

## Chapter 5 Legal Frameworks

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### Abstract

In many ways, the production, ownership and transfer of firearms is regulated in the same way as the production, ownership and transfer of any other commodity, but the regulations have always been tighter when concerning firearms. Earlier in this book, we saw that both the legal and illicit manufacturing, acquisition, trafficking and criminal misuse all physically take place on the soil of a sovereign State. This means that that State must develop regulations and laws designed to prevent or reduce these illicit activities. Modern national legal frameworks are constructed under the umbrella of different extra-national legislative measures that have been developed to prevent and reduce illicit activities involving firearms. However, as this chapter will demonstrate, these instruments are generally of a guiding nature, and will not be successful unless States implement the regulations and policies agreed to in the instruments. The chapter will discuss the development of these supra-national frameworks, and consider how States develop these regulations and measures. It will cover elements such as stockpile management, purchasing and ownership restrictions, law enforcement and standards on collecting and destroying firearms. For reach of the supranational elements, examples will be given of how these are put into place at a national level.

### Nature and Sources of International Law

The chapter though will first begin by outlining the nature and sources of international to help contextualise the international, trans-national, multinational and municipal provisions that are discussed later

The eighteenth century English philosopher Jeremy Bentham described international law as: “A collection of rules governing relations between states.” (cited in Shaw 2003). Bentham’s quote is a good place to start but since the eighteenth century international law has become much more complicated and American Law Institute gives a much more nuanced definition:

“[R]ules and principles of general application dealing with the conduct of states and of international organisations and with their relations inter se, as well as with some of their relations with persons, whether natural or judicial” (American Law Institute, 1987)

Public International Law (PIL) is therefore:

- **Horizontal**, as opposed to vertical because there is no sovereign or supreme legislature;
- **Has no constitution** which has caused some to question whether it is law at all;
- **Inconsistent** in that there is not always consistent models of dispute settlement or resolution or enforcement for breaches.

This debate over the nature of international legal frameworks has led to the development of different theories to address the question of whether PIL is law at all. Most commentators however do talk of international law as ‘law’ in some form. International law may also in certain circumstances impose legal rights and responsibilities (called legal personality) on individuals such as the prohibition of crimes against humanity or planning an illegal war. When each of the instruments is discussed below it will be noted to whom they are applicable.

International law thus describes those laws intended to be “above” nation States and applicable in most, if not all, States. Transnational law on the other hand describes a legal provision that exists between two or more States. Defining transnational law is not a straightforward task, in part because of the approaches different disciplines take. For the purposes of analysing the different legal frameworks as they relate to the regulation of firearms Koh’s definition is sufficient: “Transnational law represents a hybrid of domestic and international law that has assumed increasing significance in our lives.” (Koh, 2006: 745)

Transnational law therefore is any law that applies to activities that cross State borders. Firearms trafficking by its nature is primarily a transnational activity that would be subject to a variety of laws that, in this context, could be correctly described as transnational laws.

There are therefore similarities and differences between international and transnational law as illustrated in the table below:

#### **Table 5.1: International v Transnational Law ABOUT HERE**

International law has a variety of sources and in Article 38(1) of the Statute of the International Court of Justice (1946) there is a non-exhaustive list of the sources of international law that the International Court of Justice (ICJ) could consider when determining a case and these provide an excellent starting point when considering the sources of PIL, these are:

- a) international conventions "expressly recognized by the contesting states"
- b) "international custom, as evidence of a general practice accepted as law"
- c) "the general principles of the law recognized by civilized nations"

- d) "judicial decisions" and the most highly qualified juristic writings "as subsidiary means for the determination of rules of law"

Many commentators (e.g. Dixon 2013) also argued that the practice of international organizations, particularly the UN, as demonstrated in the adoption of Resolutions of the UN Security Council (UNSC) and the UN General Assembly (UNGA), are an additional source of international law. Resolutions of both the UNSC and the UNGA are an important source of rules relating to firearms. This source of international law is often referred to as 'soft law'. The 1946 ICJ Statute was based on the 1920 Statute of the Permanent Court of International Justice and this may explain why these sources of law are not included in the list.

International law regulating licit and illicit firearms encompasses both binding *hard law* and non-binding *soft laws* or instruments.

For the purposes of this chapter, it is necessary to consider conventions, judicial decisions, and 'soft law' and these are briefly discussed, with examples, below. Customary international law (CIL) is not suited to regulating the transfer of firearms as it recognises the sovereign rights of states to individual and collective self-defence but does not define its parameters. However, some elements of CIL were explored by International Court of Justice (ICJ) in *Nicaragua v United States of America* which is discussed below in Chapter 8.

International Conventions are agreements between two or more States and are governed by the Vienna Convention on the Law of Treaties (1969) (VCLT). The VCLT uses the term 'treaties' rather than 'international conventions' but the status of any agreement is determined by the form it takes rather than by what it is called.

International Conventions can be bi-lateral (meaning between two parties) or multi-lateral (meaning between many parties) and can be agreed between:

- States
- Federal States
- IGOs and International NGOs

The VCLT provides who can be a party to an international convention: "Every State possesses the capacity to conclude treaties... [and] The capacity of an international organisation to conclude treaties is governed by the rules of that organisation" (Art. 6)

As international conventions are agreements then the consent of the parties that are bound by the convention is required by Article 2 of the VCLT, however the ICJ found in *Free Zones of Upper Savoy and the District of Gex* (1932) PCIJ, Ser A/B, No.46 (at 147-148) that where a convention creates rights for a third-party then they may benefit from these rights. International conventions

therefore cannot create obligations for third parties but can create rights, provided such rights are beneficial.

The creation of an international convention will normally go through the following stages:

- Initiation
- Negotiation
- Adoption
- Signature
- Ratification
- Accession
- Entry into Force

An international convention cannot enter into force if it conflicts with a peremptory norm of international law, for example States could not enter into a treaty to conduct genocide.

International treaty law is therefore the typical international legal source regulating licit and illicit firearms. Bi-lateral international conventions are necessary for the lawful trade in arms between States but must be consistent with the peremptory norms of international law which form part of CIL. There are also bi-lateral and multi-lateral international conventions that either explicitly or by implication impact on the illegal or illicit trades in firearms, the most impactful of these is the Arms Trade Treaty (2014) (ATT). Therefore, treaties can be part of different branches of international law, for example arms control or transnational and international criminal law and this normative process can therefore take place within different institutional frameworks.

Another source of international law are judicial decisions. In legal decisions between parties, judicial decisions only apply to the parties to that particular judgment, this is also true in international law (Art. 59 of the Statute of the ICJ). Decisions of municipal courts may also have effect in international law as was the case in *The Lotus Case: France v Turkey* (1927) PCIJ Reports, Series A, No.10 where the parties were bound by principles that they had accepted within their own judicial systems.

Judicial decisions are the application of the other sources of international law. How the international courts have applied these sources is explored later in this chapter.

There are also sources of international law that might be best described as 'soft law'. Bell & McGillivray say that soft law is "not binding in form, often neither clear nor specific in content, and not readily enforceable" (2013: 147). This does not mean that soft law is without merit, however, for as Barczewski suggests "Soft law instruments can be intentionally used to generate support for or to

help generate binding hard law” (2011: 54). It is often easier to garner support from States for non-binding soft law measures as a first step than it is to go straight to binding, hard law measures.

As the UN is not a supreme legislative body, neither General Assembly (UNGA) Resolutions nor Resolutions of the Security Council (UNSC) are genuine legislative measures however they may have an effect similar to law because they either confirm a peremptory norm of international law or authorise action as lawful.

Article 10 UN Charter explains the effect of a UNGA Resolution:

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Certain UNGA Resolutions do seem to hold special importance, for example the Universal Declaration of Human Rights (1948) exists because it was adopted by UNGA Resolution 217A (111).

UNSC Resolutions similarly do not create legislation but they can authorise sanctions against States, including the use of force for the purposes of Collective Security.

The ICJ has also considered Unilateral Decisions of States as a source of legal obligation in, for example: *The Legal Status of Eastern Greenland Case: Norway v Denmark* (1933) PCIJ Rep. Series A/B, No.53, 71, where a unilateral statement by one of the parties as to status of Eastern Greenland was regarded as legally binding.

The ATT is discussed below, and its development is due to a series of ‘soft laws’. In 2001 the UN adopted a non-legally binding program of action on the Illicit Trade in Small Arms. This program was formally called the “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects” (PoA). This was followed by the adoption of UNGA Resolution 61/89 on 18 December 2006 which was approved by 153 of the Member States of the UN.

## **The nature of Municipal Law**

Municipal law (which includes all national, domestic and federal provisions) may seem to be a straightforward category, but there are some quite detailed nuances that come into play when trying to define it. At the simplest level, National Regulations are rules which have legal force within the territory of a particular State, but for the purposes of this discussion, we need to clarify the difference between statutory and non-statutory regulations, criminal, civil and administrative regulations, and consider Federalised systems, as the powers of the relevant regulatory body will differ, as will the sanctions applicable for breach of the regulations.

The terminology used in different States will be different, as some States operate on a Civil System of Law, and others on a Common Law System, yet others on a pluralistic or religious system.

Pogrebennyk (2014) states that the Civil Law System is designed to put “the state over the court” as it relies in practice on a Codex, or single source, which contains all the legislative provision within a State. There are many examples of this type of codified or partially codified system across the world, including the United States Code, French Code Pénal, Argentinian Código Civil y Comerical de la Nación, the legal system of the Republic of the Congo and the Indian Penal Code. Courts will refer to the Codex and / or a Constitution first when deciding on their judgements in cases, rather than looking at previous case law decisions, or precedent.

Common Law systems, on the other hand are almost exclusively in States which were formerly British colonies. In Common Law jurisdictions, there may or may not be written constitutions and codified laws but, with judicial focus giving much more weight to precedent, there is much more scope for judicial interpretation. Gennaioli and Shleifer say that this evolutionary approach to law, where precedent allows judges to develop statute “is, on average, beneficial because it washes out judicial biases and renders the law more precise” (2007: 43)

### **Unitary v Federal Systems**

Some States (e.g. the USA, Brazil, Australia) operate a Federal legal system. What this means is that there are separate Federal and State Laws (state in this sense being a region in a county). In these systems, the laws which govern civilian access to firearms will be different from State to State, and there may be restrictions on transporting firearms across State lines (often this is the point at which Federal Law is invoked).

There is a risk in Federal systems that firearms could be held legally in one State, and be taken across a State line into a neighbouring state, where they would be held illegally. This is not a new concern, and Brabner-Smith identified the risk almost a century ago, stating that “the principal weakness in this type of law is that there is nothing to prevent a criminal from obtaining a gun in a nearby state which has no similar restrictive regulation” (1934: 401).

Those States which are not Federal are Unitary, that is to say that the same law applies, with some exception, across the whole State, and the majority of the legislative power is centralised.

Some Unitary States (e.g. the UK and Spain) operate of a devolved government system, which could be thought of as *de facto* rather than *de jure* a semi-Federal system. The UK central government, based at Westminster, has devolved some powers to the regional governments in Scotland, Wales and Northern Ireland, and the Spanish Government, based in Madrid, has devolved some powers to the 17 *comunidades autónomas* (autonomous communities) such as Catalonia, Galicia and Andalusia)

Other Unitary States such as Italy, Chile and New Zealand operate as Regionalised Unitary systems, where the central government has devolved some powers to regional governments, but these regional governments do not have the same level of authority as those in a devolved system of government.

### **Statutory v Non-Statutory**

Within all States, whether Federal or Unitary, there is a split between different types of regulation. Some are Statutory (their basis is in a Statute Book, legislation, or *Codex*) and some are non-statutory (their basis is custom or case-law). Since anything relating to firearms is regarded by most States as a serious issue, most regulation will have a statutory, binding, basis. In relation to Firearms, there will be different combinations of these regulations in different States, and there may be differing powers of enforcement attached to them.

In the UK, for example, Norfolk Constabulary and Suffolk Constabulary both use “two non-statutory forms used in connection with firearms licensing:

- A land permission form to assist an applicant for a firearm certificate in providing evidence of the land on which they intend to use the requested firearms.
- A weapon transfer form to assist a certificate holder in notifying the acquisition or disposal of a firearm or shotgun.”

Failure to complete these forms is not an offence, but it could result in an application for a firearms certificate being refused.

Similarly, in Australia, the National Firearms Agreement (NFA) was brought in after the Port Arthur massacre in 1996, in which 35 people were shot dead in Tasmania. The NFA is technically non-statutory itself, as it was an agreement whereby the 15 States and territories with their own governments would enact matching legislation to give effect to the provisions of the NFA.

Probably the best example of non-statutory regulators, as opposed to regulations, are the many NGOs which operate in the firearms sphere. These may be pro-civilian ownership of firearms (such as the US National Rifle Association (NRA), the Spanish Asociación Nacional del Arma (ANARMA), or the cross border National Association for Gun Rights in India) or they may be in favour of restricting the abilities of civilians to carry firearms (such as the US Coalition to Stop Gun Violence (CSGV)) but all will use social, political and/or financial pressure to try and influence the regulatory framework.

When looking at specific regulatory measures later in the chapter, it is essential to consider whether they are operating on a statutory or non-statutory basis, as this will have an impact on their effect and enforceability.

## **Administrative, Civil and Criminal Regulations**

While discussing the different types of regulatory regimes which exist, it is worth noting that there are also different “types” of laws. In the context of regulating possession and use of firearms, the logical way to consider these is by looking at them as a process.

### **Administrative**

As we will see below, most States have a process of licensing for civilian firearms ownership. The process may be lengthy, or it may be short, but it is essentially an administrative process. Failure to comply with the process is not *de facto* an issue for law enforcement, and the sanction is that the requisite licence will not be issued.

### **Civil**

In addition to the general licencing regime, most states will have a set of categories which preclude an individual from applying for a licence. These are a type of civil regulation. There is nothing in them which will prevent an individual from applying (under the administrative part of the process) but if the civil regulations are followed correctly, it does mean that the application will be unsuccessful.

### **Criminal**

The large part of regulation in relation to possession and use of firearms is criminal. If the wording of the regulation uses the wording “illegal” (as in “illegal small arms trade”), rather than “unlawful” then it is likely that it is referring to a criminal act. Some legislation will specifically use the word “crime” when referring to a criminal act, but UK legislation, for example will use the word “offence.”

Individuals who are found to be in possession of a firearm and have not completed the administrative licensing part of the process will, in almost all cases, have committed a criminal offence. Similarly, those who are in possession of a firearm but also appear on the relevant list of individuals who are not permitted to possess firearms, will have committed a criminal offence.

In a criminal case it is the State (or an emanation of the State) who will bring the case against an individual or corporation. Punishment in criminal cases varies, but may involve a fine, imprisonment, or death, depending on the prosecuting State’s legal framework.

## **International instruments on firearms**

### **Arms control: treaties**

There are different types of legal instruments that impact on the licit and illicit transfer of firearms. Arms control treaties exist primarily to limit the proliferation of weapons. The ATT is one example of an arms control treaty.



The ATT entered into force on 24 December 2014 and provides strict controls over the transfer for firearms in states' jurisdictions. Civil Society Organisations (CSOs) and the United Nations Office for Disarmament Affairs (UNODA) were key to the development of this important international convention. The role of CSOs from the 1980s onwards are explored in Chapter 10.

The ATT developed from the non-legally binding “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects” (PoA) in 2001. This is discussed below as an example of ‘soft law’. However, despite its origins, the ATT extends beyond SALW and applies to all conventional arms from battle tanks and combat aircraft down to small arms and light weapons (Art 2(1)).

This was followed by the adoption of UNGA Resolution 61/89 on 18 December 2006 which was approved by 153 UN Member States. Under Resolution 61/89, a Group of Governmental Experts was established “to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms” (A/RES/61/89/2). The Group of Government Experts published their report in 2008 (UN GGE, 2008), and this led to the introduction of the ATT in 2009. Following prolonged negotiations, and after an initial failure to approve the text in March 2013, the text of the ATT was adopted as a Resolution of the UNGA (A/RES/67/234 B) on 2 April 2013. Two months later, on 3 June 2013 the ATT was formally opened for signatures and, 90 days after the fiftieth State had ratified it, the ATT entered into force on 24 December 2014.

The UN currently has 193 Member States, at the time of writing of these 142 States have signed the ATT and 110 of those have either acceded to or ratified the ATT meaning that they are parties to it. Significant among the states which have signed but not ratified the ATT is the United States. Russia has neither signed nor ratified the ATT. This is significant because the United States and Russia are by far and away the largest manufacturers of arms in the world – The Stockholm International Peace Research Institute, which has been collating arms export data for many decades, estimated the combined US/Russian exports for 2019 at US\$1.2tn, which is more than double the value of exports from the next eight largest exporters (US\$519bn).

The key provision of the ATT, the so-called ‘golden rule’ is that:

“no international conventional arms transfer should be permitted where the weapons, munitions or equipment are likely to be used to commit serious violations of international human rights and humanitarian law, or to undermine social-economic development” (Auwal & Aluaigra, 2021).

The ATT is an international convention so those States who have ratified it have accepted its obligations and are required by international law to comply with those obligations. Failure to comply with these obligations therefore may have legal consequences. These legal consequences are

provided for in the model for State responsibility envisaged in Articles 6 & 7 which reflect Article 16 of the Draft Articles on Responsibility of States for Internationally Wrongful Actions (2001).

However, as will be demonstrated below, the levels of compliance with the reporting requirements of the ATT are troubling.

The ATT is aimed at States therefore there are limitations in its scope when dealing with the transfer of firearms from States to non-State actors as was exemplified in the United Kingdom High Court's Decision on arms sales to Saudi Arabia in 2017 (*R (on the application of Campaign Against Arms Trade) v The Secretary of State for International Trade and Intervenors* [2017] EWHC 1726). The case was an application for judicial review (a court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body (Judiciary 2021)) and was brought by the Campaign Against Arms Trade (CAAT) who asked for a judicial review into whether the UK Government "is obliged by law to suspend extant export licences to the Kingdom of Saudi Arabia and cease granting new licences, to conform with Government policy to deny such licences where there is 'a clear risk that the arms might be used in the commission of a serious violation of International Humanitarian Law'" (per Burnett LJ & Haddon-Cave J at para 1). CAAT's argument was that the exports did not comply with the criteria in the ATT (or the EU Common Position, discussed below). The court decided that the government had complied with the criteria and had been a "finely balanced" (para 209) but lawful decision.

However, none of the measures in place to control firearms are intended to operate in isolation and there are synergies between the various instruments as explored in detail in UNODC (2016).

### **Arms control: UN Security Council Resolutions on arms embargoes**

The United Nations (UN) also works to control the transfer of arms through UN Security Council Resolutions (UNSCRs) and arms embargoes. Arms embargoes that are a result of UNSCRs passed under Chapter VII of the UN Charter are important because of their unique legally binding nature and their 'universal' application as they are compulsory for all UN Member States. By agreeing to the UN Charter, and therefore Chapter VII of the same, Member States of the UN have explicitly agreed to be bound by any arms embargoes enacted through it even though the UNSC only consists of representatives of 15 of the Member States.

Whilst UN Arms Embargoes would appear at first glance to be extremely effective, they need to be considered in the context of the grey market (discussed above in chapters three and four). The financial gains which States can make by engaging in breaking an embargo are vast, and this is one of the criticisms which has been levelled at this process. In chapter 4 we saw that Le Brun and Leff (2013) found that despite the UN arms embargo put in place in 2004 following the 2nd Sudanese civil war "all sides in the conflict have continued to gain access to military resources" and the embargo has been violated "openly, consistently and without consequence" (Le Brun & Leff, 2013). It was not just

in relation to Sudan that embargoes were flouted. Brzoska (2008) looked at 74 UN Arms Embargoes between 1990 and 2005 and concluded that “such embargoes had notable effects on arms import patterns in about 30 percent of all cases” (2008: 1).

### **Crime control treaties: Transnational Criminal Law and International Criminal law**

As well as arms control treaties there are also crime control treaties that relate to firearms. Some of these treaties are part of international criminal law (ICL) whilst others are part of transnational criminal law (TCL). ICL relates to international crimes such as genocide, crimes against humanity and, war crimes which are crimes committed against the international community as a whole (*delicta juris gentium*). International crimes are part of ICL and as such may be prosecuted in municipal or international criminal tribunals regardless of where they were committed. TCL generally relates to activities that are criminal in one or more State and that occur across State boundaries such as money laundering, or trafficking. Transnational crimes do not create international criminal responsibility, so individuals are tried in municipal courts applying municipal laws, international law simply imposes the obligations on States to act, including through international cooperation which is discussed in Chapter 8, to suppress transnational criminal activity. For this reason, treaties relating to TCL are often referred to as ‘suppression conventions’ (see, for example, Boister, 2002). One example of a suppression convention is the UNTOC and its three supplementary Protocols, which include the UN Firearms Protocol which is discussed below. The requirements imposed by suppression conventions to cooperate are explored in Chapter 8.

### **The UN Convention on Transnational Organised Crime, and its Firearms Protocol**

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (“Firearms Protocol”) was passed in Palermo in 2005, and is one of three Protocols to the 2001 United National Convention against Transnational Organised Crime (UNTOC). There are 119 parties to the Protocol at the time of writing, which means it has less of a reach than the ATT discussed above. The Firearms Protocol is described by UNODC as: “the only legally binding instrument to counter the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition at the global level.” (UNODC, 2018).

The Firearms Protocol creates the obligation for each State Party to adopt such legislative and other measures as may be necessary to establish as criminal offences acts committed intentionally, including the illicit manufacturing, or illicit trafficking in firearms, and falsification or illicit obliteration, removal or altering of marking(s) of firearms. This requires effective transposition of these provisions into States Parties legislation so that illicit firearms trafficking can be prosecuted domestically as a criminal offence. Where States have non-effective implementation of these provisions this may jeopardize judicial cooperation in criminal matters and encourage ‘forum

shopping' whereby criminals choose jurisdictions between which to move illicit firearms on the basis that such activity carries a lower penalty.

Rose (2020) points out that:

“Nearly two decades after the adoption of these instruments, however, remarkably little is known about whether states parties have implemented UNTOC and its protocols in their national legislation, whether they enforce such legislation, and whether they make use of UNTOC's provisions concerning international cooperation (e.g., extradition and mutual legal assistance)” (2020: 1).

As will be demonstrated later in this chapter, the UN has consistently made calls for states to become signatories to the Firearms Protocol, and for those states which are already parties to implement the provisions more effectively.

### **‘Soft’ law**

The principle ‘soft’ law instruments at an international level are the UN Programme of Action and the International Tracing Instrument, International Small Arms Control Standards (ISACS), the Wassenaar Agreement, the Bamako Declaration and, the Andean Plan. Each of these is outlined briefly here.

#### **Programme of Action and ITI**

Under the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), governments agreed to improve national small arms laws, import/export controls, and stockpile management – and to engage in cooperation and assistance. In 2005 they also adopted the International Tracing Instrument (ITI), which requires States to ensure that weapons are properly marked and that records are kept. Moreover, it provides a framework for cooperation in weapons tracing – fulfilling one of the commitments governments made in the Programme of Action. Improving weapons tracing is now part of the 2030 Agenda for Sustainable Development. International cooperation in relation to the ITI is discussed in more detail in Chapter 8.

The PoA and the ITI are a political agreement between States but they are not international conventions so they do not have the force of law. They are both an example of ‘soft law’. States are under political pressure to comply and it is possible that a State failing to comply with the agreements may face sanctions, but they could not be subjected to legal action.

#### **ISACS**

The ISACS were developed by the UN in collaboration with global partners to provide guidance on how to reduce the illicit manufacture, use and, trade in firearms. As guidelines

ISACS do not carry any legal weight but there may be political pressure from other States or international organisations to follow them.

### **Wassenaar Arrangement**

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Goods and Technologies was adopted and entered into force on 19 December 1995. The Wassenaar Arrangement is an agreement between 41 arms suppliers concerning commitments and guidelines on, for example, small arms and light weapons.

The key commitment under the Arrangement is that arms suppliers agree to prevent the destabilising accumulation of weapons, including firearms. Signatories have the autonomy to decide whether or not to deny a transfer of weapons but there is a set of criteria against which such decisions are judged. Further, States are required to report any transfers and denials.

### **Bamako Declaration**

The 2000 Bamako Declaration (on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons) was created by the Organization of African Unity (now called the African Union). It is a high-level document and does not list categories of firearms, leaving States free to classify firearms as they feel appropriate for their own purposes.

### **Andean Plan**

The 2003 Andean Plan (to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons In all its Aspects) was put into place in Colombia by the Andean Community Council of Foreign Ministers, representing Bolivia, Colombia, Ecuador and Peru (Argentina, Brazil, Chile Paraguay and Uruguay are associate members while Panama, Mexico, and Spain are Observers). The plan provides encouragement to Parties to adopt “appropriate national rules or regulations” to improve or reinforce “laws that regulate the legal possession by civilians of firearms, ammunition, explosives and other related materials” (Annex I, Guidelines for Action, Part A (4)(e), p7)

### *CIFTA, 1997*

The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (CIFTA) was adopted on 14 November 1997 and entered into force on 1 July 1998. As with the examples below, CIFTA is a regional convention that is legally binding on the parties to it but is not binding on other States. The structure and wording of CIFTA served as a model for the 2001 Firearms Protocol which is discussed above.

State parties are required to criminalise illicit manufacture and trafficking of firearms, ammunition, explosives and other related materials. CIFTA provides provisions for marking and confiscation and a system of import, export and transit licensing. CIFTA strengthens cooperation between States and was the first instrument to introduce a model system of laws for parties to adopt.

### **The regional instruments**

#### *SADC Protocol, 2001*

The Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community Region (SADC Protocol) was adopted on 14 August 2001 and entered into force on 8 November 2004. It is a regional convention that is legally binding on the parties to it but is not binding on other States. Technically, it is a Protocol to the 1992 SADC Treaty, which established the SADC and set the areas of cooperation for the Member States.

The Protocol adopts broadly the same definitions for firearms and ammunition as the Firearms Protocol, but does not include “parts and components” (Article 1). Another interesting distinction is that the Protocol specifically includes “Small Arms” and “Light Weapons” as different categories, whereas the Firearms Protocol deals with “firearms” in general.

State parties to the Protocol are required to legislate the manufacture, possession and, use of firearms, and to keep records of purchases, sales and manufacture. The Protocol requires States to co-ordinate procedures for import, export and transfer and ensures co-operation between States.

Article 5(3) requires the State Parties to prioritise a range of provisions from stopping the unrestricted possession of small arms by civilians, and completely prohibiting the use of light weapons by civilians. Since these are the only two mentions of small arms and light weapons outside the definitions section, it must be concluded that the State Parties were more concerned about civilian ownership and use of light weapons than of small arms.

Machakanja & Manuel (2021) have found that despite two decades of effort, the:

“proliferation of Small Arms and Light Weapons (SALW) continues to redefine conflict and regional stability in Southern Africa and the consequences are far-reaching as they affect development and human rights in the region. The illicit trade in SALW has exacerbated conflicts in countries like the Democratic Republic of Congo (DRC), Mozambique and gun crimes in countries like South Africa. These conflict dynamics being caused by proliferation of SALW have direct negative implications on regional peace, stability and integration” (2021: 983)

They also identify a link between illicit firearms and other forms of organised criminality, a theme which will be explored further in Chapter 6.

### *Arab Model Law, 2002*

The League of Arab States (LAS) agreed a common position at the 2001 conference and the Council of Arab Interior Ministers adopted the Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material Tunisia (2002). Since 2001 however no stronger regional action has followed and at the time of writing there are no legally binding regional conventions that control the illicit manufacture or transfer of firearms in the Arab States. There are however several political agreements that are forms of ‘soft law’ including the UNODC Regional Programme for the Arab States to Prevent and Combat Crime, Terrorism and Health Threats and Strengthen Criminal Justice Systems in Line with International Human Rights Standards (2016-2021) (hereafter the Regional Programme) (2016-2021).

The Regional Programme is the second Regional Programme of the UNODC in the Middle East and North Africa region. It functions as the overarching framework for cooperation between the LA), the 18 participating States<sup>1</sup> and UNODC.

In para. 3.2.4 the UNODC recognizes that the instability in the region poses particular concern in relation to the illicit trafficking of firearms. Although the Regional Programme imposes no legal obligations on States to counter this illicit trafficking the UNODC does offer its support to States to do so:

“In order to strengthen the response of Arab countries to illicit firearms manufacturing, trafficking and firearms-related criminality, UNODC will support Member States through the provision of legislative and technical assistance in this field, including updating legislation in Member States in order to comply with the UNTOC Firearms Protocol, and developing marking strategies and operational support, which are appropriate to the institutional, technical and budgetary country-specific setting” (UNODC, 2016: 21).

### *Nairobi Protocol, 2004*

The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa was adopted on 21 April 2004 and entered into force on 5 May 2005. This Protocol was based on the SADC Protocol (above), and is also a regional convention that is legally binding on the parties to it.

The Nairobi Protocol has key provisions relating to manufacturing, possession and use, State ownership of firearms, transfer and trafficking, co-operation and capacity building, and institutional arrangements.

The Protocol requires that the manufacturing of light weapons and small arms be regulated by law. Weapons must be licensed, registered and marked.

National laws must prohibit the unrestricted use of small arms and promote minimum standards in relation to the control and possession of weapons.

States must maintain inventories of State-owned weapons and ensure their safe storage.

The Protocol requires that minimum standards must be in place regarding import, export, re-export, transit, transport and transfer of weapons. States are also required to institute a system of marking, to criminalise illicit trafficking, and to regulate brokering.

The Protocol encourages cooperation and mutual legal assistance. Mutual legal assistance is explained in some detail in Chapter 10. The Protocol establishes the Nairobi secretariat to oversee the implementation of the Protocol.

#### *ECOWAS Convention 2006*

The ECOWAS (Economic Community of Western African States) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials was adopted on 14 June 2006 and entered into force on 29 September 2009. It is a regional convention so is legally binding on the parties to it but is not binding on other States. The Convention has key provisions relating to the transfer, manufacture, civilian possession, State-ownership of weapons, law enforcement, and institutional arrangements.

In relation to transfer there is a general prohibition on the transfer of firearms (Article 3) and there are only limited exceptions to this (Article 4), for example in relation to national defense and security needs. In order to qualify for an exemption a State must provide details of the arms to be transferred, the supplier, the process, the end user and the end use (Article 5(1)). There is also a system of marking and recording weapons that are lawfully transferred under an exception. This process was clearly designed to limit the potential for grey market transfers.

Member states are also required to control the manufacture of weapons which includes listing and registering manufacturers and sharing the information with ECOWAS. For firearms which are manufactured, the ownership of them must be controlled, and the Convention requires that States prohibit the possession, use and sale of light weapons by civilians and that the possession, use of sale of small arms by the same is regulated.

The Convention also requires that States have systems of stockpile management, including safe storage, for State owned weapons. In relation to law enforcement the Convention requires that States review their legislation and co-operate with other ECOWAS States to strengthen border controls. To ensure that the aims of the Convention are met States are required to set up and fund institutional arrangements to implement the Convention.

Berkol identified in 2007 that for the ECOWAS Convention to be successful, it would “require the active contribution of all the actors involved (ECOWAS, its member states, civil society, the technical



and financial partners) and voluntary and effective collaboration between them” (Berkol, 2007: 11). This suggestion that civil society plays a vital role in ensuring effective implementation of firearms legislation is explored further later in the book.

The effect of the four African provisions is that all States in Africa are bound by the advisory Bamako Declaration, and the majority of States are also bound by one (or in five cases, two) additional legal instruments which require or encourage them to enact national legislation. Since the provisions are all broadly similar, there does not seem to have been a problem, for a State to satisfy the requirements of more than one of these instruments.

### *Europe*

There is a broad range of European responses to illicit manufacturing, use and trafficking of firearms from EU legislation to the Organisation for Security and Co-operation in Europe (OSCE). OSCE is discussed below whilst the relevant EU legislation is outlined here. The EU legal framework on licit and illicit firearms is complicated and includes both ‘hard’ and ‘soft’ law instruments.

The external dimension of the EU security, namely the relations between EU and third States, focuses on combatting illicit trafficking and the proliferation of SALW and is based on the ‘EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition’ (2005). This document aims to put EU policies in line with the UN Programme of Action discussed above. Within this context EU has identified 4 areas of intervention: the international level; the regional level; the bilateral level; and the national level.

At the international level the EU aims to promote worldwide the ratification and implementation of international legal instruments, such as the ATT and UNFP; offer technical and financial assistance to third States for the implementation of international instruments; and promote a world mechanism for tracing illicit weapons (iTrace).

At the regional level the EU has launched several initiatives in different regional contexts relating to stockpiling, disarmament and, seizure and destruction of firearms.

At the bilateral level the EU promotes several commercial and economic agreements with third States which contain some specific clauses on arms trading.

Finally, at national level the EU require its Member States to transfer SALW with third States in light of high common standards which include, respect for UN arms embargoes, respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

The EU is also concerned with internal security in relation to firearms. In this area the EU legislative framework dealing with illicit firearms trafficking largely derives from the Firearms Protocol discussed above. The EU completed the process of transposition into EU legislation of the Protocol provisions through Regulation 258/2012, which addresses trade and transfers of firearms with

countries outside of the EU. The legal instruments were amended by Directive 2017/853/EU which has brought a decisive improvement in several areas of the EU legal framework to detect, investigate and, prosecute the trafficking in illicit firearms. This Directive has strengthened legal measures aimed to effectively trace illicit firearms, thanks to its more harmonized rules on markings, as well as with the envisaged new electronic system to exchange information on licit and illicit firearms among Member States. The Directive separates Firearms into three categories, which can be summarised as:

- Category A - fully automatic weapons (including those converted to semi-automatic), some centre-fire semi-automatic, and military weapons. These cannot be owned by private persons unless they have been deactivated;
- Category B - repeating or semi-automatic arms. These can be owned by private persons subject to authorisation;
- Category C - less dangerous repeating and semi-automatic firearms and single shot firearms. These can be owned by private persons subject to declaration;

The Directive also establishes an effective legal basis for a common regulation of ‘converted firearms’ in the EU by introducing innovative requirements and obligations on deactivated firearms and alarm weapons. It does this by including in each of Categories A-C any firearm which has “been converted to firing blanks, irritants, other active substances or pyrotechnic rounds or into a salute or acoustic weapon” (Art 1(19)(i) - (iii)).

Project SAFTE, which reported in 2018, also revealed that the current EU framework does not cover “Flobert” weapons. Flobert weapons, sometimes called Gallery-, Saloon- or Parlour-guns, are designed to fire small projectiles at relatively low velocity, and were originally intended to be toy weapons. What Project SAFTE and others have found is that Floberts can be converted to fire live rounds relatively easily, and that tightened restrictions on deactivated weapons have caused a growth in demand for Floberts:

“when closing the loophole posed by inadequately deactivated firearms, criminals soon abandoned this strategy and promptly turned to firearms converted to fire unregulated ‘Flobert’ calibers of ammunition that can easily be altered to fire more powerful ammunition. This neatly illustrates the pitfalls of well-intended but ultimately disjointed initiatives.”  
(Duquet & Goris, 2018: 11)

In 2000 the OSCE agreed Small Arms and Light Weapons (SALW) guidance on criteria for transfers, markings and management of stockpiles which was contained within the Handbook of Best Practice on SALW.

## Synergies Between the Instruments

The UNODC outline on their website the complexities of having a variety of international and regional instruments:

“A variety of international and regional instruments form part of the international legal regime on firearms. While this plurality of instruments demonstrate the complex and multi-dimensional nature of the firearms problems, they also illustrate the need for diversified and multi-disciplinary approaches, and the central role that firearms continue to play in the international agenda.

These instruments provide on the one hand a solid legal and operational framework for States to reinforce their domestic legal regime, but can on the other hand, become a source of confusion and contradiction, when their relationship and the different context in which these instruments operate is not clear to national decision makers. By way of example, the Firearms Protocol addresses the illicit manufacturing of and trafficking in firearms from the criminal justice angle, with a view to provide measures to address the transnational nature of the phenomenon and its links to organized crime. Other instruments, although covering similar topics, address the issue from a disarmament, trade or development perspective, and focus more on measures to reduce the accumulation, proliferation, diversion and misuse of firearms, than to bring offenders to justice. These differences, beyond linguistic nuances, reflect substantively different although complementary approaches to the same problematic.

In order to benefit the most from the application of such instruments it is important for states to familiarize themselves with them, understand their purposes and ensure its proper implementation at national and regional levels contributing in this way to harmonized legislations” (UNODC, 2021)

The reality is that ‘soft law’ and political agreements, with no legal weight often demonstrate a shared political will and often evolve into custom and practice which may in turn develop into legal obligations, or they are the precursor to conventions which impose legal obligations.

Illicit trafficking of firearms is typically a TCL offence which can only be prosecuted in ICL, either municipally or internationally, in cases where the supply of firearms is related to an international crime such as genocide or crimes against humanity. In such cases an individual may have international criminal responsibility for aiding and abetting the international crime committed by the recipient of the weapons.

## Implementing international provisions into municipal regulatory frameworks

### Process of Implementation

Thus far in the chapter we have discussed the measures and laws that States are committed to integrate into their legal and policymaking systems, either from global or regional instruments or measures generated at the national level. We also know that States do this in accordance with their culture and domestic legal system, as well as their capacity to do so. We know from previous chapters that States with the most conflict and armed violence are often the most “fragile States.” The OECD States of Fragility Report defines fragility as “the combination of exposure to risk and insufficient coping capacity of the state, system and/or communities to manage, absorb or mitigate those risks. Fragility can lead to negative outcomes including violence, the breakdown of institutions, displacement, humanitarian crises or other emergencies” (2016: 22).

The OECD proposed a new model in 2015 which moved away from the “from the ‘fragile states list’ - a binary view of the world - towards a universal concept of fragility. It builds on the recognition that fragility affects states and societies in different ways. It affects not only developing but potentially all countries” (OECD, 2015). States which do not have the capacity to carry out the basic functions of governance are likely to have regulations which are either absent or inadequate, which could provide regional loopholes that are exploitable by Organised Criminal Groups or Terrorists, as explored in the following Chapter.

The UNTOC COP (Conference of the Parties) takes place every two years, and looking more closely at the COP Decisions and Resolutions we can see that there have been repeated calls for Parties to be clearer about their “programmes, plans and practices, as well as legislative and administrative measures to implement this Convention” (Art 32(5)). For example:

- Fourth Session of the COP (2008) – Decision 4/6(d) “Urged States that had not yet done so to consider becoming parties to the Firearms Protocol and to implement its provisions;” and Decision 4/6(e) “Urged States parties to the Firearms Protocol to strengthen their national legislation in a manner consistent with the Protocol;
- Fifth Session of the COP (2010) – Resolution 5/4(2) “Urges States parties to the Firearms Protocol to harmonize their national legislation in a manner consistent with the Protocol”;
- Sixth Session of the COP (2012) – Resolution 6/2(3) “Urges States parties to the Firearms Protocol to harmonize their national legislation in a manner consistent with the Protocol”;
- Seventh Session of the COP (2014) – Resolution 7/2(3) “Urges States parties to the Firearms Protocol to harmonize their national legislation in a manner consistent with the Protocol”;
- Eighth Session of the COP (2016) – Resolution 8/3(4) “Urges States parties to the Firearms Protocol to harmonize their national legislation in a manner consistent with the Protocol”;

- Ninth Session of the COP (2018) – Resolution 9/2(3) “Urges States parties to the Firearms Protocol to harmonize their national legislation in a manner consistent with the Protocol”; and
- Tenth Session of the COP (2020) – Resolution 10/2(2) “Encourages States that have not yet done so to consider becoming parties to the Protocol [...] and to fully implement its provisions; and Resolution 10/2(3) “Urges States parties to the Firearms Protocol to enhance their efforts to implement the Protocol”

This pattern of States signing up to an international provision and then not following the requirements of that provision is repeated with the Arms Trade Treaty (ATT). In the Fifth Conferences of the State Parties (CSP5) in 2019, the ATT Secretariat reported that “less than half of States Parties due to report had submitted an annual report [...], continuing a downward trend” (ATTS, 2019, Para 27). In CSP6 (2020), although no report has yet been published, the meeting adopted only eleven draft decisions, six of which related to administrative issues relating to CSP6 and CSP7.

These examples all show that one recurring theme for the Firearms Protocol COP and ATT CSP over the past fifteen years is that States are either not implementing national regulations at all or are implementing them in a way which is not consistent with their Treaty obligations.

In addition, where States are sustainable or stable, there is often an inconsistency with their national transposition of regional obligations. The Project EFFECT Report, for example, found that European States differed in their definitions of “gun-enabled crime”, which hampered efforts to collaborate in detection and prosecution of this type of offence. The Report states:

“Currently, it is not possible to determine the true extent of gun enabled crime across Europe due to the fact that ‘gun enabled crime’ is not an identified notifiable offence category, nor is it consistently defined in legislation. Countries do not consistently record the presence of a firearm when a crime has been committed/recorded. Statistical data obtained from each country concerning the amount of crime committed with a firearm revealed more than 20 different offence categories” (2016: 87)

One way in which this divergence of definition may start to converge is through the emergence of global legal norms, which go through what Finnemore and Sikkink (1998) call a life cycle. The norm life cycle, they argue has three stages:

- Emergence: This is the stage where a new regulation is created, and is promoted by a small number of “norm entrepreneurs” with an intention of convincing a critical mass of States to adopt the new norm.
- Cascade: At this point of the cycle, a sufficient number of States has embraced the new norm, and a new international standard may be developed.

- Internalisation: This is the final point in the life cycle, and it is where the norm, which is already present in international and regional obligations, is internalised into national legislation and regulatory measures. (1998: 896)

Transposition of all international frameworks into National legislative frameworks can pose problems. Article 10 of the Firearms Protocol, for example, is drafted on the assumption that State Parties have a firearms licencing authority, which is not necessarily the case. The next section considers the internalisation stage of the model, and will outline the different ways in which States are assisted by International Organisations and NGOs to internalise the norms which exist in relation to the regulation of firearms.

### **Assistance with developing national legislation**

All regional and global instruments involving firearms recognize the situation discussed above, because they all contain language about assisting States in developing their regulations, laws and measures. This section gives a non-exhaustive list of examples of bodies (intergovernmental and nongovernmental) which offer assistance to States wishing to create legal frameworks. A more detailed discussion of international cooperation can be found in Chapter 8.

The first three are all run under the auspices of the UN and are the key mechanisms for developing national legislation.

- UNODC Global Firearms Programme. The GFP has five main areas of work, and “Legislative Policy and Development” is one of them. The UNODC (n.d.) clarifies that the GFP was “created to assist states in building adequate criminal justice systems to effectively respond to the challenges posed by organized criminality specifically related to trafficking in firearms its parts and components.”
- UNODC Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. This was published in 2011, and “developed in particular to assist States in implementing a legislative regime consistent with the provisions contained in the [Firearms Protocol]” (2011: iii). The Model Law is split into Introductory, Mandatory and non-Mandatory provisions.
- The UN Office of Disarmament Affairs (UNODA) produces a range of guides and handbooks for practitioners and governments. Most recently, the Effective Weapons and Ammunition Management in a Changing Disarmament, Demobilization and Reintegration Context handbook was produced, which identifies that “Peacekeeping and small arms control benefit from being closely aligned and integrated” (UNODA, 2018: viii)

In addition to these three UN programmes, there are a number of other, non-governmental, and regional groups which have developed their own guides.

- The Arms Trade Treaty-Baseline Assessment Project (ATT-BAP) was created by the Stimpson Center. The Project has identified key factors which would support effective implementation of the ATT, and these can be applied equally well to other global and regional obligations. They are:
  - Ensuring States understand their ATT obligations;
  - Identifying existing capacities and areas to be strengthened; and
  - Matching assistance needs with resources, to avoid duplication and waste (ATT-BAP, 2021).
- The Bonn International Centre for Conversion (BICC) publishes a number of Policy Briefs which give “research-based advice to national and international policymakers and gives explicit policy recommendations on current developments” (BICC, 2021). The October 2016 Brief on the ATT, for example, “reveals considerable gaps and reporting deficits; in particular with regard to the number of reports delivered on time, the concealment of information, missing transfers, the comparability and the level of detail in the reports.” (Bales & Mutschler, 2016: 2)
- The Consultative Committee of CIFTA was established in 2000, and one of its functions is to “facilitate the exchange of information on domestic legislation and administrative procedures of the States Parties.” As with the issues identified by the Conference of the Parties to UNTOC, above, the twelfth meeting of the Consultative Committee was caused to call for States to complete their responses as to the state of national implementation (CITFA, 2012).
- The NGO Saferworld “works to strengthen national, regional, and international controls on the global transfer of arms. We do this by advising governments and holding them to their obligations to build peace and safeguard people’s security by not transferring arms irresponsibly. We engage in dialogue with government officials – including through targeted policy briefings and bilateral meetings – to encourage the progressive development of robust and transparent arms controls rooted in international law” (n.d) Particularly in relation to the Arms Trade Treaty, Saferworld “provide critical, analytical, legal and technical support to countries as they develop and implement the laws and regulations needed to comply with their ATT commitments” (n.d.)
- SEESAC (2014) has created a Toolkit for Addressing Unauthorized Re-Export or Re-Transfer of Arms and Ammunition which “presents examples of good practices, including appropriate language from the relevant guidelines and best practice documents, useful examples from different states’ national policies and practices, and practical lessons learned from cases of violations of re-export and re-transfer controls” (2014: 5). SEESAC is clear though, that this

is a toolkit for identifying the types of mechanisms that might be effective in South Eastern Europe, rather than having global reach.

- The Stockholm International Peace Research Institute (SIPRI) work “on arms export controls focuses on efforts at the national, regional and international level to develop and strengthen laws, regulations and standards in this area as well as broader efforts to combat illicit trafficking, particularly of SALW” (SIPRI, 2018)
- The Small Arms Survey 2014 Trade Update on Arms Transfers and the ATT, includes sections which “examine national practices” (2014: 126) that could give guidance at regional and international levels on how to respond to detected or suspected unauthorised transfer cases.

As this list demonstrates, there is substantial formal and informal assistance available to States who wish to avail themselves of it. There is much more going on in the way of assisting States to develop their own regulations, laws and measures in order to participate fully in the global quest to combat the illicit acquisition, manufacturing and, trafficking of firearms.

What is clear, and unsurprising, is that the enforcement of the provisions of Global and Regional agreements is carried out at nation State level, and that without a coordinated effort at creating harmonious national regulations, enforcement is not going to meet its full potential for efficiency.

## Concluding Comments

International law is different in nature from municipal law although most commentators agree that it makes sense to describe it as a system of laws even if it lacks some of the characteristics of a traditional legal system. This means that international law is not imposed vertically but is about agreement and co-operation between the subjects of international, which are principally States.

The key sources of international law are international conventions and customary international law. There are examples of regional and international conventions that aim to reduce the illicit manufacture, use and transfer of firearms. These compliment customary international law and operate with general principles and ‘soft law’ to create a body of law. These laws are applied by the judges in judicial decisions either in the ICJ or the ICC.

International law imposes legal responsibilities on States both to follow customary international law and to meet their obligations under international conventions. There are enforcement mechanisms in place as well as a system of sanctions however enforcement is piecemeal and power and influence are also important.

As we have seen, whilst international legal frameworks provide a basis for municipal law, there is a significant difference in the obligations that the different measures place on States. Many of the



provisions which relate to firearms for example the Programme of Action discussed above. Soft law does not require States to act, and as we saw from Barczewski's comments earlier in the chapter, "Soft law instruments can be intentionally used to generate support for or to help generate binding hard law" (2011: 54).

Even once the transition from soft to hard law has been made, it is still down to the will of an individual State whether to sign or ratify a particular instrument. Earlier in the chapter, we saw that the UNTOC COP has passed resolutions at every session since 2008, when the Firearms Protocol was first discussed. These fall into two general categories. Firstly, urging and encouraging states to become parties to the Protocol (and, at the time of writing, there are still only 119 State Parties to the Protocol), and secondly urging those states which are parties to the treaty to actually do what they are required to do under the terms of the Protocol. We have seen this pattern of non-engagement and non-compliance repeated with the Arms Trade Treaty. The ATT took more than a decade of negotiation to emerge from the Programme of Action, and has garnered almost as many ratifications in five years as the Firearms Protocol has in 18. Unfortunately, this is still a long way short of total adoption, and as was shown above, fewer than half of those states which have ratified are submitting reports when they should.

The plethora of UN-based and NGO-based organizations offering guidance and model laws on how to implement the Coupled with this apparent unwillingness or inability of States to comply with their international legal obligations. Without stronger cooperation internationally (which will be discussed in Chapter 8), the international legal frameworks will not become truly global, and the illegal trade in firearms will continue to flourish.

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## List of abbreviations

ATT Arms Trade Treaty

CIFTA Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials

CIL Customary International Law

CSO Civil Society Organisations

ECOWAS Economic Community of Western African States

EU European Union

GFP UN Global Firearms Programme

ICC International Criminal Court

ICJ International Court of Justice

ICL International Criminal Law

IGO Inter Governmental Organisation

ISACS International Small Arms Control Standards

ITI International Tracing Instrument

NGO Non Governmental Organisation

OECD Organisation for Economic Cooperation and Development

OSCE Organisation for Security and Co-operation in Europe

PIL Public International Law

PoA UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

SADC Southern African Development Community

SALW Small Arms and Light Weapons

TCL Transnational Criminal Law

UK United Kingdom

UN United Nations

UNGA United Nations General Assembly

UNODA United Nations Office for Disarmament Affairs

UNODC United Nations Office of Drugs and Crime

UNSC United Nations Security Council

UNTOC United National Convention against Transnational Organised Crime

USA United States of America

VCLT Vienna Convention of the Law of Treaties

