

**DRAFT FRAMEWORK CONVENTION ON INTERNATIONAL ARMS
TRANSFERS**⁽¹⁾

Preamble

[...]

PART I

Article 1

[Authorization of International Arms Transfers]⁽²⁾

Contracting Parties shall adopt and apply in accordance with their national laws and procedures a requirement that all international arms transfers be authorised by the issuing of licences.

PART II⁽³⁾

Article 2

[Express limitations]⁽⁴⁾

A Contracting Party shall not authorise international transfers of arms which would violate its obligations under international law. These obligations include those arising under or pursuant to:

- a. the Charter of the United Nations, including decisions of the United Nations Security Council;⁽⁵⁾
- b. international treaties by which that Contracting Party is bound;⁽⁶⁾
- c. the prohibition on the use of arms that are incapable of distinguishing between combatants and civilians or are of a nature to cause superfluous injury or unnecessary suffering; and⁽⁷⁾
- d. customary international law.⁽⁸⁾

Article 3

[Limitations based on use]⁽⁹⁾

A Contracting Party shall not authorise international transfers of arms in circumstances in which it has knowledge or ought reasonably to have knowledge that transfers of arms of the kind under consideration are likely to be:

- a. used in breach of the United Nations Charter or corresponding rules of customary international law, in particular those on the prohibition on the threat or use of force in international relations;⁽¹⁰⁾
- b. used in the commission of serious violations of human rights;⁽¹¹⁾

- c. used in the commission of serious violations of international humanitarian law applicable in international or non-international armed conflict;⁽¹²⁾
- d. used in the commission of genocide or crimes against humanity;⁽¹³⁾
- e. diverted and used in the commission of any of the acts referred to in the preceding sub-paragraphs of this Article.

Article 4

[Other considerations]⁽¹⁴⁾

In considering whether any international transfer of arms may be authorised in accordance with Article 1 of this Convention, Contracting Parties shall take into account whether transfers of arms of the kind under consideration are likely to:

- a. be used for or to facilitate the commission of violent crimes;
- b. adversely affect regional security;
- c. adversely affect sustainable development; or
- d. be diverted and used in a manner contrary to the preceding sub-paragraphs

and in such circumstances there shall be a presumption against authorisation.

PART III⁽¹⁵⁾

Article 5

[National measures]⁽¹⁶⁾

Contracting Parties shall establish authorisation and licensing mechanisms under their national law as are necessary to ensure that the requirements of this Convention are effectively applied in accordance with the minimum standards set out in Annex I.

Article 6

[International measures]⁽¹⁷⁾

1. There shall be established an International Registry of International Arms Transfers.
2. Each Contracting Party shall submit to the International Registry an annual report on international arms transfers from or through its territory or subject to its authorisation in accordance with the requirements of this Convention.
3. The International Registry shall publish an annual report and other periodic reports as appropriate on international arms transfers.

PART IV⁽¹⁸⁾

Article 7 Definitions⁽¹⁹⁾

For the purpose of this Convention, the following definitions shall apply:

1. “Arms” means small arms and light weapons within the meaning of these terms in the Report of the Panel of Government Experts on Small Arms (A/RES/52/298) save that the enumerated categories therein are not to be regarded as restrictive of the definition.
2. “International transfers” means the transfer, shipment or other movement, of whatever form, of arms from or across the territory of a Contracting Party.

Article 8 [Relationship to other rules and instruments]⁽²⁰⁾

This Convention shall be applied as a minimum standard, without prejudice to any more stringent national, regional or international rules, instruments or requirements.

Article 9 Protocols⁽²¹⁾

1. This Convention may be supplemented by one or more protocols.
2. It shall be a requirement that participation in any protocol to this Convention shall only be open to Contracting Parties to this Convention.
3. A Contracting Party to this Convention is not bound by a protocol unless it becomes a Party to the Protocol in accordance with the provisions thereof.

Article 10 Signature, ratification and entry into force

[...]

COMMENTARY

(1) The *Framework Convention on International Arms Transfers* (“the Framework Convention”) is a draft convention prepared under the auspices of a group of Nobel Peace Laureates convened by former Costa Rican President Oscar Arias. The object of the Convention is to provide a legal framework within which further issues can be addressed over time, building up a series of interlocking instruments. Subsequent initiatives could either take the form of protocols to the Convention or self-standing instruments associated with the Convention in some other way.

A framework instrument is proposed for a number of reasons. First, it is recognized that while the international community urgently needs to agree a set of common core principles to regulate and control the arms trade, certain issues remain controversial. Rather than attempting to regulate all aspects of the arms trade in a comprehensive manner in a single instrument, the Framework Convention contemplates the elaboration of a binding regime in a step-by-step manner. It starts by identifying core substantive prohibitions that reflect existing international legal commitments as well as establishing mechanisms necessary for their effective implementation. The Convention would crystallize, in the context of international arms transfers, commitments already assumed by States *inter alia* under the United Nations Charter, the Geneva Conventions of 1949, other widely supported international conventions, and established principles of customary international law as reflected, for example, in the U.N. International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts* (see General Assembly Resolution A/RES/56/83 of 12 December 2001).

A second advantage of a framework convention is that it would allow detailed technical issues to be addressed by means of subsequent instruments rather than encumbering the framework text.

Proceeding by means of a framework convention would also give States flexibility in assuming commitments. Once a Contracting Party has acceded to the Framework Convention, it can decide which, if any, additional instruments or protocols it wishes to ratify and can do so in a progressive manner.

The Framework Convention focuses on commitments of States in respect of the international transfer of arms. It proceeds on the basis that important related issues such as brokering, licensed production and end-use monitoring will be addressed in subsequent instruments. The definition of arms in the draft is on international transfers of small arms and light weapons coming within the scope of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15). Those involved in promoting the Framework Convention nevertheless affirm that the principles and mechanisms laid down in the Convention should be applied equally to the broadest possible range of weapons and technical assistance and material devices for training to make use of weapons.

(2) *Article 1* lays down the basic obligation requiring Contracting Parties to adopt national mechanisms for the authorization of all international transfers of arms by the issuing of licenses. The minimum requirements of such a licensing system would be addressed in an Annex to the Convention in accordance with Article 5. As a minimum, each application for an authorization should be reviewed and licensed individually. This obligation is already an element in the arms control procedures of most States. It is also incorporated into regional arms control arrangements.

(3) *Part II* contains the substantive obligations of the Convention. The first two provisions codify existing limitations under international law on States' freedom to transfer and to authorize transfers of arms. *Article 2* reflects express limitations on

manufacture, possession, use and transfer. *Article 3* addresses limitations based on the use or likely use of the arms.

(4) *Article 2* codifies express limitations on the transfer of arms based on existing express limitations on manufacture, possession, use and transfer of arms including those:

(5) arising under the Charter of the United Nations, including pursuant to decisions of the United Nations Security Council such as those imposing arms embargoes. In Resolution 1196 of 16 September 1998, the Security Council called upon States to adopt legislation making the violation of arms embargoes a criminal offence;

(6) arising under or pursuant to other international treaties by which the particular Contracting Party is bound, including embargoes adopted by other international and regional bodies and organisations established pursuant to a treaty, as well as those arising from the prohibition of arms transfers in other agreements such as the protocols to the 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious and the 1997 Anti-personnel Mines Convention;

(7) arising pursuant to the prohibition on the use of arms that are incapable of distinguishing between combatants and civilians or are of a nature to cause superfluous injury or unnecessary suffering. This obligation derives from universally accepted principles of international humanitarian law. It applies in respect of arms the use of which, although not the subject of a specific treaty commitment, is nevertheless prohibited because they are incapable of distinguishing between civilians and combatants or because they are of such a nature as to cause superfluous injury or unnecessary suffering (see, for example, the Advisory Opinion of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons* (1996), at paragraph 78). The prohibition on transfers follows from the appreciation that the transfer of such arms would be irreconcilable with the per se prohibition under international humanitarian law of the use of such arms. This prohibition would also cover arms the use of which is prohibited by a specific convention but where the convention does not address the question of transfers.

(8) arising under or pursuant to customary international law. In some circumstances, arms transfers from one State to another or to persons in the territory of another State without the latter State's consent will amount to a breach of existing obligations under customary international law relating, for example, to the threat or use of force in international relations. Transfers to persons other than those exercising governmental authority may also amount to a breach of the principle of non-intervention in the internal affairs of the State.

(9) *Article 3* addresses limitations on the freedom to transfer arms based on the use or likely use that would be made of the arms. The responsibility of the Contracting Party of export to prohibit arms transfers under this principle flows from the obligation not to participate in the internationally wrongful acts of another State. This principle is stated in Article 16 of the U.N. International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts*, adopted in 2001 (see General Assembly Resolution A/RES/56/83 of 12 December 2001), in terms which reflect customary international law binding on all States, as follows:

“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.”

(10) Arms transfers that would be in breach of the United Nations Charter or corresponding rules of customary international law in consequence of the use of such arms would include arms used in breach of the prohibition of the threat or use of force in international relations in Article 2(4) of the Charter, and related principles concerning threats to the peace, breaches of the peace and acts of aggression in Article 39 of the Charter, in General Assembly *Declaration of Principles of International Law* of 1970 (General Assembly Resolution 2625 (XXV) of 1970) and in other standard-setting United Nations resolutions. Corresponding rules apply at the level of customary international law.

(11) The commission of serious violations of human rights would include violations of the non-derogable provisions of the 1966 International Covenant on Civil and Political Rights and of regional human rights instruments such as the 1950 European Convention for the Protection of Fundamental Rights and Freedoms, the 1969 American Convention on Human Rights and the 1980 African Charter on Human and Peoples' Rights. Fundamental human rights relevant to this provision are also set out in a range of other widely accepted multilateral conventions such as the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

(12) Serious violations of international humanitarian law includes grave breaches of the 1949 Geneva Conventions as well as violations of fundamental principles of international humanitarian law contained in other standard-setting multilateral agreements and in customary international law. This provision is consistent with the existing obligation to respect and ensure respect for international humanitarian law.

(13) The 1948 Convention on the Prevention and Punishment of the Crime of Genocide defines genocide *inter alia* as “acts committed with intent to destroy in whole or in part, a national, ethnical, racial, or religious group, as such”. Acts punishable under this heading include genocide, the conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide and complicity in genocide. Crimes against humanity are similarly defined in a number of international instruments. In both cases, the definitions are largely uncontroversial.

(14) Unlike Articles 2 and 3, *Article 4* does not prohibit the authorization of arms transfers. Rather, it requires Contracting Parties to *take into account* the effect of transfers of arms of the kind under consideration by reference to three principal factors. These factors, together with others, are identified in Section I of the Programme of Action as well as in regional instruments concerned with arms transfers. The first factor is whether the transfer of arms is likely to be used for or to facilitate the commission of violent crimes. This is an important consequence of the proliferation of arms. The second factor is whether the transfer of arms is likely to adversely affect regional security. The third factor is whether the transfer of arms is likely to adversely affect sustainable development. Where such circumstances are apparent, the Article establishes a presumption against authorization.

(15) *Part III* of the Framework Convention addresses the mechanisms to be adopted at the municipal and international levels to facilitate the effective implementation and application of the substantive provisions of the convention.

(16) *Article 5* requires the establishment of such mechanisms of national law as are necessary to ensure that the authorization provisions of the Convention will be effectively applied. It contemplates that minimum standards relevant to the authorization process will be laid down in an Annex to the Convention addressing such matters as the need for a transaction-by-transaction licensing mechanism, minimum disclosure requirements by applicants for licences, mechanisms for parliamentary scrutiny, etc.

(17) *Article 6* deals with implementation at the international level, requiring the establishment of an International Registry of International Arms Transfers. It also provides that Contracting Parties shall submit to the International Registry an annual report on arms transfers from or through their territory or subject to their authorization and that the International Registry will publish annual and other periodic reports as appropriate on international arms transfers. Specific details of Contracting Parties' reporting obligations as well as any additional international implementation measures may be addressed in protocols to the Convention.

(18) *Part IV* of the Framework Convention contains definitions, concluding provisions and final clauses.

(19) *Article 7* lays down definitions. For purposes of the present draft, the definition and description of "arms" adopted as a working text is that of the 1997 Report of the Panel of Government Experts on Small Arms (A/RES/52/298, at paragraphs 24 – 33). The principal elements of this definition are:

- small arms are weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew;
- weapons in this class are capable of being carried, if a small arm, by one person or, if a light arm, by two or more people, a pack animal or a light vehicle;
- such weapons include revolvers, self-loading pistols, rifles and carbines, sub-machine guns, assault rifles, light machine-guns, heavy machine-guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns and recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, mortars of calibers of less than 100 mm, ammunition and explosives.

Without prejudice to this definition for purposes of this working draft, those involved in promoting the Framework Convention affirm that the principles and mechanisms laid down in the Convention should be applied equally to the broadest possible range of weapons and munitions for use in military operations and law enforcement, including their components, technologies, and technical assistance and material resources for training to make use of such weapons and munitions.

(20) *Article 8* indicates that the principles laid down in the Framework Convention are to be applied as a minimum and shall not prejudice the application of any more stringent national, regional or international rules, instruments or requirements.

(21) *Article 9* addresses the issue of protocols to the Convention, providing essentially that participation in any protocol to the Convention will only be open to Contracting Parties to the

Working Draft of 25 May 2004

(reflecting, with minor modifications, the text circulated at the UN biennial PoA meeting, New York, July 2003)

Convention. This is consistent with the scheme and object of the Convention as establishing a framework within which other rules on arms transfers may be elaborated.
