





# **Viability of the Arms Trade Treaty: Comparative Legal Analysis Exercise**



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## **Presentation**

### **No more guns to commit atrocities**

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The future of a global set of rules establishing effective controls for the commerce and transfer of guns is increasingly becoming more possible and is closer than ever to converting into a concrete international agreement.

The international support towards the Arms Trade Treaty (ATT) has taken a different face since being accepted by an overwhelming majority of member states for the United Nations Resolution 61/89 supporting this initiative. The Security-General Ban Ki-moon focused on the viability and scope of the ATT in two ways. He used documents presented by representatives from almost all of the member states with the goal to reach a consensus on the initiative, while at the same time he commissioned a Group of Governmental Experts (GGE) to analyze the scope, feasibility, and parameters of an international, legally binding treaty for the transfer of conventional arms.

The absence of international standards for arms commerce, which is an unregulated market, is a factor that allows and accentuates the negative consequences of conflicts such as the relocation of people from their native lands, as well as crime and terrorism. The lack of control in the proliferation of arms perpetuates the confrontations and increased costs, not only in terms of human lives, but also in terms of opportunities for potential progress within developing countries.

The GGE met on three occasions this year presenting four fundamental recommendations to the Security-General. First, the group suggested that a United Nations group be created that would further continue discussions with an unlimited timeframe in order to establish the feasibility of this treaty and know exactly what should be included. Secondly, the group emphasized that the treaty focus on mechanisms to prevent the diversion of conventional arms from the legal into the illicit market, especially those arms that risk being used for terrorist acts, organized crime and other criminal activities. Also, it recommended that the ATT should regulate all conventional arms as well as ammunition, explosives, and other components via the United Nations Registry of Conventional Arms; and lastly, and most importantly, the GGE recognized that an ATT is only possible if the political will exists to adopt it with the support of more rigorous national standards that currently exist.

Some countries and regions have taken the appropriate steps toward controlling arms commerce and preventing the flow of military equipment toward possible human rights violators. These are extremely important steps that ought to be taken as examples. Notwithstanding, due to the international nature of this market, the arms that a State restricts can be provided by other less responsible states; for this reason it is essential that all control mechanisms are grouped under one instrument that can be applied universally, guaranteeing that the imposed States' (or Region's) controls cannot be undermined by other suppliers. The idea is that the adoption and implementation of a future treaty serves as a dissuasive effect for those involved in the illegal trafficking and improper use of arms. Furthermore, an ATT would reduce the necessity for other future agreements, facilitating the coordination and application of shared standards by all of the countries.

This publication is the result of an in-depth comparative analysis of the current, legally-binding laws and policies in South America in relation to the established principles of the ATT. The objective of this legal analysis is to contrast the national legislations of each country and the principles of the proposal presented by civil society representatives regarding arms transfers, which is a continuation of a similarly prepared analysis for the Central American region published in 2006.<sup>1</sup>

The information is systemized here in a manner that displays the national legislation currently in place in each of the South American countries, according to the analysis of the global principles. The legal conditions necessary to put an ATT in practice are highlighted among each country, as well as the treaty's legislative foundation with respect to the national constitutions and local laws, the application of related conventions, and the possible national support that would be both necessary and significant.

New and interesting support exists from the national consultants, such as that of the Paraguayan lawyer Jenny Villalba, who carried out a qualitative categorization for legal harmonization, according to the indicators elaborated in relation to the current laws by country and with respect to the ATT.<sup>2</sup> The sum of the scores obtained as a result of the comparative analysis ranks each country, in graphics, according to their possibilities to internally adapt and align themselves to the ATT, taking into account the following guidelines: antecedents (regarding similar legislation and policies), internal mechanisms effectively implemented, international laws in effect, and the capacity to control transfers.

The recommendations offered by the national experts demonstrate that each South American country possesses the minimum conditions necessary to adopt the ATT. Suffice to say that only a few months ago the future of a global set of rules establishing the effective control of arms transfers seemed almost utopian, and that the perspectives to regulate the control of armaments seems more open now than ever. However, there is still much more to do in order to reduce the proliferation of arms: work that is absolutely necessary to begin now without delay.

The Arias Foundation has worked arduously in this area along with other organizations around the world constituting a strong base of support for the ATT. The continued financial support from the Swedish International Development Agency (SIDA) reflects its commitment to secure safer societies, a commitment shared deeply by the Arias Foundation.

Luis Alberto Cordero

Executive Director

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<sup>1</sup> *Arms Trade Treaty (ATT) and Central America's Legal System*. Series: Disarmament, Legislation, and Peace, Arias Foundation for Peace and Human Progress, San José, Costa Rica, 2006.

<sup>2</sup> Indicator 1: Implementation-minimum structure for control/Favorable legal scenario and internal political support. Indicator 2: Situation of internal systems for the control and legal security in the circuits of authorization. 3: Capacity and legal security to prohibit or not authorize.



## **A. Towards an Arms Trade Treaty: The perspectives of Latin American Countries**

### **How a Code of Conduct took route to an International Treaty**



In 1997 in New York City, Dr. Oscar Arias Sánchez, Nobel Peace Prize 1987, proposed an International Code of Conduct for the transfer of arms with the support of other Nobel Prize winners.

In 2000, this initiative reunited a group of civil society organizations which gave origin to the creation of a Committee Director in favor of the Code. This directive organ collaborated with legal professionals at the Lauterpacht Center for International Legal Research of the University of Cambridge, from the United Kingdom, in order to translate the beginning principles of the International Code of Conduct into a rough draft of the treaty. Thus is how the Arms Trade Treaty (ATT) emerged as a model for a legally binding international agreement that establishes basic criteria in order to regulate the transfer of conventional arms. It is founded on a simple principle: the arms traders have the responsibility to not provide these instruments in a way that could be used in order to commit serious violations of international rights. Its objective is to establish a standard, precise, and harmonized legal framework to guide the conduct of the states involved in the international arms market, by means of establishing fundamental, common standards for the transfer of arms in a way that will not impede the establishment of stronger national or regional controls.

In this sense it is imperative to indicate that the ATT will not impose a completely new standard for the conduct of the States. Rather, it will reaffirm and clarify the states' existing responsibilities in accord with international rights and grant them a renewed pledge of support via a treaty that assures its consistent and efficient application.

The proposal that endorses an Arms Trade Treaty consists of the following global values:

- The states should adopt and apply a mechanism that demands the transfer of arms to be authorized only through the use of licenses.
- The states should not authorize those transfers of arms which result contrary to current international rights when dealing with specific arms or the transfer of these arms to specific users.
- The states should not authorize the transfer of arms in circumstances that can be reasonably foreseen when such transfers are: contrary or can become contrary to the United Nations Letter, can be used to commit serious violations against Human Rights or against the International Humanitarian Rights, used to commit genocide or crimes of human injury, or that the transfers of arms could be divergently used for these means.
- The states should be conscious of the impact that the transfer of arms has within the regional security and its impact on sustainable development.
- The states should communicate their transfers of arms with an international authority established for such goods.

Within this context emerges the necessity to bring together a regional analysis, brought about by an initiative by the Arias Foundation of Costa Rica, interested in knowing the process of how arms are transferred in the region. Thus, an Exercise of Legal Analysis relative to the Arms Trade Treaty (ATT) and its application at a national level has been conducted culminating with a comparative analysis of the processes and realities of the involved countries. Included in the analysis are ways of advancing the regional and sub-regional legal frameworks within the countries.

Interesting contributions exist from the national consultants about the applicability of the ATT; one of which specifically refers to the ATT as an INSTRUMENT OF HUMAN RIGHTS. This is the key for it to be both applicable and obligatory. The main principle of the instrument is its universality to be used for protecting human rights and strengthening the prevention of international armed conflicts or outbreaks of violence with serious social consequences that these entail; such as the human sufferings provoked by the handling, transportation, and the controls that enable the passing of arms, with or without the authorizations of our states, created in order to promote violence, not peace.

## A.1 Latin America and the Arms Trade Treaty (ATT)

An Exercise of Legal Analysis was executed in order to contrast countries' national legislations with the values proposed by civil society concerning the control of arms transfers. The structure of the national studies tried to analyze, one by one, the global values within the context of each country's current national legislation and to analyze the advantages and disadvantages of adopting an ATT. In continuation, we incorporated the executive summaries of the completed studies in the countries of South America.<sup>1</sup>

### Argentina

Argentina maintains a system of licenses and authorizations for each activity of exportation, importation, and international transportation of firearms, supplies, explosives, and other related materials. Therefore, it is required to register the legitimate commercial users before the National Registration of Arms (RENAR). The Principle of Anticipation prevails, according to which all activity completed with the controlled material should contain the respective license according to the case and previous state authorization.

Similarly, they impose the verification that the importing and trafficking countries have granted the necessary licenses or authorizations. The validity of registrations incorporates, among others, fabric tags and a series of numbers.

The ratification of an Arms Trade Treaty, with the characteristics of being legally binding, will be obligatory to the internal legal layout, given that the constitutional hierarchy of the treaties is superior to national laws. Therefore it has the obligation to adopt the legislative measures<sup>2</sup>, or other measures, to make the rights and established guarantees effective for the legal, valued plexus.

As for the limitations on the use of arms, Argentina has prepared to submit itself to the same ones from its adherence to the Wassenaar Accord and its directives.<sup>3</sup> The Accord requires that the participating states assure, via national politics, that the transfers of such materials do not contribute to the development or bettering of military capacities in a way that undermines the international and regional security and stability, and that they do not be deferred to support such capacities.

The directives outline the necessity to adopt legislation and assure their implementation in such areas as: evaluating arms exportations; exportation licenses; re-exportation/retransfers;

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<sup>1</sup> See the original documents produced by their respective consultants at: [www.arias.or.cr](http://www.arias.or.cr)

<sup>2</sup> "One of the obliged consequences of the incorporation of the treaties referred to the text of the Constitution of Argentina is the need of permanently adequate laws and other legal norms established..." which "has already been recognized by the Supreme Court of the National Justice" (SCJN, "Ekmekdjian c/ Sofovich", L:L 199.C-547), la Comisión I.D.H. (Caso 10.970, Recomendación 4, 1995) y la Corte I.D.H. (OC -13/93 del 16-VII-93)" I IIDH).

<sup>3</sup> See "Best Practice Guidelines for Exports of Small Arms and Light Weapons" at: <http://wassenaar.org/guidelines/index.html>

manufacturing without a license; requirements to the potential receptors of arms; maintenance coverage of registries and cooperation. The presentation of the Certificate of Final Destination works like a voucher; the same should be issued by the authority of the country in question and be validated by the Argentine consulate in the country of destination for this type of merchandise. The authorized licenses of exportation and importation have dates of expiration.

As an exporting country of arms, Argentina created the National Commission of the Control of Sensitive Exportations and Belligerent Material. Upon ratifying the Protocol of the United Nations, the country promised to “guarantee the maintenance, for a period no less than ten years, of information relative to firearms and, when it is appropriate and feasible, of the information relative to its pieces, components, and supplies that may be necessary in order to locate and identify the firearms, and when it is appropriate and feasible, its pieces, components, and supplies that have been objects of manufacturing or illicit traffic, so as to avoid and detect those activities.” More specifically in clause b) of the 7<sup>th</sup> Article it is obliged to maintain certain information about the international transactions of firearms, its pieces, its components, and supplies: “the dates of emission and expiration of the corresponding licenses and authorizations, the country of importation, the countries of transit, when it proceeds, and the final receptor, including the description and quantity of the articles.”

Similarly in the CIFTA, Argentina promised to maintain “for a reasonable amount of time, the information necessary to permit the tracing and identification of firearms that have been manufactured or trafficked illicitly” to attain the obligation of exchanging information among “products, sellers, importers, exporters, and, when it is possible, authorized transporters of firearms, supplies, explosives, and other related materials.”

Argentina completely supports the elaboration of an Arms Trade Treaty that is legally binding. It favors the creation of multilateral instruments that identify common parameters at the global level that facilitate a common understanding regarding each of the factors and circumstances that the states should have in mind at the time of evaluating the authorizations of conventional arms transfers with the objective of avoiding its deflection towards actors or uses unauthorized by active international rights. In this way it would compliment the level of control that the country implements in correspondence with previous political and legal agreements, and would fortify the implementation of its own internal legislation. In synthesis, it would give coherence to the instrumentation and maintenance of controls, unifying criteria in spaces where they are already executing control measures. In this way the proposed principles of the ATT do not contradict the promises, either political or legal, that Argentina has acquired in this subject.

## Bolivia

Bolivia does not have a law that regulates the internal or external trade of arms. The control in this sense is found at present in the care of the Ministry of Defense and the National Police without a clear, legal framework in that it is executed on a basis of less administrative policies.

Currently in Congress there is a Project titled "Law of Arms, Supplies, Explosives, and Chemical Agents of Double Usages," which did not have the greatest progress apart from the existing discussion between the Armed Forces of the Nation and the National Police (which maintain different commands) about which should be the institution in charge of controlling the arms in the country.

The importation of arms, supplies, and belligerent material requires previous authorization from the Ministry of National Defense; however, it does not establish previous limitations, conditions, or procedures to the bestowal of permission for this type of activity.

The "Regulation for the Importation, Transportation, Commercialization, and Employment of Explosives, Arms, and Supplies of the Ministry of National Defense" was created by the Ministerial resolution number 00665 on May 24, 2000. This creates a registry that is in charge of regulating the activities of importation, storage, and transportation.

- The Registry grants a certificate, taking into account the following criteria:
  - If its acceptance agrees with the interests of the country.
  - If its acceptance does not infringe on national security and defense.
  - The quality of the products to import and market.
  - The suitability of those interested, in regard to their moral, technical, and financial, and social-political points of view.
  - Previous contracts or meetings, correct or not, with the State.
- The importation of explosives, arms, and supplies that can also be authorized and registered by the Ministry of National Defense.
- The importation of explosives should be limited to those who have work related to mining, hydrocarbons, and civil work or similar, and cannot be attained through the postal service.
- The Regulation should also establish norms for transportation and storage of explosives, arms, and supplies, establishing administrative policies and security for these activities. The only reference to the transit of these materials destined for a third country is the demand that it is counted with the respective registry and fulfills the administrative means and established security of the Regulation.

In Bolivia's case, the Ministry of Defense, as a political and administrative organism of the Armed Forces of the Nation, has the jurisdiction to authorize the transfer of arms and the authority to implement the control over each part of the arm trade.

The authorizations to implement the international transfer of arms and supplies are granted in writing through its Unit of Belligerent Material.

The procedure of importation and re-exportation are not found expressly tied to the international legislation, but that is not seen as an obstacle.

Bolivia, as a part of the ONU, accepts the established obligation of the Letter of the United Nations. Among these obligations are the linked resolutions from the Security Council and those that determine the embargo of arms, the prohibition of usage or the threat of force, and the prohibition of intervening in internal subjects of other states. Therefore, the limitation of exportation, re-exportation, transportation, or transfers that violate this Letter is found valid in Bolivia. This authorization could not be given in a case where the possibility exists that the arms could be employed to violate some law of consuetudinary right over the use of force.

Bolivia, just as any other state, finds itself tied to the principles of humanitarian and consuetudinary rights, and to those legally binding laws that apply to these principles. Similarly, it cannot authorize the transfer of arms that could violate the Letter of the United Nations.

Bolivia subscribed and ratified the *Convention for the Prevention and Sanction of the Crime of Genocide* (through Law 3061 on May 30, 2005) of the *Roman Statute for the International Penal Court* (through Law 2398 on May 24, 2002), for which it is obliged to not authorize arms transfers that could lead to crimes of genocide, human suffering, war, or aggression.

Bolivia does not have arms manufacturers (it has only one supply manufacturer), thus no economic group exists that could obstruct the treaty in regard to this matter.

## **Brazil**

Brazil constitutes a country of vital importance to the possible adoption of an international arms trade treaty, not only because it is seriously affected by armed violence, but also because it is an important producer of arms and supplies. After the United States it is the second largest producer and exporter of small arms and supplies of the Americas, whose annual exportations total \$127 million dollars and has an annual production of 104 million dollars. The introduction of an ATT in Brazil's case would strengthen the commitment to adapt further legally binding agreements, like the Protocol of Arms of the ONU.

Brazil has in place a system of previous authorization that considers all the indicated activities of the ATT: to know the importation, exportation, re-exportation, and transportation of the arms and for each of these activities to require individual licenses. Such responsibility relapses upon the army through the Authority of Supervision of Controlled Products (DFPC) under the area of the Ministry of Defense.

The international legislation is above the national legislation which requires the adequacy of national laws to correspond with the eventual text of the ATT. In the same manner, Brazil has subjected itself to cooperate with other international decisions such as: the Letter from the United Nations, the established embargos by the Security Counsel, some instruments over the usage of arms that produce indiscriminate harm to the civil population, and the indicated instruments within the Defense of Human Rights and the Humanitarian International Right.

Brazil applies the Certificate of Final Destination to all of its transfers. Unfortunately, there are few countries that dispose of this certificate, and furthermore they are not accustomed to have follow-up mechanisms that would guarantee that the data is credible. An adequate application requires that some States take into account the negative effects that the arms can provoke, especially within three aspects: exacerbating a situation of extreme violence or armed conflict, reducing the strengths in favor of sustainable development, and provoking regional instability. This ordinance does not exist as an expressed norm in the Brazilian legal system, but it is assumed to exist from other adopted instruments.

The introduction of an ATT in the international scope would not impose a contradiction to the current Brazilian legislation.

- The proposal of the ATT could be adopted without the necessity to introduce large modifications to the current national legislation, because taking into account its current commitment in regards to International Law it could easily assimilate an international treaty that regulates the transfer of arms to an international scale that includes clear aspects of the active Human Rights and International Rights.

- Brazil's case, which recently updated to an ample and comprehensive legislative framework over arms and supplies, should be taken into account by the region, above all because their legislative modification has already accomplished a reduction in the number of homicides with firearms in the country.
- The discrepancies between the national legislative framework over the trade and possession of arms facilitate the labor of the traffickers and the traffic of arms by frontier workers. Because of that, Brazil and its neighbors should harmonize their national legislations over the control of arms for an effective implementation of the principles of the ATT.
- In order to have a good implementation of the standard it is very important to have access to the legal documents that the countries continue to adopt. Therefore it is appropriate to distinguish as a positive note that Brazil makes available a webpage through which it is possible to have easy and direct access to these documents.
- International treaties that express limitations on the usage of certain arms, just as all treaties of the promotion and protection of Human Rights and Humanitarian International Rights, should be ratified by the states immediately. In Brazil's case, the great majority of these treaties have already been ratified; therefore its implementation should not be a problem at a legal level. Furthermore, it would be vital to know which of those practices Brazil considers applicable within the International Consuetudinary Rights.



## Chile

Upon analyzing the current national standard of arms transfers and trades, it becomes clear that the standard is centered more on the control of the arms than the trade: the principle policies about this material being the Law Number 17.798 about the Control of Arms<sup>4</sup> and its complimentary regulation.<sup>5</sup>

As for the analysis of the current international legal framework in Chile concerning arms trade, it is clear that an ample spectrum of international instruments exist that Chile has ratified. The principal sources are inter-American agreements, such as the Inter-American Convention against the Manufacturing and the Illicit Trafficking of Firearms, Supplies, Explosives, and other related Materials and its Annex,<sup>6</sup> and the Inter-American Convention about the Transparency in the Acquisitions of Conventional Arms.<sup>7</sup>

The contemplated principles of the Treaty are harmonious to the position that Chile has maintained with respect to the transfer of arms. Furthermore, they constitute a new contribution, especially the 3<sup>rd</sup> and 4<sup>th</sup> principles, which reinforce the criteria to consider the actual or probable final use of the acquired arms before authorizing an international transfer.

The Law of Arms Control and its complementary regulation maintain that the control and supervision of small arms is the responsibility of the National Ministry of Defense through the General Guidance of National Mobilization. This guidance also has registry and authorization functions of the exportation and importation of arms.

The law grants the DGMN, dependent of the Ministry of Defense, large capacities to control the arms. Therefore, any business or person, national or foreign, that desires to sell arms in Chile or export arms from national territory, should count on its authorization, corresponding to the DGMN and departments of supervision, once the authorization is granted. The DGMN has a connection with the justice courts and other State organizations in order to keep vigil the obligation of these dispositions, and to denote its respective non-fulfillment. This labor is reinforced by the functions that entrust the supervising authorities that establish strict controls over the exportation of belligerent material, meeting not only the established requirements with the particular ones for exportation of arms, but also a Certificate of Final Destination.

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<sup>4</sup> Published in the Diario Oficial on April 13, 1978. The most recent modification to this law was completed on September 10, 2005 through Law Number 20.061.

<sup>5</sup> Published in the Diario Oficial via Decree Number 77, of the Ministry of National Defense on August 14, 1992.

<sup>6</sup> Adopted in Washington on November 14, 1997. The Instrument of Ratification was placed before the Secretary General of External Relations, published in the Diario Oficial on February 18, 2004.

<sup>7</sup> Adopted in Guatemala City on October 7, 1999. Put into force on February 28, 2006. Enacted through Decree number 49, of the Ministry of External Relations, published in the Official Diary on June 21, 2006.

It should be highlighted that in this case, the official position of the State of Chile is of complete contribution and commitment with the international security, which includes the subject of the transfer and trade of arms. As we all can see, Chile has assumed an active commitment within the control of trade and transferring of firearms, protected by continuous declarations from official State organizations. This commitment has been fulfilled, since the State of Chile has effectively issued the corresponding intelligence, communicating the arms trade as much with the ONU as with the OEA.<sup>8</sup>

The exportations of arms and material of belligerent use should be authorized by the Commission of the Exportation of Arms from the Ministry of Defense, which biannually receives from the Ministry of External Relations a list of countries that have restrictions against the purchase of armaments: also included are embargo resolutions for arms established by the United Nations. They also ratified the Additional Protocols I and II to the Geneva Convention, which consecrates the principles of prohibiting arms that cause malicious, superfluous, or unnecessary sufferings as well as arms that are incapable of distinguishing between combatants and civilians. These prohibitions are found consecrated furthermore in the International Consuetudinary Right with automatic Chilean legal incorporation and application.

This principle which consecrates the obligation of the States to consider the actual or probable use of arms before authorizing the transference is denominated "Principle of Finality" (it is consecrated in the Chilean standard through Article 37 of the complementary regulation of the Law of Arms Control.) Therefore, the departments of the General Assembly and the Supervising Authorities are able to demand the records in order to assess the relative necessities of the petitioners and the characteristics and final use of the operation at question, being able to negate, suspend, or condition the authorizations.

In other words, the criteria include the Principle of Precaution in relation to Humanitarian Rights. The 3<sup>rd</sup> principle definitively corresponds with the current international obligations contracted by the state of Chile, which form part of the internal Chilean right. This principle in some way is already foreseen in the legal system which would undoubtedly facilitate the acceptance and adoption of the ATT in Chile.

We can conclude in this setting that extensive regulation does not exist for the indicated factors of the 4<sup>th</sup> principle, for which the incorporation of this principle in the ATT project is a great progress. As the on-goings indicated can be assessed, the international assumed obligations by Chile, incorporated in internal order and therefore connected to the interior of the state, are entirely coincidental to the content from the aforementioned principle, which by definition would facilitate the ATT.

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8 See the Webpage of the Arms Registry of the United Nations at: [http://disarmament.un.org/UN\\_REGISTER.nsf](http://disarmament.un.org/UN_REGISTER.nsf) visited on September 23, 2007 and the webpage of the OEA at: <http://www.oas.org/csh/spanish/armasconvencionales.asp> visited on the same date.

Consequently, the state of Chile already complies with the Principle of Transparency and the promotion of confidence. Therefore, the established principle in the rough draft of the ATT corresponds to Chile's current international obligations, which once again, would facilitate the negotiation, adoption, and ratification of the ATT.

With respect to an ATT in Chile, there would not be content problems since the principles in this project are harmonious with the position that the country has maintained dealing with the control of arms, keeping in mind that it is disposed to a strong control and regulation on part of the State with respect to the trade and transfer of arms by private parties.

Although they still have not signed or ratified the *Protocol of the United Nations against the Manufacturing and Illicit Traffic of Firearms, pieces, components, and supplies*, which vigorously began on July 3, 2005, a group of parliamentary members has executed a formal request to the government that they proceed to begin the procedure of its ratification, which allows a favorable scenario, at least from the political perspective.

## Colombia

One of the essential characteristics of the Social State of Rights is the monopoly of the legal coercion of the State, which consists of *"exclusively restraining the means of coercion, with which it is guaranteed that the laws of rights are fulfilled by all the affiliates."* This characteristic is seen reflected in the principle of exclusiveness of the Public Force and in the monopoly of arms in the head of State, dispatched in articles 216 and 223 in the Constitution of 1991. Likewise, from article 223 of the Constitution of 1991 it is derived that the State has the monopoly over arms importation and the production: the government can introduce and manufacture arms, war supplies, and explosives. *No one will be able to possess them or carry them without permission of the qualified authority.*

In order to make the principle from the constitutional article 223 effective, according to which the State has the monopoly over the importation, production, and distribution of arms and supplies in Colombia, they can only complete transfers of arms through the Ministry of Defense and the Military Industry (INDUMIL).

The basis of an ATT is given and has been validated by regional, sub-regional, multilateral, and international instruments concerning this subject.

Colombia considers that this Treaty will have the possibility of being applied only if it includes all the points of view, interests, necessities, rights, and obligations of all those who participate in the chain of legal arms trades. This Treaty should give an account of the responsibilities of each of these parties to prevent the legal market from deviating to an illegal one.

One aspect that will improve the viability of an ATT is the consideration of the different forms of violence and insecurity that internally affect the nations. An Arms Trade Treaty cannot encumber the State to respond to the security necessities of its population and control of its territory. All of the States are subject to different manifestations of armed violence, be it rural, urban, ethnic, religious, political, social, economic, etc. Therefore, the ATT guarantees that the State can have access to the legal market of arms with the objective to confront these manifestations of violence in a legitimate way.

In the majority of cases it is illegal trafficking that causes the violations of Human Rights and the infractions from the International Humanitarian Right; thus, it is imperative that the Treaty consider maximizing the transfer controls to avoid this mortal trafficking and its terrible impact and humanitarian cost. All those controls that look to avoid the violations of the Human Rights should be applied in an objective way and under criteria in which the transparency and mechanisms of the exchange of information and consultation are a norm that guarantees its credibility, legitimacy, and therefore, effectiveness.

An Arms Trade Treaty should include an integral system to control the international movement of all conventional arms, supplies, explosives, and accompanying pieces, as well as other accompanying accessories. This should include the importation, exportation, transfers, trafficking, transportation, exchange, and brokerage or intervention of all conventional arms, such as: heavy arms, small arms, light arms, their pieces and components, their replacements and complementary accessories, supplies (explosives included), technology utilized to manufacture conventional arms, arms utilized for internal security, and other supplies of double usage that can be utilized for military, constabulary, or security means.

An ATT should favor the creation of clear national procedures to regulate the international transfer of arms; it should impede and combat illicit transfers of arms; it should include a mandate that respects the imposed embargos by the ONU; it should establish the mechanisms to impede the deviation of arms, supplies, and explosives to illegal armed groups or actors not affiliated with the state; it should prohibit transfers that infringe on legal obligations contracted by virtue of international rights and norms.

An ATT should prohibit transfers when convincing evidence exists about their negative effects with respect to the internal security of a State, or about its usage in crimes against humanity, or grave violations of the International Humanitarian Right or International Right of Human Rights.

It is necessary to balance this prohibition with the right to a legitimate defense of the consecrated Status in the Letter of the ONU and recognized by Resolution 61/89 for the responsibility of the States to provide security to its co-nationals in accord with the different conditions of violence that affect them.

An ATT should consider a chapter about the pacific solution of controversies in anticipation of specific situations; such as when a contract of selling and buying already exists and doubts emerge over the approbation of the transfer or import. It should establish through a precise way the applicable sanctions for the purchasing country to allow the deflection of arms to the illegal market when there are State agents involved. The States should be allowed to sanction, with appropriate measures according to its severity, the State agents that are found responsible for participating in illegal trafficking of arms and supplies.

The ATT should respect the existing criteria regarding pertinent international treaties and found in the International Consuetudinary Right, the International Humanitarian Right and the International Right of Human Rights, in the recognized principles of the ONU, and in the articles concerning the responsibility of the States by internationally illicit factors. The States are responsible for all the illicit transfers of arms within its jurisdiction and should regulate them.

An ATT would reaffirm the validity and application of the legal instruments ratified by the Colombian State that protect Human Rights as well as the Humanitarian Right. Upon establishing an international procedure that registers the transfers of conventional arms between States, it would be possible to calculate the percentage of arms that each State has, identifying which are the States that direct most of the armaments. That registration should be implemented in a responsible way under certain criteria so that it does not intervene in internal State issues, and would constitute a pertinent tool to offset the armed violence in Colombia. Therefore, it would allow the evaluation of aspects such as the correspondence between the percentage of arms acquired by each State and the reasonable necessities that they have for defense; the percentage of arms that are diverted from the paymasters (official agents and authorized individuals); where the diversions originate from and end up, etc.

Adopting strict controls within the framework of the ATT for the transference, importation, and exportation of conventional arms could align the political interests of countries in situations of internal armed conflict, like Colombia, with the interests of exporting countries of arms.

If strict controls are implemented in the framework of the ATT without the parallel adoption of sufficient and complementary measures to confront the illicit trade of arms, the ATT could bring an effect in Colombia contrary to the intention for such an instrument. In place of diminishing the proliferation of conventional arms and its improper use, through an indirect way it could lead to stimulate the illicit trade of arms. This situation would represent a foreseeable risk for all countries that adopt the ATT, but it would be greater for the countries that suffer a situation of internal armed conflict. By indirectly stimulating the illicit trafficking of arms it would sharpen the situation of internal armed conflict; which explains itself when taking into account that the illegal armed groups participating in the conflict are supplied arms in that way.

## **Ecuador**

The Political Constitution of Ecuador is in harmony with the principles that the ATT establishes. As a signing State of the CIFTA, the Republic of Ecuador has adequate standards for the parameters outlined by the Treaty as well as other instruments of universal and regional reach that are already active.

The first and principal advantage for the adoption process of the ATT is that the current legal arrangement does not contain any disposition contrary to any of the articles of the ATT initiative. The adoption of the ATT does not require any legal reform that makes it viable; it only lacks the political will in order to specify it.

The adoption process of the ATT guarantees a more precise and effective control in harmony with the valid laws in the country (in particular, with the Law of Manufacturing, Importation, Exportation, Commercialization, and Tenancy of Arms, Supplies, Explosives, and Accessories, and its Regulation).

The adoption of the ATT contributes to the concretion of the principles of International Rights and the fundamental rights that the Ecuadorian State is obliged to respect.

As an obstacle, the possible rejection or block of the proposal is observed via distinct sectors; particularly among the businesses that import arms and the conservative politics that may doubt the objective of the ATT as well as find the language in which it is redacted very specialized. Of course, this disadvantage can be overcome by recommendations about the diffusion of the ATT.

## Paraguay

Paraguay is considered a transitory country among the irregular transfer of arms closely tied to the image that situates it among the countries with the highest index of public corruption. This report unveils the necessity to generate a propitious political framework for the application of the principles of the ATT, based on the transparent and effective control of corruption.

One of the problems with applying the principles of the ATT is the relationship among inter-institutional sectors (public institutions, plaintiffs, and other parties) in the entire process of transferring arms: each developing practices and politics bypassing obstacles from their organic roles.

It would be agreeable then to foresee the possibility of conflicting scenarios behind the convergence of universal interests over commercial interests, scenarios of corruption, local and state bureaucracy, confusion of roles, functions and overhead competencies of which locally are still not completely legally harmonized.

The constitutional supremacy is recognized and determines an order of precedence, situating the international treaties approved and ratified in a hierarchal order, below the Constitution and above other sanctioned laws. The Arms Trade Treaty, according to the projected legal nature would remain integrated in this order with respect to the procedure of denunciation. The treaty's rank related to Human Rights would be compared – about the possibility of a denouncement – to a rank quasi-constitutional that should be done via a procedure of constitutional emendation.

The public and private institutions find themselves coordinating distinct strengths to implement multilateral agreements, signed previously and directly linked to the transfer of arms. This context can be embraced in order to transmit the principal rector of the ATT, and as an added strength, to accompany and influence the strengthening of the implementation of other treaties that transversely influence the objectives of controlling illicit arms trafficking and the protection of universal human rights. The following examples are cited: the Conventions of the fight against corruption and the Statute of Rome which establishes the International Penal Court.

Paraguay's legislation includes the management and maintenance of authorizations, registries, and international instruments each concerning arms transfers. Thus, within its legislation are at least twenty-five listed valid and registered instruments that can transversely influence concrete aspects to implement the ATT.

Identified authorities and institutions exist with the necessary roles to adequately accomplish the established local and international standards, among those indicated are: the Fiscal Agents specialized in the trafficking of arms; the Management of Belligerent Material (DIMABEL); the General Management of Customs; the National Police; and the Ministry of External Relations,

among others. Their organic laws allow for concrete participation in all of the proceedings for international arms transfers.

There are no definite time installments for each step in the process of internal approbation. Instead they should find strategies and parliamentary alliances; first for their daily inclusion, then in the treatment of the subject within the sessions, and lastly in the parliamentary lobby for each partisan "Bancada"<sup>9</sup> for the final approbations.

Meetings should be taken advantage of to debate the laws of the Paraguayan penal system to include clear types of penalties for persecutions of the gravest cases of arms trafficking. Furthermore, the legislative debate of the ATT should include the incorporation of new technologies in the international transfers of arms via electronic commerce (e-commerce).

Paraguay has reiterated its conviction to achieve a legally binding instrument, not only to guarantee the effectiveness of the objective but also to set an important precedent for following disputes over small and light arms that should be negotiated at the United Nations. However, it feels entirely committed to the resulting document.<sup>10</sup>

In general, the Principles of the ATT are in harmony with the active legal system and its process of debate will not be a problem of legal nature, rather of political will in the management for its effective application. This supplemented with issues of functional measures will continue to indicate and complicate the scenario of accomplishing these principles.

For the Paraguayan legal system to agree with these principles it will require political strategies that aim for the effective implementation of connecting the organic norms with the systemization of the internal practices according to the proposal of the ATT. It will also require proposed operatives or ways that should separate the available possibilities that are deduced from the same redaction of the Proposal of the Treaty as well as follow up measures for their effective accomplishment.

It would be convenient to implement a document that follows the entire process of the international transfers of arms through the meetings of involved institutions. According to its roles, each party could significantly articulate and identify their responsibilities, delimitate the competitions of each one of the institutions and establish a check list of prioritized, necessary operatives and of the knowledge of all the focal points. To know the transparent step by step process of the transfer of arms and the responsibilities of each institution in a harmonized

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<sup>9</sup> Bancadas or Political blocks: In both Chambers different groups conform to reunite legislators by party, affinity, and common interests.

<sup>10</sup> PARAGUY. National Report about the implementation of the Program of Action 2001 of the United Nations to Prevent, Combat, and Eliminate the Illicit Traffic of Small and Light Arms in All its Bearings of the period from 2001-2005. V. International and Nongovernmental Organizations, 3. Organization of the United Nations (III, 8;1,c,2a) Page 22.



language among the administrative, ballistic and penal military groups will give the necessary inter-institutional recognition for the implementation of the ATT.

The biggest challenge for Paraguay is its progress in the fight against corruption and of governmental transparency, both of which can directly affect the right application of the mechanisms of conduct and implementation of controls and their respective verification.

## **Perú**

The Peruvian State has demonstrated a favorable position toward the existence of strict controls for the transference of armament through the ratification of international instruments.

Governmental manifestations indicate the importance that an eventual ATT should be legally obligatory, comprehensive and ample, and include within the scope of its application all types of small arms, light arms, conventional armament, including the supplies for each different category of arms, its components, pieces, replacements, and other related materials. Notwithstanding, it should leave open the possibility to incorporate new modalities of materials of war in the future, as in the technology of double usage (civil and military).

The viability to solicit the authorization of all arms transfers is a policy that is fulfilled in Peru. In this case the Peruvian standard that regulates the international transfers of arms separate from arms of war has had a higher development than those that regulate the transfer of arms of war. The importation and exportation of arms separate to those of war is authorized by the Ministry of the Interior through the General Management of Control of Security Services, Control of Arms, Supplies and Explosives of Civil use, accruing the favorable opinion of the Combined Command of the Armed Forces.

From that perspective it is necessary to regulate the proceedings of the acquisition of armament on behalf of the Armed Forces away from a form that favors transparency. The established way allows for the rendition of checks every time one of the armed institutions determines its necessities of acquiring armament. They then transmit them before the Ministry of Defense, in its secretive military way, thus impeding the verification of the type and quantity of acquired arms.

The possession and use of arms of war is prohibited for the civilians in Peru. If the Peruvian Constitution is a good indicator, the law will regulate the production of arms of war on behalf of the private industry; such regulation has not been created because Peru does not currently count private production companies of arms of war. On the other side, the possession and use of arms separate from war ones is regulated by DISCAMEC, which issues licenses to those who fulfill the requisites by law.

Attempts should be implemented to include aspects such as the coverage and the elimination of the surplus of firearms according to the assumed international commitments by Peru. Notwithstanding, there is not a foreseeable indisposition to incorporate these activities within the ranks of control.

Currently, a base of centralized facts does not exist that figures all of the arms, supplies, and explosives that are imported or exported by Peru, but the support that the government has manifested does not observe this element as inconvenient. Contrarily, it would strengthen the control expectations that the State is seeking.

The specific captured limitations and the limitations based on the usage are also compatible with the international obligations contracted by Peru in the matter of Humanitarian International Rights and the International Right of Human Rights. Similarly, they are compatible with the assumed commitments by Peru as a member of the Organization of United Nations. However, to date such limitations have not been captured in a specific way as requisites for the transfer of arms under the Peruvian law for firearms.

With respect to the determining factors of the authorization of eventual transfer of arms, the Peruvian standard for firearms has not yet secured a clear way; however, they are compatible with the State politics to prevent and combat transnational crime and promote sustainable development through the reduction of armed violence.

Peru's position with respect to the approbation of an international treaty over the transfers of arms has been expressed through declarations of its representatives in international forums, such as is its opinion in respect to the Resolution 61/89 of the General Assembly of the United Nations. Such a position is generally favorable to the establishment of more strict controls with respect to the commercialization of armament that reaches the States.

Within the internal Peruvian State certain entities exist that have supported, in an open and decided way, the approbation of the ATT, such as the Ministry of External Relations, while others such as the Congress of the Republic have not shown interest in the subject, while others still have not openly expressed their support or opposition.

## Uruguay

Uruguay's national position, within a regional and international context, has been marked by a clear meridian that indicates a position of support for a treaty that regulates the international transfers of firearms, their parts, and supplies. Uruguay presents a high degree of acceptance and ratification of the national and regional instruments of Human Rights; the problems, however, generally derive from their implementation.

In Uruguay previous authorization is required by law in order to execute arm transfers. Such adequacy resides in the Ministry of National Defense in accord with the Decree 91/993 and the Decree 2605/943. It is based on the system of previous authorization where the Ministry of National Defense should always present authorization to the Department of Customs to perform operations with arms, or explosive parts and supplies.

The ATT establishes a tie between the control of transfers and the respect of Human Rights, Humanitarian Rights, and peace and sustainable development. Among the analyzed standard in force in the country it could not be seen that the control is crossed by considerations of such disposition. This may be the result of the antiquity of some norms that prioritize the bureaucratic administration by questions such as development, peace, or human rights. The fact that Uruguay has ratified the treaties indicates that it should be a fairly quick implementation.

The topic of control covers the fundamental importance of knowing the final destination of arm transfers: in Uruguay this aspect is considered by the current legislation. Without discounting the growing strengths of the State by measuring its work to international standards, one of the weak points for the implementation of the ATT is the structural development of public administration without sufficient resources being optimized or coordinated.

With respect to the creation of an International Registry of Transfers, as with the connection between national registries, Uruguay has vast experience in the subject of arms registration (created in 1945) brought forth by the Service of Material and Armament of the Ministry of National Defense. By means of the Decree 91/993, the "Warrants of authorization of importation of explosives, firearms, etc." should dispatch the list of arms, supplies, and explosives that in fact entered the country.

In Uruguay resistances do not exist towards the process of the arms trade treaty. The official position is to support and facilitate the process of searching for a regional block position (especially within MERCOSUR) that concludes:

- 1- *The necessity to strengthen the international cooperation and exchange of information in order to recognize the competent national authorities and the respective points of contact.*
- 2- *International arms transfers should not be authorized that violate the ordinances of treaties and international organisms even though some of the participating States are not part of them.*
- 3- *Adequate measures should be taken so that the authorized transactions do not generate damage to particular situations that present, in legitimate moments, the States of final destination or in transit of the arms, always requiring the previous consent from them.*
- 4- *No shipment of arms can be authorized to leave the exporting country without having the national authority previously assure that the respective authorizations have been extended by the countries in transit and the final destination by means of official licenses. The same law should be observed for the components that are exported for the assembly or manufacturing of arms in corresponding third party countries.*
- 5- *The necessity that it be legally binding; that it establish sanctions for those who are declared responsible for the violation of their precepts after an instance that guarantees the opportunity to express discharges and produce evidence.*
- 6- *The ordinances of the Treaty cannot be interpreted by a way that reduces or limits the right of the States to satisfy their necessary defenses without damaging the control over all the involved materials that the States have the right and obligation to carry. The decision to authorize or not a transaction is a sovereign right of the States that remains reserved within its nationals scope.*
- 7- *The necessity to adopt national measures that establish, through a concrete and determined form, single points of entrance and departure of the arms to the countries in a way to make viable the international control of the transfers and avoid the deviation toward illicit traffic.<sup>11</sup>*

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<sup>11</sup> Extracted from the first rough draft of the response to the General Secretary.

## **A.2 The objectives and criterion set out by the Arias Foundation for the present investigation:**

### **A.2.1. Objectives:**

#### **Objective of the Comparative Analysis**

To conduct a comparative analysis of the findings of the national investigations regarding the ATT.

#### **Specific Objectives:**

Systematize and compare the contributions that the national investigations set out with respect to the Global Principals of the ATT.

Identify and analyze the principal challenges that an instrument like the ATT could face in the region.

Define categories among the analyzed countries and the arguments for each category.

### **A.2.2. Criterion of the Investigations:**

#### **Analysis Criterion:**

To use a system of tables or matrixes in relation to each global principal of the ATT and elaborate the analysis of each principal and its specific details.

To define and explain the categories constructed from the studies on the countries of: Mexico, Colombia, Ecuador, Peru, Bolivia, Venezuela, Argentina, Uruguay, Paraguay, Chile and Brazil.

## **A.3 Methodology:**

It is a comparative theoretical/legal investigation whose main source of content comes from the national investigations and compares the applicability of the ATT in the following countries:

- |    |  |     |
|----|--|-----|
| 1. | Argentina: Dario Kosovski.                           | ARG |
| 2. | Bolivia: Juan José Lima Magne.                       | BOL |
| 3. | Brazil: Rebeca Pérez.                                | BRA |
| 4. | Chile: Gonzalo Aguilar Cavallo, Daniela Méndez Royo. | CHL |
| 5. | Colombia: Jimena Sierra.                             | COL |
| 6. | Ecuador: Xavier Flores Aguirre.                      | ECU |

7.	México: Without national report.	<b>MEX</b>
8.	Perú: Oscar Sandoval.	<b>PER</b>
9.	Paraguay: Yeny Villalba.	<b>PRY</b>
10.	Uruguay: Luis Pedernera.	<b>URY</b>
11.	Venezuela: Without national report.	<b>VEN</b>

For effective purposes, the indicated abbreviations are used in the comparative matrices.

In the end, the work of México and Venezuela are absent in the regional comparative analysis.

The report presents a referential scale constructed by categorizing the States of the study, as part of the measurement, over the indicators elaborated, based on the content of the ATT proposal. Each indicator is presented with a brief explanation of the criterion used in the comparative analysis.

Categorizing and measuring the applicability, from the 3 principal indicators that contain the harmonizing blocks necessary for the country, in the probability of the implementation of the Treaty.

- 1. Implementation**, everything that involves the structure and adjustment of the transparency of the registry and control, from the ratification or internalization of the legal instrument of the countries of study.
- 2. Authorization**, everything involving the system of verification with the international permission, the proliferation of arms.
- 3. Prohibition**, everything that is involved in the juridical framework, restrictions or non-authorization for the transfers.

Blocks for Analysis INDICATORS FOR IMPLEMENTATION	Articles referenced in the ATT Project	Subject
<b>Implementation of a minimum structure of control.</b>	<b>6 to 10</b>	<ul style="list-style-type: none"> <li>• Convention as a minimum standard.</li> <li>• Diffusion and acceptance of the terms of the definition of "arms," conforming to the Convention.</li> <li>• Establishing an International Registry of international arms transfers.</li> <li>• Each state will report in periodically.</li> <li>• From this registry, an annual international report will be published, as will other periodic reports, regarding the international transfer of arms.</li> <li>• A process of control and regulation open to the possibility of future agreements or additional Protocols.</li> </ul>
<b>Authorization, after verification of goals.</b>	<b>1 and 5</b>	<p>Definition on behalf of the States – in their internal law – of mechanisms and licenses, as well as circuits of efficient control of the transfer and emission of licenses.</p> <p>The pertinent requirements will be case by case.</p> <p>The sovereign States will authorize.</p>
<b>Prohibition, in the case of doubt or suspicion of use for serious violations of human rights.</b>	<b>2, 3 and 4</b>	<p>To limit and restrict the transfer of arms that are suspected to contribute to serious violations of Human Rights and International Humanitarian Law.</p> <p>There will be a presumption against the authorization.</p>

In this sense, such indicators are described for the measurement of applicability in the countries of the region, according to the following criteria:

## What do the reports presented by the local experts indicate regarding:

- **Implementation:** The international system of registry and state reports of monitoring the ATT; Articles 6, 7, 8, 9 and 10. Articles 7 and 8 establish a minimal framework of conceptual reference for the Member States, at the time of fulfillment and implementation.

### **Article 6.** [International measures]

1. Will establish an **International Registry of International Arms Transfers**.
2. Each collaborating country will present to the International Registry an annual report regarding the international transfers of arms from their territory, or through it or that require said country's authorization, according to the requirements of the Convention..
3. The International Registry **will publish an annual report and other periodic reports, regarding international arms transfers,** as is appropriate.

## PART 4

### **Article 7.** [Definitions]

For the purpose of this Convention, the term "arms" will refer to:

- i) All of the items presented on the list of ammunition in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies.
- ii) Small arms, including revolvers and automatic pistols, rifles and carbines, submachine guns, assault rifles and light machine guns.
- iii) Light arms, including heavy machine guns, grenades (hand and mounted), portable anti-aircraft cannons (sometimes mounted), portable anti-tank cannons, non-retracting rifles (sometimes mounted), portable systems of missile launchers and anti-tank rockets (sometimes mounted), portable systems of anti-aircraft missile launchers and mortars with less than 100 mm caliber.
- iv) Ammunition and explosives including cartridges (with bullets) for small arms and bullet shells and projectiles for light arms; mobile containers with projectiles or grenades for anti-aircraft and single shot anti-tank systems, anti-personal and anti-tank hand grenades; land mines and explosives.

### **Article 8.** [Relationship with other rules and instruments]

This Instrument will be applied as the minimum Standard without prejudice to any stricter rule, instrument or national, regional or international requirement.



## **Article 9.** [Protocols]

1. This Instrument can complement one or more protocols.
2. It will be required that the participation in any protocol of this Instrument will be open only to the Counterparts of the Instrument.
3. Counterparts in the Instrument will not be obliged to a protocol unless it becomes part of the Instrument, according to its clauses.

## **Article 10**

Sign, ratify and come into effect [...]¹

- **Authorization:** of transfers of arms and issuing of licenses: Articles 1 and 5 of the ATT.

### PART I

#### **Article 1.** [Authorization of the international transfer of arms]

Counterparts will adopt and apply the standard that all international arms transfers will be authorized through an issuing of licenses, in agreement with their laws and national procedures.

### PART III

#### **Article 5.** [National measures]

Counterparts will establish mechanisms of license and authorization under their national laws, if necessary, to guarantee that the demands of the Convention are applied effectively, in agreement with the established minimum standards ....

- **Prohibition:** To not authorize international transfers that violate other obligations underneath International Law, International Human Rights and International Humanitarian Law: Articles 2, 3 and 4.

### PART II

#### **Article 2.** [Expressed limitations]

Counterparts will not authorize an international transfer of arms that violates their obligations under international law. These obligations include those that result from, or are in agreement with:

- a. The United Nations Charter, including decisions of the Security Council of the United Nations.
- b. International treaties to which the Counterpart is obliged.

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<sup>1</sup> Extracted from PEREZ M. (2007). Toward an international treaty for the control of small and light weapons. A viewpoint from MERCOSUR. Viva Río – Swefor. P. 72-73.

- c. The ban on the use of arms that are incapable of distinguishing between combatants and civilians, or are of a nature that cause unnecessary wounds or suffering, and
- d. International customs law.

**Article 3.** [Limitations based on use]

Counterparts will not authorize international arms transfers in circumstances in which they have knowledge, or are reasonably thought to have knowledge, that it is likely that the arms that they are considering transferring are of the type:

- a. Used to violate the United Nations Charter or corresponding rules of international customs law, in particular those prohibiting the use of threats and force in international relations.
- b. Used to commit serious violations of human rights.
- c. Used to commit serious violations of international humanitarian rights applicable to armed conflicts, either international or non-international.
- d. Used to commit genocide or crimes against humanity.
- e. Diverted and used to commit any of the acts that are referenced in the previous sub-paragraphs of this Article.

**Article 4.** [Other considerations]

When considering authorization of any international arms transfer in agreement with Article 1 of this Instrument, the Counterparts will take into account if it is probable that the arms in consideration of being transferred will:

- a. Be used to facilitate violent crime.
- b. Harm political stability or regional security.
- c. Damage sustainable development.
- d. Be diverted and used in a manner opposite of the preceding sub-paragraphs.

And in these circumstances, it is assumed that authorization will be denied.

<b>B. COMPARATIVE ANALYSIS.</b>			
<b>B.1. COMPARATIVE MATRIXES FOR THE ANALYSIS OF COUNTRIES</b>			
<b>B.1.1 COMPARATIVE ANALYSIS MATRIX OF THE STUDIES DRAWN UP FOR THE IMPLEMENTATION OF THE ATT IN LATIN AMERICAN COUNTRIES.</b>			
	Indicator 1: IMPLEMENTATION – MINIMUM STRUCTURE FOR CONTROL. Art. 6 to 10	Indicator 2: POSITION OF INTERNAL SYSTEMS FOR CONTROL AND LEGAL SECURITY IN THE CURCUIITS OF AUTHORIZATION. Art. 1 & 5	Indicator 3: CAPACITY AND LEGAL SECURITY FOR PROHIBITION AND NONAUTHORIZATION Art. 2 to 4
	<p>Are there feasible results from the implementation of a registry or units of interstate controls?</p> <p>Local authorities will have the capacity and ability for the internalization of the rule that they install, staying current and in cooperation with the information regarding the records and advances in control over transfers that are harmful to human rights.</p> <p>It is a priority to install mechanisms of interstate coordination and maintenance of the international communication for control and the international registry.</p> <p>Is there reference to any factor, favorable or conflicting, in the political position of the state, in any pre-assessment over whether or not to join the ATT?</p>	<p>What typology do the studied states have regarding arms?</p> <p>International transfers of arms are considered as: 1-) products harmful to human rights or are considered 2-) products of economic activity.</p> <p>Valid controls are important on the basis of simple administrative regulations and taxes, or as a matter of dangerous products that harm human rights.</p> <p>Is there a real possibility of scenarios of corruption by administrative/business authorities?</p>	<p>Regarding the typology of "the product of international economic/ business exchange" or "tools used for violation of human rights" :</p> <p>Do internal regulations exist regarding the prohibition that are valid and that can represent an internal precedent for the prohibitions?</p> <p>Is there any reference to the behavior of a State when conducting international transfers that makes them especially vulnerable, as an actor in illegal operations?</p>

<b>B.1. COMPARATIVE MATRIXES FOR THE ANALYSIS OF COUNTRIES</b>			
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ARG	<p>The internalization of the regulation will place it at a rank of "quasi-constitutional."</p> <p>Current legislation exists in reference to the registry and exchange of information.</p> <p>STATE ACTORS: LEGISLATIVE POWER-NATIONAL CONGRESS.</p> <p>Transparency in the Matter of Armaments: Current Resolution 46/36 L regarding the Transparency in the Matter of Armaments established, in the year 1992, the Registry of Conventional Arms (UN).</p> <p>There is a current Joint Mechanism of the Registry of buyers and sellers of firearms, ammunition, explosives and other related materials. MERCOSUR (1998) (Decision 15/04 Memorandum of Understanding MERCOSUR. Exchange of Information (2004))</p> <p>The national position regarding the transfer of arms is in favor of the ATT.</p>	<p>Mixed typology: Of the economic perspective, but with restrictions.</p> <p>Initiative of transfers: in the category of LEGITIMATE COMMERCIAL USER (individual or corporation<sup>2</sup>)</p> <p>Control of the Circuit of authorization: THE STATE.</p> <p>The study shows that the referenced rules categorize the transfer of illicit arms within the State's responsibility, before the international system of the protection of human rights.</p> <p>INSTITUTIONAL ACTORS: RENAR<sup>3</sup>, FEDERAL ADMINISTRATION OF PUBLIC TAXES, CENTRAL CUSTOMS OFFICE, MINISTRY OF DEFENSE, ARMED FORCES (Import of Secret Military Materials.)</p> <p>The Directives of Wassenaar (1996) and UNPoa (2001) are important references.</p> <p>It will be necessary to know the scope of the ATT in regards to the conceptual management and control of "transfers."</p>	<p>There is abundant applicable legislation for Control.</p> <p>CIFTA: Obligated to have a political commitment of adopting methods more strict than earlier ones. Law Nº 25.449</p> <p>It includes the National Law on Arms and Explosives.</p> <p>Joint control between the Institute of Scientific and Technical Research of the Armed Forces (CITEFA) and Central Customs Office, Ministry of Defense.</p> <p>CERTIFICATION and PROHIBITION OF RE-EXPORTATION without previous authorization by RENAR.</p> <p>The National Commission of Export Control was created to control sensitive exports and military material, and is composed of the Ministry of Defense, Foreign and Economic Relations</p> <p>In this case, a representative of the Nuclear Regulatory Authority handles the cases of exports of Nuclear Technology and other dependent agencies whose functions are naturally determined.</p> <p>The sanctions of competence of RENAR: Temporary suspension of permits and authorizations, permanent withdrawal (only 5 years can pass before an entity can return to request reinstatement.)</p> <p>National Arms Law: art. 1.</p>

<sup>2</sup> The matter of the responsibility of the legal persons could be complicated by the tracking of those directly responsible in the irregular international operations.

<sup>3</sup> KOSOVSKI, D. (2007). ARIAS FOUNDATION. Internal Document: Viability of the application of an arms trade treaty regarding arms transfers in Argentina. Ref. available by RENAR 13/99

<b>B.1. COMPARATIVE MATRIXES FOR THE ANALYSIS OF COUNTRIES</b>			
<b>B.1.1 COMPARATIVE ANALYSIS MATRIX OF THE STUDIES DRAWN UP FOR THE IMPLEMENTATION OF THE ATT IN LATIN AMERICAN COUNTRIES.</b>			
BOL	<p>It does not have a special law.</p> <p>Administratively, the application of the "Regulations for the Import, Transport, Marketing and Use of Explosives, Arms and Ammunition" is the responsibility of the Ministry of Defense. Operationally, it is the responsibility of the Unit of Military Materials.</p> <p>There is mention of said regulation, from the Business Registry related to the Import, Storage, Marketing and Use of Explosives, Arms and Ammunition.</p> <p>Constitutional reform process.</p>	<p>Typology: instrument that violates human rights.</p> <p>The specifications to grant authorization of transfer are pointed out in the current Regulation of internal Bolivian control.</p> <p>The Ministry of Defense defines "the Benefit" of authorizing or not, the operation of arms, materialized in the granting of a certificate that should specify the operation.</p>	<p>Constitutional reform process.</p> <p>Currently conflicts exist due to an overlapping of functions between the National Police and the Armed Forces.</p> <p>The Penal Code does categorize the manufacturing, selling, or the possession of explosive or asphyxiating substances, but does not include the trafficking or possession of illegal arms.</p> <p>Exposure to danger for people is punishable.</p>
BRA	<p>The ATT proposal would be adopted without the necessity of introducing huge modifications in actual Brazilian national legislation, which already has current commitments regarding International Law that would easily assimilate an international treaty which regulates the transfer of arms at an international scale that includes clear aspects with respect to human rights and current International Law.</p> <p>Politically, the ATT appears favorable.</p>	<p>Mixed typology.</p> <p>Controls are defined in a commercial frame, and also question security and human rights.</p> <p>Currently, for arms transfers, previous authorization by the System of Foreign Commerce (SISCOMEX) is required, and in the case military transfers, the transfer would be held to the Diretrizes Gerais da Política Nacional de Exportação de Material de Emprego Militar (DG/PNEMEM)<sup>4</sup> (art. 177).</p> <p>Brazil applies the certificate of final destination in all international transfers, for import as well as in export and traffic.</p>	<p>The discrepancies between the national legislative framework regarding the sale and the possession of arms, ends up making the work of the traffickers and cross-border arms traffic easier.</p> <p>As a result, Brazil and its border countries should harmonize their national legislation on arms control in order to have an effective implementation of the principles of the ATT.</p> <p>For better control, it is especially important to consider the point of view that arms violate human rights.</p>

<sup>4</sup> The data from the PNEMEM regarding war materials are secret, which makes transparency difficult.

<b>B.1. COMPARATIVE MATRIXES FOR THE ANALYSIS OF COUNTRIES</b>		
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CHL	<p>International treaties have the nature of being "superlegal and infraconstitutional".</p> <p>Law N° 17798 regarding Arms Control, passed on the 13th of April, 1978 and modified the 10<sup>th</sup> of September, 2005, through Law 20.061.</p> <p>Additional Regulation: Decree N° 77, ratified by the ministry of Defense, 14 August, 1992.</p> <p>Regulates the importation, manufacturing, marketing, storage or distribution of arms.</p> <p>The overseeing entity is the Office of National Public Transport (DGMN).</p> <p>There are many international regulations regarding International Human Rights Law that are internalized in Chile.</p> <p>On the matter of the transparency of the acquisitions of conventional arms, Chile is a signatory of the Inter-American Convention and has, since 2006, published an annual report and has overseen an exchange of information on the imports and exports of conventional arms.</p> <p>There is abundant internalized international legislation on the matter of registry and mechanisms of arms control.</p>	<p>There is explicit reference to the ban on transfers for "individuals or legal entities" without authorization from a relevant authority.</p> <p>The Law on Arms Control, foresees a sanction of "the crime illegally possessing firearms", under the good ruling of "security of society."</p> <p>Likewise in the Law of State Security: Crimes of a Public Order (1975).</p> <p>Likewise, the law sanctions "the penalty of prison" for whoever deliberately sells ammunition or cartridges without telling the proper authorities.</p> <p>Also, incarceration in the cases of the sales of arms and to "manufacture, supply, convert, import, export or carry out conventions of arms without authorization..."</p> <p>Possibilities of sanctions: "Any person" with the exception of specific public institutions.</p> <p>The Office of National Public Transport (DGMN), has the function of reporting any transgression of the law to the legal authorities.</p> <p>Customs Law: the scope within the declaration of merchandise is not covered in customs code. It includes restrictions of auction-able and transferable merchandise, in virtue of that legally confiscated as contraband.</p> <p>Since 2004, the Convention has enforced the ban or restrictions of the use of certain conventional arms that can be considered excessively harmful or which have indiscriminate effects.</p>

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		<p>There exists an office of Special Policy in the Ministry of Foreign Relations in charge of lending consultation and enforcing national policies at a bilateral level or in multilateral forums, on disarmament, international security on scientific or technical matters, drug trafficking and narcotics, transnational organized crime, corruption of public figures, money laundering, human security, information society and particular themes of the global agenda, as linked between specialized national agencies and international entities.</p>	<p>It is applied through the Arms Law, the strictest control on Arms outside of the country, with the instrument that must concede: Certificate of Final Destination.</p> <p>There is experience with international coordination and application of the international and internalized regulations on the matter of sanctions of military personnel in violation of United Nations Resolutions on arms embargos to Croatia – and an effective international coordination for detecting arms smuggling.</p> <p>There is an Investigating Police Unit and an Investigative Unit of Organized Crime that depends on INTERPOL.</p> <p>Chile ratified Additional Protocols I and II to the Geneva Convention that established the principles on the ban of arms that cause grave wounds or unnecessary suffering and the ban on arms that are incapable of distinguishing between combatants and civilians.</p>
COL	<p>The official position of the State of Colombia is in favor of the ATT.</p> <p>The analysis of players and responsibilities in legal business and regarding the probability of diversion of the legal traffic of arms argues for the viability of the ATT and presents that it is necessary.</p>	<p>Typology of goods for security and national defense.</p> <p>Transfer only through INDUMIL: Ministry of Defense and Military Industry. This institution develops the general Governmental policy on importing, manufacturing and selling arms, ammunition, explosives and complementary elements.</p>	<p>Due to the armed internal conflict in Colombia, arms can be bought by an exceptional route/ bought directly/ without calling public elicitions or auctions– with the factor of immediate necessity. The law protects these exceptional routes of transfer as purchases for national security to be “of a confidential nature.”</p>

<b>B.1. COMPARATIVE MATRICES FOR THE ANALYSIS OF COUNTRIES</b>		
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<p>Likewise, it argues for the necessity to make an analysis of the types of violence and insecurity of the countries in relation to the humanitarian cost of the infractions and violations of control regulations.</p> <p>Legally, Colombia supports the validity of CIFTA, in relation to controls on importing countries, shipments of arms or related elements, with respective licenses or authorizations.</p> <p>The ATT will cover a Control of the Constitutional Court. Only the government can introduce and manufacture arms, ammunition of war and explosives. According to the finished study, the ATT adjusts to the Colombian Constitution and the Agreements of International Human Rights that they are subscribed to.</p> <p>The transfers are conducted under the control of INDUMIL. A registry exists of "affiliates" of Colombian citizens, foreign residents, and legal entity of private law in the Department of Control of the Commerce of Arms, Ammunition and Explosives. The authorization of this agency has validity for one year. This registry passes through the Ministry of Commerce, Industry and Tourism. There exists a current regulation on the matter of the control and restrictions of Final Destination of arms and their use: Certificate of Final Destination and Re-exports on the matter of transfer of conventional arms.</p>	<p>Fees are not imposed on arms used for national defense.</p> <p>The proliferation of arms is due to problems of control of individuals and the proliferation of private security groups.</p> <p>In the context of sociopolitical violence and serious manifestations of armed violence, systematic violations of human rights and international humanitarian law, the lack of compliance of instruments of Human Rights and International Humanitarian Law.</p> <p>According to reports by non profit and human rights organizations, the structures of paramilitary groups "are far from disappearing, instead, they are transforming and legalizing themselves."</p>	<p>For private sales, transfers are made with the approval of the Department of Foreign affairs in INDUMIL.</p> <p>The sanctions of conduct such as manufacturing, transferring, or carrying of firearms or ammunition without permission from the authorities, according to Law 599 of the year 2000: Carriers are incarcerated for 1 to 4 years.</p> <p>In the case of arms for private use by the armed forces, the traffic, manufacture and other types of use, sale of illegal arms for exclusive use of the armed forces, the penalty is incarceration for 3 to 10 years.</p> <p>Recommendations indicated in the State's Position are:</p> <ul style="list-style-type: none"> <li>• Create a comprehensive system of control for the cross-border movements of all conventional arms, parts, ammunition and explosives.</li> <li>• Favor the creation of clear national procedures that regulate transfers, and that impede and combat illegal transfers.</li> <li>• There should be bans on transfers when evidence exists of their negative effects with respect to internal security of the State or their use in crimes against humanity or serious violations of International Humanitarian Law or of International Human Rights, but they should realize a balance with the legitimate defense of the State.</li> </ul>



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	<p>Re-exportation is permitted, with the control of Customs and Communication of the General Commander of the Military Forces.</p> <p>The right of the use of arms by civilians is not covered in the constitution, nor is it legally equal to a human right, according to the Constitutional Court.</p> <p>There is considerable current legislation on the matter of the control of arms and internalized legal regulations that support the fundamentals of the ATT.</p> <p>Proposed in the study is the importance of the transparency of the registry, to control the correspondence between the percentage of the arms acquired by the State and those reasonably needed for their defense, for authorized persons and consignees.</p>		<ul style="list-style-type: none"> <li>It is interesting to note that the official proposal to make possible (particularly in the case of commercial controversies) a peaceful resolution of the controversies of situations with contracts of purchasing/selling of arms and develop doubts over the approval of the transfer or of import. Likewise, the question of sanctioning with "measures according to the gravity" of the state agents who participate in the trafficking. Nevertheless indicating in general that the States are responsible for all illegal transfers of arms under their jurisdiction and that these should be regulated.</li> <li>Help facilitate campaigns of voluntary civil disarmament and reduce proliferation.</li> </ul>
ECU	<p>Context of constitutional reform.</p> <p>The process of adopting the ATT is presented as legally feasible.</p> <p>The existence of "political will" is the most important factor indicated in the study in order to initiate and implement what is established in the ATT.</p>	<p>Typology regulated within the framework of public security.</p> <p>With the public premise of arms control: National Leadership on the Control of Arms <a href="http://www.controlarmas.gov.ec">www.controlarmas.gov.ec</a></p>	<p>The Ecuadorian Penal Code contains many relevant and diverse sanctions on the theme of arms control. Especially because they define behaviors that violate the laws of national security. Likewise, crime is categorized as "abuse of arms".</p>

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	<p>The is a Special Law for registry and certification: Law of Manufacture, Import, Export, Marketing and Ownership of Arms, Ammunition, Explosives and Accessories.</p> <p>Official Registry 311 of November 7<sup>th</sup> 1980 and Regulation from the Law on Manufacture, Import, Export, Marketing and Ownership of Arms, Ammunition, Explosives and Accessories. Currently: CIFTA and other laws, are ample and differing on the matter of the control of arms.</p>	<p>Businesses who import arms and conservative politicians may think that it is too technical, in virtue of the lack of knowledge of the purpose of the ATT and of the language in which it has been drawn up. This matter can be overcome with adequate dissemination and follow through. There exists a control on private security firms: "Regulation from the Constitution and Functioning of Private Security Firms." Executive Decree No. 2697, Published in the Official Registry No. 765 from the 9th of September, 1991.</p>	<p>Sanctioned in the reformatory Law, "Art. 31. – Those who manufacture, supply, acquire, steal, throw, use, transport or have firearms, ammunition, explosives, accessories or material destined for manufacture in violation of the norms of this Law, will be imprisoned for at least 3 to 6 years with a fine of 1000 to 5000 US dollars, notwithstanding fines related to the confiscation of firearms, ammunition, explosives, accessories, raw materials "<sup>5</sup>.</p>
MEX			
PER	<p>The State of Peru is politically and legally in favor of the implementation of the ATT.</p> <p>There exist enough rules on the matter of arms control, prevention and sanction of serious violation of human rights.</p> <p>Peru is obligated to conform to the regulations of CIFTA and has achieved reform advances on the matter of penalties for the transfer of arms or crimes connected to the illegal sale of arms.</p>	<p>There exists a constitutional classification that found its limits the moment that it was interpreted, since it covers a generic concept of "weapons of war" and "arms different from those of war", with exceptions like the weapons characteristically of war, but that are of civil use for reasons of security, named: "weapons of restricted use."</p> <p>The procedure for transfers, in general, runs through the Ministry of Defense, which approves the transfer of arms and military equipment through the Supreme Resolution on the Importation of war materials.</p>	<p>279<sup>6</sup>- of the Penal Code<sup>6</sup> categorizes the illegal traffic of arms, ammunition and explosives of war.</p> <p>According to this paragraph, anyone who dedicates him/herself to the illegal manufacture, import, export, transfer, marketing, trade, transport, ownership, concealment, usurpation, carrying or illegal use of arms, ammunition, explosives of war and other related materials, will be reprimanded with a penalty of imprisonment of no less than 10 and no more than 20 years.</p>

<sup>5</sup> Reformatory law to the Penal Code for the Law of Manufacturing, Importing, Exporting, Marketing, and Possession of Guns, Explosives, and Accessories.

<sup>6</sup> Law 26672, published October 20, 1996.

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	<p>The regulations that exist are current, diverse, very regulated and descriptive of the specifics of ballistic science, with the procedures and requirements for the sale and transfer according to customs, business and public and private security. This indicator can be a positive factor in some cases, but in others it can limit the new situations that present themselves in order to intervene through the controlling bodies or technological advancements that present new characteristics or hybrid elements in the composition of arms.</p> <p>The diversity of institutions and actors that intervene in the control and circuits or procedural guides can be an indicator of the necessity of greater control over the responsibilities and the monitoring of inter-institutional organizations at the moment of the application of the ATT.</p>	<p>In said Resolution, it is indicated that if the procedure of acquisition is fulfilled in a public manner or through the procedure of secret acquisition by the military, then the Joint Command of the Armed Forces does not issue directives regarding the acquisition of armaments, only regarding the use of military equipment. For their part, the suppliers of arms pay attention to the orders in agreement with the specifications of the army institution that solicits them.</p> <p>The report reveals that there are no specific rules that regulate the traffic of arms, ammunition, and other related materials through the territory of Peru destined towards other States. The only reference to transport of arms is found in the TUPA of the DICSAMEC, where it is shown that the issuing of guides of circulation for the transfer of arms and ammunition, different from those of war, are obtained by presenting an application that indicates the quantity, characteristics, license number and/or authorization to sell, place of origin and destination of the arms and/or ammunition, as well as the means of transport to be used.</p>
		<p>The penalty will be no less than 20 and no more than 35 years if the consequence of the use of the arms described in the previous paragraph cause the death or serious injury of a victim or of a third party<sup>7</sup>.</p> <p>The diversity of the rule would complicate the inter-institutional coordination to define the competency of the rules of administrative and commercial law and of penal matters.</p> <p>In the study of the countries of the region, it is the penal code that classifies and contains a better description and mention of the illegal activities on the matter of security and arms traffic.</p>

<sup>7</sup> Paragraphs incorporated according to the 6th Complementary Regulation to the Law 28627 published on May 22, 2005.

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		<p>In practice, to execute the operations of the transfer of arms of war and those not of war, there is a coordination between the Ministry of the Interior, the Ministry of Defense, the Ministry of Foreign Relations and the embassy of the corresponding State. On the other side, transporters of fire arms, ammunition and explosives are subject to the general regulation of the activity of transport within the national territory, regulated by the Ministry of Transportation and Communication.</p>	
PRY	<p>There is a specific Law for Arms: 1910/2000, There was a participatory process between civil society and the State for a reform that corresponds to the guiding principals of the ATT.</p> <p>Already in the evaluation of CICAD (2003-2004), regarding the system, Paraguay announced: <i>"The country does not have a central office for the organization, compilation and coordination of statistics and other information related to drugs" ... "the country does not have a formal mechanism to evaluate its capacity to compile data and confront difficulties linked to the lack of human and financial resources.</i></p>	<p>Mixed typology.</p> <p>Authorization is granted by The Office of the Director of War Materials: Law N° 1910/2002 and in regulatory Decree 3625/2004, special procedures for issuing licenses are established as: "The relevant authority for the registry and authorization of individuals or legal entities is DIMABEL – the Office of the Director of War Materials-a department of the Ministry of National Defense, is the focal point or representative for the coordination and authorization on behalf of the Executive Power, concentrating information on the necessity of a suitable/legal operative through a Legal Consultant, connected at the time with the General Director of Customs, the National Police and the Public Ministry.</p>	<p>The sanctions in the penal order are weak.</p> <p>Currently, the sanctions that are applied are of an administrative order.</p> <p>In certain penal investigations the relationship between the transport and ownership of illegal arms are investigated, in conjunction with other crimes connected with hijacking and aggravated assault.</p>

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URY	<p>The adoption of the ATT is politically favorable.</p> <p>The report refers to the importance of developing countries to be more interested in arranging global policies of control over the sale of arms and of the "buying of security."</p> <p>In the political presentation on the subject of the need for a Global Treaty of control of transfers, a common political position within MERCOSUR is sought.</p> <p>A diffused and inorganic political body, with the facility to approve at a local level, but is weak on implementation. There is no special framework of laws on the matter of arms.</p> <p>Uruguay has vast experience in the matter of registering arms (created in 1945), which is carried out by the Goods and Armaments Service of the Ministry of National Defense. Through Decree 91/993 on "Certificate of authorization of the import of explosives, fire arms, etc." must submit a listing of arms, ammunition and explosives that enter the country. (art. 4)</p>	<p>Officially, arms and the transfer of arms were identified as a matter of security, but of high economic importance and problematic in that they harm human rights and the right to develop.</p> <p>We see the replication of the problem of the privatization of security, as in the majority of the countries in the Region.</p> <p>The authorities responsible for issuing certificates and licenses for transfers are essentially the Ministry of National Defense, with favorable reports of the Goods and Armaments Service and Police Headquarters. Final authorization comes through the Ministry of Defense, conducted also by Customs.</p> <p>Decree 91/993: establishes faculties of the Ministry of Defense (Office of Logistics) that issue certificates of dispatch and discharge in agreement with the application of the interested party and the import certificate issued by the Goods and Armaments Service.</p> <p>Decree 2605/943: establishes that applications for export, re-shipping with destination to interior land and import will be determined by previous information from the Goods and Armaments Service and Police Headquarters of Montevideo.</p>
	<p>On the matter of penal sanctions, there is no knowledge of the discussion of incorporating the types of penalties linked to the transfer of arms and connected crimes into the process of modification of the penal code of Uruguay.</p> <p>On the matter of customs: sanctions do exist, but, in general, for customs crime such as contraband and others that indicate sanctions of a customs by nature and oversight of products/ sanctions by the customs agents commission of illegal acts.</p> <p>There is an Inter-ministerial Commission that functions as a National Authority that coordinates policies and investigations, as well as the tracking of the commitments of POA in order to prevent, combat and eliminate illegal small arms trafficking. Articulated by the Ministries of Foreign Relations, the Interior, Defense, Economics and Finance, &amp; Agriculture, Livestock and Fish.</p>	

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	<p>As a member of MERCOSUR, decision 7/98 that created a Joint Mechanism of Registry of the Buyers and Sellers of Fire Arms, incorporated by the database of the relevant organizations of the Member States, applies to Uruguay.</p>	<p>Final destination of arms that are under the auspices of the Goods and Armaments Service, according to Decree 114/998 that regulates their organization and functions.</p> <p>In the country's report, it is indicated that one of the risks that could weaken the implementation of the ATT is the lack of development of the structures of public administration with sufficient resources that are optimized and managed in a coordinated fashion. <i>Many times, there has been a flaw of public policy in Uruguay that reproduces similar structures in different areas of the state, generating overlapping of resources, forces, excessive bureaucracy and, at times, with certain "institutional racketeering." "...[...]. and a low level of technological development for control.</i></p>	
VEN			

B.1.2. MATRIX OF THE CURRENT SITUATION OF INTERNATIONAL INSTRUMENTS / LEGAL REFERENCE												
Situation of the analyzed states regarding the ratification of and adherence to international reference instruments.												
Instruments	ARG	BOL	BRA	CHL	COL	ECU	MEX	PER	PRY	URY	VEN	
<b>1. International Human Rights Law.</b>												
1.1. International Pact on Civil and Political Rights adopted in New York, December 16, 1966 and came into effect March 23, 1976.	✓	✓	✓	✓	✓	✓		✓	✓	✓		
1.2. International Pact on Economic, Social and Cultural Rights, December 16, 1966, came into effect on January 3, 1976 in agreement with Article 27.	✓	✓	✓	✓	✓	✓		✓	✓	✓		
1.3. Facultative protocol of the International Pact on Civil Political Rights. Approved by the United Nations General Assembly on December 16, 1966. Law 400 of August 26, 1994.	✓	✓		✓	✓	✓		✓	✓	✓		
1.4. United Nations Convention against Transnational Organized Crime – Palermo Agreement. Came into effect on September 29, 2003.	✓	✓	✓	✓	✓	✓		✓	✓	✓		
1.5. Protocol against the Manufacture and Illegal Traffic of Fire Arms, their parts, components and ammunition, which complements the United Nations Convention against Transnational Organized Crime.	✓		✓	✓		✓		✓		✓		
1.6. United Nations Program of Action to Prevent, Combat and Eliminate the Illegal Transfer of Small and Light Arms in all their aspects. United Nations Conference, July 9-20, 2001. UNPoA.	✓	✓	✓	✓	✓	✓		✓	✓	✓		
1.7. Wassenaar Agreement: Criteria for the control of possible excessive accumulations of conventional arms and Principles regarding Best Practices for the Control of Small and Light Arms Exports. Year: 1996.	✓											
1.8. Resolution 46/36 L regarding Armament Material, adopted in the year 1991 for the Registry of Conventional Arms.	✓			✓				✓	✓	✓		
1.9. United Nations Convention against Corruption. Approved by the General Assembly in 2003.	✓	✓	✓	✓	✓	✓		✓	✓	✓		
1.10. International Penal Court Statute – Rome. Valid since June 1, 2002.	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓

<b>2. International Humanitarian Law- IHR<sup>8</sup></b>													
2.1. Additional Protocols (I & II) of the Geneva Convention, August 12, 1949. Adopted in Geneva on June 8, 1977.													
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
2.2. Convention on Prohibitions and Restrictions of Use of Certain Conventional Arms that Can be Considered Excessively Harmful or which have Indiscriminate Effects. (& Protocols I, II & III).													
	✓	✓	✓									✓	✓
<b>3. International /Regional Organization of the American States</b>													
3.1. Inter-American Convention against the Manufacture and Transfer of Fire Arms, Ammunition, Explosives and Other Related Materials. Washington D.C., November, 14, 1997. (CIPTA)													
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3.2. Inter-American Convention on the Transparency in the Acquisition of Conventional Arms. Guatemala.													
✓												✓	✓
3.3. Inter-American Commission against the Abuse of Drugs. (CICAD).													
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3.4. Regulatory model of CICAD, that proposes bans, such as carrying out the brokering of arms that violate human right or international humanitarian law.													
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3.5. Inter-American Convention against Corruption.													
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
3.6. Declaration of Antigua, Guatemala of the Regional Conference for the Revision of the Achieved Progress by Latin America and the Caribbean in the Implementation of the Program of Action of the United Nations to Prevent, Combat and Eliminate Illegal Transfer of Small and Light Arms in all their Aspects.													
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

<sup>8</sup> Remembering the concept of International Humanitarian Law: Set of laws, either of conventional origin or customary, applicable in armed conflicts, international or not, for which it is denominated also "law of armed conflicts or war law." Its objective is to alleviate the suffering of victims, their protection and that of the essential needs for their survival, limiting the liberty of the contestants when it is time to select their methods and means of war. The situations and applicable IHL is: a) international armed conflicts; the four Geneva Conventions and the Additional Protocol I; b) internal armed conflicts: Article 3 in agreement with the four Conventions and the Additional Protocol II; c) Internal tensions and disturbances: Article 3 in agreement with the four Conventions and the irrevocable human rights according to the International Law of Human Rights. PEREZ DE ARMINO, K. Y OTROS. Humanitarian Action and Development Cooperation Dictionary. HEGOA – ICARIA. 2002. P. 158.



<b>4. International – Sub Regional</b>													
4.1. Additional Protocol of the Treaty of Asunción / Protocol of Ouro Preto. MERCOSUR.	✓		✓									✓	
4.2. Decision 07/98 of MERCOSUR, for a Joint Mechanism of Registry of Buyers and Sellers of Fire Arms, Ammunition, Explosives and Other Related Materials.	✓		✓									✓	
4.3. Memorandum of Understanding for the Exchange of Information regarding the Manufacture and Transfer of Fire Arms, Ammunition, Explosives and other related materials between the Member States of MERCOSUR.	✓		✓									✓	
4.4. Common Tariff of MERCOSUR.	✓		✓									✓	
4.5. Protocol relative to the Customs Code of MERCOSUR. Signed: Ouro Preto, December 16, 1994.	✓		✓									✓	
4.6. Protocol of Buenos Aires regarding International Jurisdiction on contractual matters. MERCOSUR.	✓		✓									✓	
4.7. Protocol of Mutual Legal Assistance in Penal Matters. MERCOSUR.	✓		✓									✓	
4.8. Agreed Framework on the cooperation in the Matter of Regional Security Between the Member States of MERCOSUR.	✓		✓									✓	
4.9. Andean Plan to Prevent, Combat and Eradicate the Illegal Transfer of Small and Light Arms. COMMUNITY OF ANDEAN NATIONS.		✓											
<b>5. Relevant Bilateral Agreements</b>													
5.1. Agreement to facilitate the control of illegal sales of arms between the Republic of Paraguay and the Federal Republic of Brazil.			✓									✓	
5.2. Establishment of Norms Regarding the Acquisition, Manufacture, Ownership, Transfer and All Legal Acts Related to Fire Arms, Gunpowder, Explosives and related aspects.			✓									✓	
5.3. Between Bolivia and Paraguay: Joint Communication between Ministries of Foreign Relations to Initiate Pending Negotiations to the subscription of Agreements to Combat the Transfer of Illegal Fire Arms and Regarding the Treatment of those Accused and Condemned of the Crime of Kidnapping. 2007.		✓										✓	



## B.2. SCALE

Scale of categories given to countries, according to the indicators elaborated, related to the current laws and their connections to the ATT: 1 to 5

**Category 5:** very high harmonization of rules. outstanding possibility to initiate the negotiations of approval. most complex process of harmonization, institutional coordination and functionality.

**Category 4:** high harmonization of rules. outstanding possibility to initiate the negotiations of approval and harmonization with current rules.

**Category 3:** medium harmonization of rules: country with a good probability of advancing to an adequate level of harmonization.

**Category 2:** low harmonization of rules: priority country for awareness raising actions.

**Category 1:** very low harmonization of rules: priority country for awareness raising actions.

Country		Indicator 1: IMPLEMENTATION – MINIMUM STRUCTURE FOR CONTROL/ FAVORABLE LEGAL SCENARIO AND INTERNAL POLITICAL SUPPORT.	Indicator 2: SITUATION OF INTERNAL SYSTEMS FOR THE CONTROL AND LEGAL SECURITY IN THE CIRCUITS OF AUTHORIZATION.	Indicator 3: CAPACITY AND LEGAL SECURITY TO PROHIBIT OR NOT AUTHORIZE.	TOTAL	CATEGORY
1	ARG	5	4	4	13	4
2	BOL	3	2	2	7	2
3	BRA	4	3	3	10	3
4	CHL	4	5	5	14	5
5	COL	3	1	1	5	1
6	ECU	3	2	2	7	2
7	MEX					
8	PER	3	2	2	7	2
9	PRY	3	2	2	7	2
10	URY	4	3	3	10	3
11	VEN					

Sum and relation to the possibilities of adoption or internal harmonization in reference to the ATT:

15-14: 5 State that has approved 100% of the total of the regulations of the reference base.

13-12: 4 State that has passed up to approximately 86% of the laws in the reference base.

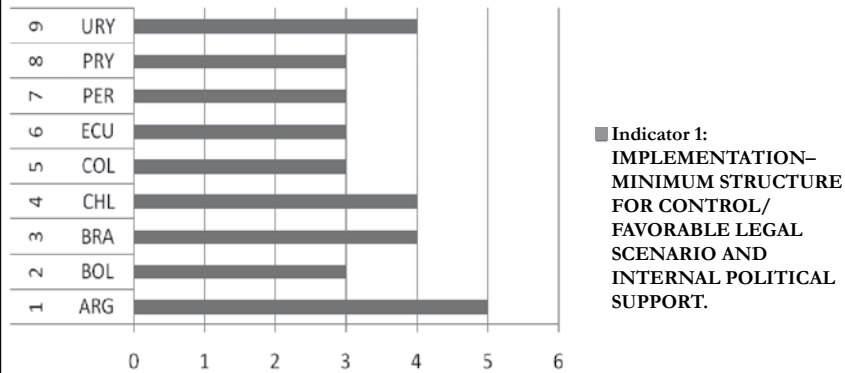
11-9: 3 State that has passed up to approximately 73% of the laws in the reference base.

8-7: 2 State that has passed up to approximately 50% of the laws in reference, internal policy is uncertain about the effective implementation of the ATT.

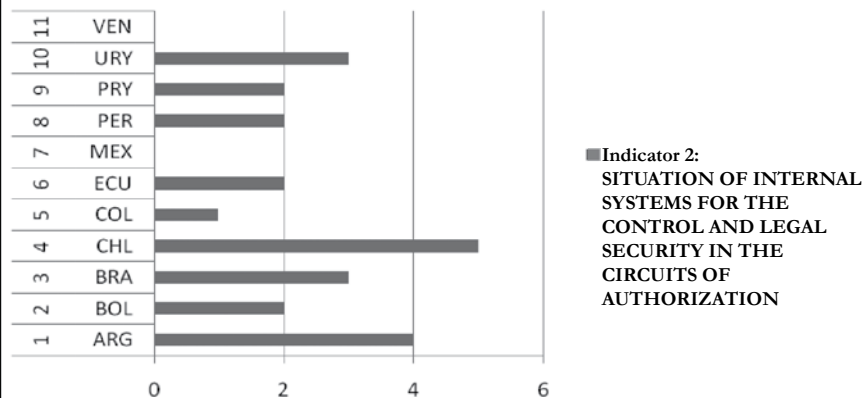
6-1: 1 State that has passed up to approximately 40% of the laws in reference, internal policy is adverse and resistant to the ATT, vulnerable and with intermittent focus on violence.

### B.3. RESULTS ON THE ELABORATED SCALE, IN GRAPHICS:

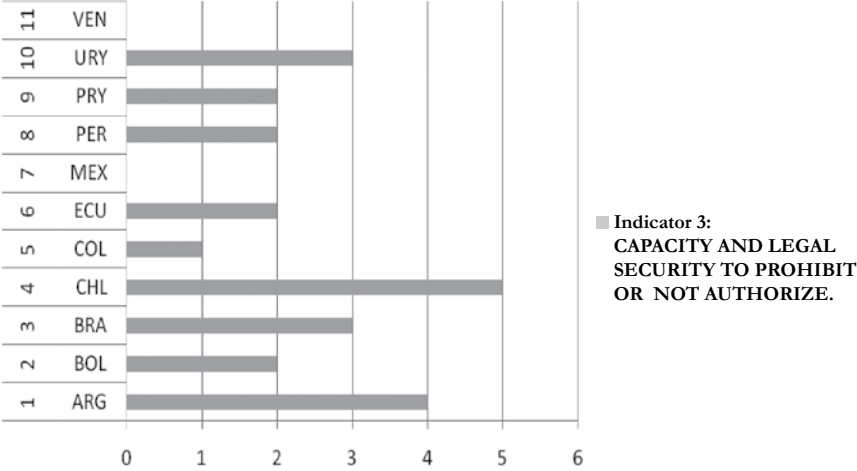
#### Indicator 1: IMPLEMENTATION – MINIMUM STRUCTURE FOR CONTROL/ FAVORABLE LEGAL SCENARIO AND INTERNAL POLITICAL SUPPORT.



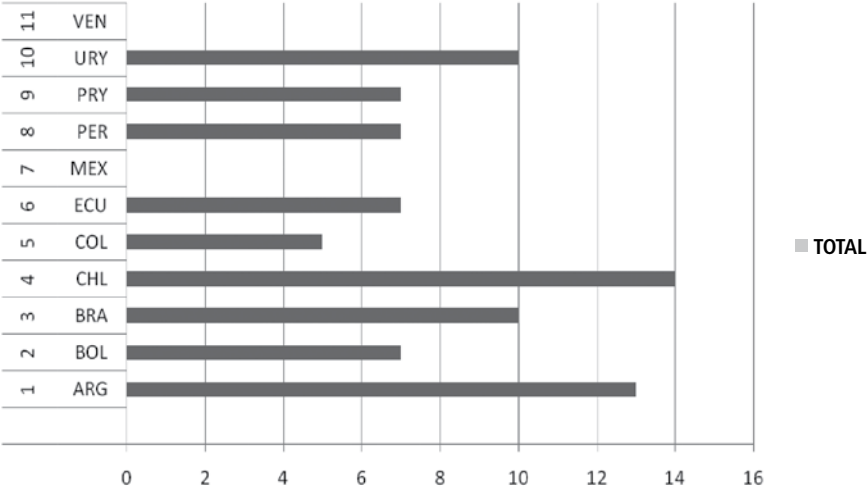
#### Indicator 2: SITUATION OF INTERNAL SYSTEMS FOR THE CONTROL AND LEGAL SECURITY IN THE CIRCUITS OF AUTHORIZATION

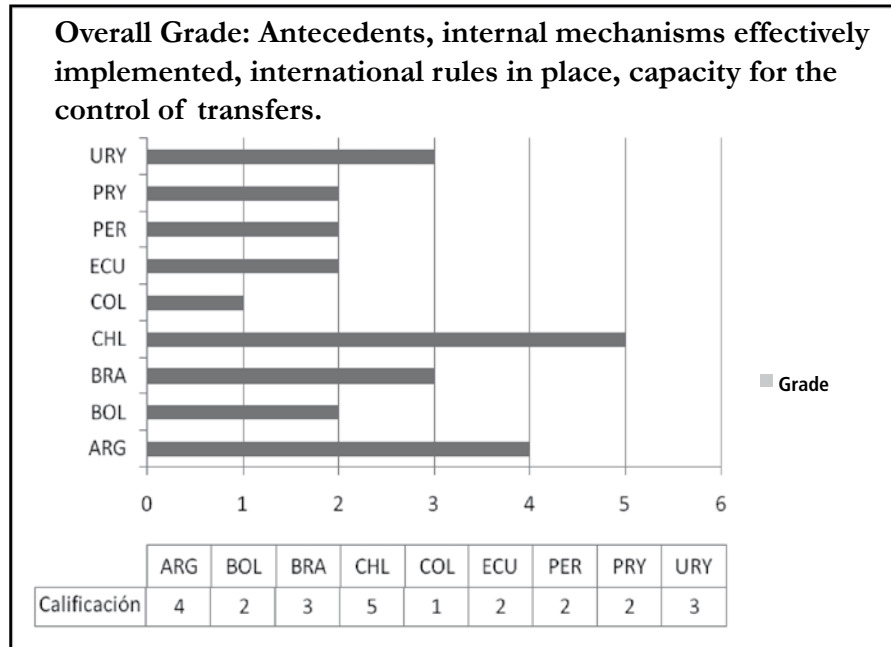


**Indicator 3:  
CAPACITY AND LEGAL SECURITY TO  
PROHIBIT OR NOT AUTHORIZE.**



**TOTAL**





Considering the principal aspects of analysis, it can be indicated that Chile has the best ranking regarding structures of internal control that would facilitate the implementation of the ATT. The lethal assumption is the opposition to the ratification of the Instrument on behalf of the conservative members of parliament, as was the experience with the CPI, and the opposition of members of parliament with conservative tendencies, justified by matters of sovereignty.

The second most qualified country is Argentina, which is the only country to have applied the Directives of Wassenaar, having the capacity of internal control and who, politically, has already presented their policy position as favorable to the approval of the ATT. On the other hand, Argentina is the third highest producer of arms in Latin America.

In the cases of Bolivia, Paraguay, Peru, and Ecuador, although they have already ratified the majority of the international instruments regarding arms control, the capacity for the control and internal coordination, overlapping of functions and with special laws dealing with arms control, they have reached a medium to low level for the completion of the coordination between the actors, or minor overlapping of functions of State actors that intervene in the circuit of control.

Bolivia has no special law dealing with arms; like Ecuador, they come up against a strong process of state reform.

Brazil and Uruguay have the same level, but other factors exist that have not undergone a very profound analysis; such as the dense population of Brazil, which would make, in practice, a complex internal control. The capacity of international lobbying in Brazil is high, as is the participation of social sectors in the analysis. Also, Brazil is one of the largest producers of arms in the region.

Colombia is an example of a high level of priority due to the complex sociopolitical crisis and vulnerability to violence.

Venezuela and Mexico, key countries within the region, have not presented reports.

### **C. SUMMARY OF RECOMMENDATIONS given by local experts:**

#### **Argentina:**

- ➔ Analyze the viability of the ATT through a transparent and inclusive process, promoted in conjunction with organizations from civil society, a common understanding. The rough draft of the ATT does not include any mention of the role of civil society, and should include, at least, a consulting role for civil society organizations.
- ➔ Define the term of transfers in a broad way with the effect of including activities of export, import, intermediation, transfer and transport of conventional arms in the State territory.
- ➔ Include all possible intervening actors in international operations.
- ➔ Promote the proposal of the ATT to the Legislative Powers.
- ➔ Cover transfers between governments (for armed forces and/or security forces); between governments and individuals, and between individuals, with the goal of avoiding any type of transaction being out of reach of control of the ATT.
- ➔ Ratify criteria for the authorization of transfers.
- ➔ Establish a democratically elected authority that applies the ATT.
- ➔ Foresee the need for a quick mechanism of consultation for organizations of the United Nations and/or regional organizations for the background check on the situation of the country of destination of materials (at least once a year.)

- ➔ Plan the creation or appointment of an Application Authority or a specific entity for the interpretation of the Treaty in cases where it may be necessary: either for the tracking of the compliance of the national and international methods to be adopted by the signatories; or for the differences in criteria of two parts with respect to the text of the Treaty for its concrete application. Another suggestion is to include the appointment of an entity, at least with faculties of supervision and control over the questions relating to the Treaty.
- ➔ Create spaces for work and debate that involve whoever would be the Application Authority at the national level, in case of the approval of the ATT. They will contribute to the debate and will facilitate its future implementation.

**Bolivia:**

- ➔ To advocate for the processes of legal reform at an internal State level and in the unresolved ratifications of international rules of reference and that complement the ATT initiative.
- ➔ To realize a campaign, led by civil society, on the problem of the black market for arms that transcends the exclusive focus on armed political groups.

**Brazil:**

- ➔ Take Brazil as a producing/exporting country as a example to follow for other producing countries that have skepticism over the process on account of the impact that the ATT could have on their countries on a military, economic and political scale.
- ➔ Harmonize their national legislation on arms control for an effective implementation of the principles of the ATT.
- ➔ It would be desirable that the rest of the countries will also facilitate access to these materials, legal documents through -for example- updated web pages.
- ➔ The countries of MERCOSUR should agree on a common list of candidates to enter and join as part of the Group of Governmental Experts who will draw up the ATT proposal, which should develop in 2008.

**Chile:**

- ➔ To concretely establish in the treaty what would specifically be the common rules or the common system of control that the States must respect.
- ➔ Recommend the signature and ratification of the Protocol against the Manufacture and the Illegal Transfer of Firearms, their parts, components and ammunition, which came



into affect in July, 2005, as a necessary component to the implementation of the ATT.

- ➔ To organize a frank and open dialogue, with an international technical consultancy, in the form of rounds of consultants and of information at a political level, with the goal of trying to convince or dissolve any fear that might exist regarding the eventual ratification and incorporation of the Internal Law of the Statute of Rome, for which the International Penal Court has been created.
- ➔ Carry out local or regional seminars explaining the principles that are contained in the ATT. Since the proposed document does not contain an exhaustive development process, also like a strategy of awareness directed towards governmental and political authorities regarding the necessity of adopting the ATT and of incorporating the principles and rules of internal legal ordinance.

### **Colombia:**

- ➔ To consider the adoption and application within a sociopolitical context and national policies already adopted regarding arms control.
- ➔ To adopt sufficient and complementarily measures directed to counteracting the illegal transfer of arms, parallel to the implementation of controls regarding the transfer, import and export of conventional arms.
- ➔ To keep in mind the possible indirect consequence of the implementation of very strict controls regarding the transfer of arms in the framework of the ATT.
- ➔ To adopt methods that are necessary, to guarantee the respect for the immanent right of legitimate defense of all States consigned to Article 51 of the UN Charter, and to establish an equilibrium between said right and the general obligations of the States to respect and guarantee human rights.
- ➔ To create a mechanism closely attached to the system of the United Nations, that guarantees impartiality and objectivity in the evaluation of the conditions to apply restrictions on the transfer of arms, as in the cases where a State has breached international agreements, where there exists serious violations of human rights, or that presents other similar situations that merits such restrictions.
- ➔ To avoid the use of restrictions regarding transfers of arms, like an instrument of political control or a mechanism of coercion for some States against others, that violates the ban on the interference in the internal matters of States and their sovereignty.

- ➔ To incorporate into the ATT methods that prohibit signatory states from adopting internal policies that upset the principal intention of the treaty. To establish expressed regulations in the framework on the instrument that obliges the States to maintain coherence between the adoptions of internal policies regarding arms control and the objectives of the ATT.
- ➔ To adopt methods complementary to the framework of the ATT oriented to restrict the regulation of arms for individuals.
- ➔ To draw up the ATT and promote it as an inclusive multilateral instrument, to guarantee its effective adoption and application, and that in consequence, takes into consideration the particulars of the situation of armed violence that are present in certain countries like Colombia.
- ➔ To promote a process of consultancy with civil society, under the conditions that guarantee their real and timely participation.
- ➔ To favor security policies that avoid the use of civilians in intelligence activities and territorial control and that disregard the official work of patrol and vigilance of individuals, in order to strengthen the monopoly of the use of arms in the head of State and slow the proliferation of arms into the hands of non-state agents, as a bid to set the appropriate implementation of the ATT.
- ➔ To take into account the proposed recommendations in the document presented by certain representatives of civil society to the Committee of National Coordination for the prevention, combat and eradication of the illegal small and light arms trade, regarding the parameters of a project of a broad and legally relevant instrument that establishes international rules for the import, export and transfer of conventional arms.
- ➔ To call on States to strengthen integral campaigns of civic disarmament with the intention of providing educational value to the legally binding plans, to collect the arms that are in circulation and reduce proliferation.
- ➔ Implement campaigns of voluntary disarmament. This is an opportunity for the treaty to regulate and establish measures and clear procedures of collection, storage and final disposal of arms.
- ➔ Develop processes of collection of arms that are already in circulation and prevent their recirculation. These processes will contribute to an increased credibility among the states.

- ➔ Create an authority that serves as a guarantee for the future control of arms in a coercive manner and projects that help reduce the demand, ranging from education to the conciliation of common delinquent groups.
- ➔ Clearly establish a series of conditions that the States should comply with that examine any type of international conventional arms transfer. By means of this coding of the responsibilities contracted by the States in virtue of international law, the transactions authorized by governments can be distinguished clearly from illicit traffic, and in this manner, regulate themselves in an effective way. This will help to avoid irresponsible transfers of conventional arms, the diversion of those arms to the “parallel market” and the constant misuse of the arms that come from it.
- ➔ Include an integral system of control of cross-border movement of conventional arms, ammunition, related parts, technologies and material. This should cover the import, export, transfers, traffic, transportation, shipment and brokering or intermediation of all conventional arms.
- ➔ Consider the necessity of balancing the ban of the legitimate right of defense consecrated in the Charter and recognized by the Resolution 61/89 and develop clear legal instances that prevent the un-authorized application of this ban in detriment to the efforts in the provision of security for the people on behalf of States affected by complex situations of armed violence.
- ➔ Consider a chapter on the peaceful resolution of controversies for the precaution of specific situations, such as when there already exists a contract for the buying and selling of arms and doubts arise regarding the approval of transfers. They should establish, in a strict manner, the sanctions applicable to the purchasing country that permits the diversion of arms to the illegal market when there are agents of the State involved in it, and hold the States accountable to sanction with measures according to their seriousness, to the States that are found responsible in participating in the illegal transfer of arms and ammunition.

#### **Ecuador:**

- ➔ Diffuse the ATT amongst professionals and academics; politicians and business owners; and the general public.
- ➔ Create training courses and informational workshops that are open to the public, print publications and broadcast radio programs with conversations with key actors to promote the adoption of the ATT.

- ➔ Coordinate the work of organizations in civil society that put pressure, in a reasonable and persistent manner, towards the adoption of the ATT.

**Paraguay:**

- ➔ Present the necessity of the approval of the ATT in international reports of other international treaties on human rights, previously signed and in which the State is obliged to fulfill, especially in the regional and sub-regional territories. This makes it possible to make the public actors aware of the importance and the specification of this new legally binding Treaty, a document that presents an opportunity for specific local and transnational needs, and that will strengthen all of the legal system in their general approach.
- ➔ Make the most of the context of the fight against public corruption and include the principal institutional actors in the international transfer of arms in this context.
- ➔ Develop an agenda of group training between the institutional focal points, as it will be an opportunity to construct in a participative manner a functional and comprehensive map of the process of international arms transfers.
- ➔ Regarding the assumption that the findings of the state agents at the same level of participation can achieve an instrument of concrete joint action could generate not only institutional recognition, but also the valuation of personal involvement of each one of the agents in the process of group works.
- ➔ A concretely elaborated instrument would be able to become an inter-institutional operating/practical manual for the control and investigation of cases of international arms transfers, in an intermediate language between the different entities, militaries, legal administrators, customs agents and law enforcement agencies. Furthermore, this would be a concrete instrument of work, a joint process of exchange of experience and knowledge.
- ➔ Take advantage of the meetings to debate the laws of the Paraguayan legal system to include type of penalties that are clearer for the prosecution of the worst cases of arms trafficking.
- ➔ Include in the debate on the ATT, the incorporation of new technologies in international arms transfers: electronic commerce ("e-commerce"); especially with electronic purchases through the government and public contracts, to identify restrictions regarding arms sales to civilians and to clearly identify the restrictions for the procedures through these new technologies.

- ➔ Take advantage of and recover the content of the tax reports of importing businesses and their financial reports, and of the expenses as required by law to the public institutions, as a source of alternative control and sharing of information in the international registry, as well as those legally established in the special arms legislation.
- ➔ Accompany those from civil society to the State, so that it is reflected in the international reports, the real advances and difficulties regarding the concrete political and financial impossibilities.
- ➔ Find methods of awareness raising and circulating the systematic experiences in the entire process of the public debate to achieve the approval and implementation of the ATT with public support.

### **Peru:**

- ➔ Identify the internal classifications of arms so that the scope is clear regarding the determination of the final legal system for application.
- ➔ Regulate the internal procedure for the acquisition of armaments so that it favors transparency and the surrender of accounts, especially for the control of demands and acquisitions of arms.
- ➔ Verify the rules and penalties for the possession and sale of illegal firearms, the prohibition on the sale of banned arms and the illegal intermediation on the matter of firearms, surplus of firearms, etc.
- ➔ Centralize the internal information through a centralized database that contains all arms, ammunition and explosives that are imported or exported. This can be through the same internal organization that is specifically in charge of the control of these imports and exports.
- ➔ Adjust the definition of “firearm” in internal legislation to be in agreement with the ATT.
- ➔ Carry out awareness raising campaigns regarding the subject of armed violence, as well as the circulation of proposals contained in the ATT, principally at the level of the Government employees, who in the end properly understand the advantages that could be gained through the approval of the Treaty.

## **D. Final Conclusions**

What stands out the most in the comparative study is without a doubt the clear and favorable position the countries in the region maintain for the application of a legally binding model of the International Treaty of International Human Rights Law for the effective control over arms trade.

The optimistic political and legal position within the region for the approval of the ATT will provide important support in the international system and have a presence in the strategies for securing the ratifications by the States.

Uniformity among active and controlled criteria exists, as does certain and concretely established roles for Parliament and civil society organizations.

Some of the most significant and original contributions are:

- An instrument of human rights protection and the necessity of debating the main scenario of political resistance that could be found in the approach of the right to legitimate defense.
- The consideration of a chapter on the peaceful solution of controversies, in prevention of specific situations; like when there already exists a contract of buying and selling arms, but doubts over the transfer's approval then arise.
- Alternative controls through tax systems, public sale, and use of information technologies, such as web pages where transfers are controlled.
- The necessity of regulation and foresight of the new typologies of transfers, such as international operations through e-commerce.
- Foresight into the creation or appointment of an Application Authority or a specific entity for the interpretation of the Treaty.

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