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TO: All Permanent Missions in New York	FROM: Daniël Prins, Chief Conventional Arms Branch United Nations Office for Disarmament Affairs
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I have the honour to transmit attached hereto a letter from the Chair of the Preparatory Committee of the Conference on the Arms Trade Treaty transmitting his informal draft papers on “scope”, “criteria and parameters” and “international cooperation and assistance”, which are intended to facilitate discussions in the second session of the aforementioned Preparatory Committee, which will be held 28 February to 4 March 2011 in New York.

The Chair of the Preparatory Committee would be grateful if his letter and enclosed draft papers could be forwarded to the relevant authorities within your Excellency’s Government.

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Le 17 février 2011

Excellence,

Comme vous le savez peut-être, la deuxième session du Comité préparatoire de la Conférence des Nations Unies pour un traité sur le commerce des armes, prévue en 2012, se tiendra du 28 février au 4 mars 2011, à New York.

Dans le souci d'aider les États à préparer la session du Comité préparatoire, j'ai l'honneur de vous faire parvenir ci-joint, pour examen par votre gouvernement, trois projets de rapport sur : i) la portée; ii) les critères et paramètres; et iii) la coopération internationale et l'assistance aux victimes, qui seront les trois principales questions de fond inscrites au projet d'ordre du jour de la session susmentionnée.

Ces documents ont été établis sur la base de l'interprétation que j'ai faite de l'échange de vues qui a eu lieu durant la première session du Comité préparatoire tenue en juillet 2010 ainsi que des exposés présentés par les facilitateurs à cette occasion. Je tiens à souligner, toutefois, qu'ils ont été rédigés sur ma propre initiative et sous ma responsabilité dans le seul but de faciliter un débat ciblé et fructueux lors de la deuxième session du Comité et qu'ils ne préjugent en aucune manière de l'issue des discussions.

Veillez agréer, Excellence, les assurances de ma très haute considération.

Le Président du Comité préparatoire
de la Conférence des Nations Unies
pour un traité sur le commerce des armes
(Signé) Roberto García Moritán

Criteria/Parameters

- I. States shall evaluate on a case-by-case basis the decision on whether or not to authorize a transfer of arms. In achieving this decision, States should, as appropriate, take into consideration following criteria:

A. *International Obligations of a State:*

1. A State Party shall not authorize a transfer of arms if the transfer would violate any measure adopted by the Security Council acting under Chapter VII of the Charter of the United Nations, including arms embargoes, or adopted under any treaty to which it is a party, as well as regional or sub-regional arms embargoes.
2. A State Party should not breach or be in violation of any of its other international obligations or commitments.

B. *Potential consequences of the arms transfer on internal, regional and international peace*

A State party shall not authorize a transfer of arms if there is, in the view of the potential transferring State, a substantial risk that those arms would:

1. Be used in a manner that would seriously undermine peace and security or, provoke, prolong or aggravate internal, regional, sub-regional or international instability, including through the excessive accumulation of conventional weapons stockpiles.
2. Be used in the commission of serious violations of international humanitarian law and international human rights law.
3. Seriously impair poverty reduction and socio-economic development, seriously hamper the sustainable development of the recipient State or would not meet legitimate security needs with the least diversion for armaments.

C. *Consideration of the illegal use of the transferred arms*

A State party shall not authorize a transfer of arms if there is, in the view of the potential transferring State, a substantial risk that those arms would:

1. Be diverted within the recipient state, including through diversion to the illicit market, unauthorised end users or transferred to another State for use in a manner inconsistent with the any of the criteria contained in this treaty.
2. Be used in the commission of transnational organized crime as defined in contravention of the United Nations Conventional Against Transnational Organised Crime.
3. Likely be used to facilitate or commit acts of genocide or crimes against humanity or any other crimes of international law.

4. Be used to perpetrate acts of terror.
5. Contribute to a pattern of persistent corruption in the recipient State.

II. In making assessments under Article I, a State party shall take into account the nature of the arms to be transferred, the use of the weapon by the end-user and assessments made and information provided, inter alia, by all reliable sources of information, including:

1. a State party's own authorities and agencies, including its diplomatic and consular missions;
2. competent bodies of the United Nations and other international, regional and sub-regional organisations;
3. other States; and
4. non-governmental organisations;

Scope

I. Scope of the ATT

For the purposes of this Treaty, conventional arms shall include those items enumerated below.

II. Arms and related items

- a. Tanks
- b. Other Armoured Combat Vehicles
- c. Large Calibre Artillery Systems
- d. Military Aircraft
- e. Military Helicopters
- f. Naval vessels
- g. Missiles or Missile Systems
- h. Small Arms
- i. Light Weapons
- j. Munitions
- k. Ammunition
- l. Parts or Components specifically designed for any of those categories of weapons or equipment defined in subparagraphs (a)-(k).
- m. Technology and Equipment specifically designed and used to develop, manufacture, or maintain any of the above equipment, ammunition or components defined in this list.

III. Transactions/Activities

For the purposes of this Treaty, the transactions/activities covered in this Treaty are those enumerated below.

- a. Import
- b. Export
- c. Re-export

- d. Temporary transfer
- e. Trans-shipment
- f. Transit
- g. Transfer
- h. Brokering
- i. Technology transfer
- j. Manufacture under foreign license
- k. Leases
- l. Loans
- m. Gifts
- n. Technical assistance
- o. Research and Development
- p. Financing

IV. Exceptions

The following categories of transfers and weapons are not within the scope of the Treaty:

- a. Internal transfers
- b. Domestic ownership of weapons
- c. Sporting and hunting rifles for recreational purposes
- d. Antique weapons

Annex A

Mandatory items to be covered by the ATT

1. For the purposes of this Treaty, the conventional arms described in Article XX shall include any of the following which have been designed or modified for military use:
 - a. **Tanks** (tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high level of self-protection, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre);
 - b. **Other Armoured Combat Vehicles** (tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either: (i) designed and equipped to transport a squad of four or more infantrymen, or (ii) armed with an integral or organic weapon of at least 20 millimetres calibre or an anti-tank missile launcher, (iii) designed to perform reconnaissance missions, (iv) with integral command and control of troop technology, or (v) with technical means designed for electronic warfare);
 - c. **Large Calibre Artillery Systems** (a gun, howitzer, artillery piece combining the characteristics of a gun and a howitzer, mortar or multiple-launch rocket system, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 50 millimetres and above);
 - d. **Military Aircraft** (manned or unmanned fixed-wing or variable-geometry wing aircraft armed and (i) equipped to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons, or other weapons of destruction, or (ii) equipped or modified to perform reconnaissance, command of troops, electronic warfare, electronic and fire-suppression or air defence systems, refueling or airdrop missions);
 - e. **Military Helicopters** (manned or unmanned rotary-wing aircraft equipped to (i) employ anti-armour, air-to-ground, or air-to-air guided weapons and equipped with an integrated fire control and aiming system for these weapons, or (ii) equipped or modified to perform reconnaissance, troop transport, command of troops, electronic warfare, electronic and fire-suppression or air defence systems, refueling or airdrop missions);
 - f. **Naval vessels** (surface and submarine vessels armed or equipped for military use);

- g. **Missiles or Missile Systems** (guided rocket, ballistic or cruise missiles capable of delivering a payload to an air, sea, or land-based target, or vehicles, apparatus or devices designed or modified for launching such munitions);
- h. **Small Arms** (weapons designed for individual use including, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns);
- i. **Light Weapons** (weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person including, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 50 millimetres);
- j. **Munitions** of 50mm and above for use with the weapons and equipment defined in sub paragraphs (a)-(i);
- k. **Ammunition** of 50mm or less for use with the weapons and equipment defined in subparagraphs (a)-(i);
- l. **Parts or Components** specifically designed for any weapons or equipment defined in subparagraphs (a)-(j); and
- m. **Technology and Equipment** specifically designed and used to develop, manufacture, or maintain any equipment, ammunition or components defined in this list, including: electronics, computers, telecommunications, information security, sensors and lasers, transportation and training devices.

Annex B

Mandatory transactions/activities to be covered by the ATT

1. For the purposes of this Treaty, the following transactions/activities shall be included by States in their national legislation and regulations:
 - a. **Import:** The physical movement of conventional arms into a State's territory
 - b. **Export:** The physical movement of conventional arms out of a State's territory; the transfer of title to and control over conventional arms from one State to another State, or from one State or a legal and natural person to a legal or natural person in the jurisdiction of another State;
 - c. **Re-export:** The subsequent transfer of conventional arms, following the original entry of those arms to the primary importing country and regardless of whether the arms have been modified during their use by the original importer, to a third party recipient outside the jurisdiction of the importing State.
 - d. **Temporary transfer:** The non-permanent physical movement of conventional arms into or from national territory.
 - e. **Trans-shipment:** The export of conventional arms from the territory of a State which have been imported into the State solely for the purpose of exporting them, either on the same or another conveyance
 - f. **Transit:** The conveyance through the territory of one State to another State of imported conventional arms
 - g. **Transfer:** (includes imports, exports, transit, trans-shipment, and re-export of conventional arms)
 - a) International arms transfers involve, in addition to the physical movement of equipment into or from national territory, the transfer of title to and control over the equipment.
 - b) An international arms transfer may also occur without the movement of equipment across State frontiers if a State, or its agent, is granted title and control over the equipment in the territory of the Supplier State. Therefore, a transfer of arms to a State would occur when its forces stationed abroad are granted title and control of equipment by the host country or any third State, or when title and control of such equipment are transferred to the host country or any third State. Additionally, if title and control of equipment temporarily stored or prepositioned on the territory of another States are granted to the host country by the owner, then an international transfer has occurred.
 - c) Since the supply of equipment by a State to units of its armed forces stationed abroad does not involve the transfer of national title and control, such supply is not considered an international transfer. Equipment of a State can be temporarily strode or pre-positioned

on the territory of another State with no transfer of title and control of this equipment. This is not considered an international arms transfer.

OR

- 1. Physical movement of an item to/from national territory
- 2. Transfer of title to or control over the covered items

h. Brokering:

- 1) A broker, person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise (from 2007 United Nations brokering report (A/62/163)). A broker serves as a finder of business opportunities to one or more parties to a transaction involving conventional arms;
- 2) Acting as an intermediary that puts relevant parties in contact;
- 3) assisting parties to a potential transaction involving conventional arms in proposing, arranging or facilitating agreements or possible contracts between them;
- 4) Assisting parties to a potential transaction involving conventional arms in obtaining the necessary documentation or assisting in arranging the necessary payments;
- 5) Providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services in return for some form of consideration whether financial or otherwise and regardless of the origins of the goods and independently of the fact that the conventional arms enter the territory of the State Party.

i. Technology transfer: The process of exporting such assets which are related to conventional arms manufacturing *inter alia* products, skills, knowledge, technologies, methods of manufacturing, samples of manufacturing and facilities in anticipation that the recipient may replicate these assets or further develop or exploit these assets into new products, processes, applications, materials or services.

j. Manufacture under foreign license: Supplying, equipping or furnishing a State or a legal and natural person with patent rights, data, know-how, trained personnel, instruction and guidance of personnel or other manufacturing aid, or such other assistance, information, rights, or licences as are needed to enable the recipient to produce particular conventional arms

k. Leases: A contract by which conventional arms are conveyed from one State to another State, or from one State or a legal and natural person to a legal or natural person in the jurisdiction of another State for a specified time and in return for a periodic payment.

l. Loans: The borrowing of conventional arms from one State to another State, or from one State or a legal and natural person to a legal or natural person in the jurisdiction of another State in anticipation of return and not necessarily against payment.

- m. **Gifts:** Conventional arms given willingly from one State to another State, or from one State or a legal and natural person to a legal or natural person in the jurisdiction of another State without payment in return.
- n. **Technical assistance:** Cooperation, facilitation or aid from one State to another State, or from one State or a legal and natural person to a legal or natural person in the jurisdiction of another State involving the transfer of materiel, assets, knowledge or data which could enable the recipient to develop, manufacture, assemble, maintain or operate conventional arms.
- o. **Research and Development:** The systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions as well as all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.
- p. **Financing:** The act, process or an instance of raising or providing funds to enable a transfer of conventional arms.

International Cooperation and Assistance

I. International Cooperation and Assistance

1. In fulfilling its obligations under this Treaty each State Party has the right to seek and receive assistance.
2. Each State Party in a position to do so, and where appropriate, shall provide technical, legal, material and financial assistance to States Parties aimed at implementation of the obligations of this Treaty. Such assistance may be provided, inter alia, through the United Nations, international, regional, sub-regional or national organisations, non-governmental organisations, or on a bilateral basis.
3. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment and scientific and technological information promoting the implementation of this Treaty. The States Parties shall not use this Treaty to impose undue restrictions on the provision and receipt of technology and assistance.
4. Each State Party in a position to do so, and where appropriate, shall provide legislative and legal assistance, exchange experiences in legislation and regulations related to an ATT and its practical implementation, and industrial cooperation, technology transfer, and management as necessary to assist with practical implementation.
5. States Parties giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

II. Victim Assistance

1. Each State Party in a position to do so, shall provide assistance for the care and rehabilitation, and social and economic reintegration, of victims of armed conflict. Such assistance may be provided, inter alia, through the United Nations system, international, regional, sub-regional or national organisations, non-governmental organisations, or on a bilateral basis.