

Small Arms Survey 2014: Women and Guns

Annexe 3.1 A comparative overview of transfer criteria in multilateral and regional instruments on conventional arms

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Theme	Instrument	Obligation ¹	Threshold	Potential consequences to be assessed
International humanitarian law (IHL)	ATT (UNGA, 2013a, arts. 7.1.b.i, 7.2, 7.3)	Do not authorize	If there is an ‘overriding risk’ that arms ‘could be used’	The commission or facilitation of ‘a serious violation’ of IHL
	Central African Convention (ECCAS, 2010, art. 5.5.b)	Deny transfer authorization	If arms ‘are to be or might be used’	The commission of IHL violations, war crimes, genocide, or crimes against humanity
	ECOWAS ² (ECOWAS, 2006, art. 6.3.a)	Do not authorize the transfer	‘If the arms are destined to be used’	The ‘violation of international humanitarian law’ or ‘the commission of serious violations of international humanitarian law, genocide or crimes against humanity’
	EU Common Position (EU, 2008, criterion 2.c)	Deny an export licence	If there is a ‘clear risk’ that items ‘might be used’	The ‘commission of serious violations of international humanitarian law’
	OSCE Document (OSCE, 2000, para. III.A.2.b.v)	Avoid issuing export licences	If there is a ‘clear risk’ the arms ‘might threaten’	Threats to ‘compliance with international law governing the conduct of armed conflict’
	SICA (SICA, 2006, art. I.1)	Do not carry out the transfer	n/a	The importing state engages in the commission or sponsorship of ‘crimes against humanity or human rights violations or [the commission of] serious violations of the laws and customs of war contained in the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977 or other rules and principles of international humanitarian law applicable to situations of armed conflict between States and within States’
	Wassenaar Elements (WA, 1998, ³ para. 1.e)	[Assess the importer’s motivation]	If there is a ‘clearly identifiable risk’ arms ‘might be used’	The commission or facilitation of a violation of the laws of armed conflict

Theme	Instrument	Obligation ¹	Threshold	Potential consequences to be assessed
	Wassenaar Best Practice Guidelines (WA, 2002, ⁴ para. I.2.e)	Avoid issuing export licences	If there is a ‘clear risk’ the arms ‘might threaten’	Threats to ‘compliance with international law governing the conduct of armed conflict’
Human rights	ATT (UNGA, 2013a, art. 7.1.b.ii)	Do not authorize	If there is an ‘overriding risk’ that arms ‘could be used’	The commission or facilitation of ‘a serious violation’ of international human rights law
	Central African Convention (ECCAS, 2010, art. 5.5.b)	Deny transfer authorization	If arms ‘are to be or might be used’	The commission of violations of international human rights law
	ECOWAS (ECOWAS, 2006, art. 6.3.q)	Do not authorize the transfer	If the arms ‘are destined to be used’	The ‘infringement of human and peoples’ rights and freedoms’ or ‘oppression’
	EU Common Position (EU, 2008, criterion 2)	Deny an export licence	If there is a ‘clear risk’ the items ‘might’ be used	Internal repression ⁵
	OSCE Document (OSCE, 2000, para. III.A.2.b.i)	Avoid issuing export licences	If there is a ‘clear risk’ the arms ‘might be used’	The ‘violation or suppression’ of human rights and fundamental freedoms
	OSCE Principles (OSCE, 1993, para. II.4.a.i)	Avoid transfers	If the transfers ‘would be likely to be used’	The ‘violation or suppression of human rights’ and fundamental freedoms
	SICA (SICA, 2006, art. I.1)	Do not transfer	n/a	The commission or sponsorship of ‘crimes against humanity or human rights violations’
	Wassenaar Elements (WA, 1998, para. 1.e)	[Assess the importer’s motivation]	If there is a ‘clearly identifiable risk’ the weapons ‘might’ be used	The commission or facilitation of the ‘violation and suppression’ of human rights and fundamental freedoms

	Wassenaar Best Practice Guidelines (WA, 2002, para. I.2.i)	Avoid issuing export licences	If there is a 'clear risk' the arms 'might be used'	The 'violation or suppression of human rights and fundamental freedoms'
Terrorism	ATT (UNGA, 2013a, art. 7.1.b.iii)	Do not authorize	If there is an 'overriding risk' that arms 'could be used'	The commission or facilitation of 'an act constituting an offence under international conventions or protocols relating to terrorism' to which the exporting state is a party
	Central African Convention (ECCAS, 2010, art. 5.5.b)	Deny transfer authorization	If arms 'are to be or might be used'	Terrorist purposes
	ECOWAS (ECOWAS, 2006, art. 6.3.d)	Do not authorize the transfer	If the arms 'are destined to be used'	The commission of 'terrorist acts' or support or encouragement of terrorism
	EU Common Position (EU, 2008, criterion 6.a, 7.e)	Take into account the importer's record with regard to support and encouragement of terrorism	n/a	Support and encouragement of terrorism and non-compliance with international commitments; diversion of technology or equipment to terrorists
	OSCE Document (OSCE, 2000, para. III.A.2.b.ix)	Avoid issuing export licences	If there is a 'clear risk' that the arms 'might'	Support or encouragement of terrorism
	OSCE Principles (OSCE, 1993, para. II.4.b.viii)	Avoid transfers	If the transfers 'would be likely to'	Support or encouragement of terrorism
	SICA (SICA, 2006, arts. I.14–15)	Do not transfer	n/a	Failure, on the part of the importer, to 'comply with international agreements and instruments on terrorism and related acts' or the facilitation of the commission of an 'act of terrorism, in violation of international instruments on terrorism adopted' by SICA states
	Wassenaar Elements (WA, 1998, para. 6.c)	[Assess the importer's motivation]	If the equipment or technology were to 'be at risk'	'[D]iversion to terrorist groups and organisations, as well as individual terrorists'

	Wassenaar (BP) (WA, 2002, para. I.2.a)	Avoid issuing export licences	If there is a 'clear risk' the arms 'might'	Support or encouragement of terrorism
Transnational organized crime	ATT (UNGA, 2013a, art. 7.1.b.iv)	Do not authorize	If there is an 'overriding risk' that arms 'could be used'	Commission or facilitation of 'an act constituting an offence under international conventions or protocols relating to transnational organized crime' to which the exporting state is a party
	ECOWAS (ECOWAS, 2006, art. 6.4.a)	Deny transfer authorization	If the transfer 'is destined to be used'	Facilitation of 'the commission of violent or organised crime'
	EU Common Position (EU, 2008, criterion 6.a)	Take into account the importer's record with regard to support and encouragement of organized crime	n/a	Support and encouragement of international organised crime and non-compliance with international commitments in this area
	OSCE Document (OSCE, 2000, para. III.A.2.b.x)	Avoid issuing export licences	If there is a 'clear risk' that the arms 'might facilitate'	Facilitation of organized crime
	Wassenaar Best Practice Guidelines (WA, 2002, para. I.2.j)	Avoid issuing export licences	If there is a 'clear risk' that the arms 'might facilitate'	Facilitation of organized crime
Diversion	ATT (UNGA, 2013a, art. 11.2)	Asses the risk of diversion; prevent it by considering mitigation measures, examining parties involved in the export, requiring additional documentation, or not authorizing the export	n/a⁶	Diversion
	Central African Convention (ECCAS, 2010, art. 5.5.a)	Deny transfer authorization	If there is a 'possibility' the arms might be diverted	Diversion 'to unauthorized use or users or to illicit trade'

	EU Common Position (EU, 2008, criterion 7.d–e)	Assess the impact and risk as well as the importer’s record with regard to respecting re-export provisions designed to prevent diversion to terrorists	If the military technology or equipment ‘might be’ diverted	Diversion within the buyer country or re-export under undesirable conditions, such as to an undesirable end user or for an undesirable end use
	OSCE Document (OSCE, 2000, paras. III.A.2.b.iii, viii)	Avoid issuing export licences	If there is a ‘clear risk’ that the arms ‘might be diverted’	Diversion to ‘territories whose external relations are the internationally acknowledged responsibility of another State’; reselling or diversion within the recipient country; or ‘re-export for purposes contrary to the aims of this document’
	OSCE Principles (OSCE, 1993, para. II.4.b.vi)	Avoid transfers	If the transfers ‘would be likely to be diverted’	Diversion ‘within the recipient country or [re-export] for purposes contrary to the aims of this document’
	Wassenaar Elements (WA, 1998, para. 6.c)	[Consider]	If the equipment or technology were to ‘be at risk of diversion’	Diversion ‘to terrorist groups and organisations, as well as individual terrorists’; diversion to the ‘illicit trade’
	Wassenaar Best Practice Guidelines (WA, 2002, paras. I.2.c, I.2.g)	Avoid issuing export licences	If there is a ‘clear risk’ that the arms ‘might be diverted’	Diversion to ‘territories whose external relations are the internationally acknowledged responsibility of another State’; reselling and or diversion within the recipient country; reproduction without licence; or re-export ‘[c]ontrary to the aims of this document’
	Wassenaar Best Practice Guidelines (WA, 2002, para. II.1)	Take into account the importer’s stockpile management and security procedures	n/a	‘[U]nauthorised re-transfers, loss, theft and diversion’

Notes:

n/a = not applicable

¹ In the ‘Obligation’ column, text that appears in brackets relates to implicit guidelines rather than clearly stated obligations.

² In fact, the ECOWAS Convention contains a complete ban on the transfer of small arms and light weapons into, from, and through the territories of its member states; however, the Convention stipulates exemptions for legitimate national defence and security needs or to facilitate participation in peace support operations (ECOWAS, 2006, art. 4).

³ Adopted in 1998 and amended in 2004 and 2011.

⁴ Adopted in 2002 and amended in 2007.

⁵ Internal repression is defined to include ‘torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights’ (EU, 2008, criterion 2).

⁶ Although Article 11.2 of the ATT does not explicitly require states parties to apply the ‘overriding risk’ threshold contained in Article 7.3 of the treaty when assessing the risk of diversion, it is logical to apply the same threshold.