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Combating the proliferation of small arms and light caliber, the planting of landmines under international law

مكافحة انتشار الأسلحة الخفيفة و العيار الصغير، و زرع الألغام الأرضية
بموجب القانون الدولي

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Abstract:

This study aims to highlight the role of international law in combating the proliferation of small arms and light caliber, which constitute a major challenge to international peace and security, and a threat to development and the protection of human rights, especially in light of the increase in organized crime and terrorism, and the diversity and change of the contents of armed conflicts, most of which have become interiors of an international character.

Indeed, strategies for disarmament and the identification of dangerous weapons focused at the beginning on nuclear, biological and chemical weapons, excluding small arms and landmines. This is why in this article we seek to discuss the most important international agreements that have been issued and shed light on the work programs drawn up by the United Nations during its conferences, in order to put the necessary mechanisms and procedures for disarmament, preventing the proliferation and trade of small arms, and destroying mines.

Keywords: small arms and light caliber, mine destruction, the Ottawa Convention, disarmament, international armed conflict.

الملخص باللغة العربية:

تهدف هذه الدراسة إلى إبراز دور القانون الدولي في مكافحة انتشار الأسلحة الخفيفة والعيار الصغير، والتي تشكل تحدياً رئيسياً للسلم والأمن الدوليين، وتهديداً للتنمية وحماية حقوق الإنسان، خصوصاً في ظل تزايد الجريمة المنظمة، والإرهاب، وتنوع وتغير مضامين النزاعات المسلحة، التي أصبحت معظمها داخلية ذات طابع دولي.

والواقع أن استراتيجيات نزع السلاح وتحديد الأسلحة الخطيرة قد ركزت في البداية على السلاح النووي والبيولوجي والكيميائي، واستثنت الأسلحة الصغيرة والألغام الأرضية، لهذا نسعى في هذه المقالة إلى مناقشة أهم الاتفاقيات الدولية التي تم إصدارها ونلقي الضوء على برامج العمل التي سطرته الأمم المتحدة من خلال مؤتمراتها، من أجل وضع الآليات والإجراءات اللازمة لنزع السلاح ومنع انتشار وتجارة الأسلحة الخفيفة، وتدمير الألغام.

الكلمات المفتاحية: الأسلحة الخفيفة والعيار الصغير، تدمير الألغام، اتفاقية أوتاوا، نزع السلاح، نزاع دولي مسلح.

Introduction:

The end of the Cold War gave hope for a world blessed with security and peace, completely free from the threat of nuclear war and all other sources of threat, but on the contrary, security threats have increased and diversified and armed conflicts have multiplied, especially on the African continent. This is what contributed to the spread of small arms.

Twenty years ago, Small Arms and Light Weapons (SALW) were completely absent from the scope of the arms control and disarmament discussion. Only weapons known as mass destruction (nuclear, biological, chemical and bacteriological weapons) are of particular interest to the international community. But today, with the impact of internal conflicts of an international character - in 1997, 26 of the 27 recorded conflicts in the world were of an internal or quasi-state nature - it appears that small arms and light weapons have become dangerous due to their massive destructive potential in armed conflict.

These weapons have killed more than 3 million people in West Africa between 1990 and 2004, if we add to these tragic losses the devastation caused by these weapons in other conflicts such as (Sudan, Somalia, Rwanda, Liberia, Sierra Leone, Democratic Republic of the Congo, Ivory Coast) And, most recently, Libya and Syria), we conclude that small arms and light weapons do much more harm than heavy weapons and nuclear weapons.

However, the proliferation of light weapons and mines is not only a security issue, it is also a matter of human rights,

development and the prolongation of armed conflicts, threatening legitimate governments and serving terrorism and organized crime. Therefore, countries agreed in the "Millennium Declaration" to take measures to end the arms trade. Small, mine is destroyed.

Based on the foregoing, the study attempts to answer the following problematic: **What are the legal mechanisms to combat the proliferation of small arms and light weapons under general international law?**

And To answer this problematic we discuss the following axis:

1. From the 1980 Convention on Certain Conventional Weapons to the Ottawa Convention:

- 1.1. The "1980 Convention on Certain Conventional Weapons"
- 1.2. The Ottawa Convention 1997

2. The United Nations Conference on fighting the Illicit Trade in Small Arms

- 2.1. The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001
- 2.2. The Second United Nations Conference on Combating the Proliferation of Light Weapons 2005
- 2.3. The Conference on the Evaluation of the United Nations Program of Action on Light Weapons 2006

1. From the 1980 Convention on Certain Conventional Weapons to the Ottawa Convention:

Small arms regulation began with the 1980 Convention on Certain Conventional Weapons¹. Likewise, the Ottawa Convention appears to enrich and make the small arms

normative framework effective. Thus, studying the transition from the 1980 Convention on Certain Conventional Weapons to the adoption of the Ottawa Convention reflects the will of the international community to address the issue of small arms, because before the adoption of the 1997 Ottawa Convention on the Comprehensive Ban on Anti-Personnel Mines², the use of these weapons was governed by customary international humanitarian law, and the 1980 Convention on Certain Conventional Weapons.

Until 1980, the use of anti-personnel mines was not covered by any specific legal text, and efforts to regulate the use of anti-personnel mines in armed conflict were based exclusively on general principles of international humanitarian law³.

Since the nineteenth century, the emergence of new weapons of warfare has led to specific bans or restrictions on the use of certain conventional weapons. For example, the use of projectiles weighing less than 400 grams is prohibited by the "**Petersburg Declaration of 1868**", the first formal agreement aimed at banning the use of certain weapons during war, and marking the beginning of disarmament and arms control. These laws do not address the conduct of armed conflict, but rather seek to put in place progressive control measures over the production, stockpiling, transfer and development of weapons with which hostilities are waged⁴.

1.1. The "1980 Convention on Certain Conventional Weapons":

The 1980 Agreement came currently accompanied by four protocols, which are:

- The first protocol regarding explosive firearms that cannot be located.

- The Second Protocol Concerning Prohibiting and Restricting the Use of Mines, Booby-traps and other devices, which aims to regulate or restrict their use without establishing a general prohibition principle.

- The Third Protocol on Incendiary Weapons.

- The Fourth Protocol on Blinding Laser Weapons: This last protocol, which was adopted on October 13, 1995 in Vienna, has special importance in developing international humanitarian law and disarmament law, because it prohibits the use or deployment of a specific weapon during an armed conflict.

Thus, prior to the conclusion of the "Ottawa Convention in 1997", the "1980 Convention on Certain Conventional Weapons" and "Protocol II amended in 1996" were the main international agreements specifically regulating the use of landmines. These agreements apply only to countries that have agreed to be bound by their provisions.

However, from a humanitarian perspective, the 1980 Convention and its related protocols have been criticized, which continued to allow the use of antipersonnel mines by NGOs whose goal was to enact more ambitious laws to ban these weapons, and that these restrictions take into account the real humanitarian concerns of the disaster caused by the proliferation of these weapons since the 1990s. The international community has tried to find a legal instrument capable of eradicating this scourge. Thus, negotiations were underway

between states because antipersonnel mines not only affected their security in the first place, but also because disarmament efforts in recent years have also sought to reduce threats to human security.

1.2. The Ottawa Convention 1997:

This ambition was achieved on September 18, 1997 with the adoption of the "Ottawa Convention Concerning the Prohibition of the Use, Stockpiling, Production, Transfer and Destruction of Anti-Personnel Mines"⁵. Member States were required to disarm anti-personnel mines, abandon their use in perpetuity, and destroy their stockpiles. This agreement forces them to take the necessary measures because anti-personnel mines impede the development of countries and prevent economic reconstruction, as well as prevent the return of refugees and internally displaced persons. This has dire consequences⁶.

Implementing the Ottawa Treaty on anti-personnel mines will not only require the assistance of 154 signatory states (except for the United States, China and Russia that have not signed it) but also significant support from NGOs and private companies to clear the more than a hundred million landmines buried in the nearly 70 countries that have been destroyed by them. the war. Every year, about 25,000 people are maimed by landmines. It is often difficult to detect and the disinfection processes are long and dangerous⁷.

The Ottawa Agreement is an ambitious project of partial disarmament led by the United Nations and non-governmental organizations, with the aim of reducing the number of small arms and banning their export. Since the entry into force of this

convention banning the use, stockpiling, production, and transfer of anti-personnel mines and their destruction in March 1999, more than two-thirds of the world's governments have pledged not to use antipersonnel mines⁸.

International law has been enriched by the Ottawa Treaty which prohibits for the first time in history the manufacture, sale and use of the weapon of war represented by anti-personnel mines, and this agreement constitutes a concrete expression of a recommendation from the United Nations General through the General Assembly that adopted Resolution 51 / 45S on December 10, 1996⁹, Which urged all countries to conclude a new international agreement to ban anti-personnel mines as soon as possible¹⁰.

In compliance with the provisions of the Ottawa Convention, the state parties destroyed mines: on the first of March 2003, on the fourth anniversary of the implementation of the convention, the 45 states parties destroyed all their stockpiles, destroying 30 million mines. The agreement also requires marking, guarding, and protecting mined areas with a fence so that all mines there are destroyed, and taking measures to care for, rehabilitate and reintegrate mine victims, in addition to mine awareness programs¹¹.

Essentially, it is trying to create a framework to link the disarmament and development processes. It appears that the issue of anti-personnel mines is being dealt with through two legally binding instruments: the 1980 'Convention' and the 'Ottawa Convention' 1997. The signing of the Ottawa Agreement on December 3, 1997 is a giant step forward in the field of

disarmament. Progress has been made over the past five years:

- nearly 140 states parties;
- A significant decrease in the number of producing countries,
- a decrease in stocks;
- The number of victims has stabilized¹².

However, today the effectiveness of the Ottawa Agreement is jeopardized by the continuing refusal of the major powers (China, Russia, the United States, India and Pakistan) to join it. The 2003 Report, entitled Landmine Monitor: Toward a Land Without Mines, showed that 47 countries still had a total stockpile of about 200 million mines (according to estimates: 110,000,000 for China, 50 million for Russia, 10,400,000 for the United States) 6000,000 mines Pakistan, 5 million in India) which are the countries that have not yet joined this treaty, along with three of the five permanent members of the Security Council, most of the Middle East countries and the former Soviet republics, as well as a large number of Asian countries have not ratified the Ottawa agreement yet. Meanwhile, the treaty's implementation suffers from the lack of an effective monitoring and oversight mechanism. It depends mainly on the goodwill of the countries¹³.

2. The United Nations Conference on fighting the Illicit Trade in Small Arms:

The Secretary-General of the United Nations declared that "we have to face new threats, or perhaps old ones, but in strange and dangerous combinations: new forms of terrorism and the proliferation of weapons of mass destruction. However, while some see these threats as the main challenge to global peace and security, others feel a more direct

threat through the use of small arms in civil conflicts or so-called "soft" threats such as the persistence of extreme poverty and income disparity within and between societies, The spread of disease, climate change and environmental degradation."¹⁴.

2.1. The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001:

The international, regional and national efforts contributed to the holding of the "**United Nations Conference on the Illicit Trade in Small Arms and Light Weapons**" in New York on July 9-20, 2001, which is responsible for (**defining methods of action against illicit arms trafficking and how to eliminate it, and it drew the attention of the international community, to the criminal side of these weapons as well as to all aspects of the illicit trade**). This conference comes in line with the recommendations of the Disarmament Commission issued in 1996 and directives related to international arms transfers¹⁵.

2.1.1. Principles stipulated in the conference:

In short, the conference participants defined the following principles:

- Respect for the purposes and principles stipulated in the United Nations Charter, including the right to self-defense, equality of sovereignty among all member states, non-interference in the internal affairs of states, respect for human rights and a commitment to transparency in arms transfers;
- Commitment to preventing and eliminating the illicit arms trade. The same applies to

restraint in the production, purchase and transportation of weapons;

- The obligation to take into account not only economic or commercial considerations, but also other factors such as maintaining international peace and security, efforts to reduce international tensions, promote social and economic development, and resolve regional conflicts by peaceful means, to prevent the occurrence of an arms race and disarmament under effective international control;
- Imposing an obligation on states (with respect to the exporter and importer) to ensure that exported weapons do not lead to instability or the emergence of conflicts in their own regions or in other regions;
- The obligation to ensure that international arms transfers are not a means of interfering in the internal affairs of other states¹⁶.

The conference's program of work is a turning point in the efforts to disarm and control it in order to achieve peace and stability based on human security, sustainable development and human rights. It also contains a wide range of "political commitments and actions" that member states have committed to at the national, regional and global levels. The program remains "a politically binding international instrument against the proliferation of small arms." Its goal is to develop and strengthen standards and implement international measures to combat the trade in light weapons¹⁷.

2.1.2. Obligations stipulated in the conference:

The introduction to the 2001 **“Program of Action: Preventing, Combating and Eliminating the Illicit Trade in Small**

Arms and Light Weapons” defines the goals of the United Nations Member States that are not only related to small arms, but are specifically concerned with “peace, reconciliation, security, security, stability and sustainable development at the national and regional levels, and international”.

The program also identifies a list of commitments that member states, regional organizations and global actors must undertake to achieve these goals, for example:

- Establishing and adopting legislation related to controlling transfers of small arms and light weapons, and the destruction or confiscation of these weapons;
- Regulating trade in small arms and light weapons, while insisting on the need to involve the international community as a whole in the monitoring process and achieving regional goals;
- Encouraging international cooperation and assistance to improve states' ability to identify and trace small arms and light weapons;
- Member States should submit national reports on the implementation of the Program of Action and assess progress made in combating small arms and light weapons;
- To take concerted and comprehensive action at the global level to enhance the effectiveness of measures aimed at preventing, combating and eradicating the excessive and destabilizing proliferation of small arms¹⁸.

From the foregoing, it appears that the conference report focuses on limiting small arms as a means of avoiding conflict or managing conflict, and preventing the

spread of organized crime and terrorism. Therefore, arms control is not seen as an end in itself, but rather as a means to achieve the goals of peace, security and stability, Crisis management, peace building, and resolution of humanitarian, development and security issues¹⁹.

2.1.3. Marking and tracing light weapons²⁰:

With regard to the marking and tracing of small arms, the United Nations Program of Action calls for the following:

- Strengthening measures that prevent the manufacture, stockpiling, transfer and possession of small arms that have not been or are not marked incompletely;
- It is required that the weapons be marked at the time of their manufacture, with a mark containing minimum information on the country of manufacture, the manufacturer and the serial number;
- Encourages better record-keeping and gathering together to facilitate access to information.

Through these provisions, the program of work is in line with the logic developed at the regional level as many agreements encourage the improvement of markings and registration, and the application of measures specified in the "United Nations Arms Protocol," Which requires states to respect clear rules for marking, record-keeping, and weapons traceability, which may be related to transnational crime and criminal trafficking. Because of these measures, the Program of Action enabled the promotion of international awareness of the importance of "proper labeling" and "improved registration"²¹.

A sensitive issue was also raised during the United Nations conference, which is the issue of "regulation of legal transport" in the sense of focusing on export control by improving export licenses, controlling permits, and strengthening cross-border cooperation. However, these measures remain vague, and require the adoption of appropriate regulations to control transport operations in an efficient manner²².

2.1.4. The role of regional organizations in cooperation in combating the spread of light weapons:

The United Nations conference program demonstrated the importance of engaging regional and sub-regional organizations in combating the proliferation of small arms. Indeed, regional measures related to small arms can complement and enhance the implementation of the program of work, as they allow regions to address the problem of small arms in a way that suits them.

For example, in 1996 the Organization of African Unity began an in-depth study on ways to reduce the proliferation of small arms and improve sub-regional cooperation to combat arms smuggling, and regional agreements were part of the international process to address problems related to the uncontrolled proliferation and illicit trade in small arms. Thus, regional agreements such as the "ECOWAS Convention against Small Arms of June 2006", "The Protocol of the Southern African Economic Community"²³, (Economic Community of Central African States) and the "Nairobi Protocol" have contributed²⁴.

In playing a useful role as a collaborative center for global action, it contributes to strengthening national decisions in line with international

measures. Regional tools can also help set global standards by (creating an effective institutional framework that directs and coordinates work on small arms in a region in crisis). Delegates from 20 regional and international organizations and 172 non-governmental organizations participated in the national reports submitted by member states. These reports demonstrated that significant progress has been made in implementing the Platform for Action²⁵.

2.2. The Second United Nations Conference on Combating the Proliferation of Light Weapons 2005:

The second conference was held in New York in July 2005²⁶. Member states submitted about 100 reports, highlighting many of the targeted areas and paying more attention to them in order to prevent and combat the spread of small arms in them. The conference included achieving the following tasks:

- collect and destroy weapons; - Inventory Management;
- disarmament, demobilization and reintegration;
- marking and tracking;
- Strengthening control over resources;
- Establishment of institutions;
- Establishing links with terrorism, crime, drugs and precious metals;
- Illegal import / export, brokerage, etc²⁷.

In addition, according to the United Nations, of the 4 million weapons seized and disposed of between 1993 and 2003, half have been neutralized since the implementation of the program of work, and 50 member states have taken steps to collect them and destroy the surpluses. Programs to disarm populations in exchange for development aid, as well as reintegrate ex-

combatants into civil society, were put in place during peace agreements.

At the national level, more than 80 member states submitted national reports, and 97 focal points are responsible for liaising with other member states in order to ensure the implementation of the program of work and the national coordination aimed at an inter-institutional approach²⁸.

Some countries have also put in place new laws to combat the illicit arms trade: 90 of them have internal laws related to the manufacture, possession and illicit trade in weapons, and have signed or ratified many international instruments with more stringent provisions. Likewise, out of 98 countries that compiled national reports, 57 countries indicated that they had adopted laws to control exports and imports before 2001, and 21 countries adopted or revised these laws after 2001, 39 of which required end-user certificates.

However, while the program of work provides for registration and certification of arms brokers and suppression of illicit transactions, only 16 countries have adopted regulations on this basis. It also remains difficult to gauge the effectiveness of the procedures (inventory of seizures, misuse of weapons, etc.)²⁹.

2.3. The Conference on the Evaluation of the United Nations Program of Action on Light Weapons 2006:

World governments met from 26 June to 7 July 2006 in New York to hold a "Conference to Evaluate the United Nations Program of Action on Small Arms", until then, this program had neglected respect for human rights despite the obligation enshrined in Article 1 of the

United Nations Charter, and had not addressed fundamental aspects of arms control.

It is the same recorded failure that was noted at the third biennial meeting of states on the United Nations Program of Action on Illicit Small Arms. Nor has he been able to overcome these fundamental differences of opinion between states about the future of the UN small arms operation, many states remain disappointed with their aspirations to firm commitments to long-term goals such as: "Negotiating a legally binding instrument on small arms brokering."³⁰

Likewise, there was no consensus on issues such as the transfer of small arms to non-state actors, civilian possession of weapons, or the inclusion of ammunition in the program of work, but while this smuggling continues to fuel conflicts and repression in many countries, the coalition that includes (the United States, China, Russia, and several non-aligned countries) threatens to derail any major progress aimed at strengthening arms control. In response to this situation, former UN Secretary-General Kofi Annan said: "We must now consolidate these gains, and adopting an action plan is the beginning, not the end, implementation will be a test of confidence."

The illicit trade in small arms and light weapons is raging due to a lack of restrictions and international agreements, despite opposition and criticism, the UN Small Arms Program of Action can serve as a "framework for developing an international and regional legal framework on small arms."³¹

Conclusion:

The proliferation of small arms has become one of the main challenges facing the international community.

Therefore, it was imperative for the international community to intensify efforts and cooperation in order to combat this illegal trade, and for this the United Nations issued international agreements to combat the illegal trade of small arms, while adopting new mechanisms to prevent The conflict, as it developed a program through its conferences, is what established an international legal system to combat the proliferation of small arms.

However, this system, which defined actions and measures taken at the national, regional and international levels, remains weak due to the international system based on the sovereignty of states and the interests of states. Consequently, states and all international actors within the framework of the United Nations must take strong and binding initiatives that stress the importance of human rights and humanitarian law.

Addressing the problem of small arms proliferation requires serious thinking that takes into account the legal aspect of the small arms trade and the role of states. Whose work is still limited. On the other hand, the slow development of international regulations on small arms is partly linked to the need to review disarmament and arms control strategies.

Finally, we point out that there is a link between strict control of small arms, development and protection of human rights. Therefore, if the international community hopes to achieve development goals and

ensure security and human rights, these initiatives should not be limited to affected communities only. Instead, all states, especially arms importers, must comply with obligations under international law. And legislative and administrative reforms also have very little practical impact if they are not complemented by strengthening enforcement capacities, suppression and respect for global standards that some countries do not possess.

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¹⁹ Program of Action para. 2, in the Report of the United Nations Conference on the illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001, United Nations document A / CONF.192 / 15, at: www.disarmament2.un.org/cab/poa.html, consulted on 20/11/2020, at 12.00.

²⁰ The tracing and marking of weapons is a very useful means of combating the proliferation of small arms in the sense that they help to trace the supply chains.

²¹ Program of Action para. 2, Op Cit.

²² Ibid.

²³ Adopted at the same time as the United Nations Program of Action, it was the first regional agreement on small arms to be legally binding on the African continent).

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²⁶ Available at http://www.iansa.org/un/unwg_bulletin2.pdf , consulted on 20/11/2020, at 12.15.

²⁷ Available at www.un.org/french/events/smallarms2006/faq.html , consulted on 22/11/2020, at 12.00.

²⁸ These are the national commissions for the fight against the proliferation of small arms.

²⁹ Holger Anders: “The United Nations Small Arms Process: Getting Back on Track”, GRIP Analysis Note, Brussels, 27 October 2008. in: <http://www.grip.org/bdg/pdf/g0904en.pdf>, consulted on 19/11/2020, at 10.00.

³⁰ Ibid.

³¹ Ibid.

⁸ Disarmament Forum: “development and mine action”, Op Cit, p 51.

⁹ General Assembly resolution 51/45 S of December 10, 1996, in which it urged. States to actively seek to conclude negotiations towards an agreement on anti-personnel mines as soon as possible. In: <http://library.terasu.uz/kitoblar/aralash/Disarvavnt%20forum.pdf> , consulted on 21/11/2020, at 10.00.

¹⁰ Marie-Lyne: “Handicap International and the fight against antipersonnel mines”, DEA thesis on public law, University of Reims Champagne-Ardenne, 2002-2003, p 66.

¹¹ In Disarmament Forum, n ° 3, 2003 Op.Cit, p 49.

¹² Available at <http://www.operationspaix.net/-Convention-d-Ottawa-sur-147> , consulted on 22/11/2020, at 10.00.

¹³ Atwood David C: “Implementation of the Ottawa Convention: Continuity and Change in the Role of NGOs,” , Disarmament Forum No. 4, UNIDIR, Geneva, 1999, p 24.

¹⁴ United Nations: “In greater freedom: development, security and respect for human rights for all”, Report of the Secretary-General, A / 59/2005, March 21, paragraph 120, in: <https://www.ohchr.org/Documents/Publications/A.59.2005.Add.3.pdf> , consulted on 18/10/2020, at 09.00.

¹⁵ Resolution No. 53/77 of December 4, 1998 on "small arms": decided to hold an international conference on the illicit trade in small arms in all its aspects at the latest. Resolution No. A / 54/260 AG of August 20, 1999 called for the convening of an “International Conference on Illicit Arms Trade in All Its Aspects”. Three preliminary meetings and preparatory committees were planned in order to organize the 2001 conference and in particular to define the objectives of the work program: the first meeting in New York from February 28 to March 3, 2000; The second meeting in New York from January 8-19, 2001; The third meeting in New York from 19-30 March 2001. For more details, see:

<https://www.unidir.org/files/publications/pdfs/small-arms-control-the-need-for-coordination-en-361.pdf> , , consulted on 18/11/2020, at 13.00

¹⁶ Report of the Disarmament Commission, Official Records of the General Assembly, Fifty-first Session, Supplement No. 42 (A / 51/42); in: