NEAR EAST UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF LAW
MASTER'S PROGRAM

MASTER'S THESIS

THE ARMS TRADE TREATY 2013: SCOPE OF THE PROHIBITIONS OF CONVENTIONAL ARMS, AMMUNITIONS, PARTS, AND COMPONENTS TRANSFER

Farman Saeed SEDEEQ

NICOSIA
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PREPARED BY
Farman Saeed SEDEEQ
20135369

Supervisor
Asst. Prof. Dr Resat Volkan GUNEL

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Thesis Defence

Thesis Title: The Arms Trade Treaty 2013: Scope Of the Prohibitions of Conventional Arms, Ammunitions, Parts, and Components Transfer

We certify the thesis is satisfactory for the award of degree of Master of Law

Prepared By: Farman Saeed Sedeeq

Examining Committee in charge

Asst. Prof. Dr. Reşat Volkan Günel	**Near East University** **Thesis Supervisor** **Head of Law Department**
Dr. Tutku Tugyan	**Near East University** **Law Department**
….……	**Near East University** **…… Department**

Approval of the Graduate School of Social Sciences
Assoc. Prof. Dr. MUSTAFA SAĞSAN
Acting Director

ABSTRACT

This paper examines the scope of the prohibitions of the conventional arms, ammunitions, parts and components transfer. The Arms Trade Treaty 2013 and prohibitions of the conventional arms transfer were used as a base upon which analysis of the conventional arms ammunitions, parts and components transfer can be made. Detailed analysis has revealed that these laws are limited to the international scale and do not incorporate domestic conflicts and arms control policies and laws. As a result, this has hampered efforts to curb effects of violence and conflicts. Further details showed that economic powerhouses known as the P5 and major arms exporters play a significant role towards efforts to eliminate conflicts and promote peace and security. It was also established that members of government and official responsible for conventional arms monitoring are exploiting loopholes in laws in order to profit themselves. It was noted small and light arms incidents are on the rise and are threatening efforts to eradicate violence. Recommendations of this paper advocate for change in and strict enforcement of stipulated laws and full cooperation from dominant parties around the world.

Keywords: international law, Law of Treaties, Humanitarian Law, Arms Trade Treaty, Genocide, War Crimes, Grave Breaches of Geneva Conventions.

DECLARATION

I hereby declare that this master's thesis titled as *"The Arms Trade Treaty 2013: Scope of the Prohibitions of Conventional Arms, Ammunitions, Parts, and Components Transfer"* has been written by myself in accordance with the academic rules and ethical conduct. I also declare that all the materials benefited in this thesis consist of the mentioned resources in the reference list. I verify all these with my honour.

… /…. / 2016

Farman Saeed SEDEQ

DEDICATION

To all free nations whose courageous endeavor and fight against terror and dark forces, and the brave Peshmarga forces, they have always stated that;

"It's an honor that we are fighting against the most violent terrorist group on behalf of humanity."

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Farman Saeed SEDEEQ

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ABBREVIATIONS

AE	----	Arms Embargoes
AP I	----	Additional Protocol I of 1977
ATT	----	Arms Trade Treaty 2013
AU	----	African Unity
CAAPC	----	Conventional Arms, Ammunitions, Parts and Components
CAH	----	Crimes against Humanity
CCM	----	Convention on Cluster Munitions
CCW	----	Certain Conventional Weapons
CIL	----	Customary International Law
CO	----	Civilian Object
CPPCG	----	Convention on the Prevention and Punishment of the Crime of Genocide
ECCC	----	Extraordinary Chambers in the Courts of Cambodia
EU	----	European Union
GC	----	Geneva Conventions of 1949
GC I	----	First Geneva Convention of 1949
GC II	----	Second Geneva Convention of 1949
GC III	----	Third Geneva Convention of 1949
GC IV	----	Forth Geneva Convention of 1949
ICC	----	International Criminal Court
ICJ	----	International Court of Justice
ICTY	----	International Criminal Tribunals for the Former Yugoslavia
IHL	----	International Humanitarian Law

IHRL	----	International Human Rights Law
LAS	----	League of Arab States
MO	----	Military Objective
POW	----	Prisoners of War
SALW	----	Small Arms and Light Weapons
SC	----	Security Council
SCSL	----	Subsequently the Special Court for Sierra Leone
SIL	----	Sources of International Law
UN	----	United Nations
UK	----	United Kingdom
UNITA	----	The National Union for the Total Independence of Angola
US	----	United States
VCLT	----	Vienna Convention on the treaties of 1969
WCS	----	War Crimes

Introduction

There is escalating news worldwide about the weapons damages such as rocket-propelled grenades mortars, drones, and military aircraft. A significant part of this damage has been witnessed to befall on civilians. The damage that has caused by weapons has been contended to be enormous, and this can be evidenced by the situation in Iraq, Syria, Afghanistan, Libya, Yemen, Ukraine and Nigeria which has notably caused a significant migrant problem in Europe.

International leaders and organizations such as the UN have diverged in understanding about the need to deal with the problem being caused by the use of illicit arms. Among these problems are the escalating number of civilians who are falling victims to conflicts and the use of illicit arms.

Though CAAPC is a legitimate tool of achieving national security and defense goals they are also fostering instability, international tensions, cause substantial environmental damages, promoting the violation of international rights and fuels organized crimes. It can be noted that global arms conventions have greatly changed, and this has posed serious implications on United Nations' security and peace objectives. According to the Small Arms Survey (2011), the number of reported gun-related incidents has soared, and major reasons point to loopholes in CAAPC control policies and laws. International organizations such as the UN have advocated that peace and security objectives can only be attained if the currently prevailing CAAPC transfer policies are ratified.

International laws and the IHL's scope widened to incorporate elements that are being deemed to be of significant importance in eradicating violence and armed conflicts. One of the angles the ATT is being applauded on is the ability to influence of local governments' ability to monitor weapons. As such in most cases this has made it difficult to access illicit arms on the black market. The inability to monitor weapons has been said to be the prime cause and proliferation of armed conflicts. Evidence by the Small Arms Survey suggests that high levels of conflicts are aggravated by the inability of parties responsible for monitoring and controlling arms movement and usage to execute their mandate. Furthermore, domestic, regional and international peace and security initiatives will remain threatened if there is no call to

stop officials from exploiting loopholes in arms control and monitoring laws, policies, and initiatives.

The debate about the effectiveness of the CAAPC transfer is still debatable, and no consensus has been reached, and this has been a stumbling to efforts to promote peace and security worldwide. Arguments can be imposed about how CAAPC transfer can be effective when major arms exporters are reluctant to have the ATT implemented. Thus, it can be argued that the CAAPC transfer will be ineffective so long as the ATT implementation remained just an idea on paper. Consequently, it can be noted that the ratification or amendment of the CAAPC transfer may not yield desired results when the dominant parties or parties that serve as a source arms are reluctant to participate and cooperate. On the contrary, suggestions may advocate that the CAAPC transfer policies be amended and oblige these dominant parties to limit arms export and restrict them to be bought by certain States or individuals.

The issue of human rights and civilian protection and environmental management is still a crucial matter to reckon on. Human rights can be safeguarded, civilians can be protected, and the environmental can be properly managed against disasters emanating from the use of illicit arms. Recommendations can be therefore be made to have the CAAPC transfer policies and other human rights or civilians related laws modified and strictly imposed, and to limit the effects of armed conflicts, harsh penalties imposed on offenders.

Questions, therefore, remain about what the ATT is and if any other laws can be used or imposed to augment the ATT and if the scope of the ATT should be are sufficiently wide enough to encompass major changes and current peace and security elements that are being witnessed around the world.

Despite all these problems currently bewildering the world, imposed international laws have significantly endeavored to eradicate these problems. One of these enacted laws the ATT. This paper examines the scope of the prohibition of CAAPC transfer by looking at the ATT.

CHAPTER ONE: INTERNATIONAL LAW, LAW OF TREATIES AND INTERNATIONAL HUMANITARIAN LAW

1.1 International Law

1.1.1 The concept of international law

The concept of international law is the rules governing relations between sovereign states, meaning it's any law concerning the rights and responsibilities of States, according to the traditional doctrine (Al-Attiyah, 2001). But the Objective theory considers that the individual, as in any other laws, is the only subject of the international law (Alkotaivi, 1970).

The modern opinion of the scholars of international law is that any international law is the set of legal rules that controls relations in sovereign States themselves and between them and international organizations and structures and international Unions or between international organizations. These legal rules are mainly governing international relations in various Activities, such as political, cultural, social, economic, military..., etc. therefore considered States and international organizations a member in the international community and the central subjects in the international community subjects (Janis, 1991).

These legal rules when they are comprehensive and the general rule in international relations among all sovereign states, as well as for international organizations and other subjects of international law, without exception, then, this law constitutes what is called (general principles of international law).

Recent trends of the opinion of the International law scholars consider the state as the main subject of the international law and then, these legal rules can be called 'Public International Law' (Al-Sarhan, 1969).

The public international law is not different from other legal aspects that have been recognized by the majority of states and international organizations, Which included in its composition the main SIL and in the forefront, international treaties,

international custom, the general principles of the law, judicial decisions plus the teachings of the highly qualified publicists of international law and the rules of justice and equity (Hamdy, 2010).

The importance of the public international law in the field of implementation emerged after the emergence of important international organizations after World War II such as the United Nations, the EU, the LAS and the African Unity and other regional and global international organizations.

1.1.2 Definition of Public International Law

The definition of the public international law passed thru several stages, and still no clear definition of public international law. Therefore, so many definitions emerged According to ideological trends and Jurisprudence Doctrines (McKeever, 2006). According to the traditional doctrine the state is the only subject of the international law, and the Objective doctrine, individual is the only subject of the international law (Abu Heif, 1975).

However, since the mid-twentieth century, the traditional definition has become controversial due to both the expansion of the scope of the Public International Law into new areas and the emergence of new actors, beside States, on the international scene, such as international organizations, multinational corporations, individuals and groups, including minorities and indigenous peoples. Some of these actors have acquired an international legal personality, or, at least, certain rights according to International Law (Abdulrahim, n.d.).

In light of this we can define the public international law as; set of legal rules governing the relations among subjects of the public international law, whether they are states or international organizations, and sometimes individuals and define the rights and duties of each and every one of them (Alkotaivi, 1970).

1.1.3 Sources of international law

The most known reliable statement on the SIL is Article 38 of the Statute of the ICJ, which divided the sources into two parts:

1- Formal Sources: These include treaties, whether general or particular, international custom plus general principles of law accepted by civilized nations, these sources are direct sources for the establishment of international legal norms.
2- Subsidiary sources: judicial decisions and the teachings of the highly able publicists of the various nations, but those sources are not via themselves international law when coupled with evidence of international custom or generalized principles of law; they may assist to prove the existence of a particular rule of international law. (Al-Attiyah, 2001).

The problem of law-making in international law is that international community lacks a supreme authority such as the one that can be found in a State. Therefore, the international community is organized in a different way. This basic feature makes the law-making in international law much more complicated and much different from the domestic laws

1.2 Treaties and their importance

Treaties (sometimes called agreements, conventions and exchanges of notes or protocols) are the principle source of international rights and obligations among all sources and have a binding force in the application and implementation. It can be considered that these sources established the rules of public international law, and made the legal provisions clearer for States, This has effectively contributed to the creation of the way of understanding and dialogue among nations and to follow diplomatic to avoid the problems and international conflicts and wars (Sultan, 1968).

Great efforts have been made through international conferences and conventions and agreements to codify rules concerning international law according to its formal and subsidiary sources. And the prime achievement was the Law of Treaties, it is the outcome of the Vienna Convention on 23 May 1969, and entered into force on 27

January 1980 when the UN general secretary announced its implementation (Aust, 2006).

1.2.1 Definition of Treaties

A Treaty is an agreement between two or more subjects of the international law aimed to build specific legal effects (Ghanem, 1961).

While VCLT (1969) explain treaties as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more similar instruments and whatever its particular classification." (art. 2(a))

1.2.2 Classification of Treaties

Treaties could be divided into several categories, entails significant results in clarifying its role as the origin of international law, according to its parties, treaties could be divided to bilateral treaties and multilateral treaties. The conclusion of bilateral treaties is between two states but for multilateral treaties, there have to be more than two parties (Al-Attiyah, 2001). There is another division of the treaties according to its legal functions between treaty- law and treaty- contract or so-called ‘law-making treaties’ (*traités lois*) and ‘contractual treaties’ (*traités-contrats*)

Treaty- contract: The treaty as a contract may be defined as being agreements between relatively few States can only create a particular obligation between the signatories, an obligation that is capable of fulfillment. For example, an agreement between France, Germany and the UK to develop and build a new fighter jet, Euro-fighter (Al-Attiyah, 2001).

Treaty- law: The treaty as a source of law or law-making treaties create obligations that can continue as law, for example, an agreement between 100 States to outlaw the use of torture (Abu Heif, 1975).

1.2.3 Conclusion of Treaties

Treaties are international legal agreements that are ordinarily concluded in writing between States or other subjects of international law regulating their mutual relations. The fast development of international relations in the last decades has led to an explosion of treaties, in both bilateral and multilateral division. Accordingly, treaties have become the most important source of international law, and they occupy a high position in the international community as regards the relations between States.

The conclusion of treaties comprises a number of steps:

1.2.3.1 Negotiation

Negotiation is a way to swap views and opinions and consultations between representatives of two or more states with a view to understanding and the unification of views on various features of the treaty in terms of content and the form and venue and Signature. Negotiations could be administered in-person interviews or informal meetings or in the international conference drawing together representatives of specific parties. Negotiations in often brought out by international ministers themselves or delegates of the negotiating States or Heads of State and an example of the latter case the meeting between the leaders of government of the US, the UK and the Soviet Union in Yalta Conference, seldom called the Crimea Conference in February 1945 concerning the formation of the International Organization in the aftermath of WW II (Hamdy, 2010).

Representative must provide authorization or full power documents, which are no more than a document produced as evidence that the person named in it is authorized to represent his state in performing certain acts, concerning conclusion of a treaty, in particular, its signature (Aust, 2000). Sometimes it seems from the practice of the States or, from other circumstances that their intention was to regard that person as representing the State for such matters and to dispense with full powers, according to VCLT (1969, art. 7(1)(b))

VCLT (1969) states that heads of both states and governments, foreign ministers, Heads of diplomatic missions, and Representatives accredited by States to an

international conference or an international organization or one of its organs are considered to be the representative of the state without providing full powers documents (art. 7(2)).

1.2.3.2 Adoption of the text and signing

The formal act by which the shape and content of a suggested treaty text instituted are called adoption. As a general rule, adoption of the text of a treaty takes place by the expression of the approval of the states participating in the process of treaty-making. Treaties that are negotiated within an international organization will usually adopt by a resolution of a representative organ of the same organization. Also, a treaty can be adopted through an international conference that has specifically been held for establishing up the treaty, by a vote of two-thirds of the states present and voting, except, if they have voted to implement a different rule by the same majority (UN Treaty Collection, n.d.).

The parties have to agree to specify the language to be used in the writing and adoption of the treaty. If the parties are speaking one language, in this case, it does not show any difficulty (as the case with the treaties concluded between the Arab countries). If the parties speak several different languages, the selecting of the language will be as follows:

a) Adopt the text in one language of the choice of the parties;
b) Adopting the text in two or more languages according to the agreement and giving preference to one of them in the case of disputes; or
c) Adopting the text of the treaty in all of participating States languages, this technique may lead to many problems for the treaty interpretation (Al-Daqqaq, 1983).

For instance, The UN Charter was adopted in five languages (English, Chinese, French, Spanish, and Russian) and provided in Article 111 that all five texts are equally authentic.

1.2.3.3 Ratification of a Treaty

Treaties do not enter into force at the time of their conclusion, but they need the ratification process according to the national law of each country which could be by the Head of State or by the Parliament, or by both to give official sanction or approval to the treaty (Sultan, 1968).

Ratification represents the international act whereby a state symbolizes its approval to be tied by a treaty if the parties intended to exhibit their approval by such an act. In the matter of mutual treaties, ratification is usually completed by switching the necessary instruments, while in the matter of multilateral treaties the common procedure is for the depositary to assemble the ramifications of all states, having all parties informed of the condition. The institution of ratification gives states the necessary time-frame to seek the necessary approval for the treaty on the domestic level and to pass the necessary law to grant domestic impact to that treaty (VCLT, 1969, arts. 2 (1) (b), 14 (1) and 16).

1.2.3.4 Registration

UN Charter has provided in Article 102 and Article 17 of the LAS Charter and Article 80 of the VCLT that every Treaty have to be registered in the designated official body for the possibility to refer to it by the Organizing State and by other countries, especially in the case of disputes (Alwan, 2009).

1.2.3.5 Entry into Force

Usually, the requirements of the treaty set the date on which the treaty enters into force. If the treaty does not indicate a date, there is a hypothesis that the treaty is aimed to come into force as soon as all the negotiating states have approved to be bound by the treaty. Bilateral treaties can provide for their entry into force on a specific date. In cases where multilateral treaties are involved, it is common to grant a fixed number of states to declare their approval for entry into force. Some treaties provide for extra conditions to be satisfied, e.g., by specifying that a certain group of

states must be among the consenters. The treaty may also grant an extra time to elapse after the required number of countries has declared their consent or the conditions have been satisfied. A treaty enters into force for those states that gave the required approval. A treaty may also provide that, upon specific conditions having been met, it shall come into force provisionally according to VCLT (1969, art. 24; UN Treaty Collection, n.d.).

1.2.4 Reservation

Reservation is a statement made by a state, it intent to disbar or modify the legal consequence of certain provisions of the treaty in their implementation to that state. A reservation permits a state to acquire a multilateral treaty as a whole by giving it the potential not to apply specific provisions with which it does not want to comply (VCLT, 1969, art. 2(1)(d)). Reservations could be made while the treaty is endorsed, ratified, received, approved or acceded to. Reservations should be compatible with the purpose and the object of the treaty. Furthermore, a treaty might prevent reservations or allow only for certain reservations to be made (UN Treaty Collection, n.d.).

1.2.5 Application of Treaties

In principle, treaties do not apply except between the parties nor have effects only in confronting them, whether the effects are rights or obligations (VCLT, 1969, art. 34; Almana, 2005). Therefore imposes a framework for the actions and the rules of behavior do not go beyond the Contracting States among them. Hence, we find that effects of the treaties are binding for those accepted to be bound by it and a sublime on the other domestic legislation, this has been confirmed by the VCLT (Article 34), so the states respect the treaties concluded because it is one of the fundamental principles of international law.

In exceptional circumstances, a treaty could provide for obligation for third States if they expressly accept that obligation in writing to be bound by the treaty. A treaty may also provide for rights for the third State, some States or to all States if the third

States assent to it, their assent may be presumed (VCLT, 1969, arts. 35,36). An example of a treaty giving rights for all States is Montreux Convention of 1936, providing for the navigation freedom on the Turkish Straits.

1.2.6 Invalidity of Treaties

The efficacy of a treaty or the approval to be bound by a treaty may be impeached. Inconsistency erases legal effects of the treaty. The reasons which will lead to invalidity of treaties include, apparent non-compliance with domestic law of major importance, regarding competence to conclude treaties or omission of restrictions of power of a State representative, if the other negotiating States were aware of the limitation, or error, if concerned to the fact or case that was assumed by a State to exist at the moment when the treaty did conclude and formed an essential basis of its consent to be bound by the treaty, or fraudulent conduct of another bargaining State, or exploitation of a representative of a State (VCLT, 1969, arts. 46-50).

A treaty is automatically invalid if the declaration of a State's approval to be obligated by a treaty has been obtained by the force of its representative within acts or threats aimed toward him or its conclusion has been reached through the threat or use of force in breach of the principles of international law embodied in the UN Charter, or it conflicts with a peremptory norm of general international law at the time of its conclusion (VCLT, 1969, arts. 51-53).

1.2.7 Termination of Treaties

The termination of a treaty may take place in accordance with its provisions or by the approval of all the parties to that treaty (VCLT, 1969, art. 54). Also, a treaty terminates if all of the parties to it conclude a new treaty retelling to the same subject matter.

In exceptional situations, a treaty may terminate as a consequence of its material violation by one of the parties. Seldom because of the supervening difficulty of enforcement resulting from the constant disappearance or destruction of an object

necessary for the execution of the treaty (VCLT, 1969, arts. 60-61), as well as in a case of a fundamental change of conditions existing at the time of the outcome of the treaty provided the existence of those conditions constitute a fundamental basis of the approval of the parties to be bound by the treaty. However, the fundamental change of conditions cannot be invoked to terminate a treaty establishing a boundary or if the radical change is the result of a breach of an obligation (Alwan, 2003).

1.3 The International Humanitarian Law

The IHL is a branch of international law that which for humanitarian reasons seeks to limit violence and or the effects of armed conflict (Santiago, 1979). The IHL has its roots from the Hugh Conventions of 1899 and 1907, and the GC and the Additional Protocols of 1977 whose prime interest is to harbor victims of armed conflict (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013). The IHL and AP I place a difference amid non-international and International armed conflict. Based on the GC and the Protocols of 1977, the effects of armed conflict can be minimized by;

- Excluding individuals who do not take part in hostilities such as civilians or who have seized to have a direct influence in hostilities such as POW, the wounded and sick.
- Limiting the effects of conflicts and the potential threats of the enemy and long term damages to the environment.

As a result, the IHL is based on five basic principles and these are;

- The principle of proportionality

  It asserts that even if there is an obvious military target, it may be hit only if the risk of civilians or civilian property is being harmed or civilians are being killed. That is, the risk does not outweigh the expected military advantage. The number of the wounded or dead among the civilian population must not be significantly higher than the military advantage.
- The principle of necessity

Regulate the methods and means of warfare. This includes restrictions on the capacity for destruction, the choice of weapons and the means of waging war. That is, what can be attacked, which weapons can be used, which precautions musty be taken to reduce the number of casualties or civilians

- Prohibitions of unnecessary suffering

  The IHL prohibits unnecessary suffering and injury. It also covers militants who may be lawfully attacked.
- Prohibiting the attack of those hors de combat

  Protecting those not affiliating in hostile activities and these include adversaries who have surrendered adversaries who have been captured and adversaries who are injured or sick.
- Distinction between combatants and civilians

  Requires that, there be a clear cut between combats and civilians and that, MOs can be attacked and not COs.

The fundamental concepts of *Ius in Bello* and I*us ad Bellum* play a significant role in separating International Law from International Humanitarian Law. IHL came at a time when international relations approved the use of force but prohibited States from waging war *(Ius ad Bellum).* International law prohibits coercive action, but IHL regards the use of force necessary when the sole aim is self-defense. The IHL is thus a compliment to the International Law as it contends that both victims irrespective of the side of the conflict are entitled to a humanitarian action. It is required that the obligations of the IHL be observed independently of *Ius ad Bellum* and as a result not compromise self-defense. The IHL places a clear cut between International armed conflict and non-international armed conflict. Thus, it is assumed that International armed conflict is when the state of war is not recognized by either party involved in a conflict while the non-international armed conflict is based on internal matters of the State.

1.3.1 Limitations of the IHL

The IHL has been criticized on the following bases;

- It is complex because it incorporates rules and laws that vary with instruments, context, and concerned legal issues.
- Its inability to protect all victims of armed conflict or violence
- It assumes that the motives of conflicting parties are rational
- It does not influence one party's influence on the enemy and does not take into account of internal issues or conflicts.
- Its failure to separate issues according to the purpose of the conflict.

The extent to which States have complied with the stipulations of the IHL is subjective. This follows a series of violations of the IHL. The number of civilians who have fallen victims to war keeps on rising whenever war-related issues emerge. Moreover, the use of hazardous weapons still continues to take place around the world (Wexler, 2013).

CHAPTER TWO: THE ARMS TRADE TREATY-2013 (ATT)

2.1 Definition

The Arms Trade Treaty-2013 (ATT) can be defined as a legal and enforced multilateral agreement that stipulates standards and conditions under which international trade of conventional weapons can be undertaken so as to curb illicit arms trade. According to the UN General Assembly of 27th of March 2013 on the ATT, the ATT is a recall to Article 26 of the Charter of the UN whose main thrust is to aggravate the prevalence and preservation of international peace and security (ATT, 2013, preamble; Arms Control Association, 2013).

2.2 Scope

The underlining of the ATT is centered on curbing and eradicating illicit trade and diversion of CAAPC to illicit markets which may resultantly give rise to unauthorized ends use of illicit arms and promotion of terrorist activities. The scope of the ATT is thus restricted or limited to international trade of conventional weapons, and henceforth it does not incorporate quantity and type of weapons traded. The ATT does not impact domestic arms policies and control laws. In other words, the ATT is not synonymous or equal to an arms control treaty. The ATT recognizes prevailing and legitimate interest of Nations on both commercial and economic, political and security spheres. It further acknowledges that human rights, security, and peace are the main values that interlink and reinforce the UN's pillars of security, peace, and human rights development. It also reaffirms that any State has sovereign rights to regulate CAAPC and adopt its own legal framework within its national boundaries (Sears, 2012). The main objectives of the ATT are;

- To protect civilians by taking the necessary humanitarian action. The ATT emphasizes that women and children at large are more vulnerable to armed conflict and violence and hence the need to protect them.

- To encourage other international organizations and States to contribute by assisting in implementing the Treaty thereby promoting peace by reducing potential hazards that are associated with the illicit use of CAAPC.
- To advocate for detailed scrutiny of any arms deal to determine if the concerned buyer is not aimed at spearheading crimes against humanities, genocides, and WCS.
- To prevent organized criminal groups and terrorist from acquiring weapons and executing any deal that contradicts with the UN Arms Embargo by establishing common standards for which arms components, weapon parts, and ammunition can be traded (Sears, 2012).

Article 2(1) of the ATT is composed of the following attributes;

- Warships Shielded combat vehicles
- Combat tanks
- Big caliber artillery systems
- Attack helicopters
- SALW
- Weapons and missiles launchers
- Big caliber artillery systems

2.3 Requirements of the ATT

- States are required to do a detailed assessment to determine if there is a probability that the exported arms would hamper peace and security efforts, facilitate and commit atrocities, conflicts and violence or promoting terrorism. If so, the concerned state must take actions to avoid such risks (ATT, 2013, art. 7).
- Weapons that fall under the UN Register of Conventional Arms must be strongly monitored when being traded. The ATT regulates armored combat tanks and vehicles, attack helicopters, SALW, missiles and missile launchers and naval warships.

- It is further required that effective ammunition fired or delivered control system be established to regulate the export of ammunition.
- States are obliged to implement measures to control brokerage of CAAPC stipulated under Article 2(1).
- States are also required to implement measures that curb the abuse of CAAPC stipulated under Article 2(1).
- States are also mandated to present authorized import and export details of CAAPC stipulated under Article 2(1) but may not disclose classified national security information.

The above explanations can be summed into 18 Articles, and these Articles are the ones that make up the ATT. These 18 Articles are;

- Article 1: Object and purpose
- Article 2: Scope
- Article 3: Ammunition/ Munitions
- Article 4: Parts and Components
- Article 5: General Implementation
- Article 6: Prohibitions
- Article 7: Export and Export Assessment
- Article 8: Import
- Article 9: Transit or trans-shipment
- Article 10: Brokering
- Article 11: Diversion
- Article 12: Record Keeping
- Article 13: Reporting
- Article 14: Enforcement
- Article 15: International Cooperation
- Article 16: International Assistance
- Article 17: Conference of State Parties
- Article 18: Secretariat

2.4 Limitations of the ATT

Despite the establishment of guidelines for international arms trade and the SIPRI Arms Transfer Database that documents all legal arms trade since the period 1950, the ATT has been surrounded with numerous shortfalls. Foremost, it is not everyone who supports the treaty, China, Russia and the US are contended to have opposed the implementation of the March 2013 ATT. This was assumed that these nations and Germany significantly influence arms trade by accounting for at least 70% of the global share of arms exports (Annesteus, 2012). Thus, for the effectiveness of the ATT requires full cooperation and commitment of these major arms exporters.

It does not regulate domestic arms policies. As a result, more cases of illegal arms deal are emanating from domestic economies. This has been heightened by domestic trade in SALW. Small and light arms are strongly believed to be the prime cause of terrorist networks and a catalyst that promotes conflicts (Hartung, 2008). It has been estimated that 60-90% of direct conflict deaths conflicts is as a result of small and light arms. The reason suggests that small and light arms are heavily traded illicitly. That is because they are cheaper to acquire and easy to hide. That has however declined as more measures were put in place to reinforce the effectiveness of the ATT. This was followed by strong lobbying by Non-Governmental Organizations and in 2001, the UN established the Small Arms Law that curbs illicit trafficking in SALW. It can, however, be noted that the achievements of the SALW are minimum, and most are not notable or evident. This is evidenced by an increase in gun related deaths and incidents in the US and other Nations such as South Africa, Nigeria, etc. (Stohl, 2008). further contends that it is difficult to curb illicit arms trade especially when military expenditure is being kept high to fight against terrorist groups especially in Afghanistan, Syria and Iraq. The level of terrorism can be said to have skyrocketed especially when major actors in the fight against terrorism have engaged in the fight against terrorism.

The effectiveness of the ATT can also be determined by the prominence of black markets that deal in illicit arms (Mandel, 2011). Established that more than US$5 billion worth of armaments is traded on the black market, thus, the level at which black markets for arms become prominent is an indication of the effectiveness of the ATT. The higher the black market prominence rate, the less effective the ATT will

be. Further suggestions revealed that weapons that find their way to the black market are produced legally, and this further reveals loopholes in control arms trade. Human ignorance and irresponsibility are one of the main causes of black market trade of arms, and the government has no way to track such arms (Stohl & Grillot, 2009). It is alleged that 2.2% of weapons sold in the US ultimately end up in Mexico. Major perpetrators have been blamed for being government officials who take advantages in arms control loopholes in order to profit themselves.

CHAPTER THREE: PROHIBITIONS OF CONVENTIONAL ARMS, AMMUNITIONS, PARTS, AND COMPONENTS TRANSFER

3.1 Violation of Measures Adopted by the UNSC acting under Chapter VII of the UN Charter

Article 6 (1) of the ATT prohibits all transfers that would infringe with the capacity of a State to fulfill its responsibilities and it is articulated in the UN Charter, Chapter VII implemented by the UNSC.

Under Chapter VII the SC's Resolutions are of paramount importance to the UN in maintaining universal security and peace (Murphy, 1996), certainly in the domain of universal security and peace, the SC has been endowed with 'primary duty (Article 24(1) of the UN Charter) in particular arms embargoes (AE). Each member of the UN is obliged to carry out and accept the SC's decisions (Article 25) (Bowett, 1994). According to the UN Charter, Article 41, Section VII, bestows the SC with the mandate to determine when it is necessary to employ armed force and which appropriate action to take so as to promote the effectiveness of its resolutions, and may advocate UN Members to implement the proposed measures appropriately. These may partially or totally halt economic relations, and an AE is accordingly puts economic relations to a partial or full suspension especially when the transfer is hugely weaponed related (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013; Lamb, 2007; UN, n.d.). The SC Arms embargoes were utilized twice in the Cold War era, to be specific against South Africa in 1977 and the now Zimbabwe (formerly Rhodesia) in 1966, but their use accelerated after 1990 (SIPRI, n.d.).

The SC resolution 661 sanctioned and imposed open-ended arms embargos against Iraq in August 1990 for the continued invasion of Kuwait and encompassed the whole of Iraq. The Arms embargo took shape against Iraq until 2003. The Arms embargo was however ratified to encompass resolutions in 2003 and 2004 so as to allow acquisition of arms by the Iraqi government (SIPRI, 2012).

More recently, in reaction to the continuous war and the deteriorating of the humanitarian situation in Yemen SC Resolution 2216 in April 2015 established a full AE on weaponry supplies to some armed groups, in particular, those headed by Ali Saleh, Abdullah Al-Hakim, and Abd Al-Khaliq Al-Huthi (SIPRI, 2015). Adopted in accordance with the Chapter VII of the UN Charter, thus, it is restricted to the parameters of the ATT's prohibitions.

The AE is the most frequent tool to contain conflicts within or between states, and it may also have economic effects, by raising the price of military hardware and squeezing budgetary resources. But the major goal of an arms embargo is to reinforce peace efforts, limiting the financing of weapons by the combatants and preventing conflict or, at least, reducing the level of violence by denying protagonists the means to carry it out. The AE may also be intended to prevent arms from falling into the illegal hands, disrupting terrorist operations (Gov.uk, 2012).

It is strongly asserted that AEs are more preferable and smarter as compared to economic bans since they have a direct impact on combatants and help ease negative humanitarian consequences, thereby alleviating the escalation of military activities and conflicts. Until 2014, there were ten SC embargoes, which included a prohibition of goods, military equipment, transferring arms, ammunition, and relevant services to targeted individuals, States, or armed groups (Kellman, 2014).

In theory, timely implementation and vigorous enforcement of an arms embargo might achieve its goals. But the obstacles to effective AE are numerous, and the strategic fact compounds the logistical challenges that nominally even-handed AE may lead to highly inequitable results on the ground. This, in turn, can undermine support for the embargo as happened in the former Yugoslavia where the UN arms embargo effectively favored local Serb forces, who had access to indigenous arms production that was denied to the Bosnians. Declaring an arms embargo is often an easy and obvious action to take when violent conflict breaks out. Equally often, however, the political will does not exist to apply the diplomatic and material resources necessary to make it effective (Elliott, 2005).

Imposition of AE is always subjected to intense contention. AE have been critiqued on the bases of being fruitless and inherent compliance limitations which are

assumed to be of small percentage. Experts are confirming that AE, especially because of their poor monitoring, lack of capacity to enforce them and they tend to heighten trafficking. In addition, traffickers' can take advantage of the imposition of an AE and maximize their gains by building profitable markets for illegal arms sales. Moreover, instead of hurting the targeted individuals, AEs can actually result in the enrichment of offenders (Kellman, 2014; Cortright, Lopez & Gerber, 2002).

The SC has taken a number of measures to make implementation of its embargoes effective. Along with other measures, it has repeatedly established committees or panels of inquiries of accusations of breaches by entities, individuals or states. For instance, according to Resolution S/RES/1013 (1995), it has founded an International Commission of Inquiry in the Rwanda case; also, resolution S/RES/1237 (1999) has founded a Panel of Experts in the case of the National Union for the Total Independence of Angola (UNITA). The panel exposed violator states and individuals in 2000. It declared that such 'violations were willful acts of states and individuals' (Yihdego, 2007).

Thus, the impact and durability of AE depend on the commitment of all states to enforcing AE, and a unified attitude to this. AE often have a limited impact on reducing the transfer of weapons to those countries targeted by the embargo (Lamb, 2007). While a numerous SALW is available on the market, the AE can fail to reduce the number of sellers available on the global market. Illicit arms trafficking can be substantially prevalent before the arms embargo is imposed, rendering it more difficult to eliminate dominant clandestine trading patterns. AE can be rendered ineffective especially when traffickers resort to air transport which is tremendously difficult to identify and disrupt (Wallensteen, Staibano & Eriksson, 2003; Torbey, 2007).

At the minimum, four negative features of SC AE are remarkable. The first significant problem is that individuals, corporations, and states, often violate arms bans by the SC on the ground, as the last report of the Sanctions Committee of the SC on UNITA indicated (Fowler, 2000). The second greatest problem is that dominant economic power houses are reluctant to adopt and force into practice efficient arms monitoring and enforcement systems of the international scale. It stems from endeavors to curb arms exports via their producers that are made by the

same countries (Cortright, Lopez & Gerber, 2002). The third problem is that these resolutions are reckless of the legal, institutional and political weaknesses of targets, and/or supplier states, For example, 'not every member states have an existing law or the capability to enforce enactment' in agreement with their obligations under SC AE. Finally, the operations of the sanctions committees have been criticized for a range of problems, such as lack of transparency, for instance, the Monitoring Group on Somalia, formed by Resolution 1519 in 2003, recommended that the list of those who carry on to violate the AE should stay confidential (Yihdego, 2007).

The proliferation of weapons in conflict areas is aggravated by the lack of clear cuts of international level surrounding standards upon which arms can be transferred. This can lead to the exploitation of these shortfalls by brokers and arms suppliers to irresponsibly and illegally transfer weapons to insurgents, criminals and unscrupulous governments (Arms Control Association, 2016). All States are liable for enforcing compliance in their courts according to their export control restrictions (UNSC Resolution S/RES/1196, 1998, para. 2; Parker & Green, 2012). Prior to the ATT, an effective implementation of a clear legal international demand by States was absent and little was done to punish perpetrators who violate export control restrictions. The Sanctions Committee established by The UN SC to monitor and confirm that AE are not violated, but it has no precise mechanism to stop banned arms transfers (Holtom & Bromley, 2010).

The fact that the UN AE is not working properly, does not justify the use of the ATT as a platform upon which new embargoes can be established (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013). The effectiveness of the UN system depends on the underpinning of national and international Laws, and the ATT plays a big role in guaranteeing the fulfillment of this mandate (Stohl, da Silva, Suchan & Duncan, 2009).

UN Member states have a liability to oblige to, or conform to the requirements, or obligations of the SC embargo. Article 6 (1) of the ATT does not formulate alterations of member states' responsibility, but the UN SC restates prevailing obligations mentioned under the UN Charter in Chapter VII (Brandes, 2013).

The main thrust behind the SC embargo is to justify the necessity of an arms embargo, clarify conditions under which arms transferred from a State's jurisdiction are deemed appropriate and is a base upon which the supplying State can be held accountable. Infringements of the SC AE are therefore the ATT links State responsibility to the expansion of legal implications of the SC AE, heightening the probability of States being liable for complicity in illegal arms transfer. The ATT, the SC's AE allows State members to impose penalties to the supplying if CAAPC an illicit arms transfer was done from its jurisdiction to a targeted State on the condition of the availability of concrete evidence of an illicit transfer. As a result it might not enjoy certain political favors. Proceedings of the ATT can force a supplier State to consider that efforts to unscrupulously transfer arms by any means can cause it to be held accountable to an international offense of transferring prohibited arms transfers (Kellman, 2014).

3.2 Violation of Relevant International Obligations

The second paragraph of Article 6 (ATT, 2013) prohibits a State Party from authorizing a transfer that would violate its ability to comply with international obligations which govern it as a member party, notably, those relating to illicit trafficking or transfer in CAAPC.

That the obligations must be relevant seems rather a familiar requirement. VCLT Article 31(3) allows using 'the necessary international law statutes that pertain to relations between the parties' in the interpretation of treaties. Here, as well, the relevance of an international obligation depends on its connection to the subject matter; it must pertain to the situation surrounding an arms transfer. And as is the case with treaty interpretation, the condition is rather vague. All sorts of obligations can be related to the acceptability of an arms transfer, which, of course, greatly increases the potential of the provision.

The first limitation to this is that the obligations cannot stem from CIL since they must be included in the international agreements to which the transfer-authorizing State forms part (ATT, 2013, art. 6(2)). It has been noted that, 'prohibitions under CIL continue to apply independently of the ATT (Geneva Academy of International

Humanitarian Law and Human Rights Law, 2013). Despite this exclusion, the prohibition under Article 6(2) seems quite broad: there must be quite a few instruments whose provisions an arms transfer could breach.

Obviously, the term ‘international agreement’ covers all treaties as defined under the VCLT Article 2(1)(a): "an international agreement concluded between States in written form and governed by international law, whether addressed by a single instrument or by at least two related instruments and whatever its particular designation." And Article 102 of the UN Charter requires Member States to submit ‘every international treaty and agreement’ to registration.

The fact that non-binding instruments cannot be regarded as international agreements with parties is perhaps regrettable, as Article 6(2) points to instruments that relate ‘to illicit trafficking and or transfer in CAAPC, a reference to the preexisting constraints on the arms trade which are currently mostly political by nature (UN General Assembly, 2005). For example, pursuant to the UN Program of Action, States have a politically binding but certainly transfer relevant obligation ‘to subject export authorization applications under detailed scrutiny in line with the stipulated national procedures and regulations’ as well as make significant strides that mirror national practices and laws to notify the original exporting State before retransferring weapons. These obligations are of political nature and cannot constitute a prohibition in accordance with Article 6(2).

The status of obligations stemming from binding instruments is solid, though. Under the 2001 Firearms Protocol, States must, *inter alia*, criminalize illicit trafficking in firearms, ammunition components and their parts (art. 5(1)(b)). Pursuant to Article 3(e), asserts that illicit trafficking emanates from an unauthorized trafficking and when the concerned firearms are not demarcated as for Article 8 of the before mentioned Protocol.

From these two, the former cannot constitute a prohibition under the ATT, since States can always deem their own trafficking activities legal by authorizing them (Brandes, 2013). The marking of firearms; however, is an obligation which cannot be circumvented in a similar manner. Thus, transferring unmarked firearms is a violation which could breach the prohibition under Article 6(2) of the ATT.

Besides the described arms trade agreements, IHL and disarmament treaties are also related to the issue (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013). In terms of conventional weapons, they include at least the CCW with its various protocols which, e.g., some mines, booby-traps; ban non-detectable fragments and other devices, incendiary weapons and blinding laser weapons. The CCM and the Ottawa Treaty, which ban cluster munitions and anti-personnel mines, respectively, also fall into the category. When considering the obligations arising from these instruments, it must be kept in mind which arms the ATT applies to; if the arms fall outside the scope, for example, land mines do, the prohibition under Article 6(2) does not apply.

Obligations set forth in the mentioned arms-related conventions are certainly not the only relevant ones that arms transfers may violate. After all, Article 6(2) forbids States from breaching any agreements that they are parties to, which means it could be read as prohibiting the infringement of human rights treaties, for example. As stated by the Academy Briefing, this would seem to be consistent with the 5th and 6th preamble principles, which ensure the safeguarding of human rights, and also affirm the responsibility of all States to effectively regulate the arms trade in conformity with their international commitments. As one author has remarked arms trade potentially affects quite a few human rights protected by international treaties, including the right to live and liberty of torture including rights to freedom and right to security of a person, etc. But, as has also been pointed out, no human rights treaty explicitly prohibits transferring CAAPC (Bellal, 2014).

Regardless of the broadness of the prohibition, its actual worth is perhaps as dubitable as the first prohibition. After all, it simply reflects existing international law, hardly going beyond the already well-established principle of *Pacta Sunt Servanda* as stated under VCLT Article 26: ‘binding upon the parties to a convention are compelled to comply and abide to the stipulated requirements of the concerned treaty and demonstrate utmost faith in terms of compliance.’ Article 6(2) does not really create a new prohibition on arms transfers; regardless of the provision at hand, States are obligated not to violate the international conventions to which they are members, whatever the means of violation happen to be. There is nothing new here,

except a crucial and useful confirmation of an existing rule which could strengthen the obedience of all international law in the sphere of the global trade in arms (Brandes, 2013).

3.3 The prohibitions against Arms Transfers for Committing Grave International Crimes

One of the most significant provisions in the ATT is Article 6(3), which prohibits a State from authorizing a transfer of arms 'if it is to its full attention that it has authorized the acquisition of items or arms that would be utilized in perpetrating genocide, CAH, grave breaches of the GC, attacks launched against protected civilians COs as such, or other WCS as stipulated by international agreements under which it is a member.' This prohibition has been called one of the cornerstones of the Treaty (Liebman, 2013), which is not altogether surprising. Compared to the first two prohibitions, it introduces novel elements to public international law.

There are three categories of WCS named in paragraph 3. The unique wording seems to be the phrase 'attacks directed against COs or civilians protected as such' that has no equivalent in international humanitarian law (Additional Protocol I, 1977, art. 51(2)). The wording 'protected as such' may imply an emphasis to distinguish COs and civilians. This provision excludes civilians participating in direct hostilities from protection. The last category of WCS the provision is referring to can be found in international agreements like the AP I and the Rome Statute of the ICC (Sutek, 2014).

This time, the standard is that a State Party must to its full knowledge at that time before authorizing the transfer of arms that they are to be transferred would be put to illegal use that includes several crimes listed in the provision for the transfer to be prohibited. In other words, a State must know of the existence of a causal link between an arms transfer and a forthcoming crime. The definition of the word 'knowledge' is outside the scope of the ATT and thus reference can be made from the one embodied in Article 30 paragraph (3) of the Rome Statute of the ICC, which defines it as the "awareness that a circumstance exists or a consequence will occur in the ordinary course of events." (Brandes, 2013, p. 412).

The wording ‘time of authorization’ is somewhat problematic. It was pointed out by South Africa during the negotiations of the Treaty that ‘time of transfer’ would be more fitting, ‘as the situation can change in the meantime (Prizeman, 2013). This criticism is valid, especially if there is a lot of time between the authorization and the transfer. Gaps can be caused in different States for different reasons; in some States, they can be caused by overly careful consideration, whereas in others by arbitrary bureaucracy. Although the choice of wording is possibly a poor one, it leaves the reader no doubt: it can only refer to the moment when the decision to grant or deny authorization to the arms transfer is made

Grave crimes mentioned in Article 6.3 of the ATT constitute significant violation of the Rome Statute and the offender is liable to prosecution by the ICC. The nature and magnitude of these crimes is considered to outweigh all others in terms of both severity of consequences, heinousness, and scope (Kellman, 2014), and these are crimes that significantly shape the composition and structure of the CAAPC. Despite the nature and extent of these crimes, suppliers of arms and the perpetrators of inhumane transgressions have not been liable to culpability charges. The absent of substantial joint criminal enterprise evidence meant that justice could not be leveled against arms suppliers and the perpetrators of heinous crimes. Certainly, the extent to which suppliers of conventional weapons were prosecuted for aiding international crimes is insignificant ever since the prosecution of Nazi industrialists at Nuremberg (Danner, 2006).

Unlike the July 2012 draft treaty, a specific reference to serious breaches of Common Article 3 to the four GC is missing despite huge efforts of Switzerland to include this wording into paragraph 3. On 2 April 2013, the day when ATT was adopted, Switzerland made an interpretative declaration stating that 'other WCS as specified by international conventions to which it is a party' converse and extreme breaches of Common Article 3 to the GC. Ireland expressed its consent with this statement (Doermann & Arimatsu, 2013). Although it is expected that other countries will express a similar position with regards to this wording, the provision would have gained more authority by explicit reference to Common Article 3. The limitation of WCS categories perhaps originated in the intention of certain states to refer predominantly to universally ratified GC (ICRC, 2013).

On the other hand, more appropriate wording referring to things that would be used in the perpetration of listed atrocities is now included in paragraph 3 as opposed to 26 July 2012 draft text that contained the reference to the transfer of CAAPC with purposeful intentions of aiding the commission of genocide, CAH or WCS. There was a fear that the previous wording was referring to the intention of a state party to assist in the commission of those crimes. As Mexico correctly stated, no state would frame a transfer in those terms (Geneva Academy of International Humanitarian Law and Human Rights Law, 2012).

Article 6.3 prohibitions of the ATT are of paramount importance, in that, they now hold the supplying State accountable for grave international crimes. It is a significant reinforcement to the law of State responsibility as it entails that authorizing illicit arms is now regarded as breaching international law, and suppliers of every arm now stand liable for violating the ATT if evidence of grave international crimes is leveled against.

However, accountability for these misdeeds requires awareness before and during the authorization process. Knowledge bestows value especially in legal standards and is better off compared to strict liability which is not manifested in international arms restraint agreements. In the area of public international law, the knowledge criterion is entreated most in conjunction with the imputability of efforts by junior officials to the State: The decision to educationally invest in officials can be a challenge and most States are reluctant to assume responsibility of investing in officials' knowledge. This challenge is usually encountered during situations where the State has poorly strived to restrain wrongful deeds because it supposedly was not knowledgeable of the wrongful conduct; had it been aware, it would be at least arguable that it was accountable for undertaking suitable action (Wuerth, 2012).

The knowledge measure in ATT Article 6.3, in light of the treaty's asserted intention to control unauthorized international arms deals, it entails that if an approved official should have been knowledgeable of the consequences that conveyed arms will be utilized to perpetrate grave international offenses. It is an international offense to approve those transfers and accountability must is obligatory. Notably, knowledge may synonymously be defined inter alia: (1) information is openly accessible, incorporating articles by the United Nations, the media, important publicists and

other governments and; (2) information is conveyed to the official by an external source such as an NGO; and (3) conditions are adequately unique to put reasonable officials on notice, in regard of their complete legal obligations, of a questionable purpose for a selective transfer.

If satisfactory knowledge standards are met, it must be to the full attention of the necessary official, that is, the official must possess information about the wrongful activity and must be in a strong position to offer feasible steps to examine and control the approval of that transfer if the conditions allow.

Article 6.3 is concerned only with the critical international offenses which, specifically because of their unique resonate throughout humanity's morals and degree of heinousness. There are numerous infringements of IHL and human rights and that do not meet the rigorous criteria of grave international crimes

3.3.1 Genocide

The first crime which is prohibited under Article 6(3) refers to is genocide and is known as the "crime of crimes" (Legal Information Institute, n.d., para. 1), which is a highest nature of human rights violation or offense feasible to commit. Genocide was initially considered as an international offense following the aftermath of the Nazi Holocaust and was aimed at prosecuting those who attempted to destroy complete human societies. The word "genocide" was invented by a Polish lawyer, Raphael Lemkin, in his book *Axis Rule in Occupied Europe* (1944) to provide a legal concept for this unimaginable atrocity.

The CPPCG in article 2 defines genocide as:

Any of the subsequent deeds perpetrated with the intention to completely or partly destroy, a national, ethnical, racial or religious group, as such:

a) Decapitating members of the group;

b) Causing severe bodily or mental harm to members of the group;

c) Deliberately wreaking on the group conditions of life calculated to bring about its physical destruction in whole or in part;

d) Imposing strategies intended to impede births within the group;

e) Coercively transferring children of the group to another group.

The Convention definition was adopted without any amendments in the Rome Statute of the ICC, which was adopted on 17 July 1998 and entered into force on 1st July 2002 (Rome Statute of the ICC, 1998, art. 6).

Although genocide is addressed with the same breath as WCS and CAH, it is distinctly different. WCS relates to infringement of the law of armed conflict, while CAH, of which Genocide is regarded as the most effective element which requires a comprehensive or well-organized attack on a civilian population. Unlike WCS, genocide atrocities do not have to transpire during an armed struggle (although it frequently does), and unlike CAH, it may also be perpetrated against soldiers or POW from the targeted group. The notion of genocide was invented after World War II and it is, unfortunate that the genuine significant killing of human groups is enormously greater than the legal interpretation; indeed, with the German genocide of the Herero and Nama in German South-West Africa between 1904 and 1907 being cited as the first genocides of the 20th century. The CPPCG declared that “in line with international law that genocide is an offense under irrespective of whether peace was prevailing or not during the time the offense was committed and whether the opposing parties, undertake to deter and to punish.” (Byron, 2014, para. 1)

The real development of systematic international trials and punishment for the crime of genocide commenced after the 20th century: the ad hoc tribunals for the former Rwanda and Yugoslavia and the inclusion of the crime of genocide in the Rome Statute of the ICC. And also, there have been numerous references to genocide in line with the declarations, statements and resolutions of UN organs, notably the duties of special rapporteurs and expert bodies. During 2004, the Secretary-General of the UN appointed a Special Adviser on the Inhibition of Genocide, a superior position within the Secretariat with liability for notifying the institution of threatened catastrophes (Schabas, 2009).

3.3.2 Crimes against humanity (CAH)

Crime against humanity (CAH) is the second crime next to genocide in terms of weight and is included under the prohibition of Article 6(3). Although CAH are as old as humanity (Graven, 1950), in its stern thought, solely first inscribed positive international law in 1945 when the four Allied powers, France, the Soviet Union, UK and the US instituted the International Military Tribunal at Nuremberg, and conferred it authority to judge the apprehended Nazi leaders with three categories of felonies: 'crimes against peace' (Article 6(a)), WCS (Article 6(b)) and CAH (Article 6(c)), which defined CAH as violation of prohibited acts committed against a civilian population . The notion of CAH has proven to be the real legacy of Nuremberg, albeit with chronic definitional confusion (Bantekas & Nash, 2013; Van Schaack, 1999). CAH were later incorporated in the Statutes of the ICTY and ICTR during the 1990s, and subsequently the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), and the ICC (Sadat, 2013).

Genocide and WCS have been classified in conventions with universally affirmed definitions; CAH has emerged in a string of tools with moderately self-contradictory definitions. The law of CAH was originally designed to cover specific gaps in the law of WCS, but numerous issues were left obscure. The modern surge in the utilization of the international criminal law has created a conducive interaction between international instruments, jurisprudence, and commentaries, spanning to a further understandable description of the range and meaning of CAH today (Cryer, Friman, Robinson & Wilmshurst, 2010).

According to the Rome Statute of the ICC (1998, art 7), CAH include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- murder;
- extermination;

- enslavement;
- deportation or forcible transfer of population;
- imprisonment;
- torture;
- rape, sexual slavery, enforced prostitution, enforced pregnancy, enforced sterilization, or any other form of sexual brutality of comparable gravity;
- persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds;
- enforced disappearance of persons;
- the crime of apartheid;
- Other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.

Thus, for a cost of CAH to succeed, the resulting five general elements are expected to be proved: (i) there must have been an attack; (ii) the attack must have been aimed against a civilian population; (iii) the acts of the perpetrator must have been part of the attack that was aimed upon a civilian population; (iv) the attack of which the perpetrator's act constituted a part must, in turn, been part of a systematic or widespread pattern of attacks; (v) the perpetrator must have been aware that her or his acts formed part of the well-organized or widespread attack (Eboe-Osuji, 2008).

3.3.3 War Crimes (WCS)

War Crimes (WCS) are severe violations of IHL that transpire either during international armed conflicts or non-international character (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013). Unlike CAH, WCS have no requirement of systematic or widespread commission. A single isolated act can constitute a WCS (Schabas, 2009).

It can be noted that a significant number of WCS are not embodied under Article 6(3), which is only limited to three types of WCS and these are; ‘attacks directed against COs or civilians protected as such’; grave breaches of the GC, and other WCS that are established by international conventions to which a state is a member.

3.3.3.1 Attacks directed against civilian objects or civilians

The second war offense mentioned in Article 6(3) is Attacks pointed upon Civilian Objects (COs) or civilians. "Attacks" means acts of violence against the adversary, whether in offense or in defense, whatever territory they are administered in, including any land, air or sea warfare which may harm the civilian or COs (Additional Protocol I, 1977, art. 49(1)(3)).

According to the Article 50(1) of AP I, Civilian is any individual who does not belong to persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Geneva Convention and in Article 43 of AP I. The civilian population includes all individuals who are commoners. In case of doubt, whether a person is a civilian, that person shall be deemed to be a civilian. And the civilian population comprises all persons who are civilians; the availability within the civilian population of individuals who do not come within the definition of civilians does not seize the population of its civilian character. COs, which are ones that are not MOs, which ‘by their nature, location, determination or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the conditions ruling at the time, offers a sure military advantage (Additional Protocol I, 1977, art. 50). And the civilian population includes all persons who are civilians; the occupancy within the civilian population of individuals not covered inside the definition of civilians does not deprive the population of its civilian character (Additional Protocol I, 1977, art. 50(2)(3)). COs, which are ones that are not MOs, which ‘by their nature, location, purpose or use make a helpful addition to military action and whose entire or unfinished destruction, seizure or neutralization, in circumstances ruling at the time, offers a sure military position (Additional Protocol I, 1977, art. 52(1)(2)).

The task to discriminate between combatants and civilians and between COs and MOs is the most basic principle of the IHL (Primoratz, 2007), the manner of

hostilities is controlled by the cardinal principle that the parties to a conflict do not have an extensive choice of means and techniques of warfare (Primoratz, 2007), Article 48 of Protocol I (1977) lay down the basic command of the law of armed conflict, according to which

> "Separation of civilian population and combatants and also between civilian objects and Military Objectives is very necessary so as to prove esteem and safeguard them. Accordingly shall direct their actions only against military objectives."

Also known as the principle of distinction, this customary rule of IHL is applicable in international and non-international armed conflicts (Henckaerts & Doswald-Beck, 2005). It is augmented by two fundamental principles of international humanitarian law: the restriction on direct attacks on civilian and COs and the prohibition of indiscriminate attacks. In addition, in accordance with the policy of proportionality, even MOs may not be undertaken if the attack is expected to cause civilian casualties or damage which would be excessive in connection to the sound and immediate military advantage anticipated (Additional Protocol I, 1977, arts. 51(5), 57(2)(a)(iii)). In its 1996 advisory opinion on the Legality of the Threat or Use of Nuclear Weapon, the ICJ qualifies the above-mentioned principle as ' the cardinal principles… constituting the fabric of humanitarian law (International Court of Justice, 1996). Moreover, the assertion that these crucial rules are to be followed by all states despite or not they have approved the customs that contain them because they constitute intransgressible policies of CIL (International Court of Justice, 1996).

The Rome Statue of the ICC (1998, art. 8(2)(b)(i)(ii)) codifies as a war crime intentionally directing attacks upon the civilian population as such or against individual noncombatants not taking direct part in the malice and intentionally directing attacks upon COs that is objects which are not MOs.

3.3.3.2 Grave violations of the Geneva Conventions of 1949

In the ATT, a prohibition arises only if an act is a grave violation in the sense of the GC. The GC, which established IHL after World War II, marked its initial

incorporation into the humanitarian law treaty of a set of WCS, the extreme violations of the conventions (Gasser, 2009; Pictet, n.d.). Each of the four GC (on the sick or wounded on land, sick or wounded at sea, civilians and POW) contains its own list of grave breaches.

The first two GC, as titled, aim to protect the shipwrecked, ill and injured members of the armed forces, a grave breach means committing certain acts against these protected persons and the property which can be used to protect them:

> Grave violations to which the previous Article recounts shall be those containing any of the following actions, if executed against persons or property protected by the Convention: intentional killing, torture or inhuman treatment, incorporating biological experiments, deliberate causing extensive affliction or severe harm to body or health, and enormous damage and appropriation of property, not supported by military obligation and carried out illegally and wantonly (GC I, 1949, art. 50; GC II, 1949, art. 51).

The Third Geneva Convention, on the other hand, concerns the treatment of POWs. A grave breach is defined quite similarly to the first two Conventions, with the exception that the prohibition does not concern property:

Grave violations to which the previous Article recounts shall be those comprising any of the subsequent deeds, if perpetrated against property and persons shielded by the Convention: comprising biological experiments, deliberate inhuman treatment, torture or, killing, deliberate causing severe affliction or severe body or health impairment , forcing a prisoner of war to work in the forces of the unfriendly Power, or deliberate stripping a prisoner of war of the rights of normal and decent trial as mandated by this agreement (GC IV, 1949, art. 130).

Finally, the Fourth Geneva Convention recounts to the protection of civilians through wartime. This stipulation is somewhat extensive than the aforementioned:

Grave violations to which the previous Article relates shall be those comprising any of the subsequent deeds, if perpetrated against persons or property protected by the present Convention: deliberate inhuman treatment, torture, biological experiments, killing, or, including willfully causing great suffering or serious injury to body or

health, unlawful extradition or transfer unlawful imprisonment of a protected person, coercing a protected person to labor for the opposing state, or deliberately denying a protected person of the rights of fair and proper trial commanded in the existing Convention, holding of hostages and severe destruction and grant of property, not explained by military obligation and carried out unjustly and wantonly (GC IV, 1949, art. 147).

Also, we can see the reflection of the list of grave violations of the GC in the Article 2 of the Statute of the ICTY (which literally contains the same acts), and Article 8 (2) (a) of the Rome Statute of the ICC (again under the same heading as in the ICTY Statute).

- Certain medical experimentation;
- Securing the civilian society or civilians the object of direct attack;
- indiscriminating charges affecting the civilian group or COs in the understanding that before-mentioned strike will cause injury to civilians, damage to COs or huge loss of life;
- starting an attack against installations or works containing armed forces being completely notified that the before-mentioned attack will create extreme loss of life, injury to civilians or loss CO;
- Making the non-defended and other local civilians the object or imminent victims of attack;
- Causing an individual the object of an attack in the opinion that he is hors de combat,
- The dishonest use of the Red Crescent, Red Cross logo or other protective symbols;
- Transfer of an controlling force of segments of its people into the territory it took over, or the extradition or transfer of all or segments of the people of the invaded territory within or outside this territory;
- Inexcusable delays in repatriation of POWs or civilians;
- Systems of apartheid and other inhuman and demeaning acts
- Striking clearly-recognized historic monuments, places of devotion which include cultural, spiritual heritage of people, and works of art to which special protection has been given;

- And denying protected persons of a fair trial (ICRC, 1998).

All GC oblige the High Contracting Parties to the relevant Convention 'to enact any law necessary to implement adequate penal sanctions for persons acting, or ordering to be committed, any of the grave infringements of the Convention explained in the following Article (Gutteridge, 1949). Each goes on identically to provide as follows: "Each High Contracting Party must be under the obligation to ... make such persons, despite of their nationality, before its own courts …." (GC I, 1949, art. 49; GC II, 1949, art. 50; GC III, 1949, art. 129; GC IV, 1949, art. 146)

The express language of the above common preparation makes plain that the obligation refers to each High Contracting Party to extradite or prosecute (aut dedere aut judicare) persons responsible for the grave breaches of the Conventions, and not just to those High Contracting Parties which are or were parties to the armed conflict in which the offences are alleged to have transpired, although the suspect nationality, in other words, the notion of universal jurisdiction is accepted for the grave breaches system (Aksar, 2004; O'Keefe, 2009; Moir, 2009).

3.3.3.3 Other War Crimes

Ultimately, the ATT (2013, art. 6(3)) prohibits a State from authorizing the transfers of arms that would be used in ‘other crimes as outlined by international agreements to which it is a Party, This provision covers all possible WCS besides grave breaches and directly attacking civilian and COs crimes. The only two conditions are that they must be severe violations of the laws and practices relevant in armed conflicts, and they must be established in the international agreements to which the State is a Party (Rome statute of the ICC, 1998, art. 8(2)(b)). Unlike the crime of directly attacking civilian and COs, CIL cannot serve as a source for WCS because the wording clearly dictates that "defined by international agreements", for example, Rome Statute of the ICC.

The ICC Statute includes the largest and most exhaustive list of WCS (Cryer, Friman, Robinson & Wilmshurst, 2010). The enumerated WCS in Article 8(2)(b) of the ICC Statute concern international conflicts only including a list of 26 WCS

(International Debate Education Association, n.d.) (without excluding the crimes of directly attacking civilian and COs), while enumerated WCS in Article 8(2)(c)–(f), are administrable to non-international conflicts.

Many of the listed crimes present, in a more elaborate way, the forbidden nature of concerning civilians. For example, attacks against peacekeeping missions or humanitarian support; attacks in the understanding that they will create accidental loss of life or injury to civilians or damage to COs or widespread, long-term and severe damage to the physical environment; attacking or bombarding towns or buildings which are undefended and not MOs; attacks upon buildings devoted to religion, education, art, science or historic monuments, hospitals. WCS under the Statute concern the treatment of the enemy such as, killing or wounding a surrendering combatant, declarations of "No quarter" (refusal to accept surrender), committing outrages upon personal dignity, rape. Other war crimes also include more tactical and technical infractions such as abuse of flags, signals and uniforms, population transfers, the use of various different weapons (including chemical weapons) and pillaging (Dörmann, Doswald-Beck & Kolb, 2003; Dormann, 2003).

Normally, the Rome Statute only pertains to its States Parties. For other States, and for other possible WCS that are not incorporated in the Statute, other devices have to be considered outside the Statute, such as the customary Hague law; the adequate means and techniques of war in international conflicts. This law stems mainly from the 1899 Hague Convention II and the 1907 Hague Convention IV. Another instrument has to be considered is 'Geneva law', under which the concept of grave breaches is supplemented by other prohibitions. Already in the universally ratified four GC, it is hinted that other infractions can also be deemed as WCS (Cryer, Friman, Robinson & Wilmshurst, 2010).

In this brief analysis, we can draw that, in all evaluations to be made based on the risk of 'other WCS, the starting point will be the international agreements of the States Parties involved in a transfer.

3.4 Prohibition of Arms Transfers That Contribute to Human Rights and Humanitarian Law Violations or to Violations of Terrorism or Crime Conventions

In Article 7 Along with Article 6, frames the centerpiece of the treaty. prohibitions under article 6 do not need any specific action besides to not transfer forbidden arms, while Article 7 operates differently, If an export is not prohibited under Article 6, an exporting state party must, ahead of choosing whether or not to authorize a proposed export of CAAPC, in an objective and non-unfair practice, evaluate the risk that the export arms would endanger peace and security or be used to commit or encourage a serious violation of international humanitarian or human rights law, or acts making terrorism or a transnational organized crime. The law states that an exporting state shall refuse authorization if its evaluation resolved that the prospect of adverse results is overriding (ATT, 2013, art. 7(1)). Similar to Article 6(3), the wording calls for a causal link between the arms that are about to be transferred and a particular result.

As noted above, it was left open whether gifts or free loans can be subsumed under the meaning of 'export'. Notwithstanding, with the duty to practice and apply a treaty in good faith *(pacta sunt servanda*) no state party can bypass its obligations by recording all its transfers of CAAPC as gifts (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013).

Article 7 of the ATT describes several steps that must be followed by the exporting State prior to authorizing the export of a managed material. It also draws measures that must be taken if a State grows aware of new knowledge after authorization was given on the assumption of which the authorization would have been declined. It urges States to re-assess and re-consider the authorization (Coetzee, 2014).

For the conduct of assessment, which must be carried out before the authorization (ATT, 2013, art. 7(5)), under the jurisdiction of the exporting State and pursuant to, in accordance with its national control system (ATT, 2013, art. 7(1)), the ATT demanding that it be done in a justifiable and non-discriminatory manner, every time a state authorizes an arms transfer, taking into account relevant factors, encompassing information given by the importing State (ATT, 2013, art. 7(1)).

Therefore, it is hard to specify the conditions for establishing that a State has or has not complied with Article 7. But there can be no un-assessed authorized arms transfers. prohibitions of Article 7 means that an exporting State may not demand legal innocence for its arms transfers on the grounds that, below its system, it made no inquiry about the danger that the purchaser of the exported arms will use them to dishonor international law. As with regard to Article 6.3's requirement of knowledge, the defense of willful blindness is now unavailable (Kellman, 2014).

Article 7 (3) ATT limits the authorization of an export should the States Party assume that there is an "overriding risk" of any of the adverse consequences listed in Article 7 (1) ATT. The term 'overriding risk' is vague. The term has been subject to critique and pressing discussions at the Last Conference with a majority of States urging to replace it with 'substantial' or 'clear' risk. Having failed to achieve such a change of the wording, some States already made their intention to interpret 'overriding' as 'substantial', for instance, New Zealand stated after the treaty´s enactment that it would interpret the 'overriding' risk as a 'substantial' risk (UNTC, n.d.). In any case, the exporting States Party is required to direct the whole export assessment in good faith. Therefore it would be necessary allow the export so as to reduce the adverse consequences.

3.4.1 Contributing to or Undermining Peace and Security

The first rule for non-authorization of export is to evaluate whether the arms or items to be transferred could uphold or ruin peace and security. As states in several commentaries, this provision remained a huge loophole throughout the whole drafting process and remains controversial. The outline does not refer to threats to international peace and security thus allowing a state party to interpret the wording as a problem to its own peace and security. The state party in question could thus authorize an export if it considers contribution to 'peace and security (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013).

3.4.2 Serious Violation of International Humanitarian Law

Article 7(1) (b) ATT coerces States Parties to recognize potential adverse uses of exported arms, but does not explain them. Article 7(1) (b) (i) ATT refers to serious violations of international humanitarian law. Article 7(3) forbids arms export if there was an overriding risk that those arms would be used to or Advance serious violations of IHL.

Severe violations of IHL correspond to WCS. They include severe infringements of an international rule under CIL or treaty law claiming the individual criminal liability of the person breaching the rule. They can take place in international or non-international armed conflicts. Violations are serious, and are WCS, if they jeopardized protected persons (e.g. commoners, POW, the injured and sick) or objects (e.g. COs or infrastructure) or if they breach important values. The bulk of WCS include loss, harm, injury or illegal taking of property (Brandes, 2013).

Grave breaches are found under the four GC Articles, namely 50, 51, 130, 147 of Conventions I, II, III and IV respectively), Grave breaches as explained under AP I (Articles 11 and 85), WCS as stipulated under Article 8 of the Rome Statute of the ICC and other WCS in international and non-international armed conflicts in customary IHL (ICRC, 2012).

This reference to 'serious crimes of international humanitarian law' seems more appropriate because is larger than the phrase within Article 6.3 that includes reference to WCS as defined by international agreements' to which the exporting state is a party .It means that the threshold for a banned export is possibly higher than the one for the banned transfer itself (Sutek, 2014).

It is important to recognize the significance of the IHL and accord it with respect with regard to parties of armed conflict. Lack of respect makes rules meaningless. The VCLT clearly explains why respect is necessary (VCLT, 1969, Preamble). Under Common Article one of the GC, which codifies the notion of respect, members of conflict need to adhere to respect of rules all times. The GC, Hague regulation and additional protocols contains all the rules (Diakonia International Humanitarian Law Resource Centre, 2013).

3.4.3 Serious Violation of International Human Rights Law

The horrors of war necessitated the presence of the IHRL which governs international law in such cases. For example the World War II is one of the horrors of war that the IHRL looked into.

The development of the UN gave human rights international legitimacy, especially because numerous nations signed the UN Charter, which clearly mentions human rights UN Charter, 1945, Preamble, Chapter 1 art.1). The development of the United Nations, it has passed several agreements and resolutions binding the signatories to respect human rights. More so, it has set up courts to charge those suspected of outrageous crimes of human rights (Legal Information Institute, n.d.). Notably since the end of the World War II and the approval by the UN General Assembly of the Universal Declaration of Human Rights in 1948, several human rights treaties have been chosen. Some offer normal protection (e.g., the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights), and other are designed for protection against certain abuses (e.g., torture), or refer to certain segments (e.g. women, children, migrants, disabled people).

To say that that arms transfer have an effect on the enjoyment of human rights is almost trite (Bellal, 2014). Human rights treaties do not specifically address weapons transfer, similarly despite the fact that weapons are used in several countries to dishonor human rights

Article 7(1) (b) (ii) of the ATT purports that each state party before it decides whether to authorize an export of CAAPC have to evaluate the level of risk of the items in question being applied or encourage a ‘pressing breach of IHRL, in another words the ATT requires that states parties put supporting human rights law and IHL at heart of their exporting activities (Kytömäki, 2015). The desire to facilitate honor for human rights law is also a policy that guides the actions of nation's parties (ATT, 2013, Principles).

Quite a number of human rights that are categorized under the international human rights treaties and CIL are influenced by international trade (CAAPC). These need thorough analysis. The following rights need to be considered

- The right to freedom from slavery
- The right to notice as a person before the law
- The right to life (for example, restrictions on murder, genocide, enforced disappearance),
- The rights to education and security of an individual.
- The right to freedom from bondage, torture and misuse of human life
- The right to freedom of opinion, morals, and belief (Bellal, Casey-Maslen & Giacca, 2011).

Under the IHRL it is difficult to ascertain what really is a 'serious violation' because there if no clear definition of it (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013).

Crimes against human rights that fall under *jus cogens* should be regarded as severe. Even though there is a dilemma as to which human rights fall under *jus cogens*. However, the norm is that critical rights are those that refer to the existence of human life (Tomuschat, 2008). The rights to freedom from torture life and torture slavery fall under the above mentioned. Penalties of violation of these rights are indicated Article 7 (1) (b) (ii) ATT.

However, no proof is available to show that the breaches are limited to violations of stringent criteria of human rights law. Taking into account that these human rights are *jus cogens*, are still serious contrary to the name. This particularly depends on how they resulted. Therefore, important human rights are as good as violations in human rights (Brandes, 2013).

With regard to the international humanitarian law, a possible connection must be made known amid the arms in inquiry and the extent of rights violation(s), and the exporting state will have to measure case by case and determine whether there is any distress that the arms will be used to against to breach rules of IHRL, if there was such risk it has to forbid the arms in question to be transferred (Geneva Academy of International Humanitarian Law and Human Rights Law, 2013).

3.4.4 An act constituting an offence under international conventions relating to terrorism or transnational organized crime

Another likely abuse of arms export which the ATT takes into account in Article 7 (1) (b) (iii) and (iv) are, offences that fall under international conventions or customs relating to terrorism or transnational related crime to which the exporting State is a Party'. Similar to the concepts of 'violating relevant international mandate under international agreements where it is Party' and 'additional crimes as stipulated by international agreements to which it is a Party' used in Article 6, only the international commitments of a State dictate which obligations it must examine. But, to determine which conventions or protocols may possibly come into question, one must decide which of them relate to, have some connection with terrorism.

Relating to terrorism, apart from regional treaties, there are diverse multilateral international treaties dealing with this matter, the most interesting in this regard would be the 1997 Terrorist Bombings Convention, important treaties would comprise the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; the 1979 International Convention against the Taking of Hostages; and the 1971 Convention for the Suppression of illegal Acts upon the Safety of Civil Aviation (O'Donnell, 2006). And relating to transnational organized crimes, as has been regarded, appears to be a source to the 2000 UN Convention against Transnational Organized Crime (UNTOC).

3.5 Evaluation of the ATT

This section is an overall evaluation of the ATT and will be the foundation from which recommendations will be made. The following evaluations were made;

3.5.1 Improving human security through responsible arms trade

Various concerns were addressed about human threats being applied by the transfer of arms either with the intention to hinder or promote armed conflicts. Human rights have been greatly threatened by arms transfer and of notable suffering are women,

elderly people children, females and other vulnerable parties. Economic objectives such as export or trade promotion do not usually consider human rights, as a result, weapons can be transferred to culprits who are will often use them against civilians' rights and security. Furthermore, it can be noted that most weapons that fall within the scope of ATT are the ones culprits were using in armed conflicts and spurring violations in IHL. The ATT consequently is a widened instrument whose scope now successfully includes human rights and security protection. Issues on landmines, cluster munitions, and SALW have greatly supported approvals to incorporate human rights and security factors in the present ATT. This idea can be supported by recent actions by Amnesty International which greatly applauded the ATT for encompassing such a difference. The ATT thus is an addition of the IHL and reference for export prohibition are now based on this new feature and is found in Article 7. It can be noted that both human rights and CAAPC are now part of the ATT.

The ATT further clarifies that for parties need adhere with IHL and human rights, and demands for the two to review the violence against children and gender –based violence. Therefore, the ATT has Hence; the ATT has caused the formation of an international law which was not previously recognized.

The ATT acts as a tool to that can be used to increase human security by fostering the reallocation of field arms. The goal to be reached by 2020 is to widen the participation and adequately implementing and enhancing human security by reducing the inappropriate transfer of arms (Kytömäki, 2015).

However, the importance and tangible evidence on the positive effects of the ATT on civilian protection and the IHL by increasing value if the international law is not yet realized.

3.5.2 Reducing armed violence

It has been hard to define what really constitute armed violence. The SALW is the main instrumental tool that armed conflict is conducted. In order to control with armed violence, international policies have developed different strategies and

agreements for it. This can be noted in the requirements of the Geneva Declaration on Armed Violence and Development which are now part of the ATT which entails that there be controls that monitor and limit arms allocation. The ATT thus identified the causes of and solutions to armed violence and this is now affecting the design, allocation and use of arms.

3.5.3 Improving human security across age and gender

Following the Chair's draft paper which presented the evidence of child soldiers, effects of arms on the youth and children have been embraced and are now considered in the ATT. The ATT has gone an extra measure to improve children's human security in programs such as demobilization, implementation protocols, reintegration programs, and prevents the use or recruitment of child soldiers (ATT, 2013, art. 16(1)).

3.5.4 Assisting victims

The ATT realizes the needs and rights of victims which are an element of the Convention on Cluster Munitions, Anti-Personnel Mine Ban Convention and the Convention on Certain Convention Weapons. The ATT includes victims' rights, international assistance, and cooperation so as to promote norms of the IHL. However, the ATT to some extent does not consider survivors and victims of violence arising from SALW.

3.5.5 Benefits to all countries

Many countries are compelled to benefit from the ATT despite of the level of development and security situation. It should be noted that the principal agenda of the ATT is to strengthen democracy and cultivate the rule of law. The ATT makes it conceivable for the international and regional nations to follow the specified obligations.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

From the above explanations, it can be deduced that global arms conventions have greatly changed and this has posed serious implications on peace and security matters. It can be noted that though CAAPC is a legitimate tool of achieving national security and defense goals they are also fostering instability, international tensions, cause substantial environmental damages, promoting the violation of international rights and fuels organized crimes.

The ATT offers numerous benefits shortfalls among these benefits is the ability to influence parties responsible for monitoring and controlling arms movement and usage to execute their mandate. The effectiveness of the ATT hinges on the participation and full cooperation of major arms exporters and the ATT has made significant strides to ensure full cooperation and participation of all countries around the world. Therefore, global efforts to promote peace and security can now be heightened. On the other hand, the debate about the effectiveness of the ATT is still debatable since it is a recent activity.

It can be argued that wide participation base and effective implementation of treaties has a profound impact on improving human security through limiting irresponsible transfers of arms and the results should be evident by the year 2020.

This paper also exhibited that Treaties are the principle source of international rights and obligations among all sources and have a binding force in the application and implementation. It can be considered that these sources established the rules of public international law, and made the legal provisions clearer for States, This has effectively contributed to the creation of the way of understanding and dialogue among nations and to follow diplomatic to avoid the problems and international conflicts and wars.

Treaties could be divided into several categories, entails significant results in clarifying its role as a source of international law, according to its parties, treaties could be divided to bilateral treaties and multilateral treaties. There is another

division of the treaties according to its legal functions between treaty- law and treaty-contract or so-called ‘law-making treaties’ (*traités lois*) and ‘contractual treaties’ (*traités-contrats*).

It can be noted that the reasons which may lead to invalidity of treaties include, apparent non-compliance with the domestic law of fundamental importance, in relation to failure to adopt treaties and failure to impose restrictions of the authority of a State representative. The termination of a treaty may take place in conformity with its provisions or by the consent of all the parties to that treaty. Also, a treaty terminates if all the parties to it conclude a new treaty relating to the same subject matter.

This paper established that IHL and AP I place a distinction between International and non-international armed conflict. Based on the GC and the Protocols of 1977, the effects of armed conflict can be minimized by excluding individuals who do not take part in hostilities such as civilians or no longer have a direct influence in hostilities such as POW, the wounded and sick and limiting the effects of conflicts and the potential threats of the enemy and long term damages on the environment.

The IHL has been criticized because it incorporates rules and laws that vary with instruments, context and concerned legal issues, its inability to harbor all those affected by violence or armed conflict, it assumes that parties involved in armed conflict have rational aims, it does not influence one party’s influence on the enemy and does not take into account of internal issues or conflicts and its failure to separate issues according to the purpose of the conflict

The underlining of the ATT are centered on curbing and eradicating illicit trade and diversion of CAAPC to illicit markets which may resultantly give rise to unauthorized ends use of illicit arms and promotion of terrorist activities. Conclusions can therefore be drawn and suggest that the CAAPC transfer be widened to incorporate elements that are being deemed to be of significant importance in eradicating violence and armed conflicts. The issue of human rights and civilian protection is still a crucial matter to reckon on and this can be addressed by the ATT.

4.2 Recommendations

- Different parties or bodies that include the Human Rights Council, OHCHR, UNDP and the SC must collaborate to pursue a common objective and strategy in improving human security.
- Interested parties and the ATT Secretariat should offer capacity building projects and other training programs.
- Countries all over the world should oblige to the requirements of the ATT and apply it.
- There should be thorough assessment or risk on human rights

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