

Legal understanding of the failures of international conventional arms control mechanisms



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ABSTRACT: Conventional arms control appears today as an essential means to ensure peace in the world and sustainable development. Its international implementation is ensured by United Nations bodies, treaties and even programs. Despite these mechanisms, arms control is proving to be ineffective. Weapons continue to be the basis of several criminal acts, including scenes of violence, armed conflicts, and terrorist attacks. By resorting to research methods such as analysis and legal documentation, the author reaches the conclusion according to which these failures at the level of control have their sources in shortcomings within control mechanisms. These shortcomings include among other the failure to establish a Military Staff Committee whose role was to contribute with the Security Council to the implementation of a policy of reducing the budget dedicated to arms in accordance with Article 26 of the Charter of the United Nations; The non-compliance with the rules for reporting in the registers of conventional weapons, and the legalization of the right to carry weapons in the internal legislation of several countries.

KEYWORDS: Conventional arms control, peace, sustainable development, United Nations, Security Council, military staff committee, register of conventional weapons, right to carry weapons.

INTRODUCTION: Of all the inventions of man, firearms appear to be one of the most controversial. Indeed it can be defined as a device intended to neutralize, injure a person or cause property damage¹. There are two categories of firearms, heavy weapons still known as mass destruction, namely chemical, biological and nuclear weapons² and conventional weapons³. In general, disarmament efforts tend to focus on heavy weapons at the expense of conventional weapons considered legal and for which the United Nations has opted for control⁴. That is why in this work, only conventional weapons will hold our attention. Indeed, despite their usefulness in the hands of both civilians and regular defense forces to ensure security, fight crime, and their generally legal character, the misdeeds of conventional weapons are enormous. It turns out that both the manufacturing process and the use of weapons are a danger to the environment and to man. Conventional weapons are made from precious metals, including cobalt and copper, which are mined in various parts of the world. For example, the Apache helicopter⁵ has about 6000 parts produced all over the world⁶. On nature and the environment, military activities (training exercises, conflicts, unexploded ammunition or submerged ammunition), hunting, sport, leisure, contributes significantly to environmental pollution. Tens of thousands of tons of lead are thus dispersed in the environment each year by⁷ toxic lead from bullets, heavy metals; toxic fire smoke that is released into the environment are a source of lead poisoning⁸ animal, avian in particular and human lead poisoning. The other dangerous factor of these weapons is their manufacture in large quantities and the resulting consequences. Indeed, the manufacture of weapons turns out to be extremely expensive. According to the Stockholm Institute report of April 24, 2022⁹, the global military spending budget in 2022 is close to \$2,240 billion¹⁰. This is therefore a significant amount invested in armaments when we know that a tiny part of this amount would be used to feed the entire planet, finance sectors such as health, social action and achieve sustainable

¹ <https://www.thefreedictionary.com/gun>

² <https://disarmament.unoda.org/en/amd/armas-nucleares>

³ <https://disarmament.unoda.org/fr/convarms/registre-des-armes-classiques>

⁴ <https://www.un.org/en/global-issues/disarmament>

⁵ AH-64 Apache is a helicopter specially designed for military, all-weather attack missions

⁶ understand the arms trade with Leo Drasset from Dirty biology

⁷ hunting Report on the effects of heavy metals on the environment and health, by Gérard Miguel, Senator

<https://www.senat.fr/rap/l00-261/l00-2611.pdf>

⁸ Acute or chronic poisoning due to lead or its derivatives <https://dictionnaire-academie.fr/article/A9S0554?history>

⁹ <https://www.obsarm.info/spip>

¹⁰ the largest increase over 8 years

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development¹¹. On the other hand, the large stockpiles of weapons contribute to fuel conflicts and crime in the world and cause enormous harm to individuals. We are also witnessing the proliferation of scourges such as corruption, arms trafficking and their transfer to the wrong hands. Despite this observation, the process of control of conventional weapons is still quite ineffective. One way to solve this problem is by knowing the main causes, hence the problem of this work, namely: what are the legal causes of the failure of the conventional arms control mechanism?

Throughout this work we will talk about the mechanisms established over the years to reduce and combat the threat of conventional weapons in the world, namely, the bodies and institutions within the UN, treaties and programs. Then we will discuss the limits of these mechanisms¹².

In general, we can distinguish two categories of conventional weapons namely, small arms of a reduced caliber often below fifteen millimeters and heavy weapons that may require support for their handling, weigh several tons and have a range of about ten kilometers. The first of the legal consideration of the dangerous nature of weapons and the need to bring control were made through humanitarian law, namely the Geneva conventions¹³ and The Hague Conventions¹⁴.

By the Geneva Conventions, the very first of which was drawn up in 1863, the international community thus intended to lay down a set of rules aimed at limiting the effects of war operations, in particular with regard to civilian populations, facilities and persons who are not or no longer participating in the fighting, namely prisoners of war and refugees; as well as limiting the objectives, means and weapons of war..

By the 1954 Hague Conventions, the objective was to protect cultural property during armed conflicts. Over time, arms control has been strengthened by new treaties, bodies and programs of the United Nations.

With regard to the treaties, we have:

-The Anti-Personnel Mines convention also called the Ottawa Treaty developed on September 18, 2017. Still known as the Ottawa Treaty, (APLC)¹⁵ it's a treaty which prohibits the use, storage, production, transfer and destruction of antipersonnel mines. understood as an explosive charge designed and placed in such a way as to be triggered, by the involuntary action of the enemy, in the passage of persons¹⁶, Its goal is to eliminate the suffering and losses caused by antipersonnel mines which kill and impair thousands of innocent people each year, hinder economic recovery and post-conflict reconstruction and prevent the return of people displaced by conflict.

-Convention on Cluster Munitions concluded in Dublin on May 30, 2008¹⁷ by which signatory States prohibit among other things, the development, production, acquisition or transfer of cluster munitions to any person¹⁸.

-The convention on certain conventional weapons (CCW) adopted on October 10, 1980¹⁹ and its five additional protocols²⁰ whose aim is to prohibit or restrict the use of several types of weapons that blindly strike the civilian population or cause unnecessary suffering to combatants.

-The Arm Trade Treaty of 2 April 2013 (ATT). Based on Article 26 of the United Nations charter according to which, peace and security also requires disarmament and the diversion of the minimum available human and economic resources towards armament. The objectives of the treaty are among other things, to establish the highest common standards with the aim of regulating or improving the regulation of the international trade in conventional arms; prevent and eliminate the illicit trade and the introduction and the diversion of conventional weapons²¹;

With respect to the United Nations security architecture, many offices, agencies and programs contribute to disarmament missions, these are:

-The Disarmament and International Security Commission still known as "C1"²². The commission is established by article 11.II of the UN charter which state that "The general Assembly may consider and make recommendations on the principles governing

¹¹ <https://www.un.org/esa/ffd/ffd3/press-release/les-pays-parviennent-a-un-ard-historique-pour-financer-le-nouveau-programme-developpement-durable.html>

¹² <https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html>

¹³ https://www.icrc.org/en/doc/assets/files/other/icrc_.pdf

¹⁴ <https://international-review.icrc.org/sites/default/files/S1026881200138759a.pdf>

¹⁵ <https://geneva-s3.unoda.org/static-unoda-site/pages/templates/anti-personnel-landmines-convention/APLC%2BEnglish.pdf>

¹⁶ <https://alternativepressreview.org/doc/interarm%C3%A9s-dictionnaire-des-termes-militaires-et-paramilitaires>

¹⁷ <https://www.unmas.org/sites/default/files/documents/convention-eng.pdf>

¹⁸ Article 1 <https://www.unmas.org/sites/default/files/documents/convention-fre.pdf>

¹⁹ [https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-_SixthReview_Conference_\(2021\)/CCW-CONF.VI-4_Enench.pdf](https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-_SixthReview_Conference_(2021)/CCW-CONF.VI-4_Enench.pdf)

²⁰ Protocol I on non-locatable shards; Protocol II on mines, booby traps and other devices; Protocol III on incendiary weapons; Protocol IV on blinding laser weapons (1995); amended Protocol II on mines, booby-traps and other devices (1996); and Protocol V on explosive remnants of war (2003)

²¹ Article 1 ATT <https://aser-asso.org/wp-content/uploads/2017/03/Traite-sur-le-Commerce-des-Armes-ONU-2013.pdf>

²² https://unitar.org/sites/default/files/media/publication/doc/un_pga_new_handbook_0.pdf

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disarmament and arms regulations²³.” The “C1” is one of the 6 commissions of the UN General Assembly and work on 7 major themes: nuclear weapons, weapons of mass destruction, outer space, conventional weapons, disarmament and international security, disarmament and machinery.

-The Sanctions commission of the Security Council²⁴, whose mission is to monitor compliance with the sanctions pronounced by the Security Council. Indeed, by virtue of the Article 41 of the UN charter, the Security Council is empowered to impose sanctions against states that violate the provisions of international law which sanctions may consist of an embargo on the sale of conventional weapons²⁵. Some examples of entities that are victims of arms embargoes are ISIS, Libya, Iraq, Mali, CAR²⁶.

-The military staff Committee²⁷. Composed of military advisors from security council member states, was created by virtue of the UN charter in anticipation of the creation of an autonomous force of which it was to have supervision. However, their power goes beyond this primary mission. They are therefore responsible, among other things, for advising and assisting the council on all questions of a military nature. Their competences also include the participation in the development of regulations on arming and disarmament²⁸.

- The United Nations Institute for Disarmament Research (UNIDIR)²⁹, which conducts research in the field of disarmament and security to assist the international community in its thinking, decisions and disarmament efforts.

- The United Nations Mine Action Service (UNMAS)³⁰ established in 1997 is working together with 11 other UN departments, agencies, programs and funds. Their mission is to enable an effective response, proactive and coordinated response to treats such as land mines, explosive remnants of war, cluster munitions.

-The United Nation office of Disarmament (UNODA)³¹. The Geneva Service of the Bureau of Disarmament aimed at achieving a general and complete disarmament under strict and effective international control by supporting member states in their disarmament, arms control effort proliferation.

-The Conventional Arms Registry³². It is a registry set up in 1991 that receives the reports of the States on the various transfers of arms internationally. The purpose of this register is among others to prevent the constitution of too large stocks of weapons in certain places, to prevent excessive production of weapons, to ensure serenity and transparency between States, in matters of armaments in order to build mutual trust.

Still within the framework of measures intended to ensure arms control, the following programs can be cited :

-The Security Council resolution 1325 (2000) on women; peace and security adopted the 31 October 2000. The resolution reaffirms the place and the major role of women in peace processes especially in conflict prevention and resolution, peacebuilding, peacekeeping, humanitarian interventions and post-conflict reconstruction. The resolution also insists on the necessity of the equal participation and full involvement of women in all efforts to maintain and promote peace and security.

- The Disarmament Conference³³: The Conference has the ability to negotiate disarmament issues internationally. It was the framework for the negotiation of most disarmament treaties.

- International Disarmament Day³⁴: It is held annually on 24 October. It was established for the first time in the outcome document of the Special General Assembly on Disarmament to promote a better public understanding of disarmament issues.

-The youth4desarmement program³⁵ which is an initiative launched in 2019 and led by the United Nations Department for Disarmament Affairs. Its goal is to connect young people around the world with experts to learn about disarmament. The program regularly organizes youth forums and conferences.

By providing for a certain number of control mechanisms, the objective of the UN was indeed to put an end to the proliferation of weapons and the dangers associated with them. However, the observation is that the existence of all these mechanisms seems insufficient to fight against what can be described today as the scourge of weapons. Indeed, conventional firearms continue to fuel conflicts in Africa in the Middle East and are used to carry out terrorist attacks in diverse parts of the globe.

²³ It was established in 1978 by a special session of the General Assembly. It worked closely with the Geneva-based Conference on Disarmament and the United Nations Disarmament Commission

²⁴ <https://www.securitycouncilreport.org/the-un-security-council-handbook-by-scr-1.pdf>

²⁵ Article 41 UNCHA <https://www.un.org/en/about-us/un-charter/full-text>

²⁶ <https://www.securitycouncilreport.org/pdf>

²⁷ Article 47 UNCHA <https://www.un.org/en/about-us/un-charter/full-text>

²⁸ article 47 of the UNCHA <https://www.un.org/en/about-us/un-charter>

²⁹ <https://unidir.org/>

³⁰ <https://www.unmas.org/en>

³¹ <https://disarmament.unoda.org/fr>

³² <https://disarmament.unoda.org/en/convarms/registratre-des-armes-classiques/>

³³ <https://www.ungeneva.org/ru/news-media/meeting-summary/2023/03/theDisarmament-Conference-Beginning-Last-Day>

³⁴ A/RES/50/72 of 12 December 1995

³⁵ <https://www.youth4disarmament.org/>

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Such situation not only participates in the impoverishment of these States but also a serious obstacle to sustainable development. The explanations of this failure are of various origins. We can cite among others:

-The failure of the military staff committee whose mission was to propose jointly with the Security Council a global policy to lead states to reduce their spending in the field of armaments³⁶, to take on his office. The committee is composed of military representatives from the five member powers of the Security Council. In this regard, if the influence, the financial and military resources available to its five permanent members, were put in the service of peace and development, states around the world would bend to arms control regulations. We realize that many conflicts that were not intended to last are now spread over years because of continuous deliveries of arms from major powers. The impoverishment of the recipient States of these arms and the destruction of the environment being naturally more important. It has therefore become almost normal to see conflicts spread out over decades and to see hundreds of billions go up in smoke that could have stopped world hunger and financed sustainable development³⁷.

- the non-signature by the major arms producers of the main disarmament treaties. This is the case of the convention on the prohibition of the use of stockpiling, production and transfer of anti-personnel mines and on their destruction. As of August 2022, 164 states had ratified and acceded to the treaty. The major powers that are also the major past and present producers of landmines were not yet parties to the treaty; these include the United States of America, China, Russia, India and Pakistan. Another example is the International Arms Trade Treaty signed in 2013, where it turns out that among the non-parties we find the United States, Saudi Arabia, Russia, India, Pakistan and China³⁸. This state of affairs thus allows the main criminal networks to continue to supply themselves and the conflicts and pollution caused in the world by the free circulation of weapons to continue.

The non-adherence of major arms producers to arms treaties is only the tip of a wider problem, namely:

- the lack of full adherence by States to disarmament treaties. Unlike treaties of the same importance, namely the Geneva Conventions or even the United Nations Charter, which are treaties that are part of the register of treaties that must in principle be unanimous due to the values they defend, the main disarmament treaties are struggling to be accepted by all States in the international community, which naturally limits arms control efforts. This is the case of the aforementioned treaty on the exclusion of anti-personnel mines, which has only 164 ratifications to date; the convention on the munitions cluster, which has only 112 ratifications, including 12 States that have signed the convention but not ratified it; the convention on certain conventional weapons, which as of September 2023 had 127 States parties, some States parties having not ratified all of the protocols in a context where the ratification of two treaties is sufficient to be considered a party; The Arms Trade Treaty, which entered into force on 24 December 2014, has 113 ratifying states and 28 signing but not ratifying states.

- We also note as another problem, the absence of enforcement mechanisms in the treaty prohibiting the regulation of arms. This is one of the major problems of international law, namely the absence of a supreme authority to ensure compliance with international standards and to apply binding sanctions in the event of non-compliance with these laws. The Security Council, whose diplomatic weight could have compensated for this role, is itself suffering from a crisis of confidence among most states in the international community. Indeed, instead of fighting for the reduction of weapons in the world, the members of the council participate in their proliferation. Several events demonstrate this. For example, the permanent members of the SC is now among the world's largest arms exporters. In a context where there is no binding force, it becomes obvious that the instructions of institutions such as the Security and Disarmament Committee (C1) or those of the Sanctions Committee will not be respected; or that recommendations of great importance such as Security Council Resolution 1325 on Women, Peace and Security or the Register on Conventional Arms will not be respected. It is therefore no surprise that the other major problem with gun control is:

- Non-compliance with the rules for reporting in conventional arms registers. This problem has two aspects. First, we note the failure to establish reports by States³⁹. This is a trend that tends to increase over the years. While the number of reports was around 113 to 123 between 2002 and 2006, the number of reports has dropped sharply in the last three years. With 4 reports in 2021, 15 reports in 2022 and 12 reports in 2023⁴⁰. Not only are reports not established, and even when they are, it is in contempt of the rules in this area⁴¹. This is the second part of the problem. Indeed, according to the texts of the United Nations, the reports are submitted at the latest by May 31 through the UNODA web-based⁴² which even publishes a practical guide that provides step-by-step

³⁶ Article 26 of the Charter of the United Nations

³⁷ The United Nations Commission on Human Rights expressed in its resolution A/HRC/RES/24/35 the dangers to human rights of non-compliance with the rule prohibiting the transfer of weapons in conflict areas and where there are risks of violation of human rights. These dangers are among others the increase in sexual violence among women and girls and the risk of recruiting child soldiers. Also, non-compliance with the rules on weapons safety is a violation of resolution 290 called the essential elements of peace

³⁸ "Arms Trade: A Treaty, But When Are Responsible Transfers?", Peace and Security Research and Information Group, 13 September 2017.

³⁹ <https://www.sipri.org/commentary/expert-comment/2015/2015-un-register-conventional-arms-still-time-improve>

⁴⁰ <http://www.un-register.org/ReportingStatus/Nationalreports.aspx>

⁴¹ <https://www.sipri.org/commentary/expert-comment/2015/2015-un-register-conventional-arms-still-time-improve>

⁴² <https://www.unroca.org/reporting/login>

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instructions on how to prepare and submit a report to UNROCA⁴³. However, it is clear that the deadlines for submitting reports are generally not respected, as is the form of the reports. Through such failures, the Secretary General of the nations, as well as many NGOs working in the field of security and human rights, find themselves deprived of important data that could help ensure more effective arms control.

- Still in the context of problems at the level of arms control mechanisms, we have national legislation in some countries. Indeed, in several States, the right to bear arms is in force. A 2018 UN report reveals that more than a billion firearms in the world; 857 are in the hands of civilians, the rest by the various armies and police forces. This state of affairs is at the origin of several problems including arms trafficking, crime, terrorism, air, soil and water pollution, etc. A study carried out in 2020 by UNODOC on data collected between 2016 and 2017 established a direct link between organized crime, terrorism and other forms of crime⁴⁴.

CONCLUSION:

Having reached the end of this study, which was concerned with understanding the difficulties in ensuring the control of conventional weapons, it emerges that many intrinsic limitations in the control mechanisms appear to be at the origin of this problem. As part of these limitations, we have, the failure of the Joint Chiefs of Staff Committee to take up its functions as regulator of arms expenditure, the absence of constraint mechanisms or even irregularities in the application of the recommendations of the United Nations register on the control of conventional weapons figure prominently. Understanding these failures and their impact on conventional arms control efforts will therefore help the competent authorities in the application of adequate measures for a more effective mechanism for controlling conventional weapons.

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