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Masters of Laws (LL.M) in Public International Law Stream (Regular)

Weaknesses in International and Regional legal Mechanisms for Controlling Small Arms and Light Weapons: - Implications for Conflict in East Africa.

A thesis submitted in partial fulfillment of the requirements for the Award of Master of Laws (LL.M) in Public International Law at School of Law, College of Law and Governance Studies, Addis Ababa University.

By: - Misganaw Alemayehu Terfa

Thesis Supervisor: - Wondemagegn Tadesse (PhD), (Assistant Professor, AAU School of law and Governance Studies)

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Addis Ababa University

College of Law and Governance Studies

School of Law

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Thesis Approval Sheet/Page

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Approved by

Signature

Date

Advisor: Wondemagegn Tadesse (PhD)



May 12, 2025

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Approved by the Board Examiners

Signature

Date

1. Examiner: Dr. Demelash Shiferaw (Asst. Prof.) _____

2. Examiner: Asst. Prof. Mohammed Habib _____

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DECLARATION

I, MISGANAW ALEMAYEHU, Hereby declare that the thesis entitles as; ‘Weaknesses in International and Regional legal Mechanisms for Controlling Small Arms and Light Weapons: - Implications for Conflict in East Africa’ is my original work and that it has not been submitted to any degree or examination in any other university. Whenever other sources are used or quoted, they have been duly acknowledged.

Misganaw Alemayehu Terfa

Signature.....

ID: - GSR/7775/16

Date.....

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Acronyms/Abbreviations

AAU	Addis Ababa University
AU	African Union
ATT	Arms Trade Treaty
AUSP	African Union Peace and Security
BD	Bamako Declaration
CAR	Central African Republic
CIFTA	Consultative Committee of the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials
DDR	Disarmament, Demobilization and Re-integration
DRC	Democratic Republic of Cong
ECOWAS	The Economic Community Of West African States
EU	European Union
FDRE	Federal Democratic Republic Of Ethiopia
ITI	International tracing Instruments
IHRL	International Human Rights Law
IHL	International Humanitarian Law
ICL	International Criminal Law
IGAD	Intergovernmental Authority on Development
NP	National Protocol
ND	Nairobi Declaration
NFP	National Focal Points
OAS	The Organization of American States
OLF	Oromo Liberation Front.
ONLF	Ogaden National Liberation Front
RECSA	Regional Centre on Small arms
SALWs	Small Arms and Light Weapons
SADC	The Southern African Development Community
TPLF	Tigray People Liberation Front
UN	United Nations
UNODA	United Nations Office for Disarmament Affairs
UNoPA	United Nations of Program Of Action
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

Abstract

This thesis critically examines the weaknesses of the international and regional legal instruments in controlling SALWs, with a specific focus on their implications in East Africa conflicts. SALWs are not only widely available and easily accessible, but their circulation perpetuates a culture of violence, contributes to both intra-state and inter-state conflicts, and poses a threat to regional security and development. Despite international efforts, a combination of normative gaps, institutional weaknesses, and a lack of binding obligations continues to undermine the effectiveness of existing control measures of SALWs in East Africa. This thesis utilizes a doctrinal research methodology where this study analyzes primary and secondary legal sources to assess the inadequacies in existing legal framework and institutional practices. The key findings of this thesis reveal that issues such as insufficient national oversight, weak enforcement of international treaties and protocols, poor cooperation among states, and the absence of effective monitoring mechanisms in the porous borders result in the proliferation of SALWs in the conflict prone areas. The SALWs proliferation brings about devastating economic implications that become consequences for mass evictions and displacements for fear of being a battle field are among the major implications and roles of SALWs in the conflicts of East Africa. These legal and institutional loopholes enable the continued flow of SALWs, resulting in severe human rights violations and persistent insecurity in the region. The study underscores the urgent need for stronger, binding international instruments and more robust national and regional cooperation to curb the spread and impact of SALWs in East Africa. Therefore, East African countries should take a more proactive stance in showing their commitment and support towards international and regional mechanisms to control SALWs including enactment new regional legal frameworks and reinforce existing laws, giving attentions to DDR as conflicts come to an end and empower institutions like AU and IGAD on SALWs issues that should coordinate and develop policy and law for member states that enable them to control SALWs.

Key words and Phrases: - Small arms and Light weapons, UN Group of Governmental Experts, Resolutions, conflicts, Weaknesses.

CHAPTER ONE

INTRODUCTION

1.1. Background to the Study

Small arms refer to weapons that are employed by a single individual and include, in particular, firearms and other destructive weapons or devices such grenades, rocket launchers, missiles, missile systems, landmines, exploding bombs, incendiary bombs, or gas bombs. It also includes automatic-loading revolvers and pistols, light machine guns, assault rifles, rifles, carbines, and machine guns.¹ While Light weapons are portable weapons that can be used by multiple people working in a team. They include heavy machine guns; portable grenade launchers, either mounted or mobile; mortars with a caliber of less than 100 millimeters; portable anti-aircraft cannons; portable anti-tank cannons, non-recoil guns; and portable anti-tank missile launchers or rocket launchers.² According to the 1997 UN Panel of Government Experts on Small Arms report, light weapons are meant for use by a crew of people, while Small arms and light weapons are meant for individual use and this definition widely accepted.³

UN GES RES A/52/298 report defines SALWs include anything from machetes, clubs, and knives to weapons that fall just short of those included in the UN Register of Conventional Arms, such as mortars with a caliber of less than 100 mm. For the purposes of this report, SALWs that are produced in accordance with military standards for use as deadly weapons of mass destruction are the primary focus.⁴

¹ UN GES RES A/52/298 27 August 1997, para 24 & 25; See also, Elli Kytömäki and Valerie Yankey-Wayne, Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of Reports Submitted by States in 2003, (UNIDIR United Nations Institute for Disarmament Research Geneva, Switzerland), UNIDIR/2004/25, p.1

² C Ayuba and G Okafor, 'The role of small arms and light weapons proliferation in African conflicts' (2014) SSRN 2484743. SSRN: <http://ssrn.com/abstract=2484743>

³ UN GES RES n(n 1)

⁴ UN GES RES A/52/298 27 August 1997 Panel of Government Experts report on Small Arms and light weapons.

Conflict and instability has made East Africa one of the world's most unstable regions, plagued by armed conflicts, violent crimes, extremism, communal violence, political instability and state failure.⁵ Underdevelopment and inequality both cause and result from these conflicts, with SALWs being principal tools of violence.⁶ Although there is no universally accepted definition of SALWs, the UN Group of Governmental Experts' 1997 definition is widely used,⁷ and the 2002 Geneva small arms survey definition includes both military-style and commercial firearms, like handguns and long guns.⁸ However, in most of the available global and regional definitions, the term small arms, replace both weapons (small and light).⁹

The global trade in SALWs continues to expand,¹⁰ contributing to rising armed conflicts between states, and intensifying intra-state conflicts, including political violence and resource-driven clashes across regions like the Sahel, Gulf of Guinea, Southeast Asia, and the Middle East and North Africa.¹¹ Of the 875 million small arms in circulation worldwide, approximately 525 million are in civilian hands, resulting in an average of 1,000 deaths per day and about 300,000 deaths annually, with 100,000 in armed conflict and 200,000 in non-conflict situations. Additionally, one million people are injured each year, many left permanently paralyzed. Over 1,000 companies in nearly 100 countries produce small arms, supplying them to states, armed groups, and individuals, with the annual authorized trade exceeding 6 billion USD and the illegal trade estimated at around 1 billion USD.¹² SALWs are globally traded through legal and illegal networks. Since they are cheap, durable, widely

⁵ Tetra Tech ARD, *East Africa Regional Conflict and Instability Assessment Final Report* (prepared for review by United States Agency for International Development, March 2012), Executive summary(v).

⁶ Robert Muggah and Eric Berman, 'Humanitarianism under Threat: The Humanitarian impacts of Small Arms and Light Weapons' (2001) Small Arms Survey, p.1.

⁷ UN General Assembly Resolution, A/52/298, "General and Complete Disarmament: Small Arms Note By the Secretary-General, 27 August 1997, para 24 & 25; Iztok Prezelj, 'The Small Arms and Light Weapons Problem in the Western Balkans' in W. Benedek et al. (eds.), *Transnational Terrorism, Organized Crime and Peace-Building* (Palgrave Macmillan 2010), 207.

⁸ Fewer Blanks; Global Firearm Stockpiles, Small Arms Survey 2003, 59 available at <https://www.smallarmssurvey.org/sites/default/files/resources/Small-Arms-Survey-2003-Chapter-02-EN.pdf> last accessed 10:23PM, 2/22/2025

⁹ Betty Kemboi, J., 'Regulation of Small Arms and Light Weapons in Kenya: The Implementation of The Nairobi Protocol' (2023) 6(2) European Journal of Social Sciences Studies 75, 76.

¹⁰ Roderic Alley, 'Small Arms and Light Weapons: the disjunction problem' (2019) 19(2) Conflict, Security & Development 143, 143.

¹¹ Small Arms Survey Strategy 2024–28 available at https://www.smallarmssurvey.org/who_we_are/vision_mission accessed on 1 December 2024, 7.

¹² Africa Europe Faith and Justice Network, *Manual on Economic Justice for Justice Peace and Integrity of Creation Groups. AEFJN Issues, Volume 2* (year), 114.

available, portable, easy to use, and highly destructive, they are used in all conflicts and transferred between them, damaging fragile economies by fueling conflict and crime.¹³

Even in peacetime, they intensify violence, disputes, crime, and domestic violence. In sub-Saharan Africa, SALWs significantly determine the outcomes of conflicts due to the prevalence of small continuous battles and limited use of heavy weaponry by governments and large rebel groups. Consequently, SALWs impact the intensity and duration of conflicts in the region.¹⁴ There have been major flows of arms throughout East Africa, due to the multiple conflicts in the Horn of Africa.¹⁵ More recently, civil wars in Ethiopia, Uganda, Somalia, and Sudan have ushered in a boom in the illegal market in, and illicit use of, SALWs. This also due to porous and expansive borders, weak governments, and ineffectual national security systems, SALWs are difficult to control or account for as they move within the region from one conflict to another.¹⁶

In addition to this, internal dynamics, some countries of the region are known to support rebels and private dealers in other countries of the great region; adding a unique mix to the proliferation.¹⁷ For instances the most devastating conflicts that were witnessed in 1992/93, during a conflict engaged between Anyuak and Nuer for seeking a power over and access to natural resources. This were escalated at that time as reason of porousness of the boundary between Ethiopia and Sudan permits the unimpeded movement of people and goods across the boundary between the two countries.¹⁸ Hence, trafficking in SALWs constitutes one of the most challenging and pressing problems in Eastern Africa.¹⁹

¹³ Ibid

¹⁴ Nganga, F., Effects of Proliferation of Small Arms in Sub-Sahara Africa (*US Army War College 2008*), pp.5

¹⁵ Greene, O. (2000). Examining international responses to illicit arms trafficking. *Crime Law and Social Change*, (*Kluwer Academic Publishers. Printed in the Netherlands*), 33(1), 151–190

¹⁶ Griffiths-Fulton, L. (2002). Small arms and light weapons in the Horn of Africa. *The Ploughshares Monitor*, 23(2).
see, https://epe.lacbac.gc.ca/100/201/300/ploughshares_monitor/monitor_archives/libraries/monitor/monj02a.html, accessed, 10:47PM, 2/22/2025

¹⁷ A. B. Guta et al., 'Illicit Small Arms and Light Weapons Trafficking: Its Contributory Factors and Key Actors in Selected Areas of Ethiopia' (*European Journal on Criminal Policy and Research*)(2024), p.2

¹⁸ Seyoum Gebre Selassie and Heran Sisay, The Gambella Region of Ethiopia:- Small Arms in a Border Area, Author in (Small Arms in the Horn of Africa:- challenges, issues and perspective),(Bonn International Center for Conversion), p.34

¹⁹ Chelule, E. (2014). Proliferation of small arms and light weapons: Challenge to development, peace and security in Africa. *Journal of Humanities and Social Science*, 19(5), 80–87.

1.2. Statement of the problem

The SALWs is a significant challenge for the developing world,²⁰ especially in East Africa in terms of proliferation, use and control.²¹ These weapons are widespread and easily accessible, creating and maintaining a 'culture of violence.'²² Ongoing conflicts in the region increase the demand for SALWs, resulting in numerous deaths and injuries, including among innocent civilians.²³ This cycle of violence is difficult to break, as the presence of SALWs intensifies and prolongs conflicts, raises crime rates, and heightens insecurity.²⁴ Consequently, fragile economies suffer, and development is hindered.²⁵ SALWs are a serious threat to the security and development of East Africa, as they fuel both interstate and internal conflicts, leading to greater insecurity and perpetuating the demand for these weapons.²⁶

East Africa faces significant challenges due to the proliferation of SALWs. A major issue is the lack of control over arms, stemming from ineffective record-keeping systems for private and state stocks.²⁷ Addressing the SALWs problem requires a complex and comprehensive approach at both regional and international levels.²⁸ The region is known for its dynamic geopolitics and instability, with prolonged conflicts making East Africa one of the most unstable regions globally. Armed conflicts, violent crime, extremism, communal violence, political instability, and state failure have plagued the region for decades. One of the primary causes is proliferation of SALWs which are still inexpensive, and readily available, allowing organized crime and violence to continue in the area. Although there is no universally recognized definition of SALWs, the United Nations and regional instruments like the AU's Bamako Declaration and Nairobi Protocol provide guidance.

Despite international and regional legal instruments like the United Nations Program of Action, AU's Bamako Declaration, Arms Trade Treaty, and Nairobi Protocol, with current situations conflicts in East Africa remain intensified and devastating. Countries such as

²⁰ Andre Stemmet, 'Regulating Small Arms and Light Weapons; The African experience' (2001) 10(3) African Security Studies 90, 92.

²¹ Iztok Prezelj, 'The Small Arms and Light Weapons Problem in the Western Balkans' in W. Benedek et al. (eds.), *Transnational Terrorism, Organized Crime and Peace-Building* (Palgrave Macmillan 2010), 210.

²² Andre Stemmet, (2001) (n 16), 90, 92.

²³ Nganga, F., (2008), (n 10), p.1.

²⁴ Carolyn Elizabeth Lloyd, *Power, Knowledge, Interests: Understanding the Emerging Regime to Control Small Arms and Light Weapons* (PhD dissertation, University of Montreal 2005), 9.

²⁵ Maze, K. and Rhee, H., *International Assistance for Implementing the UN Programme of Action on the Illicit Trade of Small Arms and Light Weapons in All Its Aspects: Case Study of East Africa* (United Nations Institute for Disarmament Research 2006).

²⁶ Andre Stemmet, (2001) (n 16), 90, 92.

²⁷ Maze, K. and Rhee, H., (2006), (n 21).

²⁸ Abdulmalik Auwal and Moses T. Aluaigba, Civil Society and Arms Control in Africa, in Editors (Usman A. Tar Charles P. Onwurah, *The Palgrave Handbook of Small Arms and Conflicts in Africa*), (2021), pp. 221.

Sudan, Ethiopia, and Somalia highlight the weaknesses of these mechanisms in preventing SALWs from falling into the wrong hands, including state apparatus, non-state actors, paramilitaries, terrorists, and irresponsible individuals. The availability, transfer, and misuse of SALWs have severe adverse consequences on human rights, causing deaths, injuries, displacement, and abuse daily. These cheap, portable, and easy-to-operate weapons destabilize communities by shifting power dynamics, undermining personal security, and weakening the rule of law.²⁹ On average, thousands of people lose their lives daily as victims of SALWs, with many more thousands wounded, displaced, raped or otherwise abused as a result of armed violence. Yet incredibly, the international arms trade is poorly regulated and the binding standards for regulation of arms globally are weakly enforced.³⁰

The unregulated flow of widely available SALWs fuels conflicts in East Africa. Hence this thesis will examine and analyze the weaknesses of international and regional legal frameworks, providing recommendations to address specific gaps that hinder the effectiveness of SALWs control and conflict mitigation in the region.

1.3. Research questions

The main research question posed in this thesis seeks to analyze the weaknesses of international and regional legal mechanisms in controlling SALWs, and how these weaknesses contribute to conflicts in East Africa. Specifically, this thesis tries to answer the following research questions.

1. What are small arms and light weapons (SALWs)? And what role does it have in a conflict?
2. What are the implications of SALWs on conflict in East Africa?
3. What are the weaknesses in the regulation of SALWs under international and regional legal frameworks?
4. What are the mechanisms for improving regulation of SALWs in East Africa?

1.4. Objectives

The overall objective of this thesis is to examine the weaknesses in international and regional legal mechanism in controlling SALWs in East Africa and to recommend potential solutions that address conflict in the region due to SALWs.

²⁹ Barbara A. Frey, 'Small Arms and Light Weapons: The Tools Used to Violate Human Rights' (2004) Disarmament Forum, July 2004, 36.

³⁰ Abdulmalik Auwal and Moses T. Aluaigba, (2021), (n 24), p.501.

1.4.1. Specific objectives

1. To explain of small arms and light weapons (SALWs) and its role in the conflict.
2. To examine the implications of SALWs on conflict of East Africa.
3. To review the weaknesses of regulating SALWs under international, and regional legal frameworks.
4. To provide an improving recommendation that enable to control SALWs in East Africa.

1.5. Literature Review

The researcher under the topic of the literature ‘Controlling SALWs Proliferation: The Potential of the Arms Trade Treaty’ discusses international and regional approaches regarding a number of 1990s and 2000s produced multilateral political and legal agreements on SALWs control. The UN Register of Conventional Arms was established in 1991 as a voluntary reporting system by states on conventional arms transfers. It has only recently created a standardized reporting form for SALWs transfers (UNODA 2011).³¹ Global reports show significant attempts that the UN and member states have attempted at combating illicit SALWs and its related facets since 2001. There are several international instruments with coverage from global, continental, regional and national on this aspect.³² Even though both writers confirm the existence of a few international and regional legal mechanisms to control the SALWs, there is no nexus in its practical applicability to resolve the abundant conflict arise and escalate to a threat in every region of the world.

Under the Journal Article, the proliferation of SALWs in Africa, particularly its role in fueling violent conflicts and undermining governance in countries like Nigeria and the Central African Republic (CAR) taken as example were discussed in lights of the weaknesses national policy and laws toward controlling a conflict arise or escalate as reason of SALWs.³³ Although there are ambitious regional frameworks and protocols to restrict the proliferation of weapons, insufficient national legislation and permeable borders between nations pose significant challenges to their practical execution.³⁴

³¹ Nathan A. Sears, ‘Controlling Small Arms and Light Weapons Proliferation: The Potential of the Arms Trade Treaty’ (2012) 12 Paterson Review of International 35, 38.

³² Betty Kemboi, J, (2023), (n 5), 75, 75.

³³ Ayuba, Caleb and Okafor, Gerald, The Role of Small Arms and Light Weapons Proliferation in African Conflicts (August 21, 2014). p.1

³⁴ *ibid*.p.16

The gap between policy and reality is evident as resources meant for infrastructure and sustainable development are increasingly diverted to arms purchases, despite control mechanisms.³⁵ This literature criticizes that the existing regional legal frameworks in light of impracticability due to the lack of national policy led commitment towards hindering the proliferations of SALWs across the border. The literature did not address whether there are limitations of law or weaknesses regarding the currently governing international and regional law that are intended to control SALWs to further avoidance of conflict. The focus legal regime covered in this literature regarding SALWs is national law rather than the weaknesses of international and regional legal mechanism to control the conflict. Therefore, the literature lacks to address the cross-border nature of SALWs that need a multilateral approach of the states.

Other recent Literature titled as ‘SALWs: Africa a Resource Guide for Religions for Peace’ also addresses the proliferation and misuse of SALWs in Africa, highlighting their devastating impact on communities and the culture of violence. It also discusses existing laws and agreements aimed at controlling SALWs, encouraging multi religious cooperation to foster peace and security across the continent.³⁶ The other report identify a contradiction that is existing regarding SALWs where much of the arms trade is legitimate for national security and law enforcement as well these weapons often end up being diverted to non-state actors or criminals through theft and illegal markets. The proliferation of SALWs ultimately undermines the very security they are meant to provide by fueling conflict, instability and poverty.³⁷

The research report on SALWs: Africa a resource guide for religions for peace addresses international and regional legal mechanism such as the UN Programme of Action (POA) serves as a foundational multilateral framework that recognizes small arms issues transcend borders and require coordinated solutions. Regional agreements like the ECOWAS Convention provide legally binding commitments for controlling weapons transfers and civilian ownership. The Nairobi Protocol requires member states to incorporate strict provisions into national laws, including bans on civilian ownership of automatic weapons and mandatory registration. Similarly, the SADC Protocol aims to standardize legislation on

³⁵ *ibid.*2

³⁶ Allison Pytlak , Small Arms And Light Weapons: Africa A Resource Guide For Religions For Peace (*Tool Kit on Small Arms and Light Weapons, produced by The Regional Ecumenical Working Group on Small Arms for East Africa, Nairobi* (2004)

³⁷ *ibid.* p.6

private ownership and harmonize record-keeping across states. These mechanisms are crucial for preventing illegal weapons transfers and enabling weapon tracing.³⁸ However, this literature lacks to categorize and explain whether the mentioned international and regional legal mechanisms prevent a conflict arising due to SALWs as whole.

Writers (Jeffrey Boutwell and Michael T.), highlights how SALWs, due to their low cost, lethality, portability, and ease of use, have exacerbated intrastate violence, leading to millions of deaths and humanitarian crises. Regarding the role of international and regional legal mechanisms toward controlling it, the writers acknowledges that controlling SALWs will be far more difficult than previous international campaigns like the ban on antipersonnel landmines³⁹. The widespread global diffusion and easy availability of these weapons presents a significant challenge to control efforts. The resources of the international community are being overwhelmed by the scale of conflicts involving these weapons.⁴⁰ This literature addresses the problem and efforts made by countries under the guise of UN and through regional and national controlling mechanisms. However they argue that it is difficult to control due to the reason of worldwide diffusion of the SALWs. Therefore, those writers in their literature did not identify and the weaknesses of the international and regional legal mechanism to control SALWs diffusion to prevent the conflict.

The diversity of East Africa makes it difficult to generalize about patterns of conflict and instability in the region's borderlands, but several factors are of importance across most of the region's conflicts.⁴¹ The availability and the continuous production of the SALWs is one of the biggest challenges to security in East Africa.⁴² East Africa is one of the instable regions of African continent due to the fact that it's geopolitical and geostrategic position. And also in these regions there are international and regional legal documents that were intended to curb the conflict being adopted by the member states. This literature did not address or identify the nexus of SALWs or their implications for the conflict as well there is no analysis regarding the role of the international and regional legal mechanisms like Nairobi protocol.

Under recent Literatures written by (A. B. Guta) that explore the factors contributing to illicit SALWs trafficking in Ethiopia, investigate demand-related factors, supply-related factors,

³⁸ Ibid, p.9-12

³⁹ Jeffrey Boutwell and Michael T. Klare, (1999), *Light Weapons and Civil Conflict: Controlling the Tools of Violence* (*American Academy of Arts & Sciences is collaborating with JSTOR*), p.24.

⁴⁰ Ibid.21

⁴¹ Tetra Tech ARD, (2012), (n 1) Executive Summary (v).

⁴² Maj Cliff Ooga Obwogi, 'Proliferation of Small Arms and Light Weapons in Kenya: An Appraisal of Security Protocols and Instruments since Independence' (2022) 9(1) *Africa Amani Journal*, 9.

and identify key actors involved in illegal SALWs trafficking across different regions of Ethiopia. This study also reveals that major demand factors include self-protection needs, social/cultural value attached to firearms, monetary benefits, and weakening peace and security conditions in the country. The study is particularly significant as illicit SALWs trafficking has become a serious threat to Ethiopia's peace and security, making it a crucial topic for security organs and the general public.⁴³

Drawing from the previously mentioned studies, a comprehensive overview of the challenges associated with SALWs legal frameworks in East Africa has been highlighted. Despite the existence of many regional legal frameworks, including the Nairobi Protocol, the Bamako Convention, and the Arms Trade Treaty and other legal mechanism, the region still faces significant conflict as a reason of SALWs. Recently, the region (East Africa), there is a continuing conflict in Sudan, Ethiopia, Somalia, South Sudan and Lord's Resistance Army of Northern Uganda's are the major conflict. As this thesis develops, it will examine the weaknesses of these international and regional legal mechanisms and its implication toward the conflict as a reason of SALWs in the East Africa.

1.6. Research Methodology and Method

This thesis explains the legal approaches to the complex causes of the East African conflict as a reason of SALWs and how the weaknesses of international and regional legal mechanism or instruments failed to control. Therefore, doctrinal research methodology has applied to address the objective of this thesis. The reason for choosing a doctrinal research method is because the research questions are dependent on an international and regional legal mechanism to control SALWs. As a result it is necessary to study the normative framework that focuses on a written instrument such as using Resolutions, convention, protocols and other related literatures.

1.6.1. Research data sources

It has applied primary and secondary sources.

Primary sources: - This thesis mainly base on analyzing international and regional legal document and their weaknesses in controlling the conflict as result of SALWs. The primary source of this thesis data collected from international legal frameworks, regional legal

⁴³ Abdo Beshir Guta and others, 'Illicit Small Arms and Light Weapons Trafficking: Its Contributory Factors and Key Actors in Selected Areas of Ethiopia' [2024] *European Journal on Criminal Policy and Research* .p.1

documents, 2001 UN Firearms Protocol, UN Programme of Action to Curb the Illicit Trade in SALW (PoA), UN International Tracing Instrument (ITI), The Arms Trade Treaty (ATT), The Bamako Declaration (BD), ECOWAS Moratorium and ECOWAS Convention, The Nairobi Declaration (ND) and Protocol (NP) for the Great Lakes and Horn of Africa, on SALWs Control are a primary international and regional legal document were analyzed.

Secondary source:- Literature's like books, Journal, Articles, surveys documents, reports, electronic sources, and researches that has been a necessarily written to resolve the conflict escalating through the usage of SALWs. Such an approach is basically descriptive. The study therefore used both analytical and descriptive approaches.

1.7. Significance of the study

Given the wider significance, there is a serious concern with regard to SALWs in escalating conflicts in East Africa. Therefore, this thesis is significant as it contribute to improve East African peace and security by assessing critically how well the current international and regional legal frameworks regulate SALWs. The thesis is significant to identify the weaknesses of international and regional legal document that encourage considering further action. This thesis may result with recommendation for enhancing global and regional collaboration, and assisting with more extensive initiatives to lower armed conflict that widespread in the area. Lastly, the result of thesis is helpful for policy, law and strategic researchers regarding SALWs implications in conflict.

1.8. Scope of the study

Broadly speaking, the scope of the thesis is confined to researching the weaknesses in international and regional legal mechanism in controlling SALWs in East Africa and its implication for conflicts. Therefore, the thesis come across assessing legal and institutional mechanism such as the United Nations charter, conventions, resolutions, declarations, plan of Actions and regional instruments. Specifically the thesis limits in content and geographically itself to investigate the weaknesses of such international and regional legal mechanisms in controlling SALWs and its implications for conflict in East Africa.

1.9. Limitation of the study

The first limitations during working this thesis were the lack of both regional and international legal frameworks sufficiently. Lack of both local and foreign literatures regarding the SALWs role in East African conflict. It is difficult to find a literature that really focuses on the weaknesses of such legal mechanism in the context of East Africa. The significant limitations are the technical knowledge about the SALWs. The other Limitation of the study is that the author is employed in the government institutions that he would face time constraint during conducting this thesis.

1.10. Organization of the thesis

These theses have the following four chapters. This chapter one is a general introductory part. Chapter two Literature review (the theoretical and legal frameworks of SALWs within the conflict of East Africa, nature of conflict in East Africa and the role of SALWs, the implication of SALW in conflict of East Africa, normative Regulations of SALWs and so on..) the main issues discussed. Chapter three analyzes the weakness of international and regional legal mechanism in the context of East African conflict. Chapter four provided conclusions and recommendations of the thesis.

CHAPTER TWO

The Theoretical and legal frameworks of SALWs within the conflict of East Africa

Under this chapter, the theoretical Approaches to Conflict, linking regional issues to SALWs' contributions to conflict in East African will be examined. The conceptual framework of SALWs, which defines their characteristics and impact, the nature of conflict in East Africa and the role of SALWs are explored, highlighting how these weapons fuel instability, and more importantly the implications on social, economic, and political stability of this region with giving emphasis on the necessity to control SALWs and assess normative regulations to identify weaknesses in controlling mechanism, including international and regional legal frameworks will be examined.

2.1 Conceptual Framework of SALWs

According to the Panel of Government Experts on Small Arms report, light weapons are meant for use by a crew of people, while SALWs are meant for individual use and this definition widely accepted.⁴⁴ Para.24 and 25 of the report also defines SALWs as weapons which ranges from machetes, clubs, and knives to weapons that fall just short of those included in the UN Register of Conventional Arms, such as mortars with a caliber of less than 100 mm. However, the primary focus of the report is SALWs that are produced in accordance with military standards for use as deadly weapons of mass destruction.⁴⁵

SALWs have been or still are the most means of engaging violence in many of the armed conflicts that the UN has dealt with, particularly during fighting involving irregular troops from both sides. They are frequently employed in situations where a significant percentage of the victims are civilians and where violence has been committed in defiance of both domestic and international humanitarian law standards. Globally, this has recurrently summoned

⁴⁴ UN GES RES A/52/298, 27 August 1997, para 24 & 25; See also, Elli Kytömäki and Valerie Yankey-Wayne, Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of Reports Submitted by States in 2003, (UNIDIR United Nations Institute for Disarmament Research Geneva, Switzerland), UNIDIR/2004/25, 1.

⁴⁵ Ibid.

Para.25 of Panel of Government Experts report on Small Arms and light weapons, demonstrates that SALWs are being used by all military forces, including internal security forces, for a variety of purposes such as self-protection or self-defense, close or short-range combat, direct or indirect fire, and against tanks or aircraft at relatively short ranges. In general, small arms are weapons designed for individuals, whereas light weapons are built for use in team.

atrocities unto humanity putting the lives of millions in jeopardy.⁴⁶ SALWs are preferred in majority of internal conflicts for many reasons such as their accessibility, affordability, lethality, ease of use, and portability. SALWs can be owned by both government forces (police and troops) and civilian populations as opposed to major conventional weapons like fighter aircraft and tanks, which are almost exclusively purchased by national military forces.⁴⁷

Although it is difficult to identify conclusive patterns of conflict and instability in East Africa due to its diversity, a number of factors are typical in the majority of conflicts.⁴⁸ One of the impediments to East African security is the ease of access and continuous manufacturing of SALWs.⁴⁹ The availability of SALWs has highly exacerbated instability in the region where armed criminals and cattle rustling are taking place. Therefore, SALWs are putting everybody's security in dire situation in the region.⁵⁰

It is also recognized that the illegal production, distribution, and circulation of SALWs, coupled with their excessive accumulation and unregulated dissemination in many parts of the world in general and East Africa in particular have a variety of humanitarian and socioeconomic backfires and represent a major threat to peace, reconciliation, safety, security, stability, and sustainable development against individual to global community.⁵¹

2.2 Nature of conflict in East Africa and the role of SALWs

Ever since the dawn of most countries' independence in the 1960s, many factors have combined to create various episodes of violent conflict across the African continent.⁵² The influx of weapons into East Africa has created a market for SALWs or arms, contributing to the devastation caused by internal conflicts in Rwanda, Somalia, Uganda, and Ethiopia.⁵³ However, accumulations of SALWs by themselves do not cause the conflicts, instead they

⁴⁶ Report of the Group of Governmental Experts on Small Arms Foreword by the Secretary-General, United Nations General Assembly A/54/258, 19 August 1999, 8.

⁴⁷ Jeffrey Boutwell and Michael T. Klare, ' (2000), (n 35), p. 48.

⁴⁸ Tetra Tech ARD, (2012), (n 1), Executive Summary (v).

⁴⁹ Maj Cliff Ooga Obwogi, ' (2022), (n 38), 9.

⁵⁰ Joseph Kinyanjui Gikonyo, *The Illicit Proliferation and Use of Small Arms and Light Weapons and Human Security in East Africa: A Case Study of Kenya* (MA thesis, University of Nairobi; 2015), 40.

⁵¹ Ibid, 40.

⁵² Raymond Gilpin, 'Understanding the Nature and Origins of Violent Conflict in Africa', *Africa Center for Strategic Studies* (2019), 21.

⁵³ Esther Chelule, E, (2014), (n 15) p. 82.

facilitate their lethality.⁵⁴ Further, support rendered for rebels and private dealers from neighboring countries of the region has contributed to the abundance of these weapons.⁵⁵

Several factors could be attributed to the proliferation of SALWs. One of these factors is their relative inexpensiveness which easily allows many people to own one at low cost.⁵⁶ Illicit trafficking, proliferation, and misuse of SALWs have serious consequences for human security, development, and rights. In conflict situation, weapons are easily acquired by each fighting group since they can simply have them after someone is demised. Even insurgent groups, whose weaponry sources are dependent on external supplies, can closely secure weapons right after the conflict embarked.⁵⁷ After all, East African region has experienced conflict made with SALWs due to political conflicts, resource scarcity, guerrilla tactics, and criminal activity.⁵⁸

In addition, the internationalization of SALWs has further extenuated conflicts which in turn incapacitated East African states to protect human security.⁵⁹ Power and resources are only the few aspects of conflicts. Conflict also arises from sources that are strongly affiliated with human spirits and existential facts.⁶⁰ In addition to what states do to preserve their power, two critical transitions which are transition from colonial to independence and from authoritarian to democracy, entailed significant role in the production of conflicts in the region.⁶¹

Moreover, exaggerated identity politics, exalting the status of the conflict at international level, and mass involvement in the perpetration of atrocities are the elements that characterize conflicts in this area.⁶² SALWs contribute in exacerbating human suffering and plays as a fueling factor of violence in situations throughout the world. The unlawful transaction,

⁵⁴ Report of the Panel of Governmental Experts on Small Arms, United Nations General Assembly, A/52/298 27 August 1997, para.17.

⁵⁵ Esther Chelule, E, (n 15).

⁵⁶ Ibid, p.95.

⁵⁷ Osimen, Goddy Uwa, Rufus Aisedion and Isaac Adi, 'The Supply of Small Arms and Light Weapons to Conflict Zones: The Bane of Onset, Intensity and Duration of Armed Conflict in Africa (2020) 88 International Affairs and Global Strategy 1, 1.

⁵⁸ Annie Barbara Chikwanha, "The Anatomy of Conflicts in the East African Community (EAC): Linking Security with Development" (*Keynote speech to Development Policy Review Network-African Studies Institute, Leiden University, The Netherlands*) (2007), 1.

⁵⁹ Ibid.

⁶⁰ Ndayizigiye Jean Berchmans, "Humiliation and Violent Conflicts in Burundi" paper for Roundtable 1 - Workshop on Humiliation and Violent Conflict, Columbia University, New York, (15-16 December 2005), 9. "*Conflict arises from social structure and the predominant myth of social order, the political organization and economic property control, external factors as well as denial of human needs such as identity, security or governance, respect and recognition escalate the conflicts.*"

⁶¹ Shyaka, Anastase, 'Understanding the Conflicts in the Great Lakes Region: An Overview' (2008) 1(1) Journal of African Conflicts and Peace Studies 5, 6.

⁶² Ibid, 9.

dissemination and misuse of these arms entail deadly risks on human security, development and human rights by impeding conflict resolution, peace-building and commercial activities across the globe, costing the lives of millions.⁶³ In addition, these weapons plays significant role in enhancing armed conflict, terrorism and commission of transnational organized crime.⁶⁴ In Africa in general and Eastern Africa particularly, large scaled death and atrocities are mainly the result of SALWs than the major conventional weapons traditionally associated with war tanks, aircraft and warships due to their ease accessibility.⁶⁵

Arms, whether legal or not, have always historically had negative consequences in African regions.⁶⁶ Firearms, particularly SALWs, are responsible for 60-90% of battlefield deaths and contribute to indirect consequences like famine, displacement, poverty, poor health, and security issues.⁶⁷ While not necessary for violence to start, arms escalate conflicts, especially in environments of mistrust and injustice.⁶⁸ Non-state actors often amplify instability by using these weapons. The spread of SALWs severely impacts governance and development in Africa.⁶⁹

2.3 Theoretical approaches to factors of conflict in East Africa and the contributions of SALWs

Conflict in East Africa is driven by social, political, and economic factors, with SALWs playing a significant role. This also explained in different theoretical approaches like Relational theory, conflict theory, and Marxist conflict theory that offer deep insights of these dynamics. Relational theory innate and focuses on power imbalances and mistrust that lead to conflict, while Conflict theory examines competition for resources and inequality among the states or groups that utilize SALWs. In addition Marxist conflict theory also deal with the class struggle and economic disparity is appear to be the source of conflict. These selected

⁶³ Osimen, Goddy Uwa, Rufus Aisedion and Isaac Adi, (2020), (n 53), 1, 1.

⁶⁴ Annual Report in Small Arms Survey's (contributors; Alessandra Allen, David Atwood, Olivia Denonville, Emilia Dungal, Russell Gasser, and Glenn McDonald) (2016), 10.

⁶⁵ Adi, Isaac, Osimen Uwa, and Rufus Aisedion (n 20), 2.

⁶⁶ Caleb, A., & Okafor, G. (2014). The Role of Small Arms and Light Weapons in African Conflicts. *African Journal of Political Science and International Relations*, 9(3), 76–85, 77.

“particularly in areas where unstable political and economic activity are deeply entrenched and significant number of people is poverty stricken and struggle low standards of life, income, health, education and technology.”

⁶⁷ Africa Council for Religions Leaders, “Small Arms and Light Weapons: Africa” A Resource Guide for Religions for Peace, (2006), 4; see, <https://www.rfp.org/wp-content/uploads/2020/10/Small-Arms-and-Light-Weapons-Africa-English.pdf> last accessed on 8 February 2024.

⁶⁸ Osimen, Goddy Uwa, Rufus Aisedion and Isaac Adi. (2020), (n 53), 3.

⁶⁹ Denise Garcia, ‘Arms transfers beyond the state-to-state realm’ (2009) *10(2) International Studies Perspectives* 151, 152.

theories for this sub-topic are significant to explain how SALWs escalate and prolong violence in the East Africa.

a) ***Relational Identity theory:*** -

Identity is understood as an innate feeling of selfhood which predicts an individual's life against which perceived maltreatment entails to violence.⁷⁰ It is one of the decisive issues treated by basic need theory since it is a determinant catalyst for social interaction.⁷¹ Both inter and intra state conflicts that are caused by identity related problems are called Relational Identity theory of conflict theories.⁷² From a relational perspective, affiliation and autonomy are the two motives which characterize the interaction of individuals and groups. It is relational because one group perceives its identity alongside the other group. Affiliation refers to the extent and valence of each party's emotional connection with the other, whether close or distant, in-group or out groups, enmity or friendship. Autonomy is related to the degree of freedom and independence a group claims without being interfered by others.⁷³ This Relationalism helps SALWs control by paving the ways to explore arms control regimes as a process and outcomes of social relations between states and other actors based on timeless state interest. Contemplating the movement of social interactions, be it domestic, local or external, is of crucial importance to understand changes in arms control over time.⁷⁴ Because when certain group feels marginalized or threatened by another, it may resort to defensive or aggressive behaviors to protect or assert itself upholding SALWs. In East Africa, ethnic or political groups may define themselves in opposition to others, which can deepen divisions and raise conflict.

b) ***conflict theory***

The conflict theory is a theory that helps to underline the root causes of conflict and the role of SALWs in the region. It is centered on differences in power between individuals or social

⁷⁰ Jean Berchmans Ndayizigiye, "Humiliation and Violent Conflicts in Burundi" Paper prepared for Round Table 1 of the 2005 Workshop on Humiliation and Violent Conflict (Columbia University, New York, 15-16 December 2005), 6.

⁷¹ Olasunkanmi, A., 'Ethnic Identity and Constitutional Representative Governance in Nigeria' (2019) 6 Open Access Library Journal 1, 2. Available at, <https://doi.org/10.4236/oalib.1105487>

⁷² Shyaka Anastase, (n 18), p.6.

⁷³ Daniel L. Shapiro, 'Relational Identity Theory A Systematic Approach for Transforming the Emotional Dimension of Conflict,(2010), 65(7) *American Psychological Association* 634,.636.

⁷⁴ Lina Grip, "Small arms control in Africa" (PHD Dissertation, *University of Helsinki*; 2017), 55-56.

groups⁷⁵ and has had a relatively long history. The main assumption of conflict theory is that conflict is natural and inevitable throughout human interaction.⁷⁶ The theory goes that the rich and men in position are always fighting for their status when suppressing those who are in the lowest position by both wealth and power. As the conflict theory premised individuals and groups are always working to serve their own personal desires.⁷⁷

Conflict theorists assume that the haves who are in control of everything always defend and protect themselves at the expense of the have-nots'.⁷⁸ Thus, the inequality that is bred through unjust accumulation of resources by handful persons becomes the main factor of conflict. The high dissemination of SALWs in the region shows the acute interrelation of conflicts in the continent which stems from unjust power domination and non-proportionate wealth accumulation by Africans. Such conflicts as the Liberian war, the Libyan crisis, the conflict in DRC, the Sudanese conflict, etc., are all examples of conflicts based on the dominant role of one group against another.⁷⁹ This theory is developed to explain the emergence of SALWs in Africa due to politically suffocating movements of oligarchies, economic and social emasculation of the masses, and impending natural catastrophes which all have added up to summon the class struggles across the region.⁸⁰ The conflict theory explain the proliferation of SALWs East Africa, worsens tensions, prolongs conflict, and leads to greater destruction and suffering they are often used by both state and non-state actors in struggles over political control, economic resources, or ethnic dominance, amplifying the instability and perpetuating cycles of violence.

c) *Marxist conflict theory*

There are considerable structural inequalities between different economic classes such as unequal distribution of land, income, housing, employment, public health, and political rights

⁷⁵Shahrzad Yousefinejad and David A. Frederick , (2021), Conflict Theory (Chapman University), p.2. see, <https://www.researchgate.net/publication/304223229>)

⁷⁶ Mark R. Rank and Craig W. LeCroy, 'Toward a Multiple Perspective in Family Theory and Practice: The Case of Social Exchange Theory, Symbolic Interactionism, and Conflict Theory' (1983) 32(3) Family Relations 441, 443.

⁷⁷ Usman A. Tar and Sunday Adejoh,, 'The Theoretical Parameters of the Proliferation and Regulation of Small Arms and Light Weapons in Africa' in *Usman A. Tar Charles P. Onwurah (eds) The Palgrave Handbook of Small Arms and Conflicts in Africa* (Spring Nature Switzerland AG 2021), 52.

⁷⁸ Jean Berchmans Ndayizigiye (2005), (n 66), p.8.

⁷⁹ Abdulmalik Auwal and Moses T. Aluaigba, (2021), (n 24), p.505-506.

⁸⁰ Sule, B., Mikail, I. K., & Yahaya, M. A, 'An overview of the genesis, sources, manifestations and impact of Small Arms and Light Weapons (SALW) in northern Nigeria' (2020) 16 Journal of International Studies 195, 207.

and representation.⁸¹ Such a conflict can be explained by Marxist conflict theory where, Marx claims that limited resources are what always keep people at competition with each other. It holds that domination and power are pivotal tools to enhance social order, rather than consensus and conformity.⁸² This theory explains the struggle and contention to control for the betterment of their living situation.⁸³ In such a case SALWs are a mechanism for power grab and access to power. Elites use SALWs to render others useless or helpless. Not only that, other strands of conflicts which always lie at the domain of society such as kidnapping, cattle-rustling, armed robbery, resource war, political thuggery are spawned by the struggle for power and wealth. Communal conflicts, ethno-religious and the farmer's herders' conflict in different parts of East Africa are also indication of the contest for material possessions. After all, SALWs fuels and assists these conflicts to be possible and bear the conceived fruits.⁸⁴ In East Africa, Marxist conflict theory can manifest as authoritarian regimes, corruption, or policies that favor elite groups while neglecting the needs of the majority where this ignite conflicts through the presence of SALWs providing the means and power for oppressed groups to challenge the status quo, leading to violent uprisings or rebellions.

2.4 The implication of SALWs in conflict of East Africa

The implications of SALWs in East Africa are extensive and complex as they contribute to human rights violations, including unlawful killings, torture, and displacement. SALWs undermine the government enabling unconstitutional changes of government through violent coups and rebellions, destabilizing East Africa. SALWs often escalate conflicts and prolong civil wars due to their easy accessibility and low cost that anyone who wants can afford. These weapons also create, help them to be organized and fuel criminal organizations, contribute for displacement, and create refugee crises. With regard to economic implications, SALWs divert resources, disrupt trade and the development of infrastructure, and sustain poverty, hindering and growth in the East Africa.

2.4.1 The implication of SALWs on human Rights

The proliferation of SALWs affects human rights, which is the basic rights and freedom naturally given for all human beings, in the first place. The groups or persons acquire/seek to acquire weapons in order to exercise their will or control on others.⁸⁵ SALWs are utilizing for

⁸¹ Jean Berchmans Ndayizigiye, (2005), (n 66).

⁸² Usman A. Tar and Sunday Adejoh, (2021), (n 73), p. 52-53.

⁸³ Shyaka, Anastase, (2008), (n 57), 5.

⁸⁴ Usman A. Tar and Sunday Adejoh, (2021), (n 73), 52.

⁸⁵ Nganga, F., (2008), (n 10), p.5.

a number of reasons, outside of what is conventionally securing states or peace keeping missions, they take on a different applications and roles. Disseminating Illegal SALWs poses negative impact on human rights and fundamental freedoms facilitating crimes, terrorism, extremism, and human trafficking all over the place.⁸⁶ SALWs open the door up for countless human rights to be violated of around the globe. International human rights law establishes the responsibility of governments (and rebel groups) to uphold basic standards in their own behavior. SALWs are both easily available and erroneously used in many areas of violent conflict.⁸⁷

There are three main ways in which human rights are abused. These are escalation and extension of conflict, strengthening of criminals and criminal organizations, and increased crimes against women and children.⁸⁸ A threat posed by SALWS are facilitating a vast spectrum of human rights violations, including killing and maiming, rape and other forms of sexual violence, enforced disappearance, torture and forced recruitment of children by armed groups or forces.⁸⁹ Individuals prefer to use them on many conflicts and at the same time they use it to illegally target innocent civilians. Moreover, individuals who lack responsibility, training and discipline are equipped with these weapons and use against civilians.⁹⁰ Therefore, SALWs terribly abuse human rights of individuals in the areas where they are illegally deployed.

2.4.2 The implications of SALWs for unconstitutional change of government

Unconstitutional changes of government and the proliferation of SALWs are interconnected issues, with the former often facilitated by the latter and both are posing threats to security and stability in Africa regions.⁹¹ Weak and irresponsible security sector is one of the reasons for the uncontrolled and large scaled proliferation of illicit SALWs in both where conflict is

⁸⁶ Stephanie Lung'ung'u, *Implications of Small Arms and Light Weapons (SALW) Proliferation on Personal Security in the Horn of Africa Region: A Case Study of Garissa County, Kenya* (MA thesis, University of Nairobi, 2021) p 31.

⁸⁷ Small Arms and Human Rights: The Need for Global Action A Human Rights Watch Briefing Paper for the U.N. Biennial Meeting on Small Arms (2003), 4.

⁸⁸ Nganga, F., (2008). (n 10), p.5.

⁸⁹ United Nations Security Council, S/2008/258, “mall arms Report of the Secretary-General”, 17 April 2008, para 5 &6.

⁹⁰ Small Arms and Human Rights: The Need for Global Action A Human Rights Watch Briefing Paper for the U.N. Biennial Meeting on Small Arms, (2003), 4. Available at, <https://www.hrw.org/legacy/backgrounder/arms/small-arms-full-070703.pdf>, retrieved 10:04 pm,2/20/2025

⁹¹ Esther Chelule, E, (2014) (n 15).

rampant and rare.⁹² Though the presence of weak governments is part of the reason for the success of SALWs proliferation within a country, the increased availability of SALWs imply the governance of the country by further weakening security sectors as more weapons are available to criminals and criminal organizations.⁹³

Actualizing the menace of proliferation of SALWs as an implication of bad governance has not only poses and enhances insecurity in the country, but has also to a large extends contributed to the acts of criminalities in the society as many criminals amongst the citizenry were able to carry out or perpetrate their criminal acts which would not have been possible without the use of SALWs.⁹⁴ The high escalated SALWs helps dictators and rebels to take laws into their hands by deploying arms to irresponsible political gangs which in turn impede the smooth running of government and obstruct peaceful transition of powers particularly during elections.⁹⁵

2.4.3 The implications of SALWs in escalating conflict and civil war

Civil wars and multifaceted conflicts undergoing in present day regions of Africa are the consequences and progenies of deep rooted colonial systems due to the fact that these colonial powers didn't value and understand African cultural interactions and political strands existing before their arrival.⁹⁶ After all, arms deployed from all sides for winning over and destroying counterparts also terribly perpetrates any act of violence and the extreme case of conflicts and war.⁹⁷

Not only that, the outcome as to who would be the champion of the conflict is also highly determined by SALWs in Africa. On the other hand, the use of heavy weapons such as tanks and aircrafts is confined to governments or few identified large rebel groups for the fact that the fights do not engaged on the large scaled battles and the relative poor nature of the

⁹² Mike Bourne et al., "Implications of Illicit Proliferation and Misuse of SALW" in *Reviewing Action on Small Arms 2006: Assessing The First Five Years of The Programme of Action* by Biting the Bullet (London: International Action Network on Small Arms [IANSA], Biting the Bullet Project, 2006), 231.

⁹³ Nganga, F., (n 10), p.9.

⁹⁴ Oladimeji, Sogo Osewa, 'Incompetency in Governance and Menace of Proliferation of Small Arms and Light Weapons (SALW) in Nigeria: Causes, Impacts, and Solution (2022) 1(2) International Journal of Multidisciplinary Research & Reviews, p.58.

⁹⁵ Ibid

⁹⁶ Hussaini Jibrin and Umar Aminu Yandaki, 'Civil Wars, Complex Emergencies, and the Proliferation of Small Arms in Africa' in the *Usman A. Tar Charles P. Onwurah (eds) The Palgrave Handbook of Small Arms and Conflicts in Africa*, (2021), .285.

⁹⁷ Oluwadare AJ, 'The Impact of the Proliferation of Small Arms and Light Weapons on West African States: An Analysis of the Sierra Leone Civil War' (2014) 7(2) *Journal of Studies in Social Sciences* 189, p.193.

"Many factors resulted to the ease accessibility of Small arms and light weapons of which some are such as poor stockpile management, statesmen's corruption who plays as actors in violating rules transmitting arms across the continent using porous nature of African borders and the complicity of officials as vantage point."

continent.⁹⁸ The civilians own nearly half of illegal SALWs out of the million tons of arms under circulation across the globe that is being deployed for intensifying and amplifying violence.⁹⁹ In the situation where conflict continuously happening, the need for arms and weapons become indispensable which viciously goes on as one is fueling the other.¹⁰⁰ Often times, it is the civilians who are targeted for the direct attack of armed conflict which is however abhorred and prohibited by international humanitarian law.¹⁰¹ Therefore, civilians are also forced to seek SALWs to withstand these attacks which further intensify the conflict with more availability of weapons. Moreover, the displaced persons increase the diffusion of weapons to the neighboring countries.¹⁰²

2.4.4 The implications of SALWs for the proliferations of criminals, criminal organizations

SALWs have been a source of insecurity against civilians since these weapons are easily accessible for infidels, criminal gangs and illegal possessors.¹⁰³ Such an uncontrolled diffusion of these weapons in most forms increases organized criminal groups in addition to facilitating a platform for rebels to enhance their whim through violence.¹⁰⁴ Criminals and criminal organizations are feeding on the intensified conflicts and violence.¹⁰⁵ In these intricate strands of legal and illicit transfer, all the stakeholders in one way or another in the conflict are active participants in the process.¹⁰⁶

The transmission of SALWs are driven by demand from various bases which include embargoed governments; armed groups involved in war, banditry and insurgency; terrorists; criminals and criminal organizations; and also citizens who want arms for self-defense or

⁹⁸ Nganga, F., 2008. (n 10), p.5.

⁹⁹ Okoli AC, Arelhe GA and Alphonsus TA, 'Liberia: Civil War and the Complications SALWs Proliferation' (2019) 4(29) (*Conflict Studies Quarterly*), p.44.

¹⁰⁰ Godwin Onuoha, 'Contextualising the Proliferation of Small Arms and Light Weapons in Nigeria's Niger Delta: Local and Global Intersections' (2006) 15(2) *African Security Review* p.108, p.112.

¹⁰¹ Mike Bourne et al, 'Implications of Illicit Proliferation and Misuse of SALW' in *Reviewing Action on Small Arms 2006: Assessing the First Five Years of the Programme of Action by Biting the Bullet* (London: International Action Network on Small Arms [IANSA], Biting the Bullet Project, 2006) 223.

¹⁰² Nganga, F., 2008. (n 10)p.6.

¹⁰³ Esther Chelule., (2014) (n 15),p. 83.

¹⁰⁴ *ibid*

¹⁰⁵ Suleiman Sa'ad and Blessing Idakwoji, Economics of Armed Violence in Africa: Supply and Demand Sides of Small Arms and Light Weapons Proliferation, in *Usman A. Tar Charles P. Onwurah(eds), The Palgrave Handbook of Small Arms and Conflicts in Africa* (Springer Nature Switzerland AG, 2021), 639.

¹⁰⁶ N.O. Anaukwu and A.O. Onwuekwe, 'Small Arms and Light Weapons Proliferation and Peace-Building in Sudan, 2017-2023' (2024) 9(1) *Nnamdi Azikiwe Journal of Political Science* p.21, p.24.

(Participants in the process are people, brokers, insurgents, criminals, government officials and /or organized groups.)

cultural reasons but cannot obtain gun licenses.¹⁰⁷ SALWs gained entrance into Africa in general and specifically East Africa's conflict hotspots through unlicensed exports, clandestine gun-running, criminal organizations, private (security) entrepreneurs/companies, or through the activity of local blacksmiths within the continent.¹⁰⁸ Instigating and escalating all detestable and atrocious activities such as criminal violence, terrorism, insurgency and civil wars, SALWs are accepted to be the central security challenge ranging from individual to the government. In most cases, there are high tendencies in which small insurgencies develop into full scale civil wars which potentially through the region into tragedy.¹⁰⁹ The escalated conflict due to the widespread of SALWs causes people to leave their home and affects their means of livelihood. The internally displaced people may transfer the arms into criminal hands which in turn facilitate the criminals to commit heinous criminal acts like robbery, rape and others.¹¹⁰

2.4.5 Economic Implication of SALWs in East Africa

SALWs are the main blockage for the profitability, stability and economic advancement of these economies.¹¹¹ The diffusion of these SALWs throughout the continent exacerbated large scaled violence and increased longevity for conflict.¹¹² In addition to impacting human rights and humanitarian laws, armed conflict and intensified armed violence has also devastating implication on economic development.¹¹³ The geopolitical position of East African economic activity is proved to be influencing the intensification of these arms and weapons. These weapons severely affect economic settings and political engagement of a nation in addition to putting the livelihood of humans in jeopardy.¹¹⁴ However, the impact of SALWs is not as acute as that of others since the people are in constant fear and insecurity which shaded the attention away from contemplating its economic fatality. A number of people have become homeless and refugees as well as their humanitarian assistances are also

¹⁰⁷ Owen Greene, 'Examining international responses to illicit arms trafficking' (2000) 33 *Crime Law and Social Change* 151, p.153.

¹⁰⁸ Usman A. Tar, 'Background: Small Arms, Violent Conflicts, and Complex Emergencies in Africa A Fatal Combination' in Usman A. Tar Charles P. Onwurah (eds), *The Palgrave Handbook of Small Arms and Conflicts in Africa* (Springer Nature Switzerland AG, 2021), 18.

¹⁰⁹ BISETAGNE NEGA, "Small arms proliferation and its impact on human security and sustainable peace: the case of Fogera Woreda, Woreta city administration (Doctoral dissertation; 2021), p.18.

¹¹⁰ Suleiman Sa'ad and Blessing Idakwoji, (2021), (n 106), 639.

¹¹¹ Stephanie Lung'ung'u, (2021), (n 82), p.30.

¹¹² Suleiman Sa'ad and Blessing Idakwoji, (2021), (n 106), 627.

¹¹³ United Nations Security Council, S/2008/258, "Small arms Report of the Secretary-General", 17 April 2008, para 5 & 6.

¹¹⁴ Margaret Wairimu Gathaga, *Securing Peace in East Africa: Curbing the Proliferation of Small Arms and Light Weapons in Kenya* (MA Thesis, University of Nairobi 2017), p.77.

interrupted.¹¹⁵ Societal welfares such as health and education are prominent for the economic development of a country. Nevertheless, health and other services that help to sustain economic development are scarce since workers are always insecurely living and serving under dire situation. This shows that, the proliferation of conflicts using SALWs halt states' capacity to sustainable economic development.¹¹⁶

2.5 Necessity to control SALWs in combating a conflicts in East Africa

SALWs are a serious threat to the security and development of East Africa.¹¹⁷ SALWs severely affect the governments despite several international and regional conventions that have been signed of which the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALWs in All its Aspects is one.¹¹⁸

SALWs problems manifest differently across the sub region, often according to cultural and environmental contexts and irrespective of political boundaries. A sub regional approach to tackling the illicit trade and to addressing its impacts is therefore essential. However, such an approach is complicated by the differing national capacities of the states concerned.¹¹⁹ States shall agree to proactively engage with stakeholders and engage comprehensive, meaningful, and effective participation, especially regarding community safety, violence reduction, collection and destruction of SALWs, stockpile management, conflict prevention, and peace-building.¹²⁰ Unless, the large scale intra-state conflicts in East Africa have fed the ready availability of SALWs to pastoral communities in the region. The prevalence of SALWs protracted these groups' conflicts and complicated and rendered irrelevant the old methods of peaceful conflict resolution.¹²¹

SALWs and their further diffusions fuels violations of IHL, exacerbate civilian sufferings, curtail the flow of aids from victims, intensify lethality, and prolong the duration of conflicts

¹¹⁵ Esther Chelule, (n 15), 91, p.84.

¹¹⁶ Nganga, F., 2008. (n 10),p.8-9.

¹¹⁷ Kerry Maze and Hyunjoo Rhee, (2006.) International Assistance for Implementing the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: Case Study of East Africa, (*United Nations Institute For Disarmament Research*), p.1.

¹¹⁸ Esther Chelule, (n 15), 91, p.83.

¹¹⁹ Kerry Maze and Hyunjoo Rhee, 2006. (n 113), p.12.

¹²⁰ Elli Kytomaki, Johnson Asante-Twum,, Natalie Goldring, and Brian Woo, "Small Arms and Light Weapons" International Action Network on Small Arms, first committee briefing book, (2024), p. 36.

See also, <https://iansa.org/united-nations-general-assembly-first-committee-disarmament-and-international-security-2024/>

¹²¹ Enock NDAWANA, Mediel HOVE & Sylvester D. GHULIKU, Tanzania: Small Arms Proliferation in East Africa and National Security, (*Conflict Studies Quarterly*), Issue 23, April 2018, pp. 48-77, p.50.

in addition to hampering reconstruction and reconciliation.¹²² The illegal proliferations of SALWs are the core soaring tools of conflicts across the world and particularly in East Africa.¹²³ The problem of SALWs is complicated which makes them difficult to deal with for they have legitimacy in military, police, and civilian domains unlike that of heavy weapons.¹²⁴ Therefore, this thesis overview that controlling SALWs is essential in combating conflicts, as their proliferation significantly fuels conflicts and destabilizes East Africa.

2.6 Normative Regulations of SALWs

The initiations for the regulation and various multinational political and legal agreements on SALWs were made very recently particularly in the 1990s and 2000s. According to international sources, UN systems have made strong move to control illicit SALWs since 2001. A number of international instruments are issued at global, continental and regional levels.¹²⁵ The United Nations (UN) leads efforts to regulate the trade of SALWs and combat the illicit market. The UN Charter (Articles 11(1), 26, and 47) references principles related to disarmament and armament regulation for international peace and security, considered by the General Assembly.¹²⁶ The issue was first raised in General Assembly resolution (A/RES50/70B). Two expert groups established by the Secretary-General issued reports: “Panel of Experts on Small Arms” in 1997 (A/52/298) and “Group of Governmental Experts on Small Arms” in 1999 (A/54/258).

The UN enforces international treaties and agreements to regulate arms transfers and eliminate illicit markets.¹²⁷ It has adopted instruments to help states identify, trace, and combat the illicit trade of SALWs.¹²⁸ The UN's first legally binding convention on firearms

¹²² General Assembly, small arms and light weapons:- selected united nations documents 2008 edition), (Published by the United Nations Office for Disarmament Affairs), p.65.

¹²³ *Letter of transmittal dated 13 July 2007 from the Chairperson of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons addressed to the Secretary-General*

¹²⁴ Nyonsuabeleah Kollue, UN GA First Committee:- IANSA (International Action Network on Small Arms), 12 October 2016. See, <https://iansa.org/>

¹²⁵ Nganga, F., 2008. (n 10), p.10

¹²⁶ Betty Kemboi, J, (2023), (n 5), 75.

¹²⁷ Zeray W. Yihdego, ‘The role of security council arms embargoes in stemming destabilizing transfers of small arms and light weapons (salw): recent developments and challenges’ (2007) Netherlands International Law Review, 115, p.117

¹²⁸ Among the notable treaties are the United Nations Convention against Transnational Organized Crime (UNTOC) (2000), the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime Treaty Series (2001), and the Arms Trade Treaty (2013).

¹²⁹ The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001) and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (2005) are among the most notable

set general requirements for national export, import, and transit authorization systems, establishing common standards for international cooperation and information exchange.¹²⁹ This convention assists law enforcement by promoting greater transparency in legal firearm transfers, requiring reciprocal authorizations between countries, and enabling law enforcement to track legal shipments to prevent theft and diversion.¹³⁰ The Firearms Protocol mandates keeping SALWs records for at least 10 years,¹³¹ with states inspecting manufacturers' records or requiring regular reports on their activities.¹³²

The United Nations Programme of Action (PoA) is a significant step in combating the illicit trade in SALWs. It does not specifically address civilian possession regulations but mandates participating states to destroy confiscated, seized, or collected SALWs, unless officially authorized for re-use.¹³³ Weapons collection and destruction are integral to disarmament activities, including public awareness and DDR programs.¹³⁴ Member States were encouraged to report on PoA and International Tracing Instrument (ITI) implementation by 2011.¹³⁵ The PoA and ITI set standards for marking, record-keeping, and tracing to prevent diversion and misuse, promoting accountability, inventory control, and international cooperation.¹³⁶ These pillars form the basis for managing SALWs effectively.

The Firearms Protocol, part of the UN Convention against Transnational Organized Crime, provides a regulatory framework to combat the illicit proliferation of SALWs and related consequences.¹³⁷ It mandates states to criminalize illicit manufacturing and trafficking of

¹²⁹ The United Nations Convention Against Transnational Organized Crime (usually known as the Firearms Protocol) adopted by resolution A/RES/55/25 of 15 November 2000 and entered into force on 29 September 2003; See, Elli Kytömäki and Valerie Yankey-Wayne, *Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of Reports Submitted by States in 2003*, (UNIDIR United Nations Institute for Disarmament Research Geneva, Switzerland), UNIDIR/2004/25, 61.

¹³⁰ *ibid.*

¹³¹ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime.

¹³² Sarah Parker and Katherine Green, *A Decade of Implementing the United Nations Programme of Action on Small Arms and Light Weapons Analysis of National Reports*, (UNIDIR United Nations Institute for Disarmament Research), Geneva, Switzerland, 2012, p. xxiii

¹³³ Elli Kytömäki and Valerie Yankey-Wayne, (2004), (n 116), 1.

¹³⁴ *ibid.*

¹³⁵ United Nations resolution 65/64 entitled The illicit trade in small arms and light weapons in all its aspects, adopted by the General Assembly on 8 December 2010; Sarah Parker and Katherine Green, *A Decade of Implementing the United Nations Programme of Action on Small Arms and Light Weapons Analysis of National Reports*, (UNIDIR United Nations Institute for Disarmament Research), Geneva, Switzerland, 2012, p. xxxi

¹³⁶ @UNIDIR (www.unidir.org), *The International Tracing Instrument: Examining options to support operationalization*, 2018, pp.2

¹³⁷ United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25 of 15 November 2000 (Annex. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their

firearms, document falsification, and destruction of existing markings. The Protocol establishes global norms and supports other international and regional initiatives. The UN Register of Conventional Arms collects data on international arms transfers, military inventories, and procurement policies, expanding in 2003 to include SALWs inventories and transactions.

In Europe, several initiatives regulate SALWs. The EU adopted documents focusing on SALW's security effects and control measures.¹³⁸ The Programme for Preventing and Combating Illicit Trafficking in Conventional Arms and the EU Code of Conduct on Arms Exports were early efforts. The EU Joint Action on SALWs promotes cooperation and coordination to prevent illicit proliferation. Resolutions and decisions aim for common standards and approaches. The EU participates in international agreements like the UNPoA and cooperates with international organizations such as the UN and ECOWAS, providing assistance and funds.

The Organization of American States (OAS) has implemented various instruments to regulate the SALWs trade in the Americas.¹³⁹ This includes the 2006 Code of Conduct of Central American States on arms transfers, promoting transparency and responsibility. The key

parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/255 of 31 May 2001).

¹³⁸ They have created the Plan of Action on Small Arms and Light Weapons, which was documented in FSC. DEC/2/10; In addition, they have published the Handbook of Best Practices on Conventional Ammunition in 2008, and the Handbook of Best Practices on Small Arms and Light Weapons in 2003; The OSCE has also issued the Principles on the Control of Brokering in Small Arms and Light Weapons, which was decided in No. 8/04 in 2004; They have also made decisions on the Standard Elements of End-User Certificates and Verification Procedures for SALW Exports (No. 5/04, 2004) and best practices to prevent destabilizing transfers of small arms and light weapons through air transport and an associated questionnaire (No. 11/08, 2008); Principles Governing Conventional Arms Transfers Programme for Immediate Action Series No. 3 (DOC.FSC/3/96) document; Also, in Europe, political documents such as the Stability Pact Regional Implementation Plan (2001) have been put in place to combat the spread of small arms and light weapons; The European Union has also taken action, with various policies and regulations, such as the Council Joint Action of 2002 and the EU Code of Conduct on Arms Exports of 1998, which aim to control and monitor the transfer of firearms and ammunition; The EU Strategy to combat illicit accumulation and trafficking of SALW and their Ammunition of 2005 is another example of the efforts made by the EU to prevent the spread of weapons; The EU Parliament and Council of the European Union have also established regulations implementing the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, to establish export authorization, and import and transit measures for firearms, their parts and components, and ammunition.

¹³⁹ The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (CIFTA) of 1997 is one of the key treaties. Additionally, the OAS has created various documents to support the implementation of the Convention, such as the Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which is politically binding, and the CICAD Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition, and for the Control of Brokers of Firearms, Their Parts and Components and Ammunition.

regional agreement, Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Explosives and Other Related Materials (CIFTA), was the first legally binding document against illicit firearms and explosives trafficking. Additionally, the non-binding Model Regulations aim to enhance cooperation and harmonize import and export controls over the legal international movement of firearms and related parts and ammunition.

Africa has made significant strides in creating binding treaties and politically binding documents to regulate the trade of SALWs and eradicate their illicit market.¹⁴⁰ In addition to the treaties, Africa has also created politically binding documents to reinforce the regulation of SALWs trade.¹⁴¹ The Bamako Declaration and several sub-regional initiatives, like the Nairobi Declaration, demonstrate the continent's commitment to addressing SALWs proliferation. These agreements focus on issues such as illicit manufacturing, import, export, and transit of SALWs, civilian possession, government controls, marking, recordkeeping, and international cooperation. The Nairobi Protocol, in particular, is considered one of the most progressive sub-regional SALWs agreements, aiming to enhance accountability, public education, and cooperation among states.¹⁴²

Sub-regional instruments like the ECOWAS Convention and the SADC Protocol play significant roles in regulating SALWs in Africa. The ECOWAS Convention bans SALWs transfers and manufacturing materials into, from, or through their territories and prohibits transfers to non-state actors without explicit authorization.¹⁴³ The SADC Protocol, agreed upon by fourteen regional governments, addresses issues such as civilian possession control, marking methods, and record-keeping procedures to enhance SALWs management.

¹⁴⁰ These treaties include the Protocol on the Control of Firearms, Ammunition and Other Related Materials in The Southern African Development Community (SADC) (2001), the Nairobi Protocol for the Prevention, Control, and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2004), the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006), and the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention) (2010).

¹⁴¹ These documents include the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2000), the African Union Strategy on the Control of Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2011), and the Action Plan For The Implementation Of The African Union Strategy On The Control Of Illicit Proliferation, Circulation And Trafficking Of Small Arms And Light Weapons.

¹⁴² The Nairobi Protocol or the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, Done at Nairobi on 21 April 2004.

¹⁴³ ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other related materials, DONE at Abuja, on 14 June 2000, art 3.

In general, under the above reviewed literatures SALWs conceptually and theoretically discussed under specific scope of East Africa. Theoretically the conflicts in East Africa and its contributions for the proliferations of SALWs in conflicts prone area and their implication on human rights, in supporting politically rebel group to advance for bringing unconstitutional change of government by raising SALWs as main weapons. The role of SALWs for escalating new and ongoing conflicts where it expose civilian to be targeted during the conflict where crime organizations and criminal group are becoming the sources of insecurity in East Africa, as SALWs are their first choices due to its abundance and inexpensiveness. The economic implications of SALWs in East Africa also reviewed where it is the main blockage for sustainable development of member states as the continues and prolonged war and civil war impact for growth. Additionally, in this chapter normative regulations of SALWs why Eastern African are disparately in need or necessitate regulating and the threat faced if not controlled through regulation examined and the literatures conclude that if SALWs are not controlled through international and regional in East Africa, conflicts intensify, human rights abuses rise, and instability spreads all over the member states where this endangers economic growth, fuels crime, and weakens governance with prolonging conflicts.

CHAPTER THREE

Normative and Institutional Weaknesses to control of SALWs

3.1. Introduction

This chapter explores the normative and institutional weaknesses to control SALWs due to the limitation or gaps in international and regional binding and soft laws as well as the inefficiencies of enforcement mechanisms to prevent their proliferation and misuse. Under the following sub- topic, thoroughly and precisely analyses the weaknesses addressing the main cause of its weaknesses in regulation focusing on both normative and institutional aspects. The researcher will focus on the normative and institutional weaknesses as well compliance issues with its implications within the specific scope of East Africa.

3.2. Normative weaknesses in international and regional mechanisms of SALWs

The core aspirations of the UN, as stated in Articles 1 (1) and 2 of the Charter, are to maintain international peace and security, to bring about a peaceful means of dispute resolution on the basis of justice and international law, and to develop friendly relations among nations with due respect to the notions of self-determination and equal rights.¹⁴⁴ However, the proliferation of SALWs poses new challenges to the international system were the major problem relates to the illicit proliferation that takes place external to the state system.¹⁴⁵ This thesis also analyze the weaknesses of primary legal instruments like conventions/treaties/protocols at global, regional and sub-regional legal mechanisms and also soft laws or secondary instruments such as UNGA and UNSC resolutions with institutional gap to control. The main reasons of this intense proliferation are partly attributed to the weaknesses of primary legal instruments and soft laws which will be analyzed in the following subsection.

¹⁴⁴United Nations General Assembly A/811, 1December 1948, Articles 1 (1) and 2 , see, Zeray Yihdego Weldegiorgis, Substantive international law limitations and problems, (PHD Desertation University of Durham, 2005) p.89

¹⁴⁵ Andre Stemmet,(2001)‘(n 16),90, p.9.

a) The weaknesses in primary legal instruments:- Conventions/Treaties and Protocols on SALWs

States are duty bound by international law to apply due diligence principle in the regulation of private actors under their jurisdiction.¹⁴⁶ In favor of these statements, states which fail to enact reasonable regulations to limit the availability and misuse of SALWs by individuals.¹⁴⁷ In light of this, a state failed to execute its obligations under International Law when it fails to regulate the illegal dissemination of SALWs by individuals within its border. Convention and treaties is a tool that helps to address such state responsibilities in controlling the proliferation of SALWs all over the world in general and in East Africa particularly. Treaties are primary apparatuses that help to address state responsibilities in controlling illicit SALWs across the globe including East Africa.

However, despite the contribution of conventions and treaties at controlling SALWs, it also faces to a weaknesses were the rules governing complicity primarily addresses state to state arms transactions and transfer.¹⁴⁸ Nevertheless, conventions and treaties¹⁴⁹ are found to be weak since the rules governing complicity primarily exclude private actors from the dealing. These may have created a chance for state to supply SALWs to non-state actors or in the wrong hands that may exploit and use to abuse in the conflict regions. This may paves a way for states to supply SALWs to irresponsible bodies which exploit and (mis)use it in conflict areas.

Among the treaties that deal with SALWs, the ATT is the first legally-binding instrument ever negotiated in the United Nations to establish common standards for the international transfer of weapons.¹⁵⁰ The potential weaknesses of ATT with its enforcement mechanisms

¹⁴⁶ International Small Arms Control Standard (Isacs), National regulation of civilian access to small arms and light weapons (United Nations coordinating Action on Small Arms 2015) p.v.

¹⁴⁷ Derek Miller and Wendy Cukier with Helena Vázquez and Charlotte Watson, Regulation Of Civilian Possession Of Small Arms And Light Weapons, (*Briefing 16, Department of Peace Studies at the University of Bradford*,2021), p,12

(including by protecting their citizens against violence and the threat of violence as Regulating civilian access to SALWs is an essential element of this State responsibility.)

¹⁴⁸ Alexandra Boivin, 'Complicity and beyond: International law and the transfer of small arms and light weapons' (2005) 87 (857) *International Review of the Red Cross* 467, p.474.

¹⁴⁹ 2001 UN Firearms Protocol, UN International Tracing Instrument (ITI), The Arms Trade Treaty (ATT), The Bamako Declaration (BD), ECOWAS Moratorium and ECOWAS Convention, The Nairobi Declaration (ND) and Protocol (NP) for the Great Lakes and Horn of Africa,

¹⁵⁰ Woolcott, Peter. "The Arms Trade Treaty." *United Nations Audiovisual Library of International Law* (2014). p.1

are that it relies on state through their national mechanism¹⁵¹ either be it legal or institutional arrangements, which in turn compromises its effectiveness making it dependent on the willingness, political commitment and capacity of state to control SALWs.

Additionally, ATT do not cover the surveillance equipment and military technology entirely remains outside the scope of the Treaty. The problem of the use by dictatorial regimes of various forms of sophisticated technology to track individuals and intercept communications came to the fore in relation to their use by governments.¹⁵² Therefore, this treaty should have imposed an obligation or responsibility on state to track and conduct technological surveillance to search and seizure as well for checking SALWs at gateways or borders to control its entry. Due to the fact that it govern state to state relations, it would have been helpful had the ATT included borders surveillance through cooperation as mandate of each state.

The other significant inter-state governing by-product of the PoA, is International Tracing Instrument (ITI) developed, setting standards for the marking, record-keeping, and tracing of SALWs to prevent diversion and misuse by UN state members.¹⁵³ This ITI was adopted to enable States to identify and trace, in a timely and reliable manner, illicit SALWs. The marking and tracing of SALWs is crucial for effectively identifying and tracing those weapons in a national or global context.¹⁵⁴ Even though ITI is to promote and facilitate international cooperation, assistance in marking and tracing to prevent, combat and eradicate the illicit trade SALWs in all its aspects,¹⁵⁵ but the basic weaknesses of this instrument is that hindered full operationalization, including issues concerning identification, marking, record-keeping and information sharing.¹⁵⁶ The operationalization or implementation is depend on the effectiveness's of existing bilateral, regional and international agreements¹⁵⁷ implying that it does not provide a mechanism or a procedure and institutional approach by which directly states obliged to allow for marking the weapons in their domestic manufacturing.

¹⁵¹ United Nations The Arms Trade Treaty, Art.5 (2) (3) &(4).

¹⁵² Laurence Lustgarten, 'The Arms Trade Treaty: Achievements, Failings, Future', (2015) 64(3) international and Comparative Law Quarterly (ICLQ), 1,26.

¹⁵³ <https://unrec.org/index.php/en/conventional-weapons/unpoa-iti> (Published: 10 September 2024), Accessed 1/12/2025, 11:09 pm

¹⁵⁴ @UNIDIR, The International Tracing Instrument: Examining options to support operationalization, 2018, pp.1 (www.unidir.org).

¹⁵⁵ International Instrument to Enable States to identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, section I, General provision, Para. 2.

¹⁵⁶ @UNIDIR, (n 150).

¹⁵⁷ International Instrument to Enable States to identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (n 151).

Also ITI allows state to acquire, manufacture, transfer and retain SALWs as reason of self-defense and national security needs the common of all states claim,¹⁵⁸ but it does not restrict or limit to whom the SALWs transfer is legal or not, since currently the actors in illicit trade is mult-stakeholders such as criminal groups, terrorists and different governments apparatus are facilitating the flow.

The UN through PoA conduct a meeting and receive states national report every two years to Prevent, Combat and Eradicate the Illicit Trade in SALWs in All Its Aspects.¹⁵⁹ Nevertheless, other than receiving reports from states, UNPoA doesn't authorizes other independent institutions or specialized agency to follow-up enforcement by itself and report based on actual steps taken by states in tackling the proliferation of SALWs in the conflict area.

Furthermore, ITI provisions are not conclusive for the fact that emerging technological trends such as 3D-printed weapons that have had an impact on and being circulated and highly chosen in the markets are excluded.¹⁶⁰ 3D-printed firearms, an emerging category of cost-effective and reliable alternative of privately made firearms (PMF) produced beyond government control.¹⁶¹ They are made outside traditional supply chains, don't require background checks, and elusive to be traced by the law enforcement agencies which further make them problematic. Concerning these damaging SALWs, States are however enacting law for restricting this SALWs transfer and the sharing of blue prints online.¹⁶² Even though there is no literature available as evidence to its existence in East Africa, the increasing accessibility of 3D printing technology and the global nature of information sharing, it is essential to remain vigilant. Even though the appearance of this 3D printing technology in East Africa is not yet substantiated by literatures, it is essential to prematurely act seeing factual experience of the global nature in which information is being disseminated in high frequency.

¹⁵⁸ *ibid*, para.3, p.2

This instrument does not restrict the right of States to acquire, manufacture, transfer and retain small arms and light weapons for their self-defense and security needs, as well as for their capacity to participate in peacekeeping operations, in a manner consistent with the Charter of the United Nations.

¹⁵⁹ International Instrument to Enable States to identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (n 12), section VII, para.36-38, p.9

¹⁶⁰ @UNIDIR, (n 150), pp.1.

¹⁶¹ S. Schaufelbühl et al, The emergence of 3D-printed firearms: An analysis of media and law enforcement reports, (*Elsevier B.V,Forensic Science International: Synergy*) 8 (2024).

¹⁶² Champe Barton & Chip Brownlee,What Are 3D-Printed Guns, and Why Are They Controversial? Breaking down the technology, the legality, and the ideology of a growing movement, (online) 2025.

see, <https://www.thetrace.org/2021/02/3d-printer-ghost-gun-legal-liberator-deterrence-dispensed/> Accessed, 4:30 Pm, 3/29/2025.

According to ITI, marking, record-keeping, and tracing are the three effective means of managing SALWS enabling states to identify and control them within their jurisdiction and put in place appropriate procedures to share information on these weapons at the national level and international level.¹⁶³ Ultimately, ITI shows limitations since there are inadequate identification, lack of import marking, insufficiencies record-keeping and limited information sharing and coordination between national and international stakeholders responsible for tracing operations.¹⁶⁴ With regard to Eastern Africa, Member States have to enhance efforts to implement regional SALWs control instruments and the UNPoA, as well as other important mechanisms including the ATT and ITI.¹⁶⁵

In the cases of East African, even though there is a convention by IGAD on mutual legal Assistance with regard to covert surveillance and recall states parties to assist each other on the identification, tracing, freezing and confiscation of instrumentalities of crimes¹⁶⁶, however, it is not fully ratified (only Ethiopia and Djibouti on Extradition) by all members of IGAD and other member states of East African country excluded. Therefore, “IGAD convention on mutual legal assistance in criminal matters” is limited in scope of application. In addition, they also need to adopt other effective mechanisms including the ATT and ITI. However, the instability in East Africa drives the proliferation of SALWs and no reliable estimates of how many are in circulation, while some civilian held as culture wherever the sources is and other include leakage from military, police and other government apparatus stockpiles. Hence, with its existing legal mechanism, it is difficult to trace, record and identify in order to control the SALWs of the region as it require recollection which is impossible due to financial constraint and lack of member states’ political commitment.

b) The weaknesses in Secondary instruments: - UNGA and UNSC Resolutions and SALWs

I. UNGA Resolutions and SALWs

The United Nations report A/52/298, assess and address the proliferation SALWs, that have become the main tools of violence in a conflicts, causing significant casualties on civilian,

¹⁶³ Himayu Shiotani et al, The International Tracing Instrument: Examining options to support operationalization, (UNIDIR report), 2018, p.1.

¹⁶⁴ Ibid, p.2.

¹⁶⁵ Khristopher Carlson, Firearms and Ammunition Trafficking in Eastern Africa (UNODC Issue Paper 1/2022), p.3.

¹⁶⁶ Article 26 and 27(1) of “IGAD CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS”.

and creating insecurity on states. The report clearly shows a vicious cycle where insecurity drives demand for SALWs, escalating violence. With regard to East Africa, the entrenching instability drives the proliferation of SALWs making the number of circulation inestimable due to the plain use of civilians as carriers coupled with leakage from military, police and other government apparatus stockpiles.¹⁶⁷ Under section IV of this resolution it explains itself the absence of globally agreed norms and standards to determine the excessive and destabilizing levels of this class of weapons.¹⁶⁸ The resolution with regard to SALWs, characterizes them as a tool that can be concealed easily during their transportation by animals or humans, it is difficult to monitor. Nonetheless, the resolution is non-binding and confined to states excluding non-state actors who smuggle and use false documentation for transfer of SALWs across the globe.

“The United Nations Convention against Transnational Organized Crime (usually known as the Firearms Protocol)”¹⁶⁹ is the first legally binding international convention setting out general requirements for national export, import and transit authorization or licensing systems of firearms. In addition, it also establishes common standards and procedures for international cooperation and information exchange.¹⁷⁰

The UN 2001 Conference on the Illicit Trade in SALWs in All Its Aspects has become a primary focus for international action on SALWs proliferation and misuse, attracting widespread attention from policy-makers and NGOs alike.¹⁷¹ The Protocol is the first legally binding instrument on SALWs that has been adopted at the global level.¹⁷² Since the Protocol was adopted, the international community's approach to firearms and firearms violence has

¹⁶⁷ UNITED NATIONS A General Assembly, A/52/298 27 August 1997, Para.1.

para.4:- Readily available and easy to use, small arms and light weapons have been the primary or sole tools of violence in almost every recent conflict dealt with by the United Nations. In the hands of irregular troops operating with scant respect for international and humanitarian law, these weapons have taken a heavy toll of human lives, with women and children accounting for nearly 80 per cent of the casualties. Thus, the mandate given by the General Assembly in its resolution 50/70 B to report on the phenomenon of small arms was especially timely, drawing much-needed attention to what has become a priority concern in efforts to rid the world of the scourge of war and the burden of armaments.

¹⁶⁸ UNITED NATIONS resolutions 52/298 (n 23), Para.34 &35, p.14.

¹⁶⁹ United Nations A/RES/55/25 General Assembly Distr.: General 8 January 2001 (Resolution adopted by the General Assembly, 55/25. United Nations Convention against Transnational Organized Crime)

¹⁷⁰ Elli Kytömäki and Valerie Yankey-Wayne, (2004), (n 116), p.61.

¹⁷¹ Geraldine O’Callaghan and Sarah Meek, the UN firearms protocol: considerations for the UN2001 conference, (Briefing 4, Basic - International Alert - Saferworld), p.4

¹⁷² United Nations Office on Drugs and Crime (UNODC), Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, V.12-56168—October 2012—400

evolved considerably. Despite a relatively low level of ratification, it is a foundational global arms control instrument.¹⁷³ The weaknesses of the UN Firearms Protocol are that it exempts to state-to-state transactions or those related to national security.¹⁷⁴ However, the attention given to firearms and violence caused with them has considerably evolved after the protocol came into being.¹⁷⁵ This UN Firearms protocols also has a limitations as its scope is narrow or only to regulate Inter-state transfer of Firearms including SALWs. On the other hand, the states, non-state actors, brokers, state personnel, culturally driven arm possessors are the participants in the proliferation of SALWs. Therefore, there is no guarantee that the continued transfer of SALWs by states is not to ignite or escalate the conflict. Furthermore, the weaknesses of the protocol are that it does not create the obligation not to transfer SALWs to conflict zone to parties other than state actors. The scope of the protocol is duly confined leaving many prominent participants without consideration.

United Nations A/RES/79/40, on the illicit trade in SALWs in all its aspects Resolution is recalling all previous resolution on the illicit trade in SALWs in all its aspects by emphasizing the urgent need for international efforts to combat the proliferation of SALWs.¹⁷⁶ Even though this resolution request for cooperation toward combating SALWs, there is no provision that recommend or suggest about the tracing of SALWs.¹⁷⁷ Nevertheless, in spite of requesting for cooperation toward combating SALWs, there is no provision that recommends or suggest about the tracing of SALWs in the resolution. The main weaknesses lies in addressing a potential challenges associated to marking, record-keeping and tracing due to advancements in manufacturing and technological driven design¹⁷⁸ where these are hardcore problems of developing countries due to scarcity of technology to trace them. Mainly this highlights the weaknesses in being insufficiencies in identifying information's and the inaccuracies in identifying the weapons. This recent (2024)

¹⁷³ Anna Alvazzi del Frate, Emile LeBrun, Christian Ponti, Has The Firearms Protocol Helped Reduced Armed Violence?, 2021, pp. 7

DOI: <http://dx.doi.org/10.54103/cross-16847>

¹⁷⁴ Un Protocol Against The Illicit Manufacturing Of And Trafficking In Firearms, Their Parts And Components And Ammunition, Supplementing The United Nations Convention Against Transnational Organized Crime, Art.4.

¹⁷⁵ Anna Alvazzi del Frate, Emile LeBrun, Christian Ponti, (2021), (n 168), p. 7.

¹⁷⁶ United Nations General Assembly, A/RES/79/40, The illicit trade in small arms and light weapons in all its aspects, 9 December 2024.

¹⁷⁷ Ibid, para. 18, p.3. see, Tak Mashiko, Illicit Trade In Small Arms And Light Weapons In All Its Aspects Programme Of Action (POA), (*Inventory of International Nonproliferation Organizations and Regimes Center for Nonproliferation Studies*), 2011, p.3.

¹⁷⁸ United Nations 79/40,(n 171) para. 18.

resolution also weak in its reporting mechanism as it note for voluntary national reports on the implementation of PoA.¹⁷⁹

Furthermore, its reporting mechanism is also not robust as it note for voluntary national reports on the implementation of PoA. Voluntary approach is difficult to maintain transparency, to measuring progress and to identify needs and opportunities for international assistance and cooperation in order to combat the role of SALWs in conflicts.

II. UNSC Resolutions on SALWs

The UNSC is entrusted with a power to determine whether a threat to the peace, a breach of the peace, or an act of aggression exists, and recommend appropriate measures in accordance with Articles 24, 41, 42 and 39 of the UN Charter.¹⁸⁰ According to the United Nations Security Council S/2023/823 of 2023 on SALWs Report of the Secretary-General, SALWs was the second most prevalent cause of conflict related civilian deaths, accounting for 14 percent of all such deaths.¹⁸¹ The security Council has explicated in a Report of the Secretary-General that SALWS were the second most prevalent cause of conflict related civilian deaths, accounting for 14 percent of all such deaths. The weaknesses of the resolution is that, even if it is comprehensive in addressing contents regarding the impacts of SALWs, the resolution highly focuses on regionalization and domestic law to combat, prohibit and restrict the SALWs in conflict prone area. Moreover, it didn't strongly underline the need for binding laws. It rather provide the way forward which is in most case are not binding phrase like recommendations, condemnation and encouraging states and regional structures to control SALWs proliferation.

In addition, the report on this resolution also does not address the transfer and transaction of SALWs among terrorist and criminal networks where it poses a potential risk in general.¹⁸² This imply the gap of UNSC in controlling SALWs is lacking a conclusive and comprehensive reliable data with due procedure of data availability, accessibility and sharing mechanism to facilitate the implementation of the recommendations.

¹⁷⁹ UN Resolution 79/40 (n 171), para. 11, p.2.

¹⁸⁰ United Nations Security Council, S/RES/1318 (2000) section VI. see also, Zeray W. Yihdego*, The Role Of Security Council Arms Embargoes In Stemming Destabilizing Transfers Of Small Arms And Light Weapons (SALW): Recent Developments And Challenges, (*Netherlands International Law Review*), LIV: 115-132, 2007
VI. *Calls for effective international action to prevent the illegal flow of small arms into areas of conflict.*

¹⁸¹ United Nations' Security Council S/2023/823, Small arms and light weapons Report of the Secretary-General, para. 3, p.2.

¹⁸² Ibid, para. 53 &54, p.14.

As High Representative for Disarmament Affairs noted, the implementation continued to be uneven and challenges persisted¹⁸³ due to the inability of UNSC in addressing the issues of uneven, non-harmonized and weak sanctions and arms embargoes enforcement of SALWs regulation and controlling mechanisms by UN member states. Such weaknesses in turn undermine the need and effectiveness of common efforts to control SALWs.

UNSC Resolution 2117 recognizes that the misuse of SALWs has resulted in grave crimes and reaffirming, the relevant provisions of the 2005 World Summit Outcome Document regarding the protection of civilians in armed conflict regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.¹⁸⁴

However, the resolution exhibits certain weaknesses. Primarily, the scope of the resolution is limited to armed conflicts, the illicit circulation and unauthorized use of SALWs¹⁸⁵. It also limits the direct engagement of UNSC in resolving through institutional mechanism to monitor and enforce its embargoes on state.¹⁸⁶ Rather the resolution recall, recognize and emphasize with categorization of concern disregarding a mandate to facilitate the direct controlling mechanisms of SALWs. More acutely, it shows that UNSC is characterized by regionalization to which the resolution confined to and as a consequence, do not assign specific authoritative power for operational purpose to collect, combat and control proliferation of SALWs in conflict regions.

Be that as it may, the threat of SALWs are no longer a novelty on the international agenda, as in May 2015, an elected member in the UN Security Council drafted, negotiated and managed to adopt UNSC, S/RES/2220/2015 on SALWs.¹⁸⁷ It requests comprehensive approaches to address the root causes, social and economic factors, and cross-border gunrunning; calls for ratification of the ATT, management of stockpiles and the identification of close ties between terrorism, transnational crime, drug trafficking, illicit financial flows, and SALWs, their parts, components and ammunitions.¹⁸⁸ Unlike the previous UNSC

¹⁸³ Repertoire of the Practice of the Security Council (*Advance Version*) 26th Supplement (2023), 306, p.306.

¹⁸⁴ <https://www.globalr2p.org/> , <https://www.globalr2p.org/resources/resolution-2117-small-arms-and-light-weapons-s-res-2117/> , Accessed 4/January/2025, 3:53PM

¹⁸⁵ Judith Arrieta Munguía, Small Arms and Light Weapons in the Security Council: Toward a New Humanitarian Calling, (*Revista Mexicana de Política Exterior*), número especial (2020), p. 131,137.

¹⁸⁶ United Nations Security Council, S/RES/2117 (2013), Para. 1 & 2.

¹⁸⁷ Christian Garzon Osorio, Beyond the structural asymmetry of the UNSC A bargaining power-analysis of Resolutions 2220 and 2216, (*Reprosentralen, University of Oslo*), 2016,p.25.

¹⁸⁸ United Nations Security Council, S/RES/2220 (2015), See also, Judith Arrieta Munguía, Small Arms and Light Weapons in the Security Council: Toward a New Humanitarian Calling, (*Revista Mexicana de Política Exterior*), número especial (2020), p. 131, 137.

resolution, this is binding in nature and imposes obligation on all parties to armed conflict complying strictly with the obligations applicable to them under international humanitarian law, international human rights law and international refugee law, and stresses the need for parties to take all required measures to avoid civilian casualties, respect and protect the civilian population.¹⁸⁹ The strict compliance stipulated under this resolution is necessary in order to face the real challenge of SALWs. However, the binding or authoritative clauses of the imposed resolutions are applicable only for inter-state relationship to be implemented. The limitation with this resolution regarding SALWs is that the party involved is not only state but also non-state actor or state supported organization where their role is secret and unrecognizable and difficult to impose sanction. These resolutions should have coverage of non-states actors. So this resolution gave more emphasis on state responsibility rather than the way to control through well-established international system or organization.

3.3. The weaknesses of Regulations in controlling SALWs in AU and East Africa

In Africa, several policy efforts have been made by governments in their fight against the uncontrolled movement of SALWs into and across the continent. These include the politically binding Bamako Declaration, SADC Firearms Protocol, the Nairobi Protocol, ECOWAS Convention, and African Common Position to Review the Implementation of the UNPoA.¹⁹⁰

The Bamako Declaration expresses grave concern over the devastating consequences of SALWs proliferation in Africa.¹⁹¹ The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of SALWs calls on arms supplier states to eliminate the practice of dumping excess weapons in African countries.¹⁹² The declaration specifically calls on arms supplier states to eliminate the practice of dumping excess weapons in African countries. This Declaration is not legally binding; it is the only document that commits all African states to a common set of measures on SALWs to be undertaken at the national and regional levels. The Declaration was also instrumental in

¹⁸⁹ United Nations Security Council, S/RES/2220 (2015), para.2, p.4 &5.

¹⁹⁰ Adèle Kirsten and Noël Stott, Controlling the transfer of arms Progress and challenges in the African context, (ISS Paper 159), 2008, p.5.

¹⁹¹ Organization Of African Unity, Bamako Declaration On An African Common Position On The Illicit Proliferation, Circulation And Trafficking Of Small Arms And Light Weapons, Salw/ Decl. (I), (Bamako, Mali,2000), Para.Vi.

¹⁹² Dominique Dye, Africa and an arms trade treaty (ISS Paper 191), August 2009, p.3.

moving ahead the negotiation of the UNPoA.¹⁹³ This is a weaknesses that hinders its enforcement as it does not impose duty on states and it is only non-binding common position.

The other very significant sub-regional agreement on SALWs controls is Nairobi Declaration and its protocols that recognizes the wide-ranging and devastating impact of SALWs proliferation and highlights civilian possession as a key concern of the region.¹⁹⁴ It requires the States Parties to incorporate provisions for regulating SALWs into their national laws to restrict the manufacture, purchase, possession, storage and transport of SALWs through such measures as registration, minimum standards, licensing and tracing.¹⁹⁵ In East Africa, the limitation regarding the continental and regional legal framework such as Bamako declaration, Nairobi declarations and protocols for controlling SALWs are porous borders, incompatibility of national legislation, non-harmonized regulatory measure, lack of government capacity and institution to effectively monitor the flow toward the conflict area.¹⁹⁶ Such weaknesses arise in general as there is high corruption, lack of coordination and lack of independent established common institution to oversaw and control the member states whether to comply with the Nairobi declarations recommendation for its implementation.

3.4. Institutional weaknesses in Controlling SALWs

The UN and the AU have sought to address this continued illicit proliferation of SALWs. The AU, in particular, has designed a number of measures aimed at combating illicit arms flows.¹⁹⁷ For instances, AU is responsible for African peace and security through AUPSC in the fight against proliferation of illicit SALWs in Africa by signing, ratifying and implementing legally binding protocols or conventions at the regional level.¹⁹⁸ The AUPSC report on institutional context of UN and AU explain that AU member states are responsible to enforce existing UN arms embargoes through PSC; however the capacity of African countries to effectively implement the embargoes remains limited due to the porous borders and the absence of coordinated information exchanges.¹⁹⁹

¹⁹³ Bourne, M., (2006), Global and Regional Agreements on Small Arms and Light Weapons (SALW) Control, p.5.

¹⁹⁴ Ibid, p.7.

¹⁹⁵ Regulating Small Arms Brokering in Eastern Africa, The United Nations Regional Centre for Peace and Disarmament in Africa(UNREC)/United Nations Office for Disarmament Affairs (UNODA), (*UN Regional Centre for Peace and Disarmament in Africa*), (Project report) (2011) p. 1

¹⁹⁶ Adèle Kirsten and Noël Stott, (n 185) p.11.

¹⁹⁷ Nelson Alusala, Africa and arms control Challenges and successes, (*Policy Brief*), Issue 03 | April 2018,p.1

¹⁹⁸ African Union, African Union Strategy On The Control Of Illicit Proliferation, Circulation And Trafficking Of Small Arms And Light Weapons, (Preamble), para.5.

¹⁹⁹ Nelson Alusala, (2018), (n 192), 7.

Regionally in East Africa, Regional Centre on small arms (RECSA) institutions are the primary institutions that coordinates efforts to prevent, combat and eradicate SALWs in East Africa.²⁰⁰ The institutions of law and order in East Africa like courts, the police, the army, the judiciary, prisons and other security organs of the state are accused of major corruption, abuse of power and the violation of human rights. No longer confined to the barracks, soldiers man roadblocks, arrest and detain people at will and with impunity.²⁰¹ IGAD member states have initiated and carried out voluntary as well as forceful disarmament programmes in order to alleviate the trail of destruction that SALWs have been causing in the region.²⁰² At the national level, the IGAD member states have various national institutions including the National Focal Points (NFPs) for SALWs.²⁰³ However, most governments do not take adequate steps to implement international embargoes; therefore, unscrupulous individuals, agencies, and companies are able to exploit weaknesses and inconsistencies in many national arms export control systems.²⁰⁴ The lack of institutional mechanisms, while the few existing regimes aimed at control are relatively weak and even collapse of state structures, and the resulting lack of control systems in some of these states, created the force of supply of SALWs.²⁰⁵ Even though AU has conclusive member states common position, declarations, conventions and protocols to implement through regional organization like IGAD, ECOWAS, SADC and so on lacks strong institutions to enforce using diplomatic channel or using force to combat SALWs.

3.5. Legal Compliance Weaknesses of East African member state in controlling SALWS

East African member states faces institutional and compliance weaknesses in controlling the proliferation of SALWs through their common legal mechanisms. Under this sub-topic, lack of harmonization between regional SALWs frameworks and domestic laws, the role of non-state actors, cooperation and states commitment to implement and comply with Disarmament,

²⁰⁰ Regional Centre on small Arms, cooperating to Disarm, (2018-2021 three year reports), p.7.

²⁰¹ Annie Barbara Chikwanha, (2007), (n 54), p.9.

²⁰² Berita Mutinda Musau, The Intergovernmental Authority on Development's (IGAD'S) Protocol on Transhumance and the Need for an IGAD Common Policy on Disarmament of Pastoralists, (2021) 6(2) *Journal of cmsd* p.103.

²⁰³ *Ibid*, p.107.

²⁰⁴ Emmanuel Ukhani and Lassana Doumbia, 'Multinational Corporations, Trafficking of Small Arms and Intractable Conflicts in Africa', in Usman A. Tar Charles P. Onwurah(eds, *The Palgrave Handbook of Small Arms and Conflicts in Africa*), (Springer Nature Switzerland AG 2021), 595.

²⁰⁵ Andre Stemmet (n 16) p.91.

Demobilization, and Reintegration (DDR) procedures that are significant to control the movement of SALWs in the conflict prone area will be addressed.

The UNs has continued to support for the AU's Silencing the Guns by 2030 flagship initiative and implementation of its Master Road Map of Practical Steps for Silencing the Guns in Africa. The UNODA, together with the AU Commission and with the support of the Regional Centre on SALWs in the East Africa and Bordering States, continued to deliver practical support to States. In this context, awareness-raising and outreach activities on the negative effects of illicit ownership of SALWs, and capacity-building workshops in stockpile management and the collection and public destruction of weapons voluntarily surrendered by civilians, were organized in Liberia, Madagascar, the Niger, Togo, Uganda and the United Republic of Tanzania. In 2022, a total of 12,335 SALWs were securely collected, stored and destroyed under this programme.²⁰⁶

The major security challenges in East African countries largely stem from the proliferation of SALWs. SALWs are abundant; more people can carry rather loaded on pack animals to move from place to place and are cheap and widely available to use by mass of the countryside communities across East Africa.²⁰⁷ All triggers of conflict: structural, political, economic, social and cultural, are at play in the east African region. The politics of belligerence, social tussles over dwindling resources, guerrilla strategies and crime in Africa have all opted for a type of violence that relies more on the use of SALWs. Moreover, the internationalization of SALWs and its consequent fuelling of conflicts and crime have challenged the legitimacy and capacity of the East African states in providing human security.²⁰⁸

Conflicts are not just about power and resources but are rooted in the denial of human needs such as identity, security, respect and recognition. These are ultimately needs to do with the human spirit and social reality.²⁰⁹ These are acutely related with human spirits and social realities. The availability of an array of low cost weapons in the region leaves unemployed people vulnerable to crime. Particularly, the unemployed people are severely vulnerable to

²⁰⁶ United Nations' Security Council S/2023/823, Small arms and light weapons Report of the Secretary-General, para. 79.

²⁰⁷ Keneni Jibat, Causes of inter-ethnic conflicts in East Africa focus in Ethiopia (2023-2024) 11(12) *Journal of Global Peace and Conflict* 1, p 1.

²⁰⁸ Annie Barbara Chikwanha, (n 54), p.1.

²⁰⁹ Ndayizigiye Jean Berchmans, (2005), (n 56), p.16.

crime as a result of the abundant availability of low cost weapons. For many nursing grievances, access to weapons makes it possible for them to engage in violent acts.²¹⁰

International human rights law (IHRL), IHL and the UN Charter including international norms against genocide, war crimes and crimes against humanity all place limitations on the actions of the State with regard to SALWs use and transfer. IHRL, IHL, ICL (International Criminal Law) and UN Charter all place limitations on the actions of the State with regard to SALWs use and transfer. These limitations apply, to varying degrees, in peacetime and wartime and are intended to prevent threats to human security, whether by law enforcement, the military or private citizens.²¹¹ For further, the following selected point of discussion are to explain the institutional and compliance weaknesses of East Africa in controlling SALWs through their regional legal mechanism.

3.5.1 Non-Harmonization of the SALWs framework with domestic law of the states

Despite the fact that many states have laws related to SALWs; in some instances the legislations are weak or obsolete as most of them fail to recognize the new mode of weapons precipitated by emerging technologies. In most cases, firearms are addressed under the general administrative and legislative procedures governing the production, export and import of all goods and services as a whole. To this end, the existing legislation either does not specifically deal with firearms or it does not adequately address the current security and social needs of the state and region.²¹²

Despite the setbacks related to weak and outdated national legislation on SALWs, numerous efforts is under way to strengthen national firearms legislation in a number of countries including significant producers and exporters of SALWs.²¹³ The common regional and sub-regional frameworks of SALWs in East Africa encourages, at the regional level, the provision of the harmonization of legislation governing the manufacture, trading, brokering, possession and use of SALWs.²¹⁴ The Weaknesses regarding SALWs is that by nature it is not binding document; rather it resembles to common position or just consensus of the AU member states unlike domestic legal framework. Therefore, it does not provide enforcement mechanism and institutional set up to implement the overall to do description like to criminalize the illicit

²¹⁰ Annie Barbara Chikwanha, (n 54) p.12.

²¹¹ "hd Centre for Humanitarian Dialogue, international law and small arms and light weapons control: Obligations, challenges and opportunities (*Centre for humanitarian dialogue Centre pour le dialogue humanitarian 114 rue de Lausanne ch 1202 Genève*), March 2006, p.3.

²¹² Elli Kytömäki and Valerie Yankey-Wayne, (2003), (n 116) p. 37.

²¹³ Ibid

²¹⁴ Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons 1 December 2000, (paragraph 3 (B)(ii), p.7.

manufacture, illegal possession, misuse, illicit proliferation, that use of SALWs to sustain conflicts, etc., that was stipulated in detail in the declaration that require the binding law in order to enforce compliance to deter the role of SALWs in conflicts. Hence, this implies that there are difficulties in harmonizing with the national law that impose obligatory compliance and go through institutional framework to oversee for effective control.

The UNPoA does not contain any specific commitments to maintain or strengthen national regulations relating to civilian possession of SALWs. However, most states address issues relating to national measures on civilian trade and use of SALWs.²¹⁵ It refers to criminal activities related to SALWs as engagement in the illegal stockpiling, manufacturing, possession, financing for acquisition, trade and transfers, and acts contributing to the violation of arms embargoes. It is important to recall that there is no uniform standard of criminalization on SALWs apart from the compendium of whole range of phenomena with respect to differing national/regional systems.²¹⁶ This indicates that international legal mechanisms are in place while its enforcement is susceptible to national regulations where it remains inconsistent. Therefore, states interpret and apply international laws in their national legal context that expose the regulations to be ambiguous or discrepancies toward its implementations.

3.5.2 The exclusions of Non-state actor and limited scope of governance

Globally, it is estimated to more than one billion firearms; the vast majority are in the hands of civilians which counted about 857 million (85%), 133 million (13%) are in military arsenals, and 23 million (2%) are owned by law enforcement agencies.²¹⁷ Out of all global firearms holdings, roughly two-thirds of the estimated totals are in the hands of non-state actors and civilians out of which 100 million are reported to be in Africa.²¹⁸

The involvement of non-state or sub-state actors operating outside the state system in illicit proliferation - ethnic and dissident groups, private commercial concerns, terrorist groups, rebel movements, irregular forces, private security companies and mercenaries - which has

²¹⁵ Elli Kytömäki and Valerie Yankey-Wayne, (n 116), p. 40

²¹⁶ United Nations A/CONF.192/15, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, (Small Arms Review Conference, 2006), part II, para.3, p.3

²¹⁷ Aaron Karp, Estimating global civilian-held firearms numbers (*Briefing Paper on Small Arms Survey 2018*), p. 1, 3.

²¹⁸ Abdo Beshir Guta et al, 'Illicit Small Arms and Light Weapons Trafficking: Its Contributory Factors and Key Actors in Selected Areas of Ethiopia' (2024) *European Journal on Criminal Policy and Research* 1, 2.

seriously undermined the state's traditional monopoly over the legitimate use of force to provide internal security and defense from external threats.²¹⁹

Cottage industries are not strictly regulated and as a result smuggled exports to non-state actors are also increasing. States lack standardized export and import licensing and documentation mechanism, especially when corruption is prevalent within the governments and societies.²²⁰ SALWs have been used to grossly violate human rights, to facilitate the practice of bad governance, to subvert constitutions, to carry out coups d'état and to create and maintain a general state of fear, insecurity and instability in the sub region. They are also being employed for non-political and non-conflict-related crime and violence.²²¹ While regional legal framework exists to regulate mercenary activities is weak and almost unenforceable due to a lack of control measures in the internal legal regimes of states. At the same time, regional legal framework exists to regulate mercenary activities is weak and almost unenforceable due to a lack of control measures in the internal legal regimes of states. Both mercenaries and private security companies are dependent upon the regular supply of SALWs to continue their operations.²²²

During conflict, arms were directly distributed to paramilitary groups by governments in order to fight rebel forces during the civil wars, but legislation was also liberalized, and proved a major driver of SALWs diffusion.²²³ Such experiences also undertaken by the FDRE Government and Tigray Peoples Liberation Front (TPLF) war that lasted from 3 November 2020 to 3 November 2022, were the government directly address the nation and allow to possess an arm and fight on side of the government and today's so called anti-government "FANO" Movement was created and fighting against the government itself using SALWs provided to and permitted to use at that time. On the other hand, international and regional legal frameworks for East Africa focus to govern state to state arms regulations within their national borders and fail to address non-state actor by leaving a significant gap in SALWs governance through regulations.

²¹⁹ Andre Stemmet, (n 16), 90, 91.

²²⁰ Malik Qasim Mustafa, 'Proliferation of Small Arms and Light Weapons: Case Study - South Asia' (2005) 25(2) (Strategic Studies), p. 27, 43.

²²¹ Osimen, Goddy Uwa, Anegbode, E. John and Isaac Adi, 'The Role of ECOWAS in the Fight against the Proliferation of Small Arms and Light Weapons in West-Africa Sub-Region' 2024, 9(6) (*UGC approved indexed referred journal*), p.585, 586.

²²² Andre Stemmet, (n 16).

Osimen, Goddy Uwa, Anegbode, E. John and Isaac Adi, (2024), (n 216).

3.5.3 The disparity in nature of conflict and independent legal approach of regions

In order to conceptualize the role of international and national law in addressing the proliferation of SALWs, it is necessary to understand the factors contributing to the problem.²²⁴ Lack of uniformity and variety approach by states toward the SALWs explained with the fact that there exists no uniform definition of SALWs.²²⁵ The East African legal frameworks²²⁶ recognizes the importance of adequate national legislation to control the possession and transfer of SALWs, as well national measures aimed at regulating manufacturers, traders, brokers and transporters and, significantly, also financiers.²²⁷ Hence, every member state is expected to be bound by it.²²⁸ However, in East Africa the regulatory framework for SALWs are particularly weak due to ongoing conflicts, for instances in Ethiopia (FDRE VS TPLF, ONLF, OLF, Fano.....), terrorist movement in Somalia, instability in Sudan and South Sudan as a reason of weak governance structures. Nonetheless, in East Africa the regulatory framework for SALWs are particularly weak due to ongoing conflicts which mainly are occurred as the result of weak governance. In all these conflicting area the efforts to control SALWs are often left futile due to the proliferation through porous borders which supposed to be controlled by national regulations nevertheless cannot be addressed yet.

3.5.4 Lack of cooperation, state commitment and Non-compliance of SALWs manufacturing and exporting states, company and individuals

Considering states commitment and cooperation's regarding, whether international law, in an implicit or explicit manner, imposes any such legal obligation on states, shall be one of the exigent questions of SALWs proliferation.²²⁹ Weak national controls and lack of international cooperation on arms control are the pillar factors that precipitated the proliferation of these weapons on illicit markets.²³⁰ States and business groups have widely been engaged in SALWs manufacturing. This attitude of citizens on arms manufacturers has not altered from ancient trends, although advocates of gun culture do not share this ever-growing attitude. The

²²⁴ Andre Stemmet, (n 16).

²²⁵ Zeray Yihdego Weldegiorgis, (2005), (n 122), p.52.

²²⁶ The Nairobi Protocol For The Prevention, Control And Reduction Of Salw In The Great Lakes Region And Horn Of Africa (2004), The Nairobi Declaration (ND) and Protocol (NP) for the Great Lakes and Horn of Africa.

²²⁷ Andre Stemmet, (n 16), 90, 96.

²²⁸ The Nairobi Protocol (2004), (n 82) Article 3(a)(b). see, Betty Kemboi, J., Regulation Of Small Arms And Light Weapons In Kenya: The Implementation Of The Nairobi Protocol, (*European Journal of Political Science Studies*, 2023), 6(2), 75,78

²²⁹ Zeray Yihdego Weldegiorgis, (n 122), p.54.

²³⁰ Osimen, Goddy Uwa, Anegbode, E. John and Isaac Adi, (2024) (n 216), p.585.

reasonable approach is thus to view manufacturing of SALWs as a social and economic phenomena that exist within a society. Such activities have also been expanding through license transfers.²³¹ The existing frameworks of the UNPoA are also unable to deal with domestic production. States lack standardized export and import licensing and documentation mechanism, especially when corruption is prevalent within the governments and societies. States also lacks control over the political use of SALWs.²³² It is understandable that transfer or proliferation in SALWs is often cross-border so that cooperation requires for its enforcement. This also affected by rivalries between states and priority for sovereignty preconditions set by countries not tackle the flow of SALWs toward conflicts prone area. This means that it failed to compel states since legal enforcement mechanisms are not binding, lack of political will among states and inconsistent compliance measures by states and non-states actor encourage the supply of SALWs to ignite the conflicts in East Africa.

3.5.5 Limitations in managing Disarmament, Demobilization, and Reintegration (DDR) process to control SALWs diffusion in East Africa.

SALWs have been used in conflicts over resources, struggles for political and economic power, violent extremism, radicalization and anti-statism. This was encouraged due to the structural weakness of nearly all the African states. Structural governance weaknesses give room to the proliferation of SALWs through illicit sales and trafficking of local and foreign manufactured arms.²³³ At global level the UNSC is encouraged to promote the integration of weapons and ammunition management considerations in DDR processes and in community violence reduction programmes, including through dedicated mandates of peace operations.²³⁴ For instances, according to the Nairobi Declaration, SALWs is made up of some measures for implementation by state parties; globally, regionally and nationally or locally with the aim of reduction, control and prevention of SALWs²³⁵ by DDR the fighters

²³¹ Zeray Yihdego Weldegiorgis, (n 122), p.53.

²³² Malik Qasim Mustafa, (2005), (n 215), p. 27, 44.

²³³ Muhammad Sanusi Lawal and Bem Japhet Audu, 'Traditional Institutions and Firearms in Africa: The Politics and Historiography of Small Arms and Conflict Management', in Usman A. Tar Charles P. Onwurah (eds, *The Palgrave Handbook of Small Arms and Conflicts in Africa*), (Springer Nature Switzerland AG 2021), 533.

²³⁴ United Nations' Security Council S/2023/823, Small arms and light weapons Report of the Secretary-General, para. 47.

²³⁵ Betty Kemboi, J., (2023), (n 5) p.78.

through peace agreements.²³⁶ In most civil wars, however, SALWs were critically important, and were often backed up by major conventional weapons.²³⁷

Among very recent and ongoing conflict that broke out between the Federal government and a rebel groups mainly affiliated with the TPLF is where the DDR lay in the peace agreement of Pretoria.²³⁸ One of the cores Article of this agreement was the DDR process were the TPLF agreed to do so. Under this agreement to stop or end the conflicts between federal government and TPLF that involve regional countries and impact the entire East African peace, the parties agree to undertake disarmament of the heavy armaments of the TPLF combatants as a matter of priority within 10 days and set 30 days SALWs.²³⁹ The weaknesses of Pretoria Peace Agreement currently lack robust legal provisions within the context of the international legal framework to ensure the safety and protection of the civilian in the region as well as the peace and security of East Africa as its implementation faces critical deficiencies as anticipation of future threats. The other Limitations of this agreement is that in DDR with regarding to the weapons used, it prioritize heavy weapons disregarding the SALWs that were active and effective in the civil war by TPLF during war time. Its implementation lacks coordination and cooperation that led to the anticipation of the new threat as SALWs is still in the hands of the fighters that indicate the weaknesses of the agreement. Due to the failure of East African regulation and agreements SALWs remains in the wrong hands continuing to escalate or fuel instability in the region. Therefore, the role of international and regional legal mechanisms toward DDR programs are inadequate that escalate the conflicts.

This chapter delves into analyzing the weaknesses of international and regional legal mechanisms in East Africa. The terminology applied to assess the weaknesses are describing the binding (conventions and treaties) and soft laws like UNGA and UNSC resolutions that remain inadequate in controlling SALWs in East Africa. This thesis identify that the spread

²³⁶ The Nairobi Protocol For The Prevention, Control And Reduction Of SALWs In The Great Lakes Region And Horn Of Africa (2004), Article (8(a)(b)).

²³⁷ Thalif Deen, Ethiopia's Civil War Fueled by Weapons from UN's Big Powers, (*IPS – Inter Press Service*, 2021)
Available at, http://www.ipsnews.net/2021/11/ethiopias-civil-war-fueled-weapons-uns-big-powers/?utm_source=rss&utm_medium=rss&utm_campaign=ethiopias-civil-war-fueled-weapons-uns-big-powers , accessed 16/march/2025, 12:00 AM.

²³⁸ Israel Nyaburi Nyadera and Census Osedo, 'Civil War between the Ethiopian Government and the Tigray People's Liberation Front: A Challenge to Implement the Responsibility to Protect Doctrine' (2023) 23(1) African Journal on Conflict Resolution 35, 42.

²³⁹ African Union, Agreement For Lasting Peace Through A Permanent Cessation Of Hostilities Between The Government Of The Federal Democratic Republic Of Ethiopia And The Tigray People's Liberation Front (Tplf), Article 6(e)(f), p.4.

of SALWs in East Africa stems from Weaknesses of instruments like non-binding nature, limited cooperation, lack of state commitments or political willingness's, poor enforcement, weak institutional capacity and non-compliance are addressed as a gap in frameworks and inconsistent institutional approach towards the SALWS are the weaknesses addressed under this thesis chapter.

CHAPTER FOUR

4. CONCLUSION AND RECOMMENDATION

This final chapter presents a conclusion of findings on the weaknesses of international and regional legal mechanism for controlling SALWs. In depth analysis was then conducted on the weaknesses of primary and secondary legal mechanisms to control SALWs across East Africa. Here under conclusion and recommendations of further studies have been presented.

4.1. Conclusion

SALWs are a global common evil that deserves utmost cooperation in combating its proliferations toward conflict areas.²⁴⁰ The proliferation of SALWs summons critical security challenges into international laws since it majorly is diffused without proper control of state system. There are identified problems with regard to legal controlling mechanisms of these weapons. These challenges can be broadly classified as the existence (problems) of normative gaps and institutional weaknesses at various levels including and particularly East Africa. The manifest limitations of these gaps assisted many groups and individuals as intensifying tools to prolong conflicts by increasing the level violence, crimes rate and insecurity in the regions.

Normatively, all the instruments adopted so far have exhibited loopholes in many respects that can also be typified as the substantial and procedural weaknesses rooted in hard laws such as conventions, treaties and protocols and weakness of soft laws due to their nature of unbinding and lack of effective impositions unto stakeholders including states. The first problem of existing conventions and treaties is their lack of acutely controlling these weapons for the reason that these instruments are focused on state to state arms dealings. Such a state-state nature of complicity opened the doors for non-state actors to proliferate SALWS without regulations. Moreover, it stresses political willingness of states than underlining their legal commitments and obligations.

As long as the SALWs process continues to produce multilateral instruments that are politically rather than legally binding, progress in the area will be dependent on political will

²⁴⁰ Betty Kemboi, J. (2023), (n 5), 85.

rather than legal compulsion.²⁴¹ These problems of SALWs are diffused due to the weak controlling mechanisms enforcing the legal frameworks intended for this purpose.

Instruments such as ITI also didn't recognize the advent of new technologies in military arenas that has exacerbated the illicit proliferation of SALWs. In addition, it does not provide a mechanism or a procedure and institutional approach by which directly states obliged to allow for marking the weapons in their domestic manufacturing.

On the other hand, the resolutions made under the auspices of UNGA and UNSC are not binding and narrow in scope to oblige and enforce states and non-state actors. The key finding of this thesis indicates the major weaknesses of international and regional legal mechanisms in controlling SALWs are due to the nature these soft laws, where their absence of binding force undermines the potential to attain states compliances that leads to poor and inconsistent implementations of the instruments.

Apart from the gaps manifested in normative instruments, there are also well found institutional problems in East Africa. The institutions of law and order enforcing in Africa are criticized of malicious acts such as corruption, abuse of power and human rights violations. Moreover, most of East African governments do not have willingness to implement international embargoes. This has severely opened gates for many individuals and groups to unnecessarily and unlawfully transfer SALWs across the region. There is also low level of cooperation among the states and East African regional legal regimes that has lamed the institutions to monitor the proliferations of SALWs into East African conflicts prone area.

The implications of these weaknesses of both legal frameworks and institutional infirmity on conflict of East Africa are serious human, privacy and security violations, by strengthening; escalating guerrilla and conventional warfare contribute to the unconstitutional change of government, as a reason of ease availability increase civil wars and risks. Moreover, bringing about devastating economic implications that become consequences for mass evictions and displacements for fear of being a battle field are among the major implications and roles of SALWs in the conflicts of East Africa.

In general, in East Africa the legal frameworks that exist for the purpose of controlling SALWs are weak owing to the regions unique character, primarily the continuity of conflicts

²⁴¹ "hd Centre for Humanitarian Dialogue, international law and small arms and light weapons control: Obligations, challenges and opportunities (*Centre for humanitarian dialogue Centre pour le dialogue humanitarian 114 rue de Lausanne ch 1202 Genève*), March 2006, p.19

where it increases the availability, accessibility and usage of SALWs as well as limited regional cooperation, lack of political will, poor enforcement are the weaknesses of international and regional legal frameworks. So that efforts undertaken through Nairobi protocol (NP) and Regional Centre on Small arms (RECSEA) are ineffective as the flows facilitated across porous borders that national regulations also fail to secure.

4.2. Recommendation

The study has assessed the Weaknesses in International and Regional legal Mechanisms for Controlling SALWs and its Implications for Conflict in East Africa, while also highlighting some recommendations as follows:-

1. East African countries should take a more proactive stance in showing their commitment and support towards the UN, UNSC, AU, AUPS, IGAD and other institutions initiative by abiding by and implementing the principles that have been put forward to guide the control of SALWs in the regions. Most of East African countries not identified or known as exporting arms in general and SALWs in particular so that states should focus on strengthening their import controls not to fall in the wrong hands.
2. East African States should enact new binding regional legal frameworks and reinforce existing laws and regulations such as Nairobi and Bamako declaration with its protocols to strengthen border controls and management strategies. To address linkages of SALWs with non-state actors, terrorism and transnational organized crime, States should conduct financial investigations that incorporate marking, tracing of the financial flows related to SALWs in a transparent manner in order to establish liability. Therefore, East African Governments should allocate enough resources and technical know-hows to trace the illegal diffusion of SALWS across the region.
3. To limit SALWs proliferation is giving attentions to DDR as conflicts come to an end. This means that proper execution and disarmament will minimize the amount of SALWs that can be used and transferred by states, non-state actors and any other parties to areas of conflict. Additionally, effective regional controls, proper DDR execution will make it non-profitable the beneficiary to continue facilitating the proliferations of SALWs.
4. East African states through their regional institutions should create awareness for concerned bodies concerning how uncontrolled SALWs exacerbated conflicts. All concerned bodies like states security should give due attentions to handle the issue in collaboration with other relevant institutions of both regional and International

organizations. The governments should maintain strong cooperation and understanding amongst themselves so that they can responsibly and timely react to tackle the potential problems that would emerge as the result of unregulated transfer of SALWS.

5. States should make efforts to strengthen or develop norms and standards at the global, regional and national levels to prevent and combat the proliferations of SALWs on the basis of agreed measures in war-torn or conflict-prone regions of East Africa. Moreover, states should enter political will and commitment to promote common responsibility by States with regard to SALWs transfers.
6. Empower institutions like AU and IGAD on SALWs issues that should coordinate and develop policy for member states relating to the necessary administration with the power of sanctions and criminal proceeding on both states and non-state actor that involve in the transfer of such arms toward conflict area.

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