AFRICAN UNION

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Draft

African Union Common Position on an Arms Trade Treaty

As Agreed by the Meeting of Member States Experts, Lome, Togo, September 26-29, 20111

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Preamble

We, the Executive Council of the African Union;

1. *Considering* the Constitutive Act of the African Union, and theprotocol relating to the Establishment of the Peace and Security Council of the African Union;

2. ***Reaffirming*** the inherent right of all States to individual or collective self-defence in accordance with the Constitutive Act of the African Union and the Charter of the United Nations, , including the right of States to manufacture, import, export, transfer and retain conventional arms for self-defence and security needs, and to participate in peace keeping operations;

3. *Concerned* that the poorly regulated international legal trade in conventional arms, and particularly small arms and light weapons,can have an undermining effect on the economic, social and political stability of African States, including fueling conflict and armed violence, and *aware* that the unregulated trade in conventional arms can have an adverse impact on development, human security, democracy, the rule of law and the full enjoyment of human rights, as well as on international humanitarian law;

4. *Concerned*also about the threat of the diversion of conventional arms, including small arms and light weapons, from the legal to the illicit market;

5. *Reaffirming* the prohibition against the use of force and the peaceful settlement of disputes and non-interference in the internal affairs of all States in accordance with the Constitutive Act of the African Union and the Charter of the United Nations ;

6. ***Guided*** by Decision Assembly/AU/Dec.369(XVII) 32, July 2011, AHG/Dec. 137 (LXX), July 1999, Executive Council Decision EX.CL/Dec.255 (VIII) of January 2006;

7. *Convinced* that the feasibility of an ATT would be dependent on the Conventions and Protocols, and Codes of Conduct, Declarations, Decisions, Principles, Guidelines and Regimes in the field of arms control of the various United Nations, African Union and African Regional Economic Communities (RECs), particularly small arms and light weapons;

8. *Taking note* of United Nations General Assembly Resolutions 61/89 (6 December 2006), 63/240 (24 December 2008) and 64/48 (12 January 2010) to establish the highest possible common international standards for the transfer of conventional arms;

9. *Taking note*also of the common positions on an ATT adopted by the central African states and Rwanda, and the states of the Economic Community of West African (ECOWAS);

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10. *Welcoming* the convening by the United Nations of a Conference on an Arms Trade Treaty, to be held in July 2012 andundertaken in an open and transparent manner on the basis of consensus; and resolving for African Union Member States to participate in a coordinated, constructive and engaged manner in the United Nations negotiations;

11. *Commit* ourselves to adopt an African Union Common Position on an Arms Trade Treaty as follows;

Principles

12. The African Union agreesthat an Arms Trade Treaty shall be based on the following principles:

13. The principles enshrined in the Charter of the United Nations, the Constitutive Act of the African Union and the Treaties and Charters creating the African Regional Economic Communities;

14. The inherent right of all States to individual or collective self-defence in accordance with the Charter of the United Nations and the Constitutive Act of the African Union;

15. The right of all States to manufacture, develop, acquire, import, export, transfer and retain conventional arms, related materials and capabilities for self-defence and security needs as well as to participate in humanitarian and peace support operations in accordance with international law;

16. The peaceful settlement of disputes and the non-interference in the internal affairs of all States and the prohibition of the use of force in accordance with the Constitutive Act of the African Union and the Charter of the United Nations;

17. The recognition of theshared and full responsibility of all States to regulate the manufacture and transfer of conventional arms in their simultaneous and changing roles as exporters or importers;

18. The prohibition to transfer conventional arms, including SALW to unauthorized non-State armed groups and/orunauthorized non-State actors;

19. The obligation and accountability of all States to fully comply with arms embargoes decided by the United Nations Security Counciland by the African Union;

20. The respect by all States involved in an arms transfer of relevant regional and sub-regional treaties, conventions and control regimes, particularly on small arms and light weapons control or disarmament;

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21. The respect for international law, including international human rights law and international humanitarian law;

Goals and Objectivesof the ATT

22. The African Union believes that the goal of an Arms Trade Treaty shall be the establishment of the highest possible common international standards for the transfer of conventional arms, including small arms and light weapons;

23. The African Union believes that the objectives of an Arms Trade Treaty shall include:
    a) preventing the diversion of licit conventional arms into the illicit market and into the hands ofunauthorized users, including criminal organisations,
    b) preventing the trade in conventional arms, especially small arms and light weapons, from fuelling armed violence, armed conflicts and terrorism,and from contributing to violations of human rights and international humanitarian law;
    c) preventing violations of international arms embargoes or sanctions;
    d) building trust and confidence between States through increased transparency, accountability and information on the production, stockpiles, imports and export of conventional arms;
    e) contributing to international and regional peace, security and stability;
    f) dealing, in a balanced manner, with the responsibilities and duties of major producing, exporting, and importing countries in order to prevent the transfer of conventional arms in a manner that encourages imbalances in armament;
    g) providing an international, cooperation and assistance framework which addresses, inter alia, the implementation of the Treaty

Scope

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

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

25. Transactions and activities that shall be included in an Arms Trade Treaty shall be follows:
    a) import;
    b) export;
    c) transit;
    d) trans-shipment;
    e) re-export;
    f) transfers and forwarding;
    g) transport;
    h) brokering and related activities or services;
    i) leases, loans, gifts and technical assistance and expertise;
    j) production under license;

26. Technological developments in armaments shall be addressed in an Arms Trade Treaty in a manner that allows for new weapons systems, with effect comparable to conventional arms, to be included under the scope of the Treaty;

27. Conventional arms transactions shall be permitted between States under strict regulations within the framework of the Treaty;

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

Parameters and Criteria

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

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

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

32. In deciding on these parameters, the ATT should rely on multilaterally agreed mechanisms, such as the decisions of relevant UN bodies;

33. In assessing the compliance of any state with the agreed-upon criteria, the Treaty will depend on information provided by the relevant authorities of that state, in accordance with decisions and agreed-upon practices of the UN bodies and specialized agencies;

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34. Conventional arms transfers shall not be authorized if they violate the objectives of an Arms Trade Treaty, as expressed in Article 25of this common position, and will be assessed using the following parameters:

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

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

i. the international obligations of States Parties and their commitments to enforce United Nations or other arms embargoes;
ii. the international obligations of States, particularly under international, regional and sub-regional arms control and disarmament instruments, including those quoted in annex A;
iii. the likelihood of the use of the transfer to pursue an act of aggression against another State;
iv. the existence of a claim against the territory of a neighbouringState which the recipient has attempted or threatened to pursue by means of forcein the past;
v. the ability of the recipient state to an appropriate and proportionate response by the recipient State to the military and security threats confronting it;
vi. the nature and cost of the arms to be transferred in relation to the circumstances of the recipient State, including its legitimate security and defence needs;
vii. the needs of the recipient State's to enable it to exercise its right to individual or collective self-defence;
viii. the recipient State's support or encouragement of terrorism and international organized crime in accordance with Security Council resolutions;
ix. the recipient State's compliance with its international obligations, in particular on the non-use of force;

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x. the recipient State's commitment to avoiding the proliferation of armaments and other areas of arms control and disarmament;
xi. whether the transfer would exacerbate gender based violence in violation of UN resolutions 1325, 1820, 1889

xii. whether a recipient State which is or has been engaged in an armed conflict has committed serious violations of international humanitarian law;
xiii. whether a recipient State which is or has been engaged in an armed conflict has taken all feasible measures to prevent violations of international humanitarian law;
xiv. whether the recipient State has made formal commitments to apply the rules of international humanitarian law and has taken appropriate measures for their implementation;
xv. whether the recipientState has in place requisite structures, including the legal, judicial, administrative and decratic, necessary for the repression of serious violations of international humanitarian law;
xvi. whether the recipient State disseminates international humanitarian law, in particular to its armed forces and securityforces, and has integrated international humanitarian law into its military doctrine, manuals and instructions;
xvii. whether the recipient State has taken relevant measures to prevent the recruitment of children into the armed forces or armed groups, and their participation in hostilities;
xviii. whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
xix. whether the recipient State carries out, sponsors or tolerates practices, policies or legal measures violating human rights;
xx. the legitimate defense and domestic security interests of the recipient State, including any involvement in United Nations or other peacekeeping activities;
xxi. the risk of the arms being re-transferred or diverted to terrorist organizations and unauthorized non-State armed groups or unauthorized non-State actors;
xxii. the stockpile management and security procedures as well as marking and tracing procedures for arms in the recipient country, including its ability and willingness to protect against unauthorized re-transfers, loss, theft and diversion;

36. Guidelines for the application of parameters and criteria to be annexed to the Arms Trade Treaty to guide States in making transfer decisions, including a set of indicators and factors to be taken into consideration;

37. The parameters and criteria of an Arms Trade Treaty shall respect the spirit and the provisions of regional and sub-regional arms control regimes that may be stricter than the Treaty, and thus not diminish these commitments;

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Implementation

38. The African Union is of the view that the primary responsibility to implement an Arms Trade Treaty lies with States and shall take the appropriate national measures in this regard;

39. The potential ATT will require a Secretariat to serve, promote and verify the effective, fair and accountable implementation of the Treaty. Such a Secretariat could be funded from funds charged on revenues from arms sales from major producers, on an agreed percentage.

40. States shall agree on a minimum requirements for the issuance of end-use and end-user certificates and ensure they are used in an effective and efficient manner;

41. The implementation of an Arms Trade Treaty shall be reviewed at regular intervals at meetings of States Parties; a review cycle of the Treaty shall be provided for, in particular to allow for adjustments due to technological developments in conventional arms systems;

42. Provisions of international capacity-building, cooperation and assistance shall be made for States to implement an Arms Trade Treaty;

43. Provisions shall be made for regular reporting of States Parties on their transfers of conventional arms covered by the Treaty;

44. Provisions shall be made to provide assistance to victims of conventional arms;

45. Provisions shall be made for dispute settlement in case of disagreement between Parties and for sanctions in case of non-compliance;

46. Provisions shall be made to promote transparency and the exchange of information on conventional arms transfers;

47. Implementation of an Arms Trade Treaty shall respect the spirit and the letter of regional and sub-regional arms control regimes that may be stricter than the Treaty;

Implementing the African Union Common Position on an Arms Trade Treaty

48. Member States are invited to ensure that the decisions, principles and positions outlined in this the Common Position of the African Union on an Arms Trade Treaty are used as guidelines for African delegations to the 2012 United Nations Conference on an Arms Trade Treaty to be held at New York.

49. The Common Position is expected to facilitate the adoption of a meaningful, strong and balanced United Nation Arms Trade Treaty that is non-discriminatory, transparent and multilateral establishing the highest possible

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common international standards for the import, export and transfer of conventional arms, including small arms and light weapons.

50. African Union Member States and the African Union Commission, in collaboration with civil society, shall deploy every effort to promote the African Union Common Position and shall, to this end, reach out to other regional groups members of the United Nations and other relevant stakeholders with a view to securing their support.

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ANNEX A

International

Peace, security and disarmament

- Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and its four Protocols
    - Protocol on Non-Detectable Fragments (Protocol I)
    - Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II)
    - Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III)
    - Protocol on Blinding Laser Weapons (Protocol IV)
    - Protocol on Explosive Remnants of War (Protocol V)
- 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
- Convention on Cluster Munitions
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction
- International Convention for the Suppression of Terrorist Bombings
- Wassenaar Arrangement on Export for Conventional Arms and Dual-Use Goods and Technologies
- United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
- International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons
- United Nations Register of Conventional Arms

Human Rights and international humanitarian law

- The Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Geneva Conventions and Protocols:
    - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
    - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
    - Convention (III) relative to the Treatment of Prisoners of War.
    - Convention (IV) relative to the Protection of Civilian Persons in Time of War
    - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

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- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)

- Convention on the Prevention and Punishment of the Crime of Genocide
- International Convention on the Suppression and Punishment of the Crime of Apartheid
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- United Nations Convention against Transnational Organized Crime
- Rome Statute of the International Criminal Court

Regional

Peace, security and disarmament

- Protocol Relating to the Establishment of the Peace and Security Council of the African Union
- Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern Africa Development Community (SADC) Region
- Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weaponsin the Great Lakes Region, the Horn of Africa and Bordering States
- Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials
- Central Africa Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair and Assembly
- Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
- Bamako Declaration on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa
- Pact on Security, Stability and Development in the Great Lakes Region
- Protocol on Non-Aggression and Mutual Defence in the Great Lakes Region

Human Rights

- African Charter on Human and Peoples' Rights

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