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.
- (4) The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 22

Entry into Force

- (1) This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.
- (2) For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23

Provisional Application

Any State may at the time of signature or the deposit of instrument of its of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24

Duration and Withdrawal

- (1) This Treaty shall be of unlimited duration.
- (2) Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.
- (3) A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Article 25

Reservations

- (4) At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.
- (5) A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26

Relationship with other international agreements

- (6) 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.
- (7) This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28

Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE AT NEW YORK, this twenty-eighth day of March, two thousand and thirteen.

