



## **Intervention on Article 11 of the Arms Trade Treaty and Diversion**

**Submitted to:** The Office of the General Secretariat of the Arms Trade Treaty (ATT)

**Submitted by:** Maat for Peace, Development and Human Rights and the Global Coalition for Limitation of Armaments

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### **Permeable: the legal text governing the prevention of diversion**

The diversion of conventional arms and related ammunition, parts and components to unauthorized end-users and uses poses a significant threat to societies around the globe. Article 11 of the Arms Trade Treaty provides for measures to be taken by States to prevent the diversion of weapons. Whereby the first paragraph of it stipulates that each state party concerned with the transfer of conventional arms included in Article 2, paragraph 1 shall take measures to prevent the diversion of arms. It also stipulates the need for cooperation between States parties in order to mitigate the effects of diversion of arms transfers and the need to build confidence among States and exchange information to prevent the diversion of arms transfers into the hands of perpetrators of international crimes or terrorist groups.<sup>1</sup>

### **First: The impact of arms diversion on fueling armed conflict**

Diversion of arms undermines the effectiveness of counter-proliferation efforts and frustrates attempts to regulate international trade in such weapons for purposes consistent with relevant international law and standards. Over the past three decades, the international community has intensified its focus on ways to prevent and eradicate illicit arms trafficking and trafficking, in particular the diversion of small arms and light weapons. The diversion of weapons is one aspect of this illicit activity, but at the time of the adoption of the Arms Trade Treaty (ATT) in 2013 it had not been specifically addressed in most multilateral and regional legal instruments.

Thus, preventing the diversion of arms is a global challenge, particularly in areas of armed conflict, and small arms and ammunition are often involved in the local illicit circulation

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<sup>1</sup> <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf> للمزيد يمكن الرجوع لنص المادة 11 من الاتفاقية على الرابط،



through theft, resale and corruption. This may occur as a result of transfers without adequate controls, unauthorized relocation, thefts from underinsured warehouses, assistance to armed groups, civilian populations or trade-offs involving natural resources. Corruption is often associated with arms diversions and government warehouses continue to be prominent sources of illicit weapons.<sup>2</sup> In 2019, the Federation Attorney General's Office in Nigeria announced operations to smuggle weapons from government warehouses. This body took action against the High Command of the Police for the disappearance of some 178459 different weapons and ammunition. More than 88 thousand Kalashnikov assault rifles, 3,907 assorted rifles and handguns disappeared from police stores throughout the country. weapons and ammunition ", which have not been found in January 2022 records, and reports have confirmed that in Nigeria it has always been estimated that some 1 million light weapons are circulating in the country from former conflict zones in Liberia, Sierra Leone, Côte d'Ivoire, Chad, Niger, Mali and Libya. In Mali, on 4 January 2022, the Bamako Military Court sentenced a warrant officer and 16 accomplices to prison on charges of diverting weapons and ammunition and the accused transferred 80 weapons and ammunition to the black market from the Cayce military base's warehouses.<sup>3</sup>

The Taliban's control of Afghanistan's rule has also led to their control of government arms stores, as well as their seizure of weapons stores left by US forces after they withdrew from Afghanistan. This has led to the proliferation of arms dealers in Afghan markets, where US forces left behind an arsenal of weapons beginning with light weapons, such as pistols and automatic rifles to aircraft and heavy weapons and 16,000 night-vision goggles and drones, as well as 162,000 pieces of communications equipment.<sup>4</sup>

The flow of arms in the form of donations by states to Ukraine due to the Russian War has also reached an unprecedented level where 20 countries have already pledged or sent billions of dollars' worth of military equipment to Ukraine since the start of the war, raising the risk of diversion of shipments. This risk arises when weapons, ammunition and supplies such as fuel are redirected from their original destination or purpose to a new destination for likely illegal activities.

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2 معاهدة تجارة الاسلحة: الالتزامات بمنع تحويل مسار الاسلحة التقليدية، معهد الامم المتحدة لبحوث نزع السلاح، 2020، الرابط،

<https://unidir.org/sites/default/files/2020-12/ATT%20%20Issues%20Brief%201%20-%20Arabic%20Translation.pdf>

3 الرابط، 2022، يناير، الاخبارية، العين ايقافها، مستحيل ايقافها، الاتجار بالاسلحة في افريقيا ظاهرة مستحيل ايقافها، العين الاخبارية، يناير 2022، الرابط، <https://al-ain.com/article/arms-trafficking-africa-unstoppable-phenomenon>

4 الرابط، 2022، يناير، الاخبارية، العين ايقافها، مستحيل ايقافها، الاتجار بالاسلحة في افريقيا ظاهرة مستحيل ايقافها، العين الاخبارية، يناير 2022، الرابط، <https://al-ain.com/article/arms-trafficking-africa-unstoppable-phenomenon>



The risk of diversion of these weapons of war will be much greater because of the expansion of international arms shipments. The Global Organized Crime Index found that Ukraine's pre-Russian role as a key link in the global arms trade has increased since the intensification of conflicts in eastern Ukraine in recent years, which is ominous after the recent influx of international arms shipments into the country. Thus, this unfortunate reality shows that Ukraine, which has been inundated with donations, is under tremendous pressure to deploy weapons as quickly as possible to counter Russian attacks, but the Ukrainian Government is facing a difficult battle to prevent the diversion of such weapons to the existing illegal arms trade.<sup>5</sup>

## **Second: What should be done to prevent the diversion of weapons?**

In light of the outbreak of armed conflicts, especially in the Middle East and Africa, and then the massive proliferation of weapons of all kinds, which poses a threat to international peace and security, and in order to prevent terrorists from acquiring weapons, and to enhance the responsibility of states in the field of controlling arms transfers, it is possible to prevent their diversion, they shall:

### **1. Looking at transfer licensing decisions based on international human rights obligations:**

In order to create a more responsible trade in conventional arms and ammunition, decisions on transport licenses based on international human rights obligations should be seen primarily as a means of preventing gross violations or violations of human rights. Therefore, the decision-making process shall take place within a preventive approach. This approach is aimed at preventing arms transfers where there is credible information indicating a high risk that a particular group, such as the police, armed forces, or even armed groups in conflict zones, will use such weapons to commit serious human rights violations or violations. In the event of such information on the existence of significant risk, the presumption should be that such arms transfers should be prohibited in order to reduce the risk of such violations or other serious violations by the use of such weapons through such a perception, the application of international human rights law to arms transfers should be a means of preventing irresponsible international arms transfers and ensuring that the use of military and security equipment and related materials on the watch list conforms to international standards.<sup>6</sup>

### **2. Enhancing cooperation and building trust**

<sup>5</sup> <https://bit.ly/3remGA0> قندهار سوق مفتوحة لتجارة السلاح والذخيرة لمن يشترى، الخليج، سبتمبر 2021، الرابط،

<sup>6</sup> How to apply human rights standards to arms transfer decisions, Amnesty International, link, [https://www.amnesty.org.uk/files/how\\_to\\_apply\\_human\\_rights\\_standards\\_to\\_arms\\_transfer\\_decisions.pdf](https://www.amnesty.org.uk/files/how_to_apply_human_rights_standards_to_arms_transfer_decisions.pdf)



States must actively cooperate with each other to promote respect for United Nations resolutions calling for an arms embargo on States or armed groups in conflict zones such as Syria or Yemen, especially since external parties such as Iran are violating the arms embargo against Houthi groups in Yemen and Al-Shabaab in Somalia.

**Hence, Maat for Peace, Development and Human Rights affirms that States parties to the Arms Trade Treaty, as part of their preparations for the Eighth Review Conference of the Treaty, must address the Treaty's shortcomings, which are:**

- **The non-inclusion of strict international rules on brokering and criminalization of violators of these rules.**
- **A distinction should be drawn between the arms trade and arms transfers in the form of donations and assistance.**
- **Codify procedures by which weapons can be prevented from being diverted to black markets.**
- **Address gaps that allow weapons to be diverted into the hands of non-governmental organizations, including terrorist and criminal organizations.**
- **Elaboration of binding legal texts for all States clarifying the necessary procedures and measures for the transit of weapons.**