This thesis is an assessment of the current arms control agreements that regulate the transfers of conventional armament. Even though states acknowledge the threat and violent consequences that the legal, and illegal, arms trade represent, the control agreements they enact fail to successfully regulate and limit the international arms transfers. This study argues that these control agreements are ineffective. This argument is linked to the non-compliance of states to follow arms control regulations when security issues and economic interests are involved. Some agreements are merely smoke-screen measures in that they only stipulate regulations must be followed on a voluntary basis, despite the fact that the tragic repercussion of armed violence continues to occur. Due to this empirical ineffectiveness, the causes of, and possible solutions to, these situations are analyzed.

The main concern of this study is to propose the implementation of instruments that enhance the effectiveness of conventional arms control, as well as consider new methods regarding security cooperation. It takes a critical approach of the state-centric conceptions about military means and the arms dynamics that determine the relations among states. Power dynamics within the international system still give priority to the production and transfer of armament, using justification of the status quo with classical conceptions of national security and the right of self-defence as a pretext to continue the arms trade.

In the theoretical framework, the structural realist and neo-liberal institutionalist approaches are presented with the intention to understand the perspective of the states about achieving national security and the possibilities for security cooperation, despite the permanent presence of the security dilemma. Nevertheless, the main argument of this thesis asserts that the formation of an international institution based on the European Union policies on conventional arms can improve the overall situation in security cooperation. Thus, postulates from the regime theory approach are extensively presented, including the concept of international regime, its formation process, features, and types.

The analytical section of this study is focused in the application of the European Union Code of Conduct on Arms Exports. The analysis attempts to verify if the Member States have applied the criteria included in the Code of Conduct when transferring armament. Specifically, the analysis will be guided by the teachings of Carl Patton and David Sawicki by applying the six-step process of policy analysis method.
This thesis proposes that the creation of a comprehensive international regime, including a binding regulation in the transfers of specific armament and the implementation of diverse strategies of economic and social development, can improve the overall situation of security and development for the European Union and nearby regions, such as Africa and the Middle East.

The regime proposals presented are backed by the interest-based regime approach in which neo-liberalism proposes a certain degree of institutionalism. This is complemented by the constructivist-cognitive approach, where knowledge and the establishment of new practices may create new forms of cooperation in security, and, consequently, change the structure of the current international system.

It is acknowledged that the effective control of conventional armament goes beyond the national sphere and, therefore, multilateral action is needed. Arms control and security must be obtained by different methods and actions that permit states to achieve security without the permanent acquisition of weapons. Until this can happen, arms control will not be successfully applied.
### Acronyms

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ABM</td>
<td>Anti-Ballistic Missile Treaty</td>
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<td>APMs</td>
<td>Anti-personnel landmines</td>
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<td>CFSP</td>
<td>Common Foreign Security Policy</td>
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<td>CFE</td>
<td>Conventional Armed Forces in Europe</td>
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<td>DRC</td>
<td>Democratic Republic of Congo</td>
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<td>ENP</td>
<td>European Neighbourhood Policy</td>
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<td>ESS</td>
<td>European Security Strategy</td>
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<td>EU</td>
<td>European Union</td>
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<td>GGE</td>
<td>Group of Governmental Experts</td>
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<td>IAEA</td>
<td>International Atomic Energy Agency</td>
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<td>ICBL</td>
<td>International Campaign to Ban Landmines</td>
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<td>IR</td>
<td>International Relations</td>
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<td>MTI</td>
<td>Marking and Tracing Instrument</td>
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<td>MANPADS</td>
<td>Man-Potable Air Defence Systems</td>
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<td>MTCR</td>
<td>Missile Technology Control Regime</td>
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<td>MBFR</td>
<td>Mutual and Balanced Force Reduction</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<tr>
<td>PoA</td>
<td>Programme of Action on Small Arms</td>
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<td>SALW</td>
<td>Small arms and light weapons</td>
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<td>SDI</td>
<td>Strategic Defence Initiative</td>
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<td>NPT</td>
<td>Treaty on the Non-Proliferation of Nuclear Weapons</td>
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<td>UNROCA</td>
<td>United Nations Register of Conventional Arms</td>
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<td>UNGA</td>
<td>United Nations General Assembly</td>
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<td>UN</td>
<td>United Nations</td>
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<td>WTO</td>
<td>Warsaw Treaty Organization</td>
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<td>WA</td>
<td>Wassenaar Arrangement</td>
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Annex I
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1. **INTRODUCTION**

‘Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed. That ignorance of each other’s ways and lives has been a common cause, throughout the history of mankind, of that suspicion and mistrust between the peoples of the world through which their differences have all too often broken into war’

UNESCO Constitution

Peace as an ideal and security as a condition are objectives that have been followed by humankind throughout its history. Within the study of International Relations (IR) these topics have been a recurrent subject due to the warmongering that the states and societies continuously face.

From the perspective of this research, the trade and control of conventional arms have not been the main concern within peace and security studies. Rather, these studies are concerned with topics like the proliferation of nuclear weapons, weapons of mass destruction (WMD), and recently, terrorism, leaving conventional arms as a secondary concern. However, bomb by bomb and bullet by bullet, these ‘conventional’ armaments are used every day in violent acts which kill human beings or violate their rights. These armaments also deserve the title of *weapons of mass destruction*. Even though the serious problems related to unrestrained arms transfers are extensively acknowledged, world governments have only implemented palliative policies which do not provide effective solutions to these problems. I consider that this kind of armament has created more social, political, and economic problems rather than providing the supposed security they are expected to carry out.

Having analyzed different studies regarding arms control, armed conflict resolution, and peace studies, I have found that the constant trade and flow of legal, or illegal, armament represents a quandary in attempts to pacify antagonist groups or establish peaceful development in any society. Moreover, the consolidation of global criminal activities has helped the spread of these weapons. New realities and trends challenge the traditional conceptions of national security, and, at the same time, challenge the strategies to control armament. In this study, I will use the term ‘arms industry’ rather than the official or commonly used term of ‘defence industry’.

The production and sale of conventional armament is a worldwide economic activity that generates an annual profit of millions. However, the use of armament under any circumstance has only represented a constant danger for the development of societies. There have been efforts to

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1 I consider that this term does not describe the real meaning of the activity that this industry represents; it is vague and unclear to call it ‘defence’. Producing and exporting bullets or missiles to developing countries is clearly a business concern, not a mere defensive measure. This term is a deceptive euphemism.
control the arms trade, but, as reality shows, it does not matter whether, it is a jet fighter in Lebanon, a machine gun in Sierra Leone or a small gun in Colombia, arms trade is a profitable and lethal activity which is also used as a foreign policy tool of the main great powers.

1.1. Justification of the Study

Even though it is the 21st century, a multilateral binding international treaty or agreement to regulate the transfers of conventional armament is yet to exist. National and international regulations implemented for conventional arms control have had limited impact on the arms trade. For instance, it took almost 50 years for the United Nations (UN) to establish the Register of Conventional Arms (UNROCA), whose only purpose is to provide more transparency in the information of imports and exports. A visible weakness in this instrument is that all reports submitted by the states are on a voluntary basis. Considering that main arms producers do not participate actively in this initiative, the UNROCA is a useless instrument.

The permanent members of the UN Security Council adopted the Guidelines for Conventional Arms Transfers, which outline the responsibility that a country must have when producing and exporting military items. It was not a surprise that this declaration came in 1991 after the Gulf War, considering the cynical attitude of these members of the Security Council. For example, European countries that took part in the international coalition fought in this conflict against the Iraqi army, who was equipped with armament made in the United States, Russia, or other major European arms producers. The same situation occurred in the Yugoslavian conflict in the 1990s. (Bauer & Bromley 2004: 2). These armed conflicts increased the awareness that existing controls were insufficient to prevent accumulations or transfers to unstable areas. However, these ‘guidelines’ were only created to show that certain action had been taken. Therefore, this measure had irrelevant consequences for arms control agreements.

The UN Charter, in a sense, restrains the UN itself from playing an active role in promoting arms control and disarmament. The right of individual or collective self-defence permits the states to use military means to assure their national security. Nevertheless, article 26 makes the Security Council responsible for taking actions to control this issue, thus creating one of the biggest contradictions for worldwide peace and security matters, especially when its permanent members are the main arms producers.

In 1996, the Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, better known as the Wassenaar Arrangement (WA), was established considering the
‘ambitious and transcendent’ objectives of promoting the responsibility, transparency, and exchange of information in export controls. Why is ‘transparency’ the only outcome arms control can offer to societies affected every day by armed conflicts or violence?

France, Germany, Russia, the United Kingdom, and the US have been the principal suppliers of major conventional weapons during the 2004-2008 period, providing 78 per cent of the total worldwide exports\(^2\) (Bromlew et al. 2009: 1-2). The main armament producers of the European Union (EU) generated more than 30% of the annual arms trade during the same period (SIPRI 2008 www document). It is estimated that there are over 400 companies producing small arms and light weapons (SALW) within the EU, and the majority of its Member States have companies producing armament (Amnesty International www document 2004: 2).

In 2001, the UN Conference on the Illicit Trade in Small Arms and Light Weapons was held, where former UN Secretary General Kofi Annan estimated that 639 million small and light weapons exist\(^3\). The estimation of the human sufferers related to gun deaths every year is calculated to be approximately 300,000 mortal victims, and one million injured (Peters 2006: 1). The European Parliament estimates that a half million people are killed by SALW every year, and also recognizes the significant increase of transfers made by major European arms suppliers to developing countries from $830 million to $4.8 billion dollars in the 2003-2004 period (European Parliament 2006: 5).

I could continue presenting examples of the revenues of the worldwide arms industry and the human costs and impact that the use of conventional arms has in relation to this situation; however, I believe that it is more important to analyze and propose solutions to these problems. The causes of wars and military conflicts, in addition to the concept of security, have changed in the past decades. Interstate wars have decreased in number, yet armed disputes due to ethnical differences, civil wars caused by antagonist groups, weak state organization, and organized crime have been constant phenomena. The number of civilian casualties in armed conflicts has increased dramatically, the use of conventional armament, especially SALW, has prolonged the conflicts and complicated their resolution.

Conventional arms trade refers to the transfers that include military means from the supplier to the recipient. Governments and leading armament companies actively promote their products, thus developing a dependency for recipient states to acquire military technology. Security problems

\(^2\) This data does not include SALW.
\(^3\) This figure includes antitank guns, hand grenades, machine guns, mortars, revolvers, rifles and portable missile launchers (Rourke 2005: 354).
caused by irregular transfers, or lack of strict regulations, have been recognized as one cause of this worldwide security problem (Viotti-Kauppi 2001: 234). Nevertheless, it does not necessarily always involve governments, companies, or brokers. In fact, armed groups, which have been deemed illegal, are able to acquire armament. In general, transfers are based on a commercial basis or with military assistance. However, there exists a worldwide illicit black-market that has the capacity to violate arms embargoes.

1.2. Object of the Study – Research Questions

This thesis starts from the fact that states recognize armament transfers and weak export controls as a threat to common security. All of the agreements and policies that exist are evidence of this situation. Nevertheless, the combination of security, political, and economic interests represents a challenge for the regulation of this activity. As mentioned before, the transfer of conventional armament does not have any international binding regulation. My argument is that mostly all of the current arms control agreements implemented to regulate the transfers of conventional armament are insufficient and ineffective. These measures are based on voluntary acts and are thus not observed in general. This situation implies that countries, or armed groups, have been receiving conventional armament by legal, or illegal, trade in spite of embargoes. Considering this scenario of voluntary compliance and ineffective international agreements, the EU policies on arms control can be taken as an important reference point from which to direct efforts that provide control to this activity.

The EU, as a global actor, can contribute to world peace as it is a leading promoter of arms transfer controls and other security and disarmament issues. The implementation of binding controls on arms transfers would give the EU legitimacy in its foreign policy and maintain congruency with its promotion of democracy, development, and peace. Due to the fact that most of the EU members are arms producers, I believe that they are obligated to take real responsibility in this matter. These armaments are a threat to peace and development in many strategic regions for the EU, and may become a danger to its own citizens. Since the current measures and policies taken by the EU are recognition of the arms transfer problem, it is pertinent that methods to increase the effectiveness of these controls are discussed.

The concern of this research is the discussion of the ways to improve the conventional arms control agreements. Consequently, its main objective is to evaluate the effectiveness of the current EU policies on arms control, and to analyze the possibility of an international
instrument to regulate conventional arms transfers based on these policies. Effectiveness should be understood in the sense that a regime or a policy can be considered successful if these regulations fulfil their goals, and, if the participating actors observe their norms and modify their behaviour according to these goals (Hasenclever et. al. 1997: 2).

My observed argument of the lack of effectiveness in the worldwide agreements, or policies, on conventional arms control leads to the hypothesis that the inclusion of something that I call a binding-factor can change this ineffectiveness. This situation refers, basically, to the legal status of the agreement and the level of enforcement of compliance, whether adopted by national legislation or by an international regime or treaty. The lack of this binding regulation leads to the current non-compliance situation made by governments.

My principal statement for this work is that the security of humans and states can be enhanced if the political, economic, and power interests that have impeded effective arms control are changed, or minimized, for the common good of humankind. Therefore, my intention is to find an explanation as to whether there is a possibility to change the behaviour of the arms producers by promoting cooperation in security, and with this, changing common conceptions of national security. New forms of, and conceptions of, security would bring more cooperation in other sensible areas.

The research questions that this work attempts to answer are:
- Why is there a lack of effectiveness in conventional arms control agreements?
- What instrument is necessary to improve arms control?
- How can it be implemented?
- Is it possible to modify national interests and behaviour in order to fulfil compliance?

This study will bring into consideration different theoretical perspectives that involve the procurement of national and international security, cooperation, and the formation of international institutions. With the intention of clearly understanding the current situation in conventional arms control, a general review of international instruments in this area is delineated. Specifically, an evaluation of the European Union Code of Conduct of on Arms Exports (Code of Conduct) and a general review of the recently adopted Common Position 2008/944/ defining common rules governing the control of exports of military technology and equipment (Common Position) is presented. In order to corroborate or rule out my primary
assumption that even the most comprehensive control, such as the EU Code of Conduct, lacks effectiveness, the analytical case of this research will be focused on the Code's dispositions concerning arms transfers to regions or countries affected by wars or armed conflicts. It will be assessed whether or not the EU policy has been followed by its Member States when transferring armament.

1.3. Theoretical Outline

As the theme of this study is related to the issues of security, peace, and international cooperation within IR studies, two theories particularly stand out as main references. These are the structural realist perspective (the military and security aspects) and the neo-liberal institutionalist approach (the cooperation and collective security aspects). These two theories will be used to analyze how states have tried to achieve security and whether or not the possibility to cooperate with other states exists. At the same time, the relationship between these security concerns and the production, use, and trade of conventional arms is presented. Contrary to the traditional understanding that more armament procures more security, I consider that the reduction and better control of armament would have a direct benefit for the EU and global security.

Regarding the issue of how states engage in cooperation processes and face international problems, I will apply the theoretical propositions of regime theory to explain, the development and practices of institutionalization that these processes involve. An international regime may have four possible purposes: to implement regulations based on rules and behaviour prescriptions, to put into operation procedural measures and mechanisms to achieve shared purposes, to establish procedures to implement projects, or to work as a discussion forum to solve common problems (Young 1999: 4-6).

It is important to present a comprehensive view of the international regimes, in order to understand their conceptualization, types, degree of effectiveness, and features of their function, focusing specifically on the formation process. The basic assumption of the regime’s existence guided my idea to study arms control from this perspective, even though security topics are not the focal issues analyzed by this theory. With this theoretical set, I will try to analyze why states cooperate in security issues and how controls in conventional arms can be improved. It is important to explain the perspectives that these influential theories have on
cooperation and security issues, mostly for the reason that the regime theoretical works come from scholars forged in the liberal and realist camps.

Finally, taking into account the outcome of the Code of Conduct analysis and trying to contribute with this research, comments will be made about security regime perspectives from the constructivist view. The importance of this approach is that it provides new perspectives in security and cooperation issues. Constructivism supports the promotion of new social practices and knowledge in order to achieve decisive steps to improve political relations among states.

1.4. Methodology – Information Sources

The selection and implementation of the methods that will lead the analytical task represent a decisive step within a research work. For the development of this study, I am required to consider, and link, theoretical perspectives in security and cooperation related to the topic of conventional arms control and EU policies on this matter. At the same time, the analytical section of this work shall gather evidence to reject or accept my initial consideration that the EU Code of Conduct lacks effectiveness. The formulation of an alternative proposal for the issue of arms control is studied as well.

I considered that it was necessary to take a holistic approach to this research in order to understand all the variables involved in this study, and to find a balance between the qualitative and quantitative data. After reviewing several methods, it was found that policy analysis method could guide this task accordingly. Policy analysis is considered as an instrumental concept for analysis; it is aimed at drawing a line of action that leads to specific outcomes. In the case study presented, it is necessary to scrutinize decisions taken beforehand and to evaluate a possible improvement when necessary.

This situation gives a prescriptive character to this methodology and shows how better choices may be implemented (Jackson & Sorensen 2003: 241-2). There are certain risks in applying this methodology, traditionally used in public administration, to an international issue without the formal reference of a government. However, this method offers a wide and open way of applying analytical tools, giving the researcher freedom to incorporate different ways of conducting studies, regardless of the field of study.
My analysis will be specifically guided by the teachings of Carl Patton and David Sawicki, with their six-step process method of policy analysis. As mentioned previously, the specific case study in this research is to identify the impact of the Code of Conduct on arms transfers. For this purpose, I will do a comparative study of the transfers made by EU Member States to certain countries by applying the document study method considered by Kenneth Bailey.

In the second and fourth chapters, this study explains theoretical and factual elements about security and cooperation. First, a deductive qualitative approach is applied, starting with the review of different theoretical perspectives about the actions and measures of the states in regard to national security, and the direct implications with the transfers and trade of conventional armament. Information about conventional arms control is presented along with attempts to interpret the situation and circumstances of these controls and their impact on the arms trade. The study continues with a review of the main arms control agreements while focusing specifically on the EU policies on arms control. In the fifth and sixth chapters, the analytical section of the research has an inductive prognostic feature when reaching specific conclusions regarding the EU policies, and moves forward to give general comments and particular proposals about security regimes and how to improve the arms control transfers.

I will review the Annual Reports presented by the EU Member States where information on arms transfers is reported, and compare different years to verify if the criteria considered in the Code of Conduct have been applied by the Member States. This is intended to find inconsistencies in the application of the regulations and the analysis will give evidence of this situation if it exists. Then, with the pertinent information, a prospective analysis to refer which actions can be implemented to improve the current policies will be presented. My scrutiny of the control policies implemented by the EU, and ways to enhance these measures, will be lead by the six-step process of Patton and Sawicki.

This is mostly a documental research. Therefore, the material compiled for this study is based mainly in books, journals, and articles. It is presented the works of several scholars regarding security, international cooperation, regime theory, and security communities. The primary sources of information are official EU documents: the Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, the Code of Conduct, the Common Position, the European Security Strategy (ESS), the EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition, and the internet website of the
Council of the EU. For the analysis of international instruments of arms control and other international organizations, it was deemed pertinent to obtain the information directly from their internet websites.
2. **IN SEARCH OF SECURITY AND COOPERATION**

‘The EU is committed to achieving universal adherence to multilateral treaty regimes...we want international organizations, regimes and treaties to be effective in confronting threats to international peace and security’.

*European Security Strategy*

The EU has shown a remarkable commitment to peace and development promotion not only in Europe, but also in the nearby regions. However, security concerns have returned as main priority, due to the recent violent events within EU territory and armed conflicts where European countries have been involved. The European Security Strategy (ESS) expresses the position and objectives of the EU regarding world security affairs and international governance. The ESS recognizes five key threats that endanger its security: terrorism, weapons of mass destruction, failed states, organized crime, and regional conflicts. From the perspective of this research, all these threats are related with conventional arms. Considering the implications of arms control in relation to security and international cooperation, the starting point of the research is to present the debate-dialogue, with criticisms and coincidences, between neo-liberal institutionalism⁴ and structural realism. The discussion will focus on their conceptions of security, cooperation, and international governance.

The concept of security used in this work follows these two theoretical proposals. The level of analysis carried out for this research focuses on the state system. Therefore, the term *security*, when used here, refers to national security. Nevertheless, this work stands from a human-security point of view, with a strong belief in the diversification of security agenda studies⁵. In my opinion, the security analysis should include the definition of all types of violence, the identification of its sources, and the understanding of its negative impact at any social level. This work centres on the idea that a state is safe only when its citizens live without any kind of threat, and this situation does not provoke *insecurity* in other countries.

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⁴ Neo-liberal institutionalism must be distinguished from other varieties of liberalism. Grieco (1988:488) differentiates neo-liberal institutionalism from trade or commercial liberalism (free trade and development), democratic structural liberalism (democracies tend to achieve productive cooperation) and the liberal transactions approach (private international interactions encourage international integration). Keohane and Nye identify these types of liberalism as commercial, democratic, and sociological liberalism. See Joseph Nye (1988) ‘Neo-realism and Neo-liberalism,’ *World Politics* 40:2, 235-251.

A central strategy of the states to achieve national security is the production and acquisition of armament. This situation prompts a global arms trade which represents an extremely profitable business for its producers. Consequently, this trade becomes an exceptionally difficult activity to control.

The acquisition of armament is alleged to be the means to moderate military imbalances among states (Buzan & Herring 1998: 51). From this point of view, countries with the capacity to produce armament would dominate the global political scene, leaving a narrow margin for non-producers to match their military power. This situation produces an imbalance in security and, therefore, the acquisition of conventional arms is accepted. However, this work emphasizes that conventional armament must be controlled with similar restrictions as WMD. Deterrence doctrines support the pursuit for national security by possessing considerable amounts of arms; however, this situation has only justified the transfer of armament to countries or geographical areas that have been frequently involved in armed conflicts.

2.1. Security and Cooperation from Two Points of View

The antagonism between realist and liberal traditions has profoundly influenced and shaped IR theory, and consequently, the conceptions and views about how to comprehend the international reality and its facts. There are differences between the two traditions; however, in some areas, there are important similarities that contribute to a better analysis. Both perspectives recognize the rational character of the state, in which its behaviour is characterized by self-interested actions; every state tries to protect its interests and to improve its position in the international arena, trying to capitalize on opportunities and fulfil priorities.

Realism embraces power as the unique variable that motivates states, whereas liberalism considers others variables as well. Both proposals identify anarchy as the main predicament and states as the main actor in the international system. Neo-liberals find that cooperation in common issues is the only way to reduce the anarchical factor in the interactions among states. These two power-structural approaches claim that influential actors take their internal interests into the international arena to create governance systems (Breitmeier 1997: 87).

Security cooperation has been developed mainly through four models during the 20th century: alliances, collective security, security regimes, and security communities (Bailes & Cottey 2006: 199).

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6 Recent works of influential scholars have tried to avoid conflict and create permanent dialogue. See Keohane 'Institutional Theory and the Realist challenge after the Cold War' in Baldwin (1993).
Regional and international cooperation among countries has been a recurrent fact after the Second World War in order to achieve certain degree of stability and development. Security cooperation has been a strategy within world politics; North Atlantic Treaty Organization (NATO), Warsaw Treaty Organization (WTO), Organization for Security and Co-operation in Europe (OSCE) and ASEAN Regional Forum (ARF) are examples of this.

2.2. Neo-liberal Institutionalism

Neo-liberal institutionalism has been the main theoretical standpoint regarding inter-state cooperation. After the Second World War, states coordinated their efforts, with specific rules and measures, in particular areas such as security, aid to less developed countries, environmental protection, monetary policies, and trade. Cooperation among states is not given per se, as every actor has different needs and motivations, prioritizing interests within a framework of interactions. Classic liberalism believes in the innate human goodness and willingness to cooperate and reach a collective welfare; however, neo-liberals do not completely accept this assumption and explain, with the famous prisoner-dilemma problem, the supposed rationality that one actor must have when acting under certain situations.

The neo-liberal institutionalist approach, based in the functionalist proposal concerning integration issues, had notorious development with the works of Robert Keohane and Joseph Nye and their notion of complex interdependence. This concept shows the significance of non-state actors and the increasing connection among all international actors; it highlights the introduction of new issues on the international agenda without distinctions or priorities. Interdependence recognizes and supports new methods of cooperation and communication involving all international actors. This concept considers the decline of military means as a solution to inter-state conflicts. As a result of stronger economic relations, interdependence influences the power relation among states (Keohane & Nye 1977: 24-5). If interests are compatible, states will participate in a cooperation process. On the other hand, if their efforts are successful, an interaction network is created, ensuring future cooperation. Permanent cooperation under a non-state institutional structure would influence the behaviour of the states regarding issues of mutual interest.

Cooperation among states within the interdependence framework requires guidelines to maintain governance to a certain extent. This is achieved by the creation of an international institution or regime. Keohane and Nye accurately explained the position and function of a regime in the international system. It is conceived as an intermediate factor between the system’s power
structure and the political and economic bargaining that comes as a consequence of the interactions among actors (op. cit.: 21).

'The structure of the system (the distribution of power resources among states) profoundly affects the nature of the regime...the regime, in turn, affects and to some extent governs the political bargaining and daily decision-making that occurs within the system’

This perception explains the mutual influence between the structure of the system and the nature of the international regime. Continuous cooperation would reinforce the interdependence among states; political relations are a significant part, but economic, and even cultural concurrences, acquire great importance and complement the cooperative efforts.

Personally, I do not support some neo-liberal propositions, regarding the international monetary system and the institutional framework linked to the Bretton Woods system; I particularly disagree with the imposition of ‘structural changes’ and ‘market ideology’ to developing countries. Liberalization of markets, privatization of public companies and services, and the promotion of free trade of goods have only benefited trans-national corporations, in detriment of local producers, creating a centre-periphery dynamics of unequal economic relations.

However, neo-liberal institutionalism has made correct interpretations of international cooperation phenomena, questioning realist ideas. Keohane and Nye challenged the realist dominance within IR theory with the studies of interdependence and trans-nationalism. Their contribution was to identify the diversification of the interests and goals that motivate states beyond national security matters and to recognize the participation of new actors in the international arena.

Liberal ideas regarding state security rely mostly on the multilateral proposal of joint cooperation; collective security appears as the main strategy to diminish the threats caused by the security dilemma. This principle assumes that wars are always possible within the international system; this situation is diminished when military actions are restrained. The state that makes the aggression will be in an isolated position, with the international community acting against its action. Under this understanding, national security lies on the logic that states do not accept aggression as a means to an end, and if one state uses it, then a collective reaction will take place mostly through an international organization.

Collective security differentiates from collective defence in the sense that the final goal of the first is to restore a specific level of security by taking appropriate responses; the latter mostly involves mutual protection and a military response in the case of attack. Mechanisms of arms control and
disarmament complement collective security; principles of regulation and control in proliferation of weapons are closely related to liberal ideas of enduring peace and development.

2.3. **Structural Realism**

Taking a look at the other side, Kenneth Waltz and the structural realist tenets complemented theoretical thinking to the archetypal realist classic conceptions, giving pre-eminence to the international system’s structure and the direct influence that it exerts on states; these actors try to preserve their position in the system by using their potential to maintain proportional relations between the state’s power resources and the influence they have to affect other states. Military power represents the most important element that a state possesses to interact with other actors\(^7\), while at the same time, is used to achieve national security and demonstrate power capabilities. This realist understanding was a reference regarding the behaviour of states during the Cold War, with the arms race that happened in this period.

The threat of an anarchical system forces each state to guarantee its own security. However, this situation develops into a circular dilemma of self-providing security, which at the same time creates a threat for other states. Realist thoughts find the balance of power as an insufficient, but necessary, condition to avoid a situation of persistent war. Insecurity is regarded as inherent to the system. Therefore, states have to calculate costs and benefits on security matters; this situation obliges states to establish alliances to strengthen their security options. Realist logic has three basic assumptions concerning security: the need to acquire or produce armament, the desire to form alliances or negotiate disarmament agreements, and the use of arms control to reduce threats (Kegley & Wittkopf 2001: 551).

In regards to security cooperation, the realist camp identifies military alliances as the way states can achieve certain stability and balance to guarantee their survival. Security cooperation can be established with allies; nevertheless, it may also need to be established with ‘enemies’. For this situation, realism proposes theoretical answers with the so-called defensive realism; Charles Glasier identifies the possibility for long term cooperation, even with rivalries among states; security cooperation is a self-help instrument because the achievement of security is dependant on others (ibid: 372).

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\(^7\) The neo-liberal camp challenged this assumption with Nye’s distinction of soft and hard power capabilities; where military power decreases its importance favouring other areas. See Nye (1990)
It is necessary to distinguish between offensive and defensive realism in order to understand which view proposes more inclusive and open concepts. Mearsheimer, Gray, and Schweller are all proponents of the offensive category, where security is only achieved by military means and represents the main concern of the states; these actors try to maximize power, thus, mutual security is not possible and cooperation tends to be unproductive. On the other hand, defensive realists, such as Glaser, Herz, Van Evera and Jervis, believe that the increase of self-security does not necessarily represent conflict for other states; the security dilemma can be decreased with common measures, and in consequence, conflict sources can be controlled and diminished (Jervis 1999: 48-9).

Realist thinking considers deterrence as a ‘strategy’ to manage insecurity; rationality takes priority in that decision makers would try to avoid war due to the destructive costs that it represents (Mingst 2004:225-29). This concept was reinforced through nuclear attacks being a possibility during the Cold War; hence, alternatives for avoiding large military actions are necessary. Nevertheless, I believe that this strategy has a weak point; it works with the dynamics of threat and discouragement as states must have a vast amount of weapons to demonstrate power to the others. This situation leads to armament races. Nevertheless, I believe that ‘rationality’ is not always present in human beings, and it is even less frequent in political leaders or decision makers. Reliance in the threat of mutually assured destruction as a de-motivator does not work, since a rational actor does not change its preferences or interests in a status quo period, and stability in these choices is used to reinforce this status.

Realists understand cooperation among states as a utilitarian act of convenience which is rejected if national interests are not fulfilled. Moreover, the calculation of balance of gains and costs must be favourable in comparison to other participants involved in the cooperation process; if it is not favourable, the process can be cancelled (Müller 2002: 362). It is important to have in mind these two realist understandings regarding national security and cooperation if they are contrasted with the arms control theory and subsequent instruments. Unfortunately, realist notions seem to be present within most military-governmental thinking, thus legitimizing military expenditure and, consequently, the arms trade.

Further works from neo-realists scholars have considered the possibility for cooperation among states; Joseph Grieco argues that states, as long as they can increase their power, consider cooperation with others as a plausible prospect. A state enters into a calculation process of relative and absolute gains. If cooperation is successful, a single state may build up its position inside the system, affecting the interests of other states. This situation affects the cooperation process in the
sense that some actors would avoid supporting cooperation with a potential rival or competitor (Lamy 2005: 210). Grieco is critical of neo-liberal institutionalism; for him, realism confirms two reasons why cooperation is bound to fail: the concerns of the states about the achievement of relative gains and cheating actions (Grieco 1998: 118).

The issue of relative and absolute gains seems to be an irreconcilable topic for both approaches. For realists, relative gains imply that one state could increase its power and influence due to these gains and, therefore, affect other states and the system. Discrediting the assumptions of cooperation within the structural realist approach, Charles Glasier argues that there are various conditions where adversaries can cooperate and achieve joint security gains. Cooperation is conditional because states do not compete all the time; the chances of collaboration are more plausible when leaving aside the ‘obsession’ of relative gains. This is a criticism of the pessimistic assumptions of cheating and non-compliance when security cooperation is at stake (Baylis 2005: 305).

As presented, these two approaches only consider classical conceptions of national security by military means. Structural realists have tried to be more inclusive and expand their ideas of security, but, realist military logic is still rooted in Cold War era beliefs and this situation determines its conceptions regarding security. Liberals and institutionalists share ideas with their counterpart, but they present better scenarios of cooperation in other areas that strengthen international security; these differences impact the study of arms control in various ways. Even though there are proposals for international controls and multilateral cooperation, military expenditures, arms production and transfers continue to occur at an increasing rate. If national security concerns only consider relying upon military capacity, then arms control agreements have limited options to improve.

For instance, the security needs of the EU are covered by alliances, multilateral organizations, and national armed forces. Armed threats have changed as military invasions no longer occur within its borders, although they still occur nearby, for instance with the Georgia-Russia Federation war in 2008. This conflict demonstrates that states move in different spheres of interest and their behaviour is directly related to their conception of the international system. Some states still behave in a Cold War era mindset with basic concerns of national interests and security, whereas other states have moved into a dynamics of development and cooperation, applying other security measures. After presenting the general conceptions of these approaches, in the next sections the links of these understandings and the topic of this study are detailed.
2.4. Debate

Recently, scholars like Robert Jervis have tried to clarify misunderstandings between liberalism and realism. Jervis explains that ongoing disagreements have been exaggerated and that these approaches can actually complement each other to provide better analysis. Both approaches differ in the way they identify conflict as unnecessary or avoidable in world politics (Jervis 1999: 47). In this sense, neo-liberalism finds more potential for cooperation.

David Baldwin finds six principal points of debate when comparing the ideas of the leading scholars of these perspectives (Baldwin 1993: 4-8):

1) Both approaches recognize the nature and consequences of anarchy in the international system; realists find that it affects the behaviour of the states to a great extent, while liberals explain that even with the anarchic factor, states tend to cooperate and reach levels of order and governance.

2) Regarding international cooperation, realists think it depends on the capacity or power that states have. Hence, it is difficult to achieve it and even more difficult to maintain it due to a selfish position which only promotes self-interests. Neo-liberals are more optimistic in finding that certain cooperation can be achieved on economic or integration issues.

3) When states decide to cooperate, it is necessary to consider the equation of absolute and relative gains. Realists believe that relative gains are more important, mostly in security matters, because none of the parts will obtain a clear advantage over the other; more gains for one side will stall and block further cooperation between actors. Liberals focus on maximizing absolute gains when cooperation is successful.

4) The fourth point refers to a transcendental issue, the priorities of the states. Realists identify an anarchical system where security and survival issues are the main concerns of the states. Liberals focus on political economy and development issues where cooperation is more feasible.

5) As for the issue on intentions versus capabilities, realists believe that the distribution of the capabilities of a state determines its behaviour and interests. Liberals place more importance on intentions and interests that influence the actions of the state rather than the distribution of its capabilities. This is closely related to the point of relative and absolute gains; the state is restrained by its capabilities determining the type of the gains received.
6) Both perspectives recognize the existence of international institutions and regimes. The difference in views, however, comes from the importance given to these arrangements. Realists recognize institutions but believe that they are limited and tend to lack relevance. States will be partially motivated to participate in these arrangements depending on whether their interests are fulfilled or not. For neo-liberals, international institutions and regimes moderate and regulate the effects of anarchy and improve inter-state cooperation to solve problems in different areas.

These two approaches find different causes when international cooperation among states fails; the neo-realists identify the deceitful behaviour and non-compliance made by states, and the relative gains that may result from the cooperation process; the neo-liberals claim that cooperation fails when states do not follow the rules included in the agreements and take advantage of the situation to fulfil their interests (Lamy 2005: 210). As seen, these points are closely related to the roots of the problem that this work discusses; the need for security and international cooperation among states arises from different sources and motivations and it depends on the position of an actor, and its capabilities, to affect the international system. A hegemonic actor would have better opportunities to promote inter-state cooperation, without affecting the gains or interests of other states. This situation would lead to the instauration of institutions or regimes.

Taking into consideration some of the ideas presented above, in the case of the EU, its security concerns and needs are included under the Common Foreign Security Policy (CFSP) pillar. In an attempt to develop certain autonomy and an action capacity in security and military areas, the European Security and Defence Policy (ESDP) was implemented. The ESDP contains political and military structures to carry out the security duties and operations of conflict management, such as the Petersberg tasks. This policy includes the association with NATO, under which the Berlin Plus agreement exists; this agreement contains the framework and coordination mechanisms to accomplish mutual interests. The European Defence Agency (EDA) was established to develop military capabilities, to promote armament co-operation and to create the European Defence Equipment Market. This agency tries to coordinate the European arms industry and the military needs considered in the ESDP. In 2003, with the adoption of the ESS, additional specific measures were taken in the non-proliferation disarmament and export control areas. Some of these strategies will be presented in detail later on.

Let us have an analytical view of the ESS content adopted by the European Council, and then contrast it with the six points of debate enlisted above. This strategy declares that the EU strongly supports an international order based on multilateral cooperation. Globalization has implied new
opportunities but not without the absence of new risks; the main objectives mentioned in the ESS are the need for a stronger international society, well-functioning international institutions, and a rule-based international order. These statements follow mainly the liberal ideas mentioned by Baldwin. Furthermore, considering its priorities, it is clearly shown that the EU can have a civilian face, rather than the role of the classical military actor. However, we can find a shared situation regarding the intentions versus capabilities point since the EU has based the achievement of its interests and intentions on its economic capacity.

This study takes into consideration the relation between absolute and relative gains, particularly when the gains involve security and economic interests. The ESS emphasizes the use of trade and development policies as a foreign policy tool and this is considered as an innovative aspect (Howorth 2005: 195). At the same time, the ESS considers the proliferation of WMD as the biggest challenge to tackle; nevertheless, the threats mentioned before are related. Terrorists are more likely to succeed or establish headquarters in a failed state, where armed conflicts are a constant feature that can produce regional volatility. At the same time, organized crime can be involved in every threat whether through promoting terrorism, political instability, fuelling regional conflicts, trafficking illegal substances or humans, or selling armament in the black market. The ESS correctly identifies these threats, but in my opinion, fails dramatically when it does not recognize the persistent incidence of conventional armament in all these situations; it does not even mention the problem of SALW or EU policies concerning this matter. It was until 2006, with the *Strategy to Combat Illicit Accumulation of SALW*, that conventional armament was subject to particular attention within the ESS context. The destructive power and consequences of this armament should not be underestimated. The EU members have their own and shared priorities and interests; the implementation of a binding regulation on arms transfers is directly interrelated to relative and absolute gains in security, economic interests and regional development.

When comparing the neo-liberal institutionalist and realist postulations on international regimes, both have common assumptions: states promote the establishment of regimes, which are an instrument for international cooperation, and therefore, provide certain international order (Little 2005: 371). Nevertheless, these approaches diverge at different points. For liberals, regimes promote the common welfare and strengthen collaboration among states. The impact of regimes on the international system is believed to increase the influence of liberal globalization and its ideas. Realists only perceive international regimes as allowing certain coordination but giving different benefits to the participants. Realists believe that a hegemonic actor is not relevant, but the power relations that result from a coordination process. Hence, the influence of the regime on the world order will be directly related to its principles and norms. Even though the EU has not
achieved a hegemonic status in the international system, its capabilities certainly place this actor as a key factor for promoting governance according to its values.

At the same time, realists reject that regime formation is the result of the coordination of states in a specific issue giving common gains for all participants; regimes are the result of uncoordinated strategies that produce sub optimum outcomes (op. cit.: 371-80). As mentioned before, institutionalist postulations recognize the rational character of international actors and their search of maximize gains in every issue. Even in a competitive environment, states would try to cooperate with each other to achieve this. The obstacle to the cooperation process is the full compliance of all actors involved. However, compliance will be possible when states share similar interests and goals; hence, cooperation would increase trust and reliability. In this sense, a common agreement has to be materialized with the creation of an international institution, as cooperation will be realized within this institution, but only if the control and approval are executed by the states (Hasenclever et al 1997: 23).

2.5. International Regimes

International institutions have been recognized as the instruments to achieve certain level of governance within the international system; they are categorized into two types of institutions: international regimes and international organizations. Both types are social institutions distinguished by behavioural patterns based on international rules and norms (Rittberger & Zangl 2006: 6). These institutions affect the conduct of their participants which leads to a scenario of convergence of interests and cooperation. The main difference between these institutions, however, is the focalization of issues made by a regime and the possibility to transcend into actorness and affect a variety of issues accredited to the organization. Regimes can be institutionalized or non-institutionalized, but even with a level of institutionalization; they are independent compared to international organizations (Stein 1982: 46).

Due to the close connection between these institutions, differentiation may be a source of confusion; Hildegard Bedarff differentiates regimes and organizations regarding to the foundation’s level of abstraction. This scholar found three features in this relation. Firstly, the principles, norms, rules and decision-making processes in a given issue-area can be included as part of an international organization, enabling the latter to be more comprehensive than the regime. For instance, the UN comprehends a wider range of issues than a simple regime and it can be easily distinguished in specific areas (regimes) such as environmental problems or migrants rights concerns (Rittberger & Zangl 2006: 7). Secondly, there exists the possibility that a regime can be instituted from different organizations; the nuclear non-proliferation regime is supported on the
Nuclear Non-Proliferation Treaty (NPT) principles and norms, but at the same time, includes the International Atomic Energy Agency (IAEA) and the London Suppliers’ Group. Therefore, a regime may be based in a more comprehensive framework than the structure of an international organization.

It is pertinent to make a comparison between the proposal of this research and the logic that created the non-proliferation regime; this instrument was established under the assumption that the uncontrolled spread of nuclear weapons would create permanent threats and increase tensions because these weapons could be used and developed by many states. While today there is enhancement in the control of nuclear armament, effective controls are not extended to conventional armament; many states are developing their production capacity compromising the efforts of disarmament and control.

The EU Strategy against Proliferation of Weapons of Mass Destruction tries to prevent, deter, halt and control their proliferation. The strategy considers that the EU will address the root causes that increase the proliferation of WMD and will try to provide solutions to political conflicts. However, it mentions the increasing need for development assistance and poverty, and the promotion of human rights. Nevertheless, moving to the conventional arms category, the ESS states that regional conflicts need political solutions and, in post-conflict areas, requires military presence and effective security.

Regional problems in Africa, however, are initiated or prolonged because national armies or rebel groups have the fire power to engage in armed conflicts. Problems in this continent are the result of a complex net of interrelated interests; why is it not mentioned, and considered, that one of the main reasons of African instability is the constant trade of conventional arms? Arms embargos and other sanctions are always implemented after massacres; why is economic profit always put before human security? Evidently, not all responsibility should be directed toward the EU Member States. China, Russia and the US are the major arms producers and represent the real problem of arms trade, mostly with their boycotts of any attempt for international control.

Returning to Bedarff, the third feature refers to the possibility that international organizations can support international regimes and vice versa. The former may be an instrumental part in the creation of the latter and this situation is possible due to the capability of the organization to produce norms and, consequently, the possibility to create new regimes. Moreover, the organization can be the compliance authority supervising its operation. Specific international organizations can perform, on a regular basis, activities such as monitoring, information-gathering
and rule-revising (Levy et al. 1995: 321). In the non-proliferation regime, the organization has been the usual method to regulate the procedures of this instrument. An organization has physical presence and, hence, it has the capacity to act and react on its own when necessary. Regimes may also have an adaptation feature but that depends directly on the participants as international regimes lack actorness.

For Mayer, Rittberger, and Zürn, international regimes and international organizations are a subset of international institutions; the second represents entities with a purpose for specific issues or, at the same time, are related to several other issues and organizations. These broad institutions are capable of policy or regime making systems (Mayer 1993 et al.: 403).

Andreas Hasenclever, Peter Mayer, and Volker Rittberger recognize a triad of school of thought to clarify how regimes can be studied; differentiated as the study of interest-based, power-based, and knowledge-based regimes. The motivation behind cooperation, its development, and the degree of importance given to the institutions must be taken into consideration when finding the differences between these perspectives. The created regime or institution (as these authors call it) must be effective in reaching the aims and fostering the optimal participation of its members, showing signs of strength if it is able to adapt to external pressures or changes. The interest-based theory is considered the main method to analyze international cooperation via institutions or regimes and is part of the neo-liberal school of thought. The interest-based theory emphasizes cooperation through a high degree of institutionalization. The role of regimes is to help states become conscious of common problems and find solutions to solve them. If mutual transparency is increased, regimes will achieve strength in eliminating the uncertainty of no cooperation. This approach has been used mostly for economic issues (Hasenclever et al. 2000: 3-7).

The power-based theory, influenced by realist notions, tries to solve the power-cooperation relationship; the distribution of power resources and capabilities directly affects the behaviour of the members and, therefore, the effectiveness and capacity of the regime. States, under this premise, do not accept the importance of the international institution. This is result of the realist’s distrust of cooperation in the international arena, in the sense that power gains or losses related to the participant’s resources directly affect the operation of the regime. The knowledge-based theory is considered a complementary approach. It focuses on the interests that motivate different actors to create a regime, as mutual convergence can create an institution in a wider sense than the

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8 These authors differentiate, for instance, the International Whaling Commission as a specific issue area, UNESCO as a several issue area, and the UN as a constitutional organization.

9 These authors explain that it refers to ideas rather than individuals representing schools of thought.
other theories. The actor’s preferences are studied, as well as the causal and normative ideas that include the new cooperation process (op. cit.: 5). This theory criticizes the neo-liberal postulates due to its close link in ideas with the realist approach and both are discredited. In further works, Hasenclever, Mayer, and Rittberger distinguish the knowledge-based theory in weak and strong cognitivism. The difference between these categories of cognitivism is that the first focuses on the function of causal beliefs when a regime is created or changed. It is stressed that the role of epistemic communities and their impact in international policy coordination are similar to the conditions and mechanisms that governments apply in a learning process. Strong cognitivism is linked to constructivism and is concerned with the actor’s social knowledge and emphasizes the social character of global relations. It rejects the rationality of the actors due to the reciprocal dynamics of influence between them and the international institutions (op. cit.: 10-1).

Applying these three schools of thought to this study, the power-based theory does not have viability due to lack of importance given to the regime. Therefore, a combination of interest and knowledge based approaches provides better perspectives to analyze security regimes. From the interest-based approach, the importance given to transparency would be an important feature for new arms control agreements if states agreed to follow binding regimes; their behaviour would always respect the norms and fulfil the mechanisms of coordination. Regarding arms transfers, the EU Member States should present complete information of transfers and the criteria applied when these are granted or denied.

Cognitive theory properly identifies the actor’s preferences and stresses the role of normative ideas; these situations would be a core feature for a new security regime. If the normative idea of compliance as a normal practice is developed, and then complemented with the observance of binding instruments, then new forms of cooperation in security issues could be implemented.

These three perspectives differentiate from each other according to the importance they place on the created institutions; the regime significance depends on its attributes of effectiveness and robustness. The regime is effective when the participants follow the rules and accomplish the goals that directed its formation and when it has the capacity to change internally due to external influences. As stated previously, the power and interests based perspectives share an understanding concerning to the rational nature of the actors. However, they disagree in which areas each state tries to fulfil its utilities and interests.

The realists stress the importance of power in the formation stage of the regime and this normative characteristic will define its function and influence. The neo-liberal approach
understands the state as an actor that moves for its own benefit and, consequently, regimes must be understood as an interest-based structure. The power relation between participants is not a unique feature of this joint cooperation because a variety of interests are all involved. The knowledge-based theory of regimes supports a stronger institutionalist alternative compared with the other two approaches and states appear more as role-players than as utility-maximizers (op. cit.: 5).

2.6. Background and Conceptual Definition of International Regimes

In the middle of the 1970s, international regimes were an important topic for IR scholars. The concept was taken from the political perspective as an institutional frame of regulations and conducts within a political system. International regimes are an option for global governance in the sense that they are established to increase and foster international cooperation.

Richard Cooper included this concept in his analysis of international monetary systems, using the idea of regimes as guidance in certain agreement. An international regime appears as a system where objectives are achieved through political means; the intended objectives are legitimized by the regime (Velázquez 1997: 424-5). John Ruggie made a further analysis on the nature of international regimes in connection with the increasing use of technology in the 1970s. In general terms, this scholar conceived this instrument as a set of rules, regulations or financial commitments recognized by a group of states. To him, there are three main reasons for states to create an international regime: to acquire new capacities, to use these new capacities, and to manage the consequences when using them. The created regime has three working levels; the first involves the information that the members exchange, the second implies the administration resources, and the third focuses on the decision making framework for proper functioning (Ruggie 1975: 570-73).

Ernst Haas continued the regime studies in a decade where science and technology had permanent development; he recognized the need for international regimes when the development of science and technology implied a growing interdependence on the international stage. Haas’s definition of regimes pointed to the idea of collective agreements among nations for a better and effective use of scientific and technological capacities (Haas 1975: 156-9). This new reality of technological changes demanded that international regimes be implemented in order to achieve certain standards and viability.
This scholar clarifies that regimes develop mutual expectations; the norms used to regulate any regime reveal why the states are eager to collaborate and thus, the rules determine the actions in specific circumstances and the procedures of collaboration.

The existence of a common problem leads a group of states to create a regime and this creation implies a capacity to deal with a specific problem. Haas distinguishes four procedural modes that explain how to implement norms: first, a common framework where the internal political activity is influenced due to the exchange of information and the joint facility that tries to regularize the acts of the participants with the imposition of common routines; secondly, when a common policy needs special procedures; third, the national behaviour that is coordinated with collective actions; finally, the single policy that substitutes the national ones where objectives reach a solid status with the creation of coordination instances (Hass 1980: 398-401). Liberal theorists noticed the appearance of informal norms or common behaviour along with the international law, these new practices provided certain governance in specific issues and became norms or institutions, the term regime was referred to emphasize the instauration of controls and regulation of specific difficulties in the international reality (Karns & Mingst 2004: 42).

During the 1970s and 1980s, scholars from different schools of thought tried to explain the origin, motives, and prospects of international cooperation and how states could overcome the lack of a legal framework. All of these theoretical efforts were put together by Stephen Krasner and published in the book *International Regimes*. I consider that all the works included in this book represent the theoretical roots of regime theory, however, not all the articles will be mentioned since they are not directly related to international security.

There was an important, but not definitive, consensus among the participants of this book about Stephen Krasner’s definition of regimes and it has been considered as the definition of reference for these studies (Krasner 1983: 4-14):

‘Implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations. Principles are beliefs of fact, causation and rectitude; norms are standards of behaviour defined in terms of rights and obligations; rules are specific prescriptions or proscriptions of action; and decision-making procedures are prevailing practices for making and implementing collective choice’.

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11 This definition has been criticized for being vague and unclear when differentiating the four components of regimes. See de Senarcens and Milner (1993). Afterwards Young also harshly criticized Krasner’s definition mostly with its incompatibility with real-world situations in conceptual applicative notions. See Young (1997).
For Krasner, the principles and norms are fundamental to the regime’s functions. The rules and procedures may change during its operation, but this situation does not affect, in a substantive way, the nature of the regime. These components are corrected or changed to adjust behaviour; if there are variations or changes within the aims, rights, or obligations contained in the principles and norms, the regime will be completely altered. It is also weakened when its principles, norms, and procedures loose coherency and, moreover, when a member does not follow the rules or norms, the regime might need a re-foundation.

Krasner explains the four defining elements of a regime: principles are the proposal of ideals or goals that the regime tries to achieve and it is implicit certain understanding or ideological conception that will guide the cooperation; the norms set general lineaments where rights and obligations are specified and both elements define the character of the regime; rules are implemented to regulate and find reconciliation in discrepancies or disputes that may take place within the regime; decision making procedures specify how general working dynamics and procedures will operate (Little 2005: 373).

The articles presented in the book address the topic from a triad of perspectives12 the Grotian, the structural realist, and the modified realist. One participant in this book, that lately became one of the central scholars regarding international institutions and global governance, is Oran Young, whose works have focused on international regimes and how they can manage environmental problems. Young, Raymond Hopkins, and Donald Puchala represented the so-called Grotian perspective which is influenced by the liberal and idealist approaches. These scholars consider the creation of international regimes as a natural result attributed to the lack of order or global authority that can provide solutions and guidelines for international governance.

Young, in the early 1980s, defined regimes as (Young 1980: 332):

‘Social institutions governing the actions of those interested in specifiable activities...as such they are recognized patterns of practice around which expectations converge. International regimes pertain to activities of interest to members of the international system’.

In further works, Young developed and presented other definitions of regime (Young 1997: 23):

‘Social institutions that consist of agreed upon principles, norms, rules, decision-making procedures and programs that govern the interactions of actors in specific issue areas’.

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12 There is no direct explanation to call these perspectives in such way, Donelly finds that the Grotian perspective is influenced primarily adaptations from works by Hedley Bull and Martin Wight, not for direct relation with the thoughts of Hugo Grotius. Donelly (1986:599-603).
And (Young 1999: 5):

‘Regimes are set of rules, decision-making procedures, and/or programs that give rise to social practices, assign roles to the participants in these practices, and govern their interactions’.

Upon reviewing these three definitions, they all share the same idea, however, the difference would be that social institutions are not mentioned in the third definition, but the term social practices is used instead. This inclusion is a result of further studies about the features of the regime made by this scholar, which must not necessarily be articulated as an international institution or organization. Klaus Wolf and Michael Zürn argued that an observable behaviour component should be added to Krasner’s definition in order to explain that the regime is really making new influences into the actor’s proceedings (Rittberger 1993: 9). Even with differences in terminology and scope, the main idea of an international regime is clear. In my personal opinion, the differences and criticism between scholars has only helped the theory continue to further develop.

The second perspective in Krasner’s book comes from the so-called structural perspective that recognizes the incapability of a single actor to provide stability to the international system; consequently, international regimes appear as a way to deal with the anarchic environment. Robert Keohane13 and John Ruggie, among others, supported the realist approach.

Keohane also made a contribution to regime definition debate; he considered them as (Hasenclever et.al 1996:12):

‘Institutions with explicit rules, agreed upon by governments that pertain to particular sets of issues in international relations’.

The elements and definition regarding the regime concept have been a matter of confusion; Keohane’s definition, for instance, only uses rules, while trying to give an easier and condensed explanation of the principles, norms, rules and decision-making procedures proposed by Krasner. Keohane supports Krasner’s regime definition but considers it unclear the differentiation between norm and rule (Tamayo 2005: 153-182). For Keohane, the norm concept has an ambiguity component and suggests that the norms should be considered as behaviour patterns.

This scholar asserts that regime’s definition falls into the sociological concept of institution and, therefore, it is specified that international institutions can be formal inter-governmental or transnational organizations, international regimes, and conventions. The first ones are purposive

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13 The case of R. Keohane shows the interrelation between realism and neo-liberalism; his works have complementary linkage within these theories. See Hasenclever (et. al 1997:6).
entities with structures able to adapt to new challenges and are formed by bureaucratic structures and leadership; regimes are institutions with explicit rules for specific issues agreed by governments and conventions and are informal institutions with implicit rules and understandings (Keohane 1993: 28-9).

Joseph Nye and Keohane consider the concept of international regime as a major element to understand interdependence. These authors argue that regimes shape and affect relationships between countries. Within the interdependence context, they define four models to explain the changes that the international regimes may face (Tamayo 2005: 207-223):

1) The economic process that implies changes in the global economy and technology.
2) The global power structure that implies the interaction between great powers and how these actors search for their interests.
3) The structure of power in specific issues.
4) The international organizational model regarding links established among states in different levels.

The second and fourth points are related with the idea of this thesis, considering that the EU has regional interests for cooperation and development with unstable countries. This situation can be possible with the promotion of an international institution with the capacity to change actual procedures in arms control, bringing new regulations to this issue.

Nevertheless, there have been critics toward this definition and the conceptualization of the nature and purpose of international regimes. Susan Strange appears in Krasner’s book as the antithesis to the previous conceptions with the so-called structural conventional critic. Strange claims five critics against the definition of regimes (Strange 1983: 337-8):

1) She raised the question about if regimes were only a fad coming from scholars in the United States who studied IR.
2) Their concept does not clarify the meaning, or the possible use, of the term regime; for her the terminology is imprecise.
3) Strange proposes that a regime may hide dominating forces and interests in the global political and economic arenas.
4) The notion of a regime implies an effort to consolidate a static situation in the international system rather than to implement beneficial changes for disadvantaged actors.

5) She finds that regimes are only focused in states, therefore, for instance, in the study of international political economy, specific areas would be affected by the regime’s action, leaving other crucial areas where international actors, or even civilian actors, are out of the spotlight.

Let us take a closer look and comment on Strange’s arguments. Her five dragons are linked by logic of clear understanding. Taking her first criticism, she considers all regime studies as a mere reaction from the United States IR academy to certain events or situations in the international system, thus finding different agendas within the IR academies of Europe and this country, Strange believes that the United States support for international regimes or institutions is due to a subjective internal perception of the decline of this country as a world power in the international system. However, this first dragon, in a sense, failed due to the continuous creation of specific regimes or international institutions, in many areas, in the following years after her article was published.

Strange’s criticisms were truly applicable at that time and still are valid today, mostly if the analysis is directed toward international institutions within the global economy. The function and actions of the International Monetary Fund, the World Bank and World Trade Organization support this line of critical argument. The creation of regimes may be disputed if states with substantial power are the main promoters of the regime and, therefore, when the exclusion of powerless states or groups is visible, these kinds of institutions have only maintain specific interests. For instance, the Non-Proliferation Treaty is an example how only certain states are benefited and others excluded when some states can have nuclear capacity for military use, while others only in civilian areas. However, this regime has proved its utility in mostly all areas. It is also important to recognize that in other issues, state cooperation via international institutions or mechanisms also has positively impacted or regulated problems. Scholars like Young have been working on the issue of global governance showing that, for instance, in environmental concerns, international regimes have influenced the behaviour of the state in an effective way.

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15 See Young (ed.) (1997).
2.7. Features

Hopkins and Puchala find that different features must be considered when understanding regimes. First, the main principle and secondary norms must have a precise description, giving emphasis to the enforcement of principles and norms. It is necessary to identify their subjective character and inherent behavioural nature. For a proper understanding of international regimes, they must be analyzed by the norms applied to their internal operating procedures. Within the theoretical study of regimes, these scholars specify four main features that characterize them (Puchala & Hopkins 1983: 62-6):

1) Regimes may be specific or diffuse; this refers to their function, number of participants, and reach of issues considered. The issues can be specific, single-issue, diffuse, or multi-issue; these authors identify a normative superstructure that is directly related to the functions or geographical normative substructures.

2) The formality of the regime increases if it is linked to international organizations, supervised by governing bodies, or international bureaucracies. An informal regime does not possess any structure and they are only maintained for the common interests; the status of formalization is minimal.

3) There is an evolutionary-revolutionary change within the regime; as the name describes it. The first one preserves norms, but change principles as the procedural norms are reviewed and adapted due to different interests, although the distribution of power is not affected. The latter occurs when participants that consider their gains low, claim disadvantage and promote new norms to claim equity with others; this situation brings a deep transformation in the regime’s principles.

4) All regimes establish hierarchies of values and distribute rewards, creating a certain unbalance of power among the participants. Thus, a strong actor within the regime will be more benefited than others and this creates a biased practice. This situation affects, to a great extent, the durability, effectiveness, and mode of transformation of the regime. A balance of power within the regime would imply longer stability.
The degree of formalization is a central issue within this theory and some regimes are based on legally binding conventions or treaties while others are guided by ministerial declarations or executive agreements\(^\text{16}\) (Young 1999: 6).

For instance, when applying these characteristics to this study, the superstructure would be the common security principles of the EU members and the substructure is whether the regulations are applied only within the EU, or if they would have an inter-continental coverage. The first actions of the EU concerning arms exports started in 1991 and 1992 with the agreement of Common Criteria; this lead to the adoption of the Code of Conduct in 1998. Applying Krasner’s definition to the Code, the principles comprise the responsibility of arms exporting states, the respect for human rights, and preservation of regional peace, security and stability.

The norms of the regime are included in the criteria that Member States must apply when granting the arms license; the norms are deeply linked to the principles, and both are the core of the Code; the criteria include considerations about respect of international sanctions, human rights and internal security of the recipient country, the impact of the arms trade in regional security, and the political, economic and social situation of the buyer country. The operative provisions consider the rules that are listed as a primary means to enforce the criteria (Holm 2006: 215).

Considering the degree of formalization, I find that the Code is specifically focused on conventional armament; nevertheless, it has a dual formal-informal feature, in the sense that it is not legally binding and therefore falls into the informal category. By now, it can be considered only an agreement, although at the same time the criteria and provisions included in the Code, show certain framework and its continuous operation confirms a formal regularity. It is possible to consider the Code as a weak regime; more likely to stay as a coordination regime which works without compliance mechanisms. However, it contains some self-enforcement practices based on the norms of other EU policies. The analysis carried on later in this study will assess if these practices can provide reliability to the EU policies on arms control, proving or not that even the Code has an informal nature, even if still effective.

Young clarifies the exclusivity of sovereign states to be members of the regime\(^\text{17}\). Nevertheless, private entities take the operational role and this feature is applicable for economic or commercial issues; in security matters it is not possible to delegate responsibilities to a private entity.

\(^{16}\) The Antarctic Treaty System, the European trans-boundary air pollution regime or the Convention on International Trade in Endangered Species of Wild Fauna and Flora are examples of formalization.

\(^{17}\) In further works Young quoting Gereffi and Korzeniewicz recognize the possibility of regimes whose main members are not states. See Young (1997:6).
According to this scholar, and complementing its previous descriptions, the regime is supported in one or more constitutive documents which are not necessarily legally binding. Concerning regime formation, it can focus on how the processes evolve rather than how the problem structure is set, as there are spontaneous (self-generating), imposed, and negotiated regimes. When common expectations converge, efforts to create a regime are carried on without significant problems; regimes in a further phase of consolidation tend to be articulated in treaties, conventions, or other explicit agreements. When the agreements reach a phase of converging expectations (informal rights and rules) that have been evolving over time, it is considered a spontaneous regime.

Imposed regimes are formed when a single actor or group of powerful actors have the capacity to create the regime and compel others to join and follow regulations. The participation of other actors can be in a coercive way imposed by the hegemon or by natural acceptance due to the leadership of the main actor. A negotiated regime is formed by a conscious process of bargaining, where all interests and expectations are included to reach a consensus in the provisions that would guide the regime (Levy et al. 1995: 281-83).

Every international regime has a number of components; the substantive, the procedural, and the implementation. The substantive component is the framework of the regime where the rights and rules are specified; understanding right as (Young 1980: 332-3):

‘Anything to which an actor is entitled by virtue of occupying a recognized role’

And the rules as:

‘Well-defined guides to action or standards setting forth actions that members of some specified subject group are expected to perform under appropriate circumstances’.

Young considers these two elements as the core of every international regime. The procedural component sets the instruments to keep the decision-making procedure. When individual interests collide with majority interests, then these mechanisms are needed. For instance, voting tends to be the procedure to facilitate the decision making process. The implementation component contains the mechanisms to fulfil the regime’s rules.

The effectiveness of the regime depends on whether the actors involved respect and observe the correct operation of the regime. If not, then incentives are needed to assure compliance and the balance of benefits and costs comes into action, where negative outcomes may influence future situations (op. cit.: 336-8).
2.8. Types

International regimes are categorized according to their structural formation and the possible outcomes they may have. After presenting their features, it is pertinent to find the distinctions within regimes. Levy, Young, and Zürn find different ways to recognize individual categories. The type of principles and norms embedded within the regime and the orientation of goals must be determined as some regimes will promote the specific regulation of certain rights. These types can be differentiated according to different kinds of rules; the stronger and more inclusive the regulation, the better the outcomes can be expected from the process. Other distinctions can be made regarding participants, issues areas, procedures, and programs (Levy et al. 1995: 274-8).

Young recognizes four categories of regimes according to the tasks they try to accomplish. He defines them as regulatory, procedural, programmatic and generative; one is not professed above the other as a regime may belong to two or more categories. Regulatory regimes, as indicated by their name, rely on the creation of rules or recommendations to regulate joint actions towards a given problem. The rules in this sort of regime, when applicable, affect not only states and their governmental agencies, but also corporations, non-governmental organizations, and even individuals subject to the jurisdiction of the states (Young 1999: 26-7). Within regulatory regimes, the type of problems that are encountered directly impact the administrative and organizational framework of the regime.

In the case of conventional arms transfers, an authority or administrative body would be required to supervise the actions made by the members involved in the regime. In the absence of an authority, this kind of regime struggle with enforcement issues, however, in the case of conventional arms transfers, the EU would remain as the guarantor of the regime. Regulatory regimes mostly deal with the implementation, compliance, and the control mechanism used to penalize members who do not follow the accorded rules.

As mentioned before, the Code of Conduct is an informal regime mostly involved with coordination commitments. Nonetheless, if realistic outcomes are expected regarding arms control, further steps are needed; regulatory regimes are possible due to the applicability to different actors. In this case, the target of control would be the national armament industries of the Member States; the EU or even an international organization, would carry the responsibility of enforcing standards and apply sanctions when needed.
Procedural regimes provide a set of instruments to deal with specific problems that are encountered as the regime operates within the international system. This regime creates proposals to modify previous regulations or to implement new ones. The main difference between regulatory and procedural regimes is that the latter tries to find a consensus when making collective choices that directly affect the operation of the agreement.

The programmatic regime deals with the material resources needed for the basic working dynamics of the regime, it also includes exchange agreements of technology or infrastructure needed for the correct operation. Finally, generative regimes are involved with the creation of social practices and developing new ideas or solutions to existing problems. The importance of generative regimes is not well recognized, however, after the correct implementation of the regime the generative task involves the creation of networks and supportive alliances that develop in common actions and practices made by the participants (op. cit.: 28-31).

When the formalization of rules is followed by an institutionalization process, the accorded rules have legal forms which produce three types of regimes: the tutelary that is based on principles affecting the behaviour of the actors, and the regulatory and governmental types, both based on laws and authoritative institutions (Onuf & Peterson 1994: 332). There are national, regional, or global regimes in scope and these can be tutelary, regulatory or a combination of both. A higher type can be arranged with a supranational regime created completely by governmental efforts; it has an authoritative role but is only applicable to specific issues and limits and at the national level, may not be influenced by a supranational ruling. Sanctioning may not even be applicable because regulations are expected to be self-executed by the national authorities. A supranational regime would strengthen its position due to the recognition of its international reputation and the behaviour of its participants (op. cit.: 332-3). All these categories will be considered in the section regarding the proposals of regime formation.

In order to define what is needed, it is pertinent to find what the actual situation is; Jack Donnelly made this general framework18 where types of international regimes can be positioned (Donnelly 1986: 603-05).

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18 This figure gives a general idea of the degree and possibilities of regulation within regimes. The marks showing the position of the arms regulations are my own views.
The vertical column contains the regime norms where rules start from national standards up to strong international norms. International norms have an authoritative disposition expressed in binding instruments accepted by states; the fundamental idea of this research goes exactly with this type. The international standards with national exemptions include binding rules but there exists a possibility to ratify it with reservations; this kind is very close to the actual situation and therefore it is not significant in the sense that states can invoke the right of self-defence at any time or any protecting reservation included in the regime. The international guidelines are exactly the position of the Code of Conduct, there is no binding-factor, and states apply them discretionally. These guiding principles range from strong and explicit detailed rules to vague statements in diverse areas.

The international decision-making procedures are distinguished from left to right, whereas the national decision-making acknowledges the state and its sovereignty in decision making. International promotion or assistance is when national practices are influenced by promotion; information exchange strengthens the cooperation and flow of communication regarding regime norms. Policy coordination considers an international forum where better coordination of national policies can be achieved. International monitoring enacts a reviewing procedure to ensure that states actions comply with the regime norms; monitoring activities are carried out to assure that
compliance is respected and therefore the regime works properly. Authoritative international decision making contains an institutionalized and binding decision function which also produces an effective enforcement power.

Finally, the third part contains the international decision-making activities; from left to right it measures the degree of enforcement. The declaratory, promotional, and implementation regimes are all closely related, and the EU policies on arms control share some characteristics with the last two. The enforcement regime contains binding regulations, an active decision-making process, and strong monitoring. The implementation activities include weak monitoring procedures, regular policy coordination, and some forms of information exchange. Promotional activities imply information exchange, promotion or assistance, and, in some cases, monitoring of activities. Donnelly correctly states that regimes can be assessed depending on the degree of coherence they achieve; procedural incoherence takes place when decision-making procedures or structures are inconsistent or incomplete.

The procedural and generative regimes appear as a significant and valuable combination, considering that the Code or further policies would have binding regulatory status. Modifications are necessary to improve the actual framework of arms control and, therefore, the generative regime can also be utilized when the EU promotes its policies with other countries.

The EU stands for an effective multilateralism and stresses, with insistence, the priority to have a stable neighbourhood; some policies and strategies have been implemented to strengthen relations with Mediterranean, Middle Eastern, non-EU European and African countries. It is exactly in these regions that the implementation of combined regimes, with regulatory and generative features, can establish new dynamics in order to change classical perceptions of national security, and, at the same time, reduce the need for armament to achieve security.

For instance, the communication from the EU Commission *A Strong European Neighbourhood Policy* recognizes different armed regional conflicts near the EU’s borders. Even though they are ‘frozen’, these conflicts are considered as a source of instability: Transnistria, Abkhazia, South Ossetia, Nagorno-Karabakh, the Middle East and Western Sahara. Referring to these conflicts it is stated (Commission of the EC 2007: 6):

‘because they could affect the EU’s own security, through regional escalation, unmanageable migratory flows, disruption of energy supply and trade routes, or the creation of breeding grounds for terrorist and criminal activity of all kinds... The EU is already active in preventing and resolving conflicts but more should be done’
In fact, migratory flows are trying to cross from Africa to European shores, and it is possible that the Mediterranean Sea has helped to still consider these flows as ‘manageable’. The conflicts mentioned can evolve into bigger menaces if the armament trade is regulated by permissive norms. The EU represents the perfect example that cooperation and free borders can be a reality with countries that have had serious armed disputes in the past. This extraordinary achievement must serve as a guide for new conceptions and practices in security matters.
3. METHODS OF POLICY ANALYSIS

After presenting part of the theoretical argumentation in relation to international regimes as an option to improve conventional arms control, a methodological outline to evaluate the current situation of EU policies on arms control is needed. Policy analysis is a process where alternative policies, or programs, are identified and assessed to find solutions to specific problems; it involves a systematic evaluation of viability in different areas of alternatives, plans, or programs.

3.1. Policy Analysis Types and Features

There are different types of analysis that can be carried out under this method. Descriptive policy analysis refers to historical analysis when applied to policies that have been implemented or evaluative analysis when examining the results of certain policies. This evaluative type is subdivided into retrospective and evaluative analysis; the first deals with past policies, while the latter focuses in specific evaluations. Descriptive policy analysis is also called ex-post, post hoc, or retrospective.

When policy analysis focuses on future measures that can be implemented, it is called ex-ante, pre-hoc, anticipatory, or prospective. This last category is subdivided into predictive analysis, which considers future situations from implementing specific alternatives, and prescriptive analysis, which makes recommendations to achieve a particular effect (Patton & Sawicki 1993: 23-4).

I find prospective policy analysis particularly interesting, since it allows the researcher to make a contribution, rather than only reporting and describing. Policy analysis methods offer the possibility to scrutinize policies before, during, or after, the policy has been implemented. In choosing the method the researcher has to take into consideration the complexity of the issue, the data available and the situations related to the policy analyzed. The methods used in policy analysis include a considerable range of quantitative and qualitative options. These options consist of procedures to identify and gather data, to conduct specialized interviews, to prepare basic statistical analyses, to apply surveys and to communicate results (op. cit.: 74).

In order to obtain data about the transfers of armament made by the EU members, I will apply the document study method, that implies the analysis of any written material that contain information about the phenomena related to the topic of the study.
There are two main types of document analysis: the non-quantitative case-study approach, and the structured content analysis. The first is used mainly with personal documents, while the latter may be applied to public official documents. The aim of this method is to observe and accumulate evidence or information about precise situations (Bailey 1978: 266-8).

In consequence, the analysis in this research is planned through document study analysis, specifically using the structured content-analysis approach that, in policy analysis, involves the identification of patterns of communication, preferences, or actions made by actors. I will apply a basic descriptive data analysis method that goes through a body of data, searching for patterns and connections, in order to gather information about certain phenomena (Patton & Sawicki 1993: 111-4).

In order to understand and assess different arms control agreements and to evaluate specifically the EU policies on arms control, I will, first, use the descriptive analysis method to understand these instruments. It is intended to comprehend their features and problems. This is presented in fourth chapter. After that, I will apply the evaluative analysis method on the Code of Conduct criteria with the comparative case study, using the document analysis. Finally, the prospective analysis method will be utilized to consider the case study outcomes; this part will include the projection, and recommendation, of new policies or instruments. It is necessary to make a descriptive analysis to give perspective and evaluate the possible outcomes of new proposals.

Prospective analysis implies a systematic evaluation of alternative choices regarding their political viability, economic feasibility, strategies for implementation, and the possible consequences in the application of new policies. This kind of analysis is frequently integrated into prospective policy analysis, as intended in this study (op. cit.: 24).

Document study analysis offers the advantage to research certain topics that may not have additional ways to be studied. In the case study presented, the data will be obtained from the review of the Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports. The data will be presented using a summary table, which includes information about the number of licenses granted in different armament categories over a five years period. Document analysis faces two major problems: gaining access to the documents; and how these are coded (Bailey 1978: 272-3). The accessibility to the primary documents used in this research the Code of Conduct and Annual Reports is not a difficulty.
In this case, using the *ex-post* policy evaluation, I chose to compare the information presented by the Member States in the Annual Reports with the patterns of application of the Code of Conduct criteria that regulate arms transfers. The sample includes ten countries. I consider that the data obtained from the comparative case study will allow me to have truthful information to evaluate the EU policies, revealing the actions of the Member States in this issue. These evaluations and analysis are embedded in the six steps general framework applied in basic methods of policy analysis. I believe that these analytical tools can guide this study, gathering evidence to reach conclusions, and to formulate proposals.

### 3.2. Policy Analysis in Six Steps

Patton and Sawicki used, as a reference, previous rational problem-solving, as well as other policy analysis model and approaches, to propose a basic policy analysis in six steps. These authors define policy analysis methods as systematic procedures for attacking specific problems with specific purposes (op. cit.: 20-4). The detailed aspects of these steps are briefly stated below:

1. **Verify, define, and detail the problem.**

   In this step, it is necessary to verify that the original problem is still present or if it has changed from its initial perspective. It is important to analyze the best data available and, at the same time, it is required to consider possible scenarios of what sorts of proposals can be made to improve the previous policy, or the one that will be implemented. When detailing the problem, the position and influence of groups and interests, as well as other political factors, must be taken into consideration.

   This consideration turns critical in the situation of conventional arms as the military industry is legitimized by the right of every state to pursue its national security by producing or acquiring armament. Obviously, this is related to very complex issues and interests; there may be different interpretations of the same situation. For some, the trade of armament and its use in armed conflicts, or criminal violence, can represent more losses than benefits; for others, this may be considered as collateral damage, but it is justified. In this stage, the analysis moves from a general problem concept to specific measures of the same problem, after which, alternatives can be identified. There is also the possibility to not implement any solution or
make a suggestion to a certain problem; the maintenance of the status quo is also considered as a policy. This step begins with thinking about the origin of the problem and delineating its boundaries, followed by gathering information and considering a list of goals and objectives (op. cit: 150-4).

2. Establish evaluation criteria.
In order to compare, evaluate, and select alternatives, it is necessary to use measurements such as costs, net benefits, effectiveness, efficiency, equity, legality, and political acceptability, among others. Most of these criteria are used in public administration; however, I believe it is possible to apply the measurement of effectiveness when analyzing the EU policies on arms control, comparing how the regulations of the Code of Conduct have been applied. In this case, the criteria refer to specific statements and dimensions of the objectives that are considered to evaluate policies. In this step, it is important to define and establish acceptable and useful criteria. When future policies consider new criteria, it is necessary to think about technical feasibility, economic and financial possibility, political viability, and administrative operability (op.cit: 187-8).

3. Identify alternative policies.
This step is crucial when background information shows which measures can be implemented to control the problem. Goals and objectives must be clear in order to define the incoming actions. There is a list of possible alternatives, where the no-action alternative comes as first option. Additionally, a series of alternatives can be used together as one solution. An error in this step may occur when the creation of a solution does not directly solve the initial problem. The feasibility of the alternatives must also be considered when the identification process is carried out (op.cit.: 228). Some alternatives may not necessarily bring solutions. In this step of the analysis, it is necessary to be open to any source of evidence that can enhance the new measures.

4. Evaluate alternative policies.
This step is an important part of the analysis because it brings concrete contributions to the previous stages; however, it implies more difficulties because these alternative policies may not have ever been implemented before, therefore, there is no antecedent to compare to. The evaluation of alternative policies before their implementation is called ex-ante evaluation (op.cit.: 257). Part of this step is to create future scenarios of the possible consequences that may occur if the alternative policy is implemented. It relies on qualitative or quantitative
analysis, depending on the issue and the type of data involved. Here, it is determined if the problem no longer exists, or if it is still present and has developed other characteristics. Also, the political environment must be considered as some alternatives may be contrary to certain interests, thus, making it impossible to implement different policies. In this step, I will present proposals to improve arms control regulations. Hence, it will be used the prescriptive policy analysis that may imply the inclusion of recommendations and adaptations to ongoing policies or strategies.

5. Display and distinguish among alternative policies.
In this step, the results of the previous analysis are reported; this includes evaluations about the best available solutions and the implications of each one. It also considers the possible outcomes and implications regarding the actors involved. It is possible to have more than one appropriate alternative; this situation implies that the final goal must be clear and that all actors involved may adapt their interests to the new alternatives. Additionally, this step also implies the process of selection of the most optimal alternative before its implementation. Different criteria must be considered to determine why one alternative is better than other; variables used to make this judgment include political acceptance, economic costs, benefits, technical issues, and viability (op.cit.: 333).

6. Monitor and evaluate the implemented policy.
Finally, the last step includes the evaluations than can be applied to any policy. The evaluation used for an implemented policy is the ex-post policy, which examines the extent of the objectives achieved. This evaluation presents the information on whether the policy has fulfilled its objective or whether new recommendations are needed to continue or implement modifications. The ex-ante policy analysis evaluation identifies policy problems and potential alternatives to the new policy proposed. The so-called policy maintenance evaluation is used to ensure that the policy has been implemented as originally planned. This step complements the policy monitoring process giving a precise evaluation in order to identify causes of problems (op.cit.: 368). In this step, the document study method will be used reviewing the Annual Reports, and I will apply the evaluative policy analysis to the application of the Code of Conduct criteria.
All these steps have a direct relation that works as a whole method. Nevertheless, I consider that an adaptation to carry out the analytical task is needed. This modification will be detailed and justified in the chapter where the Code of Conduct is assessed.

Policy analysis does not stop with the implementation process. A reliable policy should be under inspection and evaluation in order to determine its utility. The evaluation will show if previous policies have failed partially, or totally, and if future policies or strategies will achieve success. The evaluation can be carried out before the policy is implemented, to sketch scenarios, or it can be applied to a current policy to assess results (op. cit.: 54-64). In this sense, the evaluation process details if results have been positive or negative. This last step has implicit importance in the methodology of these six steps as the analytical study takes place in this step, and the outcomes of the analysis will define or modify future decisions or changes. Policies or programs have different reasons for being unsuccessful since the design, or implementation, processes may have failures that compromise their functioning.

Policy analysis comprehends an extensive and complex set of quantitative and qualitative analytical tools used by national governments, or related institutions, to assess all kind of policies in public and domestic problems. This six-step proposal, however, can be applied to other areas. I did not include a detailed explanation of the vast applications that policy analysis has, as such, since I consider the general framework of this six-step method to be an adequate complement to the regime theory contribution. For this study concerning conventional arms control, it is required that theoretical and methodological proposals outline measures, or alternatives, to settle specific problems and their circumstances.
4. CONVENTIONAL ARMS CONTROL

‘In such a world of conflict, a world of victims and executioners, it is the job of thinking people, not to be on the side of the executioners’

Albert Camus

This chapter presents a descriptive view on some conventional arms control agreements, as well as on armament dynamics. The main interest is to review EU policies on arms control, especially the Code of Conduct. Information regarding the Common Position, the UN Register of Conventional Arms, the situation of the Arms Transfers Treaty (ATT) and some other agreements are also commented. Even though this research is focused on EU policies, I considered important to present different arms control agreements in order to get a complete perspective about the topic and compare similarities between them. After presenting all the information about arms control agreements, a general analysis is made, contrasting aims and facts concerning arms trade.

Arms control is related to several situations, namely: the decrease of global and regional arms races, the preservation of resources for economic and social development, the mitigation of destruction and suffering due to armed conflicts, and the promotion of peaceful means to solve disputes among states reducing the risk of armed disputes. Arms control involves a reduction in armament levels and a mutual restraint through regulation (Bennet 1995:215). It is recognized that the use and transfer of military means affect societies before, during, and after armed conflicts. The consequences related to arms trade include psychological trauma, ecological and economic damage, the incitement of criminal acts and corruption, and the indiscriminate use of force against civil liberties and human rights (Buzan-Herring 1998:202). The terms arms control and disarmament have different origins and meanings; however, they are not mutually exclusive.

The efforts to control armament comprise the following measures: limitation, reduction, and abolition of certain categories of weapons; banning the testing of certain weapons and the prevention of certain military activities; regulating the deployment of armed forces and proscribing transfers of some military items; and constraining or prohibiting the use of certain weapons. Arms control agreements may be implemented mainly in treaties, conventions, protocols, documents, guidelines, declarations, statutes, and final acts of international conferences (Goldblat 2002:3-18).

Disarmament is directly related to the reduction, or elimination, of the instruments that can provoke a military attack. It consists of limiting, controlling, and reducing the proliferation of certain weapons; these actions are intended to avoid or diminish military conflicts. The processes of reduction, monitoring and verifying have been carried out by specific organizations or mechanisms that supervise this function. The first modern agreement to create a certain type of
control was in 1899 with the Hague Conference; its restrictions were focused on the use of poisonous gas and other weapons (Rourke 2005:73).

4.1. Notions of Arms Control

Modern theories about arms control were developed during the 1950s and 1960s, when nuclear arms were the main issue concerning security studies. The studies intended to clarify why arms control were necessary to avoid major military confrontations between antagonist states. It was also necessary to explain how these controls could be implemented, as well as, to consider the viability of defeating the eternal enemies of arms control: compliance and verification (Miller 1984:71). Efforts to control armament increased to include weapons as chemical, biological, conventional, missile technology, and, most recently, anti-personnel landmines (APMs) (Karns - Mingst 2004: 328).

Arms control suffered a lack of support and discredit as a consequence of the Second World War; however, the use of nuclear weapons by the United States against Japan, which caused considerable civilian casualties, brought back disarmament and arms control issues to the UN and international agenda. The aftermath of this war obligated governments to take control of their national arms industry, or to have a close involvement with it; this situation is the reason why arms transfers became related to political interests. However, state control has not provided a formal guarantee that national regulations will be applied, as scandals have involved governments who maintain close linkages with the military industry.

Arms control treaties or agreements can be categorized according their coverage. The different ways to classify them are usually by numerical limits and restrictions on armament capacity, or by limitations on armaments, and armed forces (Rourke 2005: 343). Restrictions may include research, development, testing, and the evaluation of new attack systems; they are applicable in quantitative and qualitative forms\(^\text{19}\). The measures taken within conventional arms control have been focused on the limitation and reduction of military equipment; however, the regulations have not tackled, directly, arms transfers. Arms control agreements tend to be highly institutionalized in order to achieve better compliance (Stein 1982: 42).

Other measures establish a categorical control of the deployment of armed forces, or certain weapons systems, in geographical areas by applying spatial limitations. These restrictions limit or

\(^{19}\) The Conventional Forces in Europe Treaty (CFE) and the Strategic Arms Limitations Talks treaties (START I and II) are examples of numerical restrictions, the Intermediate-Range Nuclear Forces Treaty (INF) regulates a category of weapons, the Nuclear Non-Proliferation Treaty (NPT) bans the production or possession.
even eliminate the presence of specific weapons; for example, the Ottawa Convention banning anti-personnel land mines (APMs).

Additional restrictive measures are applied directly to the transfer of armament, mostly related to nuclear weapons or technology. These controls coincide with the promotion of joint mechanisms to improve confidence and security-building measures (Viotti & Kauppi 2001: 214-5). Demilitarization is the final goal when controlling armament, this strategy consists in the complete removal of a country’s military fighting capabilities, although it has only happened in small countries, Costa Rica for instance. When arms control present failures, they may have unsuccessful outcomes in two ways: the lack of compliance regarding the agreement or the breakdown of the whole process as objectives are impossible to achieve. These situations may be a persistent practice when states perceive that their national security is threatened, but this ‘fear’ only perpetuates the security dilemma (Schofield 2000: 747).

Buzan and Herring present three main ways of dealing with armament issues: arms control, non-offensive defence20, and disarmament. These are strategies that attempt to reduce the threat of armament by diminishing the side effects of their uncontrolled use and regulating their flow to areas with political instability. For these scholars arms control is a strategy used to provide surveillance over the expansion of arms acquisition; its intention is to reduce instabilities between rivals, to establish partial disarmament of specific items, and to seek the correct usage of armament to achieve security (Buzan & Herring 1998: 208-211). Arms control is appointed to achieve stability among states, to establish certain secure management of military means, and to minimize their hazardous effects. The avoidance of war is not the main objective; the strategy is more realistic, it considers measures to coordinate possible future controls or disarmament.

Within the strategic studies research field, there exists a debate about the seriousness and the tractability of the problematic rose by the existence, and use, of military means. Strategic studies, as an interdisciplinary body of analysis, attempt to legitimize the role of these instruments in national and international political issues. They back the idea that, in certain circumstances, the use of military means is appropriate for tackling political problems (op.cit.: 203). It is argued that problems occur when ‘others’ have possession of armament and, because of the risk that this situation represents, it is necessary to have a vast arsenal of ‘our own’ as a good solution to maintain security. This is realist’s deterrence in its purest form. It is pertinent to ask ourselves - who are these others? This legitimization of the possession of military means, for me, is related to

20 This concept is based making a distinction between offensive and defensive strategies; it identifies threatening measures made by states and tries to avoid these situations.
a ‘clash of civilizations’ rhetoric with imperialist-military implications; the justification and support for these theories is based on the imposition of measures in order to maintain similar dynamics of power and coercion. Political discourses founded on ‘we’ and ‘others’ have only caused division and conflict among humankind.

There are major disagreements about the problems created by military means that determine how serious and tractable these problems are. One of the arguments considers this issue as very serious, with two related branches. First, from a moral point of view, the probability of war or violent conflicts are directly related to arms dynamics, albeit; the second part cares more about the instrumental or material outcomes, where competitive arms acquisition increases the risk of a major conflict, even more if great powers with nuclear capacity are in the battlefront. Personally, I agree and support these two understandings. On the other hand, in the not so serious view, military means are considered neither a cause nor a threat that will produce a serious armed conflict among countries. For this view, the mutual assurance of destruction works satisfactorily to freeze all attempts to initiate an armed conflict. Under this view, it seems that the Cuban missile crisis was a mere tropical anecdote.

The possibility of a solution or continuation of the status quo regarding armament issues is considered by the realist approach in which military conflicts and related situations will be an everlasting reality inherent to the international system. If anarchy has not faded away, conflict will prevail in one way or another, therefore, the only way to achieve national security is through armed forces. The problems made by military means are due to the structural features of the system, mostly in political, economic, and technological areas (op.cit.: 204-6). On the other side, tractability draws the prospect of a solution to international security; the problem of armament is self-made and this notion relies on the hope that different actors can change their behaviour and share norms and values.

Hence, there are different understandings about what damage armament causes; one view follows the straightforward logic that artefacts designed with a simple or complex destruction and killing capacity, sooner or later, will be used regardless the cause and will produce a deadly outcome. The other view justifies the existence of armament and somehow its trade too. Armament represents an independent aspect that contributes to an insecure international system and, I would add, that it is a main factor that strengthens the systemic anarchy.

Political disputes about power or ideology compel states to be armed until the source of instability, or threat, disappears. The last view presents a paradox arms control cannot be developed if
political relations do not improve; however, these relations do not improve due to the existence of national arsenals that represents a threat to one another. Political relations must be changed in order to decrease insecurity and the motives that produce warlike situations. Arms control agreements are directly affected when political relations suffer from a major alteration or disagreement. If this paradox is surpassed, then a successful outcome is possible; sustainable actions and agreements on arms control and disarmament can be reached.

On the subject of arms control and disarmament, all of the theoretical body has been created according to issues that characterized the political confrontations during the Cold War. The eruption of nuclear proliferation placed this problematic as the main task of arms control efforts. The success or failure of these agreements concerning the nuclear topic will not be analyzed as this work tries to turn attention to other facet of the armament problem, the lack of effectiveness and notorious limitations of the current conventional arms control agreements. The instruments have not included all arms producers and, consequently, the coverage is partial. States with the leading companies producing armaments have made constant boycotts of arms control agreements. Another crucial failure within arms transfers comes with the interpretation and application of norms or rules made by national authorities. The level of enforcement may differ among the participants who oversee export controls, giving way to control violations. This is directly related to the compliance problem when regimes are implemented. One country might refuse to transfer arms under certain criteria when another might grant it. Other limitations that export controls present are aimed at restraining the producer or the supplier, leaving arms recipients in a relegated place. Unfortunately, recipient countries are not considered as part of the solution (Spear 2005: 213-4).

In order to increase the percentage of effectiveness, recipients must be considered as part of the control cooperation; on the contrary, black market suppliers have more opportunity to fulfil any demand for arms. Regional arms control may have easier implementation when suppliers and recipients consider limitations when trading armament (Klare & Lumpe 1998:175).

Neil Cooper finds that current conventional arms control, or mechanisms to regulate the transfers, are mainly focused on regulating the supply stage, but seriously fail to control trends in the modern global arms industry. The dual-use technology in armament equipment and, foremost, the lack of political will combined with powerful strategic and commercial interests have weakened arms control (Cooper 2006: 118).
After the Cold War, the proliferation of weapons was the main concern of the arms control agenda. Five major categories of arms were recognized: nuclear or radiological, chemical, biological, ballistic missiles, and advanced conventional weapons systems. This new era meant two challenging situations for conventional arms control; firstly, the massive stockpiles of mostly light weapons left in many countries under the Soviet influence, and, secondly, the national arms industries maintained a high dependence on exportations. The arms industry adapted quite well to globalization and it is pertinent to consider that a multinational armament production includes technology transfers, international subcontracting, licensed production, joint development and co-production of major armament systems (Bitzinger 1994: 170).

General deregulation in trade and de-politicized criteria when transferring arms led to an open international market where many actors are involved in the production and sales stages. The decrease of tension after the Cold War brought a diversification of arms recipient. Countries of certain regions did not have to buy all their weapons from leading producers as all suppliers had now access to all recipients (Klare & Lumpe 1998: 162).

The reduction of forces in Europe, the dissolution of the Warsaw Pact, and the major surplus of armament increased the need for new markets. For instance, armament coming from the former Soviet Republics was sold without any kind of control or criteria21. Competence among arms producers to ensure previous and new markets and customers has brought boundaries of ethical standards to control this activity to a level of toleration; arms transfers not only involve states as arms brokers are able to sell arms to non-state actors, including all kinds of armed groups who fight for different causes and interest. The spread of military technology within arms producing states has created a hierarchical distribution according to their production capacities.

Full producers are the leading states and companies that have enough research and development capability to offer more effective technology in weapons systems. Following these leaders, and working as subsidiaries, the partially-producing countries have a sufficient capacity and range of production; these producers are still dependant on importing technology and components. Behind these two categories of states there are all the other states that have little or no capacity at all to produce armament (Buzan & Herring 1998: 42-3).

21 The story of Victor Bout is the perfect example of international criminal complicity regarding this situation. http://www.guardian.co.uk/world/2008/mar/07/thailand.russia retrieved 29 October 2008
Within security issues, the post-Cold War era has meant the division of the world into two poles\textsuperscript{22}. One side has created a relatively peaceful environment with stable security, where the acquisition of armament does not imply destructive actions and the security dilemma is controlled. Furthermore, the countries of this side of the world have an important expenditure in military means and, coincidentally, they possess technology, research, development, and the capacity to maintain leading companies that produce and sell armament worldwide. On the other side of the world, the condition is upside down; states have not been able to achieve stability and the acquisition of armament represents a similar reaction by other states. The security dilemma is present permanently and armed conflicts have been a recurring problem. A less degree of industrialization imply dependency in many sensible areas and their development has been slowed down due to armed conflicts, weak national institutional development, and recurrent economic crisis (op. cit.: 209).

Attention must be given to arms transfers, to less industrialized countries where oppressive regimes have wasted economic resources to finance local or regional disputes as maintaining a military complex requires continuous funding. As presented above, the global arms industry adapts easily to new structures and realities, and even inter-state war has decreased inside the international system, while the military sector conserves its strategic position.

4.2. Conventional Arms Control Agreements

There are only two categories of conventional weapons under multilateral export prohibition - long-range ballistic missiles, banned by the Missile Technology Control Regime (MTCR), and APMs (Klare & Lumpe 1998:174). The MTCR was established in 1987. It is an informal voluntary association of countries formed to prevent the proliferation of missiles, complete rocket systems, unmanned air vehicles, WMDs, and different launching systems. The regime does not concede or deny export licenses as every member is responsible to implement the MTCR guidelines. Today, 34 countries are members of this regime (MTCR www document).

Other measures in non-proliferation and arms control can be categorized into five processes: unilateral steps, coercive measures, qualitative constraints, interventions in arms cycles, and assistance package deal (Bailes 2006: 23). The proliferation of nuclear, biological, and chemical weapons has been controlled, in some sense, with the multilateral agreements implemented. Since

\textsuperscript{22} In 2005, 15 of 17 armed conflicts took place in Africa, South and South East Asia, the Middle East and South America. (Harbom & Wallensteen 2006: 108)
these weapons need a high technological structure and basic materials that only states with a
certain capacity can achieve.

4.2.1. United Nations

The UN has a set of institutions and strategies, regarding peace and security matters, which cover
WMDs, conventional arms, SALW, ammunition, and information databases. It is especially
recognized the Disarmament Commission, the Conference on Disarmament, the Program of Action
on Small Arms and Light Weapons (PoA), and the Register of Conventional Arms (UNROCA). This
last instrument has been operating since 1992 and is intended to compile all information on arms
transfers that are reported by states on a voluntary basis. There are seven categories of major
conventional arms\(^{23}\) considered for the reports. The direct antecedent of the Register was the

Before the UNROCA was established, a ‘fictional’ meeting called the Guidelines for Conventional
Arms Transfers took place; it was proposed by the permanent members of the UN Security Council
in 1991. This instrument came about when the governments of China, France, Russia, the United
States, and the United Kingdom had a collective existential epiphany and expressed worries about
the uncontrolled and indiscriminate arms trade. Let us remember that these countries produce
80% of the worldwide production of these items. The newest chapter of international warfare at
that time happened in the Middle East, with the Iraqi invasion to Kuwait. The eruption of this
conflict demonstrated the endless danger of selling all kinds of weapons without strict regulations.
Then, the permanent members of the UN Security Council had concerns for the peace and security
of the world and agreed some guidelines for the management of arms trade; these countries
decided to avoid transfers likely to prolong or aggravate ongoing armed conflicts, increase
tensions, or to destabilize military capabilities in a region, and to consult and share information in
the case of major transfers to certain countries if they were engaged in armed conflict.

However, two years later, the concerns about the Iraqi case were completely forgotten and, again,
the indiscriminate flow of armament continued to the Middle East, started by the Unites Stated and
then followed by Russia. The suspension of these negotiations came about when China alleged
that illegal procedures took place when the United States sold jet fighters to Taiwan; resulting in
the withdrawal of the rest participants (Klare & Lumpe 1998: 162).

\(^{23}\) Battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships
(including submarines), missiles and missile-launchers.
In 1996, the Disarmament Commission adopted the *Guideline for international arms transfers*; this instrument considers an ample set of principles such as the right of self-defence, non-interference in internal affairs of states, the respect for human rights, and the need for transparency. It also considers the prohibition and eradication of illicit arms trafficking, maintenance of international peace and security, promoting social and economic development, and preventing arms acquisition and insecurity (UNGA 2008: 12).

In 2001, the United Nations General Assembly (UNGA) adopted the *United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms and Their Parts and Components and Ammunition*, complementing the *United Nations Convention against Transnational Organized Crime*. In the same year, the *Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons* was adopted.

Finally, the latest international effort to control conventional arms has been the attempt to promote the ATT, the idea of an international arms trade treaty started in 1997 by a group of Nobel Peace Prize laureates who expressed the urgent need for a binding regulation on arms trade. In 2003, Amnesty International, International Action Network on Small Arms (IANSA) and OXFAM backed the Control Arms Campaign, promoting the implementation of the ATT among governments. In 2006, after years of campaigning, the UNGA reacted, and 11 years later since the first proposal, it adopted the 61/89 resolution, which recognizes that (UNGA 2006: 4):

‘The absence of common international standards in the import, export, and transfer of conventional arms was a contributory factor to conflict, displacement of people, crime and terrorism, undermining peace, reconciliation, security, stability and sustainable development’

This resolution requested to establish a Group of Governmental Experts (GGE) to examine the feasibility, the scope, and the draft parameters to be included for the ATT. In 2008, an impressive majority of 147 states voted in favour of working on the implementation of the ATT; the United States and Zimbabwe voted against (Control Arms 2008 www document).

The same year, the GGE presented a report making an evaluation and a diagnosis of what must be considered for a binding treaty. The GGE presented that the feasibility of a potential arms trade treaty depends on many variables, such as the scope, the parameters, the clear definition of the fundamental goals and objectives, and the need to be fair, objective, balanced, non-political, non-discriminatory, and universal according the UN framework. The types of activities and transactions that might be included in the treaty were discussed and included in exports, imports, transfers, re-exports, transit, trans-shipment, licensing, and production. The GGE explained that the parameters of the treaty must be based in the Charter of the UN, and a total respect to the sovereignty and the rights of every state is needed. It was also stressed that all illegal activities of unlicensed
production, transfers, and brokering must be considered, due to the recognition of violations to arms embargoes imposed by the Security Council (UNGA 2008: 12-5).

It is important to mention the complete support of the EU Member States and their positive vote on this resolution; even major arms producers like France and the United Kingdom supported the ATT (Control Arms 2005 www document). In fact, in January 2009, the EU adopted the Council Decision promoting the process leading towards an Arms Trade Treaty. This instrument, as its name indicates, looks to promote the debate of the ATT among different actors involved in this situation. It includes the organization of six regional seminars to increase the awareness, knowledge, and implications of the ATT (Council of the EU 2009: 39-40).

4.2.2. Treaty on Conventional Armed Forces in Europe, the Organization for Security and Cooperation in Europe and the Wassenaar Agreement

These three instances represent different situations for arms control, showing the behaviour and position of the states according to a given context. In 1973, modern arms control agreements had its first chapter in Europe with the Mutual and Balanced Force Reduction (MBFR) talks, where NATO and WTO members negotiated a balance of forces on European soil. Both organizations proposed a reduction of effective forces and armament deployed. Negotiations were held, conversely, each side refuted the others disagreements and counterproposals, and without any formal agreement, they were finally cancelled in 1989. The MBFR negotiations were not productive; nevertheless, they were the previous step of the Treaty on Conventional Armed Forces in Europe (CFE) in 1990. The CFE imposed on both organizations to reduce in five major categories of conventional armaments and equipment24. The treaty covered a vast geographical area from the Atlantic to the Urals; however, with the dissolution of the Soviet Union, the CFE suffered changes that were negotiated and implemented with the Oslo Document in 1992, which included the new countries that emerged from the fall of the Soviet block.

Due to political events in Eastern Europe in the 1990s, the Treaty required a modification; in 1999, the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe was adopted. The main change of this modification was the elimination of the bilateral character of the CFE. The end of the WTO determined this situation, and the new achievement was the prohibition of large-scale concentrations of military forces next to a bordering state. The objective of the Treaty was to create parity within conventional armed forces, balancing the number of military units in Europe (Goldblat 2002: 222-7). The results of the CFE were tangible; more that 60,000 heavy weapons were

24 Battle tanks, armoured combat vehicles, artillery, combat aircraft, and attack helicopters.
disabled and military personnel dropped from nearly 7 million persons to 3 million (Lachowski 2006: 750).

Regarding the Organization for Security and Cooperation in Europe (OSCE), only its actions related to arms control are presented. This intergovernmental organization claimed principles that guide its members on arms transfers: promotion of transparency, recognition of the threat of excessive arsenals for international peace, and commitment to supply data and information for the UNROCA. Due to its legal status, this organization does not deal with arms control directly; it promotes other activities, such as promoting confidence- and security-building measures (CSBMs) and providing assistance on the destruction of SALW and other armament (OSCE www document). During 2001-2004, OSCE members destroyed 4.3 million small arms; the main accomplishment of this action was the availability of information exchanges that made possible the elimination process (Lachowski 2006: 765).

The Wassenaar Agreement was established in 1996 within the framework of the Coordinating Committee for Multilateral Export Controls. It has the purpose to promote transparency, recognizing the responsibility of transferring conventional arms and dual-use goods and technologies. This agreement promotes the control of these kinds of items, in order to diminish and avoid massive accumulations that may become a threat for the international peace and security. It tries to prevent the massive acquisition of armaments and sensitive dual-use equipment that may have military use. The participants have agreed to implement national export controls based on official lists. The WA has 40 countries as members. The exchange of information concerning armament transfers remains voluntary to the Participating States; this information, if presented, will be the basis of coordination in the control policies. The states reserve the decision to proceed with the transfer or deny it; the WA does not have any legal enforcement into the national legislations. The participating states have implemented different guidelines, elements, and procedures. The guidelines contemplate decision-making procedures that deal with the WA objectives. The Best Practice Guidelines for Exports of Small Arms and Light Weapons, adopted in 2002 and amended in 2007, and the Elements for Export Controls of Man-Potable Air Defence Systems (MANPADS), adopted in 2003 and amended in 2007, are the most recognized measures (Wassenaar Arrangement 2007: 2-6). The WA is a successful instrument

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25 Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.
regarding information exchange and the regulation of MANDPADS\textsuperscript{26}; however, it is an arms supplier’s club and information remains confidential (Laurance et. al. 2005: 239).


In 1980, the Convention on Certain Conventional Weapons (CCW) considered the control of specific armament; this Convention settled the efforts to control, in a binding way, the APMs. Non-governmental organizations, with the support of some governments, created the International Campaign to Ban Landmines (ICBL), which proposed a binding Treaty outside of the CCW (Fehl 2008:266). Referred to as the Ottawa Convention or Mine Ban Treaty, it was adopted in 1997; this instrument represents a memorable episode in arms control efforts when an impressive total of 122 states became signatories. Two years later, the treaty became binding under international law; the treaty prohibits the production, use, possession, and transfer of APMs (ICBL 2005 www document). By 2009, there are 156 states that have ratified or accessed the treaty, but there also exists the normal boycott from prominent members of the Security Council like China, Russia and the United States. These countries argued the need for this kind of armament as an important element of their arsenals (Rourke 2005: 353). From the EU, Finland\textsuperscript{27} is the only Member State that has not signed the treaty and Poland has not ratified it. The same year of the adoption of the Ottawa Convention, the EU announced a Joint Action on landmines trying to show consensus and a single position on the Convention; however, the landmine campaign lead to a division among EU members and therefore, it failed to ban landmines outright. Some countries were serious supporters for the campaign while others resisted it (Long 2002: 429-30).

4.3. European Union Policies on Arms Control

The efforts to coordinate arms export policies in Europe started in the 1980s from the mergers and joint projects within the military industry, when cross-border cooperation was needed to improve the productive capacity. In the early 1990s, the Gulf War, and other conflicts, showed the need to establish more control on arms transfers. Additionally, a series of scandals connected to the Iraq-Iran war affected all major European arms producers and governments and, again, it demonstrated the need for arms control agreements (Bromley 2008: 8).

The EU arms export regulations are divided in two areas. First, regarding the dual use of items and technology, a Council Regulation setting up the Community regime for the control of exports of

\textsuperscript{26} This weapon has the capacity to shoot down civilian airplanes.

\textsuperscript{27} The Finnish position was supportive regarding the treaty; even if it does note take part, it agreed not to produce or export APMs, however it conserves the stockpiling for possible use (Long 2002:439).
A common list of dual use items that includes other export controls like the WA, the MTCR, the Nuclear Supplier’s Group, and the Australia Group. The second division related to military equipment encompasses the Common Position defining common rules governing the control of exports of military technology and equipment; diverse activities to promote the principles and criteria of the Code of Conduct, and the Common Position on the control of arms brokering.

Complementing these controls, the EU has the Strategy against Proliferation of Weapons of Mass Destruction; it considers export controls as a main strategy for preventing proliferation. In the conventional arms area, along with the Code of Conduct, the Joint Action to tackle the threat of SALW accumulation was adopted to direct implementation in Africa, Asia, Latin America, and the Balkans. The EU adopted the Strategy to combat illicit accumulation and trafficking of SALW and their ammunition in 2005.

All of these strategies seem like a congruent commitment to improve coordination of arms control among Member States. However, because of the institutional and legal foundation of the European Community (EC) considered in the article 296 of the Treaty that establishes the EC, national security and defence issues, including arms exports and imports, had remained under national jurisdiction. This situation excluded any competences of the EU in this area. (Bauer 2004: 130)

4.3.1. The European Union Code of Conduct on Arms Exports

It was adopted in 1998, as a declaration within the framework of the CFSP, on the basis of Title V of the Treaty on European Union; its implementation can not be enforced by the European Court of Justice (Bauer 2004:132). The Code has two elements; the normative section containing the criteria in eight articles and the operative provisions. These provisions include the exchanging of information regarding denied export licenses due to failed compliance with the normative criteria, consultations of potential export of similar items denied beforehand, and a report of how each member has applied the Code (Anthony 2006:599). The criteria can be divided into obligatory and case by case denial categories; the first one includes the criterion 1, 2a, 3 and 4, the latter involves the considerations and interpretations of the Code made by the Member States. This agreement was not legally binding; however, it was expected to have certain political commitments, with the possibility of being applied within the CFSP. There are some cases where the Code had binding applications28 (Bauer 2004:131-4).

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28 The Code is binding regarding dual-use goods, when Member States produce together armament as accorded in the Framework Agreement, or when the Code or certain elements are adapted to national legislation.
The COARM (Council Working Group on Conventional Arms) was created to propose changes to the EU policies on arms control. Approved in 2000, the Common List of Equipment, that later became the Common List of Military Equipment (CLME), pretends to provide a single set of categories for the annual report (Holm 2006:215).

The EU Code of Conduct has implications in different issues for the Member States. These are national export policies, industrial interests, the structure of arms exports, the decision-making process on licensing, legal secrecy provisions, and the status of the EU Code in domestic export control legislation. Its adoption was, somehow, a response to attempts to control the restructuring process in the European industry and the growing trans-nationalized production (Bauer & Bromley 2004: 2-9).

According to some comparative studies, it is possible to talk about Europeanization in the arms control area, and how the influence of the Code of Conduct has been consistent, except with different outcomes among the Member States. For instance, Italy and Germany, known for exerting strict controls, have lowered their levels of export controls. In contrast, Belgium has taken advantage of the Code’s application and has applied even less strict regulations (Holm 2006: 229). Other cases show that the Code of Conduct has reported more successful outcomes; the Czech Republic has aligned its national policies and has followed the eight criteria of the Code even before its EU membership. The Netherlands also appear as a good example of promoting stricter controls, better information exchange, and transparency instruments at the European level. The application of the Code in the Spanish case shows that, in the category of SALW, the restrictions have risen and, therefore, the controls have improved thanks to the EU policies regarding this matter (Bromley 2008: 20-47).

In the case of transparency, the information reported by the governments has increased considerably in detail, lowering the secrecy and improving transparency on arms exports. As a positive effect of the Code, the inclusion of parliamentary scrutiny to the reports made by the states is increasing (Bauer 2004:143). The European Parliament has been an advocate of improving the controls related to armament and making them binding (European Parliament 2008). The Annual Report has been a successful achievement for the Code in the sense that the information submitted by the Member States has increased in detail and quantity. Therefore, this situation represents that transparency has reached new levels, implying that the European Parliament has increased its role in scrutinizing the reports and policies. For example, it was until the fourth report of 2002, that the destinations, figures, and commercial value of licenses were detailed. Every
Member State is entitled to submit information about the licenses and denials to publish a yearly report, where all these actions are specified. Other remarkable points include the development of the *Users Guide to the EU Code*, a database of license denials, agreements on harmonizing end-user certification processes, and the adoption of a Common Position on arms brokering (Amnesty International 2004: 13 www document).

4.3.2. Common Position 2008/944/ defining common rules governing the control of exports of military technology and equipment

After ten years of application, the Code of Conduct had a major review and it was finally replaced by the Common Position 2008/944. Adopted in December 2008, this new instrument represents an upgrade and it conveys an overall improvement to the previous regulations. In fact, the Common Position contains entirely the eight criteria of its predecessor, and it includes 16 articles that specify the guidelines to follow. The novelties include controls to brokering, transactions in transit, and intangible transfers of technology. I must mention, for instance, the inclusion of Article 5 that states:

‘Export licenses shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorization issued by the country of final destination’.

This article represents a significant improvement to control arms brokering, as well as other considerations to strengthen controls in technology transfers. The first assessment of this new instrument must be made in 2010, after its first year of implementation; however, being a common position approved by the Council, all Member States are legally obliged to implement it at their national level. Nevertheless, there is no explicit obligation to amend their national legislation on arms control. Unfortunately, I did not find precise information explaining how the binding status will affect the application of the Common Position in the normal praxis.

The only reference I have found about the new status was the answer made by the Council as a result of a parliamentary question made by two Members of the European Parliament, related to military equipment sales and transports by Belgium and the Netherlands to Israel. The reply explains, related to the Common Position, that: ‘Pursuant to Article 15 TEU, Member States shall ensure that their national policies conform to the common positions’. Nevertheless, the implications for the national competence of the Member States are unclear when taking the decisions regarding arms exports and the legal binding to respect the criteria of the Common

29 I had to include this policy due to its importance for arms control. Its recent adoption implied changes for the content of this research.

Position. According to Mark Bromley, even with the binding enforcement status that the Common Position has, Member States keep the final decision to apply, or not, the operative provisions. In fact, states are not expected to change their practices or actions (Bromley 2008: 11).

Comparing the Common Position and the Code, the first represents a more serious political commitment to harmonizing the application of norms and principles to control and, with this, increase effectiveness. This harmonization must be focused on strictest controls and homogeneous interpretation of the norms when making exports; not for allowing all arms producers the same opportunity to sell arms and decreasing commercial disadvantages.

4.4. Arms Control: Acts of Tokenism or Acts of Commitment?

After presenting, briefly, some characteristics of the main conventional arms control agreements, I will present facts and arguments about my perception of ineffectiveness that all these instruments have in common. Neil Cooper made an accurate characterization regarding arms control agreements. He finds that, with some exceptions (controls in nuclear, biological and chemical weapons); all the other instruments are acts of tokenism (Cooper 2006: 119).

For instance, the main flaw of the MTCR is obviously the voluntary basis of the regime; the UNROCA shares the same weakness. Failing to obtain importance due to the null political commitment made by governments, the voluntary character of these instruments limits their significance and their effectiveness. The first steps that arms control have tried to convey is the transparency of transfers and public reports about exportations and importations. These reports must be regular and free from secrecy or political interests. ‘Transparency’ tends to be partial and states do not care to fulfil this requirement. If trustable information is achieved, frequent transfers and accumulations can be detected and controlled.

Traditionally, the arms industry has maintained an important secrecy when reporting its activities; this situation is due to the consideration of national security and sovereignty matters. Recently, governmental military sectors have been included into reporting requirements about their expenditure; nevertheless, the arms industry has remained reluctant to contribute to these reports as the companies do not share or present their export figures. There is no legal obligation to disclose their revenue from arms sales to public knowledge (Sköns & Surry 2005: 399).

The UN-PoA include important commitments for governments to apply, for instance, the consideration of a legal instrument for identification and tracing SALW called the *Marking and Tracing Instrument* (MTI), contains references regarding arms brokering and the enforcement of
national controls. However, the flaws and omissions are considerable. Rebecca Peters finds that the PoA does not mention human rights, the need to regulate small arms in civilian use, the gendered origin of gun misuse and the continue transfers to non-state actors. This instrument does not recognize that legal production is the source of illegal trade, and it does not consider the need for binding instruments in small arms (Peters 2006: 3-6). The crucial innovation of marking and tracing small arms with the MTI stayed as a voluntary basis due to the pressure of a group of arms exporters lead by the United States. government that blocked the proposition; followed by China and Russia, these governments managed to keep the PoA in an inconsequential lowest common denominator status (Fehl 2008: 271).

Regarding the ATT, its discussion is still in progress. Even when recognizing its significant meaning for arms control, I have concerns that it will affect this project. For instance, after all the pertinent and shred analysis made by the GGE on how the ATT must be formulated, in my opinion, they present obvious, inconsequential conclusions, and absurd recommendations. They recognized a complexity of issues related to arms control and the need for consensus to provide benefits to all participants. The GGE finds that there are different motivations for production and acquisition of military means; as well as, the need for more prevention when legal trade of armament can be diverted into illicit trade market. Finally, the experts remarked that it is always important to recognize the sovereignty of the states, and conclusively encouraged all the participants to improve their national controls and recognize their responsibility with military means (UNGA 2008:16).

First, I am aware and therefore suspicious about the governmental origin of these ‘experts’, considering that they may only represent the interests of the states related to their arms industry. If this project was presented and supported by civilians and by NGOs, why are they not considered as a part of the expert group? Of course it is important to respect the sovereignty of each state, but in the case of arms trade, ‘national sovereignty’ has only meant permissive controls and subjective interpretations of their guidelines. It looks like the GGE supports the military establishment allowing arms producers to find excuses to continue their lethal trade. Violence and arms do not follow, or respect, any sovereignty.

Another critical obstacle for the ATT is the reiterative opposition of the United States to international binding controls on conventional armament. The government of this country uses its influence to boycott and block an initiative against its interest, as it happened with the UN-PoA and the Ottawa Convention. Considering these instruments, it is important to show the behaviour and position vis-à-vis the EU and the United States. In the Ottawa Convention, even with some internal
divisions, the EU’s position was consistent and independent from the United States to lower the restrictions of the treaty. However, regarding the UN-PoA, in order to achieve consensus and continue the negotiations, European countries accepted all conditions imposed by its influential counterpart and weakened the status of the PoA and the MTI (Fehl 2008: 266-71).

A strong consensus is certainly needed to prevent failures in control instruments, but, as Rebecca Peters correctly states, consensus is another way to allow a reluctant state to impose its veto (Peters 2006: 8). States have changed their behaviour and their interests only under specific situations related to structural changes or because of public pressure; such as the reduction by the CFE or the demands made by civil campaigns against certain weapons like APMs.

Trying to give some optimistic comments, the outcomes of the CFE treaty and the elimination processes of armament implemented by the OSCE are examples when political determination is present within governments, important measures can be taken to control armament. The CFE treaty is a perfect example that effective agreements can be implemented if political tensions are reduced. The WA has represented productive coordination among its participants, however, its voluntary basis and null consideration of recipient countries limits its coverage. When reading materials for this research, I looked through works that only had a descriptive explanation regarding arms control agreements. For instance, when referring to the WA, the analysis only used adjectives, such as ‘limited’, if it had a critique. However, to simply aspire for better cooperation and transparency, knowing which country bought a specific armament, it really does not impact the flow of armament. The WA limitations make it a useless instrument considering that prominent producers or recipients such as China, Israel, Brazil, South Africa, North Korea, India, Pakistan, Iran, or Saudi Arabia are not members of the agreement.

Transparency helps to avoid unsafe situations, but it does not stop violence and human massacres. The Ottawa Process represents a promising model to follow for further controls in other conventional categories; I consider that establishing controls to specific weapons systems is an advisable beginning that can develop beneficial practices. However, every single type of armament must be considered as dangerous as any other type. To underestimate small weapons only produces thousands of human casualties.

Before making conclusive statements regarding EU policies on arms control, while waiting for the results of the case study carried in the next chapter, some comments are stated. As presented before, some authors have found partial and irregular influence of these policies on the actions taken by Member States; there are ambivalences in the application due to a lack of real and
effective political commitment. I perceive the EU as a reactive actor when taking measures or implementing policies on arms control. The strategy on SALW appeared a few years after the UN-PoA, subsequently the Joint Action on landmines was launched just before the Ottawa Process. For instance, presenting a quick quantitative content analysis to the *EU strategy on SALW*, it is easy to uncover its function; the word ‘support’ appears 17 times and the word ‘promote’ 16 times. This strategy does not consider any other significant actions rather than these mentioned.

In contrast, the Council Decision promoting the ATT at least considers the realization of six regional seminars with the inclusion of governments, civil organizations, and even arms companies. This effort is positive as it is inclusive and open to real discussion. These seminars can increase the momentum of the ATT and the EU seems to be in an active role to increase the consensus and confront political and economic global interests that attempt to halt this project. In this matter, the Common Position represents a general improvement for the EU’s position and for the coordination of the Member States; unfortunately, due to its recent adoption, I am not able to give a precise assessment of it. The status of the Common Position certainly implies a stricter regulation, but still, the final decision to grant licenses lies completely in the interests of the Member States. For instance, in the website of the EU Council, in the section regarding the Common Position, its new elements and its determination to prevent the export of military equipment for undesirable purposes are stated; however, its binding status and the changes it represents are not explained31.

The next example clearly shows the real interests of arms producers to compete within the global arms market and to consolidate a European arms production base as a business area32. In 2000, the main European arms producers33 adopted the *Framework Agreement Concerning Measures to facilitate the Restructuring and Operation of the European Defence Industry*. This agreement, with binding status, improves and promotes the consolidation of joint ventures between arms companies of these countries; it is out of the EU jurisdiction as the provisions included to control exports are minimal and do not protect or follow the Code’s regulations. The application of the Common Position in these countries faces an obstacle with this Agreement since it may lower the standards of arms transfers (Holm 2006:218). This example shows the real priorities for arms

32 The European Aeronautic Defence and Space Company N.V. (EADS) is the example of these European corporations, when companies from France, Germany and Spain merged into a single company that also had corporative and business relations with other main company in the sector, BAE Systems from Great Britain.
33 France, Germany, Italy, Spain, Sweden, and the United Kingdom
producers and how governments favour their national commercial interests, contrary to implement strictest controls.

Using data from the Stockholm International Peace Research Institute, in the 2006 ranking of top 100 arms-producing companies, within the first 50 places, there are 22 companies based in the EU. I made the estimation that these companies have an annual profit of nearly $9,200 billion dollars, and an employment staff almost 700 thousand workers (Perlo-Freeman et al. 2007: 281-3).

It must be considered that outside Europe, conventional arms control have not registered any substantial improvement (Lachowski 2006:750). As stated previously, one of the general failures of arms control is that it does not consider the recipient country as part of the problem. A more comprehensive and effective agreement should consider the inclusion of countries, where armed conflicts are recurrent. For instance, in Africa, there have been regional efforts, such as the *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and light Weapons*. This agreement is binding and is intended to ban the civilian ownership of small firearms, to sanction illegal possession, and to implement standards for manufacture, possession, commercialization, import, and transit of small and light armament (Spear 2005:114).

After presenting these facts, and in order to try to understand how states achieve and fulfil their interests, I would like to bring back the theoretical assumptions presented in the second chapter. I find that the states behave within a deep realist core of distrust toward other states. Arms producers care about their own security and the economic benefit that the arms trade represents, even if this trade can produce anarchy and destabilization to the international system. Arms recipients try to balance their incapability to produce armament with a dependence on arms producers; the producers are willing to continue this monopoly of production and keep their industrial structure as it is recognized in the Common Position.

The dynamics of national security-arms trade-power relations has strengthened self-interested behaviour, maintaining the military option as a main interest. I believe that there is a combination of state conduct, ranging from realist positions to neo-liberal actions. Processes of cooperation and interdependence, as appointed by the neo-liberals, are present and arms control agreements are proof of this; However, the lack of effectiveness and binding status of all these instruments demonstrate the realist defensive and offensive behaviour that persists today. The UN-PoA is a perfect example of this situation. With the constant opposition to regulate arms transfers presented by some great powers, they demonstrate that deterrence still persists as a security strategy, making it difficult to consolidate international institutions in security and peace issues.
The international institutionalism, supported by the neo-liberal approach, still fails in finding effective commitments to tackle the problems created by the use and trade of conventional armament. Most of the articles and works reviewed for this research still present the Cold War era mindset, and refer to national security or inter-state armed conflict. It is necessary to adapt arms control theoretical works, policies, and proposals of control to new realities and perspectives. However, unfortunately, some powerful states are reluctant to make significant changes in the structure as a consequence of their position, interests, and preference to stay within the security dilemma dynamics.

I quoted, at the beginning of this section, the characterization that Neil Cooper made considering the majority of arms control instruments as acts of tokenism. As seen, my comments and criticisms unfortunately share the same view about the ineffective procedures to regulate conventional arms transfers. Some arms control agreements are smoke-screens and they only simulate on a ‘voluntary basis’ that something is done, while the tragic consequences of armed violence within any situation, or context persist. In spite of everything, hope must be kept while mobilization, coming from the civil society, has achieved notorious improvements such as the Ottawa Process; this agreement must be followed to transcend any attempt to control armament.
5. ANALYSIS OF THE APPLICATION OF THE CODE OF CONDUCT

In this chapter of the study, the application of the EU Code of Conduct according to certain evaluative criteria is assessed. This analytical evaluation will be guided and based on the six step policy analysis method proposed by Patton and Sawicki:

1. Verify, define and detail the problem
2. Establish evaluation criteria
3. Identify alternative policies
4. Evaluate alternative policies
5. Display and distinguish among alternative policies
6. Monitoring the implemented policy

However, I have made two adaptations to these steps in order to keep a continuous line after defining the problem. Once establishing evaluation criteria, I consider that is more appropriate to apply, first, the monitoring implemented policy step, rather than identifying alternative policies. I need to evaluate, beforehand, the current policy in order to have direct data and look for evidence of whether or not the Code of Conduct has influenced the behaviour of the states and has restrained arms transfers; understanding with this, how the Code’s selected criteria have been applied. For the final steps, I decided to make another change; the last 4th and 5th steps are fused into a single step due to the closeness of evaluating, displaying, and distinguishing processes when analyzing alternative proposals. In this final step, part of the proposals and answers of this study are presented.

The analysis will be carried out afterward with these changes in the following order:

1. Verify, define, and detail the problem
2. Establish evaluation criteria
3. Monitoring the implemented policy
4. Identify alternative policies
5. Evaluate alternative policies & Display and distinguish among alternative policies.

I will examine the data presented in the Annual Reports 2004-2008\(^{34}\), making a comparison between the criteria selected and the arms exports to certain countries that the Code explicitly forbids. While making this analysis, firstly, I am trying to understand the implementation of the Code as well as identifying how determinant, or not, is the lack of the binding-factor and if

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\(^{34}\) I chose to start my analysis from 2003 because the first three Annual Reports did not contain detailed information about the final destination of arms transfers; it was until the fourth and fifth reports that recipient country information was included, but only monetary amounts of licenses and direct sells were reported. Any description of the military goods traded was not presented; it was in the sixth report presenting 2004 when, for first time, military list categories were specified.
there are possibilities to apply it in the future. Part of the objective of this study is to find possible improvement to EU policies on arms control; therefore, after the evaluation using the policy analysis steps, some proposals will be discussed.


5.1.1. Step 1- Verify, define, and detail the problem

I find two related problems: the transfer of conventional armament and the lack of effectiveness of the agreements attempting to regulate this activity. Arms trade has a notorious impact in countries where domestic political instability or internal and external armed disputes are a constant incidence. Even so, the acquisition of armament is an accepted practice for states to assure their national security. All agreements and strategies that have attempted to regulate arms transfers and other stages of the arms trade are an implicit recognition of the danger of proliferation or massive accumulation of conventional arsenals; however, these control agreements have not been definitive enough to achieve total control over this activity. As presented in the previous chapter, the Code of Conduct and other worldwide arms control agreements do not oblige states to follow their provisions. This is mostly due to the lack of a binding-factor, which thus weakens the operation of these agreements.

In the EU context, the responsibility of adherence to binding norms lies on the arms producers, however, it is stated that Member States are allowed to maintain a ‘defence industry’ as part of their industrial base and they have the right to make transfers for self-defence purposes as considered in the UN Charter. At the same time, despite the fact that arms transfers are controlled in some sense, there exists the probability that the armament can be re-directed or re-exported to other recipients who are engaged in armed conflicts. This is related with the problem of arms trafficking and illegal production that already exists without any regulation.

Considering these scenarios, the real and effective improvement of conventional arms control agreements is necessary. The challenge is to strictly regulate all arms transfers, trying to diminish the harmful impact of these items whenever their use is irresponsible.
5.1.2. Step 2 - Establish evaluation criteria

Arms control agreements may be assessed mostly by the degree of compliance achieved considering the behaviour of the participants. For the case study presented, I have considered effectiveness as the evaluative criterion applied to the analysis. The comparative study is intended to find information and determine if the exportations made by the Member States were done while observing criterion two, three, and four of the Code of Conduct. These criteria are:

Criterion Two: respect of human rights in the country of final destination...Member States will a) not issue an export license if there is a clear risk that the proposed export might be used for internal repression.

Criterion Three: The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts. Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

Criterion Four: Preservation of regional peace, security and stability. Member States will not issue an export license if there is a clear risk that the intended recipient would use the proposed export aggressively against another country...when considering these risks, Member States will take into account a) the existence or likelihood of armed conflict between the recipient and another country.

I have decided to narrow the analysis and include only the three criteria detailed above, as it is clear that these criteria are complementary but regulate diverse situations. I consider, that the chosen criteria are related to the most compromising and sensible issues mentioned in the Code, such as human rights, internal political situation, security and regional peace. The evaluative criterion is applied considering that, if any selected country has been a recipient of arms transfers generated in the EU, consequently the evaluation criteria will be assessed as negative, and the Code of Conduct will be considered a failed policy. The sample includes ten countries from different regions: Afghanistan, China, Democratic Republic of the Congo, India, Israel, Saudi Arabia, Somalia, Sri Lanka, Sudan and Turkey³⁵.

5.1.3. Step 3- Monitoring the implemented policy

In this step, the data obtained from the annual reports 2004-2008³⁶ is presented. The table contains only the Member States that made exports concerning the following categories from the EU Common Military List: ML 1, ML2, ML 3, ML 4, ML6, ML7, and ML12. I consider these categories to be the most dangerous within the list because they include automatic weapons of different calibre, ammunitions, bombs, missiles, and chemical and biological agents, among others.

³⁵ Considering that these countries have been engaged in armed conflict or with political instability expressed in internal violent repression, as well as having tense relation with other countries in their regional context.

³⁶ The Reports show the information of the previous year. It was until the sixth Report of 2006 when for first time detailed information about transfers were made based on the EU Common Military List categories.
For a detailed description of each category, please see the complete list in Annex II. The total amount of transfers and suppliers in other categories contained by the list are not included as they are not representative of the cases presented.

### 5.1.3.1. Transfers of conventional armament made by European Union Member States

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### Notes

- The total amount of transfers and suppliers in other categories contained by the list are not included as they are not representative of the cases presented.
- For a detailed description of each category, please see the complete list in Annex II.
For practical reasons, some transfers were omitted to give a general view of all the countries involved in the cases.
For the first time in this Report, a list with the countries under international arms embargo restrictions was included; China, DRC, Somalia and Sudan were in the list.

The items and the countries under United Nations mandated or other international missions in 2006 and 2007 are specified. It is included Afghanistan, DRC and Sudan.

These countries do not specify which kind of military items are transferred; therefore, only the number of granted licences is presented.

Sweden reports total of licences issued. However, items quantities are not specified. France, Spain and Estonia reports value and category of items but the numbers of licences are not specified.

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(1) China considered as mainland, China Honk Kong and China Macao have own figures.
(3) In total 13 Member States supplied this country in 2003, 12 in 2004, 14 in 2005, 14 in 2006.

Regarding these figures, it can be seen that serious and constant contradictions exist in the application of the Code of Conduct. Every case has its own particularities and its own context, however, the information presented shows clearly that this policy on arms control is ineffective and inconsistent; Member States are directly responsible for these situations. My evaluation criterion was effectiveness, with the understanding that Member States have considered the Code’s dispositions; hence, these norms are the guidelines on control arms exports. At first glance, it is clear that, in some cases, none of the selected criteria were observed. Afghanistan has been at war since 2001; China has an arms embargo sanctioned by the EU and the Tibet situation remains uncertain; Democratic Republic of Congo (DRC), Sudan, and Somalia have all been engaged in civil wars; India has the Pakistan-Kashmir issue, with the risk to evolve in a major armed conflict; Israel has its perennial armed conflicts with Arab countries; Turkey deals with the Kurdistan dispute. If all cases are worrisome, certain situations are scandalous, what is the justification, or the pretext to export chemical or biological toxic agents enlisted in the ML7 category, among other items, to countries like China, India, Israel or Turkey? This is a frequent practice as shown in the figures. How can European arms exporters guarantee that all military material transferred to Israel has not caused civilian casualties within the Palestinian population? At the same, we have to ask from where the military factions of Palestine get armament to attack Israel.

In 2005, 24 out of 25 Member States sold weapons to the Middle East region, only Cyprus was not involved. In 2007, 24 out of 27 members, again, made military exports to this region. That same year, there were a total of 5,183 licenses issued and 84 rejected\(^3\), with both figures involving every single one of the categories in the EU Common Military list. There is not public information on why, in some cases, the supplier has been denied a license and even less information, in some others, on why some were granted. Unfortunately, within the Code’s operative provisions, it is

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\(^3\) These rejections are not explained or detailed as to what caused the rejection, it is only reported that criterion one was invoked 27 times for the rejection, two (17 times), three (25 ts), four (30 ts), five (13 ts), six (1 t), seven (42 ts), eight (2 ts). (Council of the EU 2008c: 300-05).
stated that the decision to transfer or to deny a license remains as a matter of national discretion of each Member State. This situation represents a setback for a better control. Optimally, when granting a license, the exporter state should be required to show the information and criteria why it considers the license does not violate the Code; when denying a license, the reasons should be published and other states must respect that decision.

Attempts to control armament are weakened by the secrecy and subjectivity that presently occurs among Member States when applying the criteria. Obviously, the flow of armament to the Middle-East, or to Africa, is not to be blamed solely on European producers, but then again, the above figure shows that their intentions of practicing responsible behaviour are far from reality.

The ESS directly states that the resolution of the Arab-Israeli conflict is a strategic priority for the EU and it has the firm intention of committing resources until the problem is solved. Is the granting of more than five thousands licenses of military equipment, in one year only, the right way to provide stability and to help find ways to solve this conflict? In 1989, the European Council held in Madrid made a declaration strongly condemning the Tiananmen Square massacre in Beijing, and the European Council considered it necessary to adopt, among other measures, the interruption of military cooperation and to establish an arms embargo against China (SIPRI 2004 www document). And what has been the effect of the embargo? China has been receiving ammunition, bombs, torpedoes, rockets, missiles, and other armament, in accordance with the ML4 category, as a normal and frequent practice made by EU members. In the Council declaration, it is not specified which categories are included in the sanctions. In fact, it should be clearly explained what the Council exactly understands with the term embargo.

How is it possible to fulfil Criterion four which considers the preservation of regional peace through security and stability, if 24 Member States have sold weapons to the Middle East every year? Do all African countries have enough sustainable development, monetary capacity, and political stability to divert economic resources for arms instead of funding social needs? Criterion eight considers the situations mentioned above when transferring arms. Even though the EU appears to be as a ‘responsible actor’ applying arms control to its members, what can be expected of other arms producers?

The EU has been involved in different missions in Afghanistan and DRC. EUPOL-Afghanistan is the name of the mission that tries to strengthen the reconstruction process supporting the Afghan
government in security matters, while with the DRC, there are more cooperation programs: EUPOL-RD CONGO, EUSEC, EUFOR and ARTEMIS. EUFOR and ARTEMIS were military missions conducted with the Security Council and other programs which involved the promotion of civil, political and security assistance. It can be argued that the transfers to these countries were made for stabilization, however, under the Code of Conduct, Afghanistan and DRC are not eligible for arms transfers as there is not any exemption for them considered in the eight criteria or the operative provisions. I included these countries to show part of the contradictory and loose application of the criteria implemented to regulate arms transfers, and I find this situation as a clear example that the criteria consequently also represent a problem in failure of enforcement. In 1993, the EU imposed an arms embargo to Zaire (now DRC), different Common Positions and Council Regulations were adopted to apply it. For instance, it is explained in the Annual Report 2007 that all transfers made by EU members were made under the supervision of the UN. However, in cases like these, the final recipient or national body must be clearly recognized; it must be taken into account the internal political context in the recipient country.

The current Common Position will achieve certain legitimacy, only when the granted licenses have clear distinctions or specifications, even if the transfer has as final destination regions in armed conflict. Even though transfers were made with supervision and for specific needs to Afghanistan and DRC, the problem is that the criteria can be misinterpreted, and in other cases, it can be applied as ‘domestic security interests’. For instance, the arms embargoes imposed to these two countries had important breaches; in the case of DRC, there was an eight month delay between the imposition of the UN embargo and the creation of the monitoring institution. The EU embargo on Afghanistan was modified, making the Northern Alliance exempt to it, rather than applying the restriction to the entire country (Cooper 2006: 120-1).

After these observations, the case study shows that after ten years of application of the Code of Conduct, the EU policies on arms control are ineffective. I am trying to understand why conventional arms control fails to deliver the regulations they are entitled to carry. I find a contradictory dynamics caused by the security dilemma; the supplier country and the recipient validate the transfers under the logic of the right of national security recognized in the UN charter. For instance, Israel has been in constant military activity, lately in Lebanon and in the Gaza Strip, and its national security right is invoked because their counterparts are recognized as terrorist organizations, therefore, they are justifying the transfers to some extent. In this case, it is necessary to clarify and include exceptions related to this example. However, if a state is invoking the right of self-defence by attacking terrorist organizations, how can it be guaranteed that civilians will not be injured with these self-defence actions? The lack of effectiveness is directly
related to political will and non-compliance, and in the following steps, I will go into further argumentation of this situation when sketching alternatives. Some of the countries presented in this study have not been in a frontal war against other states or armed organizations as in the classical conception of war. However, armed conflict and violence have new characteristics and scenarios; the arms are the same, only enemies and motives have changed, but always the invariable results are slaughtered human beings.

There are few good improvements coming from these policies but, they are still significant. There have been harmonization efforts to unify criteria in the interpretation of the Code to achieve more consistency and Member States have improved the information given in the Annual Reports. Denial notifications and bilateral consultations are intended to achieve greater transparency and after reviewing every one of these reports, this can be confirmed. Regardless, it is still a negative point that the motives to deny or grant licenses are still guarded by secrecy. This situation gives the opportunity to Member States to make their own interpretations and to behave according to their interests. For instance, exports to UN-mandated or other international missions were included up until the ninth report.

5.1.4. Step 4- Identify alternative policies

Patton and Sawicki recognize different alternatives to correct the problem that one policy may have; one possibility is the no-action alternative where the continuation of no or inconsequential changes maintain the status quo, while other options consider a list of individual options or a set that combines different solutions.

At this point, I have found four proposals as alternative policies; the first logical alternative that I can think of is the creation of a strong regime with binding status amid a strict enforcement in the application of the criteria when issuing licenses. The second option is to review the current criteria, make changes or adapt it, and narrow the scope and aims. The next alternative includes a binding instrument, to regulate specific categories of weapons and deny, totally, the transfer of these items; for instance, ammunition and SALW. The last one is the promotion of a comprehensive security regime, where different approaches to achieve national and regional security and cooperation are applied in the EU, as well as with nearby in-conflict or strategic countries.

While identifying alternative policies, it is clear why a non-action position is normally chosen and, in this case, it is applied with certain control yet with ambivalences. Some governments are shareholders of military companies and hence national economic interests affect, to a great extent, the implementation of further regulations. For such governments, it is more convenient to invoke
whichever right to justify that arms transfers are needed. Besides, it seems that if the damage caused by armed conflicts or the use of firearms (regardless of the reason) do not affect European soil, irresponsible actions are allowed. With a few exceptions, like the Anti-personnel Mines Treaty that achieved a remarkable control and ban, the practice of making unreal and ineffective policies has been usual when arms control are negotiated and implemented. In this case study, the Code of Conduct has represented a partial improvement of arms control, but still, the lack of the binding-factor weakens it. As mentioned before, the application of the Common Position criteria is yet to be assessed.

5.1.5. Step 5- Evaluate alternative policies & Display and distinguish among alternative policies

This step represents an important section of the chapter, and the overall thesis, in the sense that I will try to give a general assessment of the alternatives proposed in the previous step by considering the arguments of plausibility or not of each one and, at the same time, by providing answers to the research question about the instruments or policies needed to improve arms control and possible ways to achieve them. These four proposals are upheld in the concepts previously presented about regime theory. The propositions that this study is putting into consideration are meant to increase and contribute to the academic discussion of this matter and, therefore, can be criticized, rejected, complemented, or improved.

5.1.5.1. First proposal- Current policy with a binding factor

The hypothesis of this research goes with the proposal that the inclusion of a binding regulation in certain instrument would legally enforce the states to fulfil established norms. In this point, I am referring to an instrument based in the EU Common Position for arms transfers with a binding status. Until now, EU policies on arms control have been norms with specific character, but without enforcement; they have only achieved certain coordination as criteria, and this measures have been implemented according to the interpretation and interests of the Member States. It represents the EU's position on this issue, but as shown in the figure table, arms transfers are granted even with imposed embargoes.

This first instrument proposed would have formal, specific, and multi-issue features. This would be a normative regulatory regime where formality is based in the Common Position text, which must be implemented in a binding treaty. All these features would represent the substantial component of the regime. This proposal is specific in the sense that is intended to control conventional arms transfers and it has multi-issue features through the control of production, transfer, and final
destination of armament. This would be the ultimate control for conventional arms seeing that all the criteria included in the Common Position are comprehensive and regulate this activity in the proper way. If the regulations are fully applied, this proposal would drastically change the scenario of national security, arms trade, cooperation, and development, but unfortunately, for that reason, it is quite improbable as it must be considered as a utopian idea. My initial hypothesis of achieving compliance and effectiveness through a legal instrument turns improbable by these four situations:

1) As previously stated, the security dilemma causes a paradoxical spiral between the national security and the right of self-defence to acquire and to transfer armament, whenever it is necessary.

2) Therefore, the trade of conventional arms is justified by the right of every state to pursue their national security by having a military force.

3) The application of the norms tend to be subjective according to own interpretations of each state.

4) Adding up the economic, political interests and the gains that the military industry represents for arms producers; there is a lack of political will to achieve effective arms control.

By finding that the hypothesis stated is partially implausible, I am answering why the arms control agreements are ineffective.

Other situation that I find as a hindrance refers to the broad scope of armament covered by the Code and Common Position. The criteria that these instruments consider are impossible to fulfil; there is a contradictory and incompatible correlation between the regulation goals with the actual structure and perceptions about national security. A real binding regime with the current criteria would only propitiate that arms producers completely avoid or withdraw from this instrument.

The most suitable choice is to control all conventional armament. However, this represents an unfeasible obligation to fulfil, as compliance is not possible to achieve if such a wide range of actions and controls have to be regulated. The behaviour of arms producers will not change if their entire industrial military base is affected by the same regulation. When analyzing the transfer information and the Code’s regulation, I realized that effective alternative policies to this problem, with immediate results, are really difficult to propose and to implement. If European policies are the reference and the example in this matter, it is clear that the intention to regulate exists, except for reality that shows how states find pretexts and justifications to continue exporting arms to countries not eligible according to the Code.
5.1.5.2. Second proposal- To review and modify the current criteria

The Code of Conduct and Common Position are arguably the most advanced arms export controls. This evaluation comes from the comprehensive criteria that they include; however, a change in the criteria may represent a source of more ineffectiveness if the binding regulation is not implemented. This proposal may have two variants: 1) a binding regulation with adaptations or changes to the actual criteria to regulate specific situations; 2) to include new criteria to be eligible for receiving armament; considering for instance, the cases presented on Afghanistan and RDC as examples that some changes or specific norms are needed.

Military means are necessary in certain circumstances to restore order like the Iraqi situation; nonetheless, this conflict was possible because the irresponsibility of a national government supported by international arms transfers, this situation represented a danger and a constant instability to the region due to the excessive accumulation of armament. Effective controls with external supervision on countries that are engaged in armed conflicts are critical in these kinds of cases. Reducing the scope should bring better compliance for normative regulations.

The other variant will be similar to the actual situation of the Common Position without binding status by staying in the informal regime range with minimal formalization, reducing the criteria and scope, and trying to get more compliance of specific criteria. This instrument would tend to be inconsequential, per se, in the sense that all the criteria are projected to regulate certain situations or stages of arms transfers. However, they are all linked and if only one situation is considered to enhance effectiveness, those other criteria that are excluded would increase the control weaknesses. Both variants include the features of specific norms and issues. The first one would have certain evolutionary attributes when norms or principles of the regime are adapted to reach new aims.

Nevertheless, I consider that any change or suppression of the criteria, in order to fulfil certain compliance, causes the controls to become completely useless. As pointed out in the first proposal, under the actual criteria, the binding factor is not viable with comprehensive criteria. By reducing them, making it more lax for the arms producer, it would be a clear act of tokenism. This is also part of the contradictory, and absurd, situations mentioned above. If current controls tend to fail due to their ambitious scope and range, then reviewing their criteria may produce different outcomes, therefore, it would depend on the final aim of the control. If it is conceived only to increase transparency and coordination, then its repercussion
would be minimal. If the criteria is reviewed combining it, for instance, with the proposal of regulation specific categories, then it may achieve more effectiveness and legitimacy.

5.1.5.3. Third proposal- Binding regulation of specific armament categories

It is a modification of the previous proposals and it can be considered as a partial solution; however, it has certain viability and, if implemented correctly, it could change conceptions and practices in recipients and arms suppliers. As mentioned in step three of this analysis, the Annual Report includes information about denials and, in the last version; it contains a list of countries subject to arms embargo. In some cases, the Code was observed in various countries in the same way as the license or the transfers in non-compromising categories were denied. This partial influence on the regulations then opens the opportunity to establish binding regulation for specific armament categories. In this sense, the EU SALW strategy including other arms in this category can be considered for binding regulation, and thus, depending on the practices and results, its scope can be broadened.

An instrument with a binding-factor controlling specific armament can represent a solid start for more effective regulations, establishing an antecedent for future control in other categories. This regime would be a single issue focused in SALW, with regulatory normative typology forbidding any transfer when recipient countries clearly violate the criteria regarding the respect of human rights, the existence of tensions or armed conflicts, and the preservation of regional peace and security. At the same time, this instrument can be a procedural type when introducing changes to the actual informal regime.

These changes would be focused, along with the binding regulation and the modifications, only on a certain category of armament; the main innovation would be the regulatory feature affecting not only the actions of the states, but applying regulations to private actors, such as the armament industry. The formality of this regime would be based on a binding treaty, with a negotiated base that clearly balances the expectations of the participants.

5.1.5.4. Fourth proposal - Promotion of a comprehensive security regime

Controlling and banning arms transfers are part of the solution for reaching endurable peace without the risk of permanent instability, yet, further actions are still needed to reach this definitive step in the Kantian sense of peace. The inclusion of the binding factor in the actual
situation of security conceptions and armament control is possible only if there is a strong political commitment. However, since controlling all types of conventional arms is impossible, the case of the Anti-personnel Mines Treaty is a good example to follow since it shows that certain agreements are possible in specific categories and that compliance percentage can reach higher levels.

The proposal of a comprehensive security regime has two inter-related dimensions with a trans-continental or regional geographical range of application, having a normative superstructure based in the common security principles, and the legal capacity of enforcement of the EU, where the substructure would be aimed at critical geographical zones where armed conflicts are incessant. The first dimension of this regime shares an element from the previous proposal by combining features of normative procedural regimes focused on the regulation of a single issue, for instance SALW, and by adding the regulatory aspect of completely forbidding selected armament and controlling private actors. The principles of the regime can be taken from those expressed in the EU strategy to combat illicit accumulation and trafficking of SALW and the norms would be based on the actual Common Position developed into a binding treaty, while only adapting them to the category of selected armament. A considerable difference with previous controls that have only coordinated and facilitated the exchange of information is that this regime would have a negotiated feature considering arms recipients when norms and rules are implemented by general consent. Another feature is the inclusion of a framework of economic incentives in order to fulfil compliance by suppliers and recipients to change the actual circumstances.

The complementing dimension basically lies in the promotion and arrangement of the binding instrument in one category of armament and in a security regime with generative features. This proposal implies the inclusion and application of different theories and related concepts. This regime would share characteristics from the interest and knowledge based theories. First, by using the proposal of the hegemonic actor stated by the neo-liberal approach, the EU could use its position in the international arena and it could act as a creative force behind a binding regulation in conventional armament that has not existed before. This is related with the absolute and relative gains equations, where the improvement of the European regional security would be the absolute gain rather that the relative gain of the military industrial base. I consider that the EU has taken the correct route to ensure its needs and its general interests by promoting them in the near regions, but at the same time, it has stressed that the
countries with direct geographical relationships with the EU also benefit from the successful European cooperation processes.

The generative regimes and related cognitive regime approach tend to transcend mostly because they are able to develop innovative social practices that were previously inexistent. The logic of this proposition is to promote new forms of arms control but the main, and final aim, is to change the practices and behaviour of the states who achieve national security by the acquisition of military means. The innovation of this proposal lies in the idea that the promotion of conventional arms control agreements can be combined with other measures; for instance, the EU can relate its arms control policies to economic and cooperation programs to change the actions and conceptions in security and development. The behaviour of all actors involved is then the final aim of the binding control that enhances the security regime. Therefore, generative regimes represent the perfect combination to change perceptions and practices when achieving national and regional security. I consider that this proposal gives a better perspective for arms control and security concerns, the theoretical details of the third and fourth proposals will be presented in the next chapter.

5.2. Analysis Conclusions

Even though the Code of Conduct is no longer the reference for arms control, this analysis is still valid because the same criteria used in the Code are included in the newly adopted Common Position. In this moment, it is still unknown the impact and influence that this new instrument may have on the Member States. In consequence, the previous ideas that I had in this study have changed, with the primary assumption that the inclusion of a binding status would give automatic solutions and compliance to control arms transfers. The elemental problem of the Code was the evident lack of a binding status. For instance, the provisions for identifying end-user cases are weak; even though the concerns of re-export cases are considered in criterion seventh, the subjective interpretation of the criteria leads to non-compliance cases. The mechanisms of consultation where countries exchange information about the denying of licences tend to be ineffective. For example, in 2002 the Belgian government granted a license to export machine guns to Nepal after a license had previously been denied by Germany (Bauer 2004:140).

Adaptations and changes are necessary, independently from the legal status of the possible instrument. Part of the aim of this analysis was to realize how determinant is the inclusion, or
exclusion, of the binding factor in the Code in order to achieve effectiveness. In the current situation of the policies, as well as the proposals presented, this legal status turns critical if real improvement of the capacity of the controls is pursued. However, a significant point here is that even though the Common Position, now, implies certain enforcement to the Member States, the inter-pillar EU framework and the intergovernmental character of the CFSP give the right to the Member States to invoke their sovereignty to decide on the application of the normative criteria for arms control. Now that the binding status is established, the next challenge is to achieve tangible compliance; incentives are needed to promote this requirement and, therefore, to ensure effectiveness.

These four proposals, based on the current regulations presented features and scenarios about probable operation and difficulties that might arise. The first two proposals face more difficulties due to the wide scope considered and the actual state of affairs of economic and political interest related to armament production and trade. The third and the fourth proposals obviously face the same complications; however, better scenarios of security cooperation are possible, when specific armament categories and arms recipients present are considered for regulation.

Every regime should have an implementation component that contains the necessary mechanisms to fulfil the norms expressed. However, the improvement of arms control seems improbable in the near future mainly because, in my personal opinion, the root of the problem lies in the belief of the use and need for military means as the elemental way to achieve national security and this idea overlaps with the security concept that justifies the trade of armament. The inclusion in the Code and Common Position of the right of self-defence to produce and acquire armament shows that this concept affects arms control and peace initiatives. Although the Code of Conduct has been the guide to national legislation in this matter, its influence has been partial, its implementation is subjective, and, furthermore, the justification that the production, trade, and acquisition of conventional armament are a right of the states compromises the regulations to control this activity.

In my personal view, and even with much pessimism about the arms control situation, two aspects must be highlighted as extremely positive, giving us a reminiscence of seeing light at the end of the tunnel. Firstly, the promotion of the principles and criteria of the Code among other countries; it was agreed in 2004 to implement projects, seminars, and other events with neighbouring countries in order to promote closer work with EU security policies and, therefore, increase the Code’s outreach. This can be linked to, as presented in the previous chapter, the positive vote of all EU Member States to support the Arms Trade Treaty. The second positive aspect comes from
the cases where the Code was observed and transfers were made under UN coordination. For instance, in 2007 all transfers to Sudan and Sri Lanka and fairly all to Democratic Republic of Congo were under UN mandate. These two aspects show some sign of compliance and political commitment to improve the viability of this policy. At this point, I have chosen to explore, with more detail, the fourth proposal of a new security regime with the consideration that a progressive implementation of controls that change the behaviour of the states is more likely to succeed rather than only banning and denying licenses.
6. SECURITY REGIMES

'We must aim to become a global civil power at the service of sustainable global development. After all, only by ensuring sustainable global development can Europe guarantee its own strategic security'.

Romano Prodi

This research is written from the perspective that the individual and collective security of any society are under the constant threat of uncontrolled, and even controlled, arms trade. The direct relation between the national security of a state and the welfare of its citizens is recognized; nevertheless, the production of armament implies a serious responsibility for the security of all countries; in this sense, the right of self-defence cannot be used as an excuse to continue the transfers of armament, even if it is considered as a regular and an accepted business practice.

In this final chapter, I will present potential answers to the research questions regarding national interest, compliance and possibilities to improve arms control. In the preceding chapter, it was presented why arms control agreements are ineffective and why binding instruments with wide coverage have been unfeasible. In the course of the process of gathering and analyzing information, the original idea of this research has changed, in some sense, as the primary aim was only to evaluate EU policies on arms control and to find alternatives to improve them. However, at some point, I realized that it was more reasonable to propose a wider implementation and consider the creation of a more inclusive security regime, promoted by the EU, which would improve and change future arms control agreements and security conceptions.

The promotion of new security practices through the proposal of a comprehensive regime would include measures of the EU foreign policy in other areas than security concerns. I realized that if different policies are implemented together, better arms control can be applied and better perspectives of national security and economic development can be achieved in other regions.

This research tries to find new possibilities to implement more exhaustive controls on arms transfers; therefore, some scenarios about the formation of a regime will be presented using different theoretical ideas that were mentioned before. In order to increase the effectiveness of arms control and security concerns, it is proposed a model of security regime that could be implemented. It is also presented a few meaningful examples of how states can change their behaviour and choose to comply in order to fulfil binding instruments regarding security matters.
6.1. General Concepts of Security Regimes

In the absence of a central authority in international governance, certain level of normative processes have been achieved and based on non-hierarchical institutions that establish patterns of behaviour to different actors for given issues (Mayer 1993 et al.: 403). This situation has also been present in one of the most crucial concerns within the states system: national security. As a solution to this problem, the regional security cooperation has developed different ways to reach and enhance cooperation processes; for example, through conflict management and security dialogue, new forms of military cooperation, the promotion of human rights and democracy, and economic integration with a diverse non-military security agenda (Bailes & Cottey 2006: 202). All of these measures are closely related to the external role of the EU and its foreign policy. Among other things, the EU has been engaged in conflict management, the creation of confidence and security building measures, humanitarian assistance, and the promotion of democratic governments.

Harald Müller defines security regimes as a ‘systems of principles, norms, rules and procedures regulating certain aspects of security relationships between states’. These four elements are needed to create the regime; moreover, the constitutive elements must control certain variables in a specific issue to influence further actions of the participants. According to this definition Müller lists four security regimes (Müller 1993: 361-2).

1. The strategic nuclear weapons regime (SALT I and II, ABM treaty, parts of the INF treaty and the Outer Space Treaty, START)


3. The regime of prevention of nuclear war (more than ten different agreements, aspects of the SALT Treaties and agreements of not keeping nuclear weapons in high state of readiness)

4. The Nuclear non-proliferation regime

The NPT is considered as the main reference for arms control within a regime, specifically regarding non-proliferation issues. Considering the elements of principles, norms, and rules of the regime, the prevention of nuclear proliferation can be seen as an example of all of these elements.
This regime lies on four principles (Hasenclever et al. 1997: 8-22):

1. A principle which links the proliferation of nuclear weapons to a higher likelihood of nuclear war.

2. A principle that acknowledges the compatibility of multilateral nuclear-non-proliferation policy maintenance and even the use of atomic energy for peaceful purposes.

3. A principle stating a connection between horizontal and vertical nuclear proliferation.

4. A principle of verification.

The norms of the treaty are designed to guide the behaviour of the participants and to produce positive outcomes; the principles try to give proper regular working to the agreement. Müller recognizes nine norms within the NPT. The most important norms are the obligation of non-nuclear weapon states to refrain from producing or acquiring nuclear weapons, the obligation of all members not to assist non-nuclear weapon states in the production or acquisition of weapons, and the obligation of nuclear weapon states to hold serious negotiations over nuclear disarmament treaties. Rules are enforced when the norms are concrete in prescriptions and proscriptions; norms regarding nuclear exports and its verification have detailed regulations. The non-proliferation regime presents a comprehensive procedural framework that includes a mechanism for reviewing the provisions included in this treaty (ibid).

If the NPT is compared with the actual Common Position, the principles of the latter include the responsibility of controlling the export of military equipment and technology, the observance of international dispositions and instruments regarding arms trade, and the interest on maintaining the military industry complex. However, the Common Position also includes the permission to transfer arms for self-defence. The norms and the rules are specified in the 16 articles, where the criteria for granting or denying licenses, as well as the internal disposition of coordination and information exchange are listed.

Arthur Stein recognizes two motives that notably influence the establishment of the security regime. The motives depend on whether the regime was conceived to deal with so-called dilemmas of common interests (collaboration) or planned to solve common aversions (coordination). Common interests involve independent decision-making by the participants; if the result of the collaboration is positive, then it would lead to equilibrium outcomes in Pareto-optimal terms38 (Stein 1982: 35-41). In the case of conventional arms, both dilemmas are present; the

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38 Any other equilibrium outcome would be considered Pareto-deficient, when one of the actors is benefited or not in greater extent than the other.
production and trade of armament as a matter of national security and the necessary development of coordination to control them, avoiding the threat of accumulation or uncontrolled use. In order to reach outcomes that assure the interests of the participants, the regime must establish strict patterns of behaviour to guarantee compliance. For instance, the Strategic Arms Limitation Treaties agreements (SALT) are cases in point of how regimes deal with the dilemma of common interests when states take the option to maintain certain quantity of nuclear weapons, despite the final goal of these treaties which is to reach mutual disarmament. On the other hand, in the dilemma of common aversions, the focal point is to avoid a particular outcome, therefore, coordination is needed to strengthen similar interests and diminish negative results that none of the actors want.

Robert Jervis finds that security regimes are particularly valuable, but very difficult to achieve, due to the constant risk that, if participants violate the regime, it would lead to a military reaction. However, this argument was expressed amid the Cold War period, and in the actual context of this research, the difficulties would be the economic and political losses that restrain the arms control in determinate cases. In the conventional arms context, this research argues that with the control and restrain of armament, the national security of the states would improve and, consequently, the security dilemma can be gradually controlled and diminished.

An international regime on arms transfers control may have different aims and restrictions. A general regulation in transfers can be complemented with export restraints of certain types of high technology armament, establishing quantitative limits of basic armament, limiting transfers of technology to national military industrial complexes, or with the establishment of free zones regarding certain weapons (Klare & Lumpe 1998:175).

6.2. Security Regimes and Compliance

Before presenting arguments about regime formation, I consider it important to present examples of real situations where the actions of the states have favoured compliance in order to follow certain norms within a regime. Every regime depends directly on the behaviour of the participants even before its establishment. There is a mutual connection in behavioural terms between a regime and its participants, where compliance turns into a basic requirement to increase effectiveness. The formation process is closely related to effectiveness and if compliance is fully achieved, then the success of the regime becomes de facto.
Hasenclever, Mayer, and Rittberger made an analysis of the behaviour of the states under certain circumstances using regime theory. The case involved conventional arms control in Europe, starting in the early 1970s and concluding in the post-Cold War years. The authors found a clear difference between periods, when confrontation was a constant factor between the antagonist sides. During the Cold War, the behaviour of the actors was within realist prospects and mutual cooperation was precarious and ineffective. Nevertheless, after a confrontation, actors changed their positions and put in practice a liberal disposition that lead to a successful agreement in disarmament and deployment of conventional forces. The changes in the Soviet Union, during Gorbachev’s administration, meant a significant new era of cooperation. NATO and the Warsaw Pact carried out successful coordination and created two security regimes; the Intermediate-Range Nuclear Forces (INF), which introduced confidence and security-building measures and the CFE treaty (Hasenclever et al. 2000: 19-21). These examples show that changes are possible in the structures and procedures among states, even in the presence of historical rivalries. The reduction of conventional armed forces was an important initiative to neutralize and reduce military tensions and promote joint operations; moreover, the real significant change was the realization that the possession of huge arsenals was not the most favourable way to achieve stability and security, and that the priorities of the states were beyond national security.

Harald Müller analyzed three situations that happened during the Cold War related to security and the effectiveness of regimes; the United States and the Strategic Defence Initiative (SDI), the Soviet Union and the placement of air defences in Krasnoyarsk, and West Germany with nuclear export controls. Two of the examples will be presented to clarify some points of compliance. The first case is related to the Anti-Ballistic Missile Treaty (ABM) and the suspicion against the USSR of non-compliance and its potential to breach the treaty. There were enormous demands and internal pressure on the Reagan’s administration to pull out from the ABM and put into operation the SDI, which contemplated the installation of military equipment contrary to the ABM dispositions. Even though the government tried to evade the agreements, a coalition between politicians and the US Congress backed the treaty and decided on the long-term benefit prospects on arms control rather than short-term benefits that would imply the escalation of tension with the direct rival (Müller 1993: 362-8).

The West German case relates to the NPT treaty regarding exportation and transfer of technology that some private companies were dealing with developing countries. The NPT excluded, evidently, the possibility for West Germany to develop nuclear military capabilities and the German nuclear industry had leadership in technological development and their exportations were an important economic business. This industry transferred sensitive technology to many countries, in
contradiction to the NPT and some IAEA safeguards dispositions. By late 1980s, a scandal involving smuggling of material required to detonate weapons motivated a complete review of national norms and dispositions, and the cancellation of any irregular transfer.

In both cases, security concerns were at stake and national groups were pressing to infringe accorded norms and rules to receive certain gains or achieve interests. Since the behaviour of the states was influenced by the dispositions included in the regime, compliance was chosen in both situations. In the German case, the government and the parliament adjusted laws and practices to completely fulfil the NPT norms. These cases illustrate that states may choose to cooperate even when the individual rational interest could be preferred to prevail. Müller finds four general-normative situations that are present in both cases (op. cit.: 363-85):

1) The existence of a hierarchical framework of norms where necessities and priorities are capable to generate compliance and security regimes take into account the consequences of non-compliance.
2) The non-compliance of international law represents a serious set back for states.
3) Status, prestige, reputation, and responsibility have importance within national and international spheres and in a case of non-compliance, a lack of leadership or distrust may occur.
4) The internalization of the norms can promote amendments to national legislation and changes in behaviour.

In this sense, international and national reputation and prestige are important because civil society groups can intensify public pressure by using information regarding arms transfers.

Analyzing the cases presented by Müller, using regime theory, it can be seen that realist accounts do not fit into these situations due to the final decisions that the governments made. Realist ideas of national interest and calculations of gains would have implied a non-compliance act from the U.S. government. The neo-liberal institutionalist approach gives a better explanation by finding that the ABM, in this case, influenced and forced the final behaviour to follow the accorded norms and continue with the agreement.

The German case shows a clear norm-directed behaviour and the internalization of the norms included in the regime; moreover, from a cognitive point of view, Müller asserts that a learning process took effect upon the German government regarding the disadvantages that the NPT imposed to all the non-nuclear powers to inhibit the development and possession of nuclear weapons. This supposed inconvenience meant a negative threat to West Germany’s security;
nevertheless, the global support of the NPT made possible to control proliferation. Other lesson was to decide fulfilling treaty’s norms and rules amending national legislation and finally cancelling sensitive exports. Germany’s behaviour was modified through experience and knowledge (op.cit.: 384). Both examples show that binding controls and compliance regarding security issues are possible. The German case is an encouraging antecedent that the military industry can be controlled when the governments are interested in fulfilling international dispositions to maintain international status and prestige.

Contrasting these examples and the normative situations within conventional arms control, a comprehensive security regime, including the binding instrument controlling transfer of armament, must consider the importance of reaching a consensus under the design of a strong framework of norms and rules that minimize the risk of non-compliance. However, the most important condition comes from the practice of the internalization of norms. In my personal opinion, this is the final aim of arms control and security regimes; when states change their behaviour towards military issues and decide to follow international norms in order to strengthen collective development and security.

Oran Young finds a crucial point for international regimes creation in that a breaking emergency situation or a sudden crisis could change the position of states in certain issues (Young 1989:371). Unfortunately, regarding the security and arms control area, it seems that a violent event may be the only way on which governments realize about the importance of arms control and avoid situations before they become in tragedies. This situation happened after the Iraqi army invaded Kuwait in 1990. Hussein’s dictatorship had been intentionally maintained and armed by the main arms producers before the invasion, because it was in their interests to counter Iran’s power and influence in the region under Ayatollah Khomeini’s rule. After the multilateral military force entered into action against Iraq, it was recognized that there should be more control when transferring arms to certain countries.

Young specifies that effective leadership is needed to ensure a relevant and successful regime, as unilateral regimes are out of question. When negative consequences cause this situation it is not necessary a strong hegemony because other states can consider an imposition of interest by the hegemon. Nevertheless, a leading actor would have more attributions and capacities to carry out the negotiation process and, in certain cases, to compensate other participants to join the promoted regime. The logic behind the regime formation is a common problematic with self-interested actors; a successful leader will carry the responsibility, in some extent, to provide equal gains to all participants and, to reaffirm, at the same time, its role within the international system.
Keohane and Nye make a distinction among three types of international leadership: hegemonic, unilateral, and multilateral. The first two have a characteristic in common having a dominant state that is able to influence and determine agendas and actions within the system. Hegemony tends to be totalitarian, therefore, leadership is difficult to maintain; and unilateral leadership has a definitive influence over the choices and expectations of other states. Both types are not optimal for the creation or function of a regime, due to the lack of mutual legitimacy when only one actor is able to obtain advantages. Multilateral leadership has the tendency to induce states to stabilize international regimes, where leading states are able to let other participants achieve short-run gains in order to fulfil future long-run gains; this situation will lead to shared benefits among all the participants and to strengthen the cooperation process (Keohane & Nye 1977: 229-31).

For Young, leadership takes an important dimension in the regime formation process. Individual leadership has three facets: a structural leader who uses power resources to achieve support for the proposed constitutional contract; the entrepreneurial leader who has negotiating skills to find mutual convenience for all involved actors; and the intellectual leader that has the power of ideas and an inclination toward a way of thinking that is able reach consensus (Young 1991: 307).

For instance, *Effective Multilateralism* has been an important strategy of the EU foreign policy. The inclusion of arms producers that reside outside the EU would be an important measure to avoid cheating or damaging practices, due to the risk that some arms producers would intentionally stay out of the regime to capitalize on selling arms to conflict areas. As presented above, regime formation has better perspectives of success if a particular leadership proposes a multilateral cooperation process. The EU conceives itself as an actor with a normative character, willing to achieve development beyond its borders. The compliance cases presented demonstrate that if political determination is present, states tend to follow norms even when the equation of relative and absolute gains may begin with a negative outcome.

Should dozens of Europeans citizens be murdered by the use of arms in a violent situation for the EU to take serious measures regarding arms control? Or is it because most civilians that are murdered are not on European soil, or they are not part of the ‘Western world’, and, thus, effective controls are not so urgent?
6.3. Formation and Establishment of Security Regimes

In this section, I will try to answer what is necessary to improve the agreements on conventional arms transfers and the possible ways to achieve it. Part of the analytical task presented in the fifth chapter will be continued here, detailing more precisely all the theoretical considerations previously stated and sketching the different features of security regime formation with the proposals presented by this research.

Robert Jervis understands three conditions that security regimes must surpass in order to be formed and maintained. The first condition is the involvement of a great power, which implies a decisive support by this actor for the foundation of the regime. All the actors involved must have the same interests and expectations concerning the regime. This asseveration sounds logical and goes accordingly with the idea that an international actor may have an adequate capacity to negotiate and to propose rules, the competence to find mechanisms of compliance, and the viability, in this case, to maintain arms control. The second condition is related to shared interests; if a mutual trust exists, then common security and cooperation can be simplified. The third condition refers to the possible interest of military expansion; this includes great powers that were involved in wars and, at this point, the security dilemma comes into action. This condition recognizes the relation between costs of war, security needs, and the interests and situation of the states regarding these issues. For some states, military actions against other states, or arms production, may be seen as a possibility to receive gains, therefore, they will be opposed to cooperating with a regime (Jervis 1983: 174-8).

The conditions presented by Jervis are confirmed in the sense that the EU has applied certain policies on arms control. Part of its strategy has been the promotion of these policies with other non-member countries, considering that all countries in certain geographic areas share interests in security matters. The situation mentioned before is crucial in that, with the logic of the proposals presented, the military option and the security dilemma concerns must be diminished in favour of strengthening cooperation and facilitating the establishment and operation of the regime.

There are two approaches considered as the main reference to study the regime formation process; the utilitarian model, where the actor is conceived as a rational utility maximizer, and the hegemonic-power model, where the power game within a social system is the consequence of how main actors have distributed their power or hegemony. These actors, using their capacities, promote regimes for achieving certain interests. Each perspective has a different prediction when
it comes to success or problems that the regime may face; there is a mutual opposition, rejecting the assumption of the other approach. The utilitarians reject the concentration of power in one actor as this situation could imply an imposition to other actors. In the other view, power theorists do not accept the utility of sharing power between all participants as this situation may bring conflicts of interest and, therefore, creating a barrier for cooperation (Young 1989: 350-2).

The hegemonic model links the success of the regime to the capacity of this main actor to impose control and patterns of behaviour to other participants. Young believes these two approaches fall short when analyzing regime formation process. First, for the realist model, hegemony is a possibility in the international system but, it is a rare case; a unipolar agenda is not plausible with the existence of other great powers. On the other hand, the utilitarian method would fail in the bargaining process as many actors represent many sources of confrontation generating a lack of coordination. These two approaches do not exactly explain the role of the EU as an international actor. There is a utilitarian feature when promoting the interests and position of the EU; however, the rhetoric of the EU contains and depicts a more responsible and political commitment to achieving solutions to international problems, but through a multilateral base rather than through unipolarity or oppressive hegemony.

There are three stages of regime formation: agenda formation, negotiation, and operationalization. The first one refers to how an issue, or a problem, is established and where it takes place in the international political agenda. The issue must acquire relevance within the forums and its importance must justify the attention given to it. Agenda formation precedes the first steps of negotiation, where the actors present views, perspectives, and goals that the regime must achieve. This stage contains the agreement on the provisions of a specific regime. The last phase leads to the operationalization of the regime, or the implementation of negotiated results. This involves the formal activation of the regime as legitimized by the agreement of the parties within the new framework or institution; the agreement is transformed from paper to a social practice. This step may incorporate the inclusion of non-state actors, redefinition of some provisions, or the creation of an international organization that would have the responsibility to administrate the regime (Young 1991: 282-3).

Regarding the function and finality of the regime two perspectives are recognized. The contractarian perspective distinguishes a previous common background of interests and identities within the participant actors. The participants have needs that can only be fulfilled by associating with others and this action would be materialized with institutional arrangements. In this way, the regime is created by the participants to solve a certain problem.
The constitutive perspective focuses on the institution as an entity capable of modifying or influencing the interests or behaviour of the actors. Oran Young proposes an alternative model for regime formation analysis called institutional bargaining; this model considers the features of the international society. The presence of states in a bargaining process is determined by endogenous and exogenous factors. It is important to consider both factors because they affect the negotiation process and this will directly determine the structure and, therefore, the final outcome. The institutional bargaining model sketches possible success or failure determinants when an institutional arrangement is formed. If anarchy is a characteristic of the international system, then an institution or agreement can prosper only if the problem at hand can be governed by contractarian interactions and with agreed rules (Young 1989: 359-66).

Jervis finds that states are permanently concerned about the preference of other participants to avoid cooperation in security issues and the secrecy and low transparency in armament figures or military programs. For instance, domestic business, like the powerful military industrial complex, may have an influential presence over national decision-makers, lobbying their interests to avoid cooperation or regulation (Rittberger & Zangl 2006: 123-4).

The more participants involved in the regime formation process, the more difficulties the regime may have. This situation can develop in a distribution in blocs among the participants, some proposing measures and others rejecting them (long experienced in the history of the EU). National interests are shared but confronted, at the same time.

Mark Zacher differentiates the probability of regime formation in different sectors. Within international economic issues, there are five sectors having regulations. For this work, it is only relevant to mention the one containing jurisdictional competences as this is related to the previous example that states are interested in cooperation and obtain certain control in geographical areas that may be source of insecurity. Jurisdictional competences are related to the rights of states to legislate, and increase, enforcement capacities in other territories. Cooperation in security issues faces different situations that can impede its achievement. Shared interests in security regimes will preponderate over particular goals and with the existence of a potential threat of an attack from adjacent geographical areas, states are likely to support jurisdictional control (Zacher 1990: 144-7).
Levy, Young, and Zürn recognize the increasing importance of non-state actors, as well as social forces that can promote issues within the international agenda and their positive impact on the formation process. A state has prominence as a main participant of the regime, however, Non-Governmental Organizations (NGOs) can be involved in the negotiation process and then monitoring the operation or behaviour of the actors involved in the regime. This is an important variance from state-centric approaches, in the sense that NGOs have had an important role in promoting campaigns to ban and to control armament.

6.3.1. Regime Proposals

This section presents a general theorization about two of the proposals outlined before. Let us remember that one proposal is a binding regime that focuses on one arms category (SALW) and the other proposal is the inclusion of this previous binding regime into a broader security regime with the application of cooperation and development policies, in social and economic areas, directly with the arms recipients (in this case who are mostly in Africa and in the Middle East).

Considering the current Common Position and other EU policies on arms control, part of the formation process and the framework of a future regime already exist. Even if the formation stages can be considered as complete, with the inclusion of the principles and norms of the Common Position, the proposals presented should consider further adaptations to diminish the presence and trade of military means among the participants.

The negotiation stage would make a clear difference and innovation from previous arms control agreements. If the recipient countries were full participants of the regime, then the regulations would not be applied to arms suppliers and recipients only. Instead, recipients would have to fulfil regulations regarding the use and destination of the armament.

In the next table, the features and differences between the actual policy and the proposals presented are compared; this information is according to all the approaches presented within regime theory.
The binding regulation of specific armament and the comprehensive security regime start from the *contractarian* perspective, where participants recognize common problems and interests. The promotional issues stay the same in the three instruments. The comprehensive regime combines coordination policies including social and economic measures to change behaviour and practices; it creates a cognitive process to modify dynamics applying a binding control on arms transfers with generative characteristics. The comprehensive regime must be a negotiated type, where the interests of all actors are considered to reach a strong consensus; spontaneous and imposed regime varieties are out of question. Its main innovation is the inclusion of international monitoring and the appearance of new practices of cooperation; the comprehensive regime proposal can begin with specific regulation to SALW, but its final aim is to implement a wider control over many categories of conventional arms as the actual Common Position. It is clear that the regulations are related directly to the criteria used and the actions taken when transferring armament.
The comprehensive regime may have procedural characteristics in the sense that dispositions to control such transfers can be adapted according to the reactions of the states and the problems presented during its operation. The generative regime features are relevant to this proposal since it involves the creation of new social practices. In this case, the situation goes with the adoption of the EU policies on arms control by other states, as the internalization of norms and principles may share values and interests.

The degree of formalization has a stricter character with the inclusion of a biding status and the possibility to implement international norms. As previous dispositions contemplated in the Code of Conduct have not been followed, it is required high disposition and coherence in what is trying to be regulated, certainly because of the broad scope and the exceptionally high regulations that they include. The proposals have specific functions in the regulation of arms exporters and monitoring the behaviour of the recipients when receiving armament. The compliance functions remain close to the binding dispositions accorded in previous stages; mechanisms of monitoring need to be independent of the government influence to keep effectiveness in optimal degree.

The operationalization of the comprehensive regime can also include the creation of an international organization, with the inclusion of NGOs, to control the application of the norms, and to review the behaviour of the participants. This regime could achieve in long-term, a governmental dimension if an institutionalization process takes part and laws and reliable institutions come into action. For example, this happened with the IAEA and the Non-proliferation regime. The substantive components of the regime would lie in the articles of the Common Position where the rights and rules of the Member States are specified; the implementation component must be accorded with mechanisms to fulfil the rules. From the constitutive perspective, the Common Position has the capacity to influence their behaviour and interests; however, the regulatory character is a new feature in the actual Common Position, therefore, its enforcement is yet to be assessed.

Effectiveness, compliance, and enforcement are deeply related to the proper operation of the regime. The lack of an authority that ensures compliance has been the weakness of international regimes, especially regarding regulatory regimes. In this case, the EU appears as the authority in charge that generates a collective choice of applying binding regulations on arms transfers. Modest aims at the beginning are more likely to consolidate a practice that can
be improved upon in successive steps. The non-compliance threat is diminished because of a higher authority that would have the means to control. This kind of security regime does not involve the weakening of the security of any participant; it tries to regulate a public-private economic activity with political implications.

6.3.2. Effectiveness and change within International Regimes

One of the research questions of this thesis is to understand whether national interests and behaviour can be modified in order to fulfil compliance. The cases of Germany and the United States presented evidence of this situation. In addition to this, the correct application of the Code of Conduct norms denying some transfers also represents a positive sign for this transcendent issue of compliance and behaviour. In this sense, effectiveness will not necessarily be achieved automatically with a binding regulation; even this status is a fundamental part for the optimal operation of the regime. However, the behaviour of the states will be the determinant factor for a successful outcome.

A crucial point inside the operation of the regime is the level of effectiveness that it may reach after the formation stage. The appropriate operation of the regulatory regime relies on the level of compliance that the members deliver to the agreement and, in a negative case, how to penalize non-compliance. The procedural regime relies in a majority decision basis that gives legitimization to further decisions. The programmatic agreement supports its appropriate work on administrative matters of funding, close work relation between national offices, and efficient coordination. The generative regime can be considered successful when social movements have a positive implication and, thus, new ways of thinking or innovative solutions come to the light. The combination of regulatory and generative features would provide the proper effective functioning of the regime (Young 1999: 32-4).

A sign of effectiveness within the operation of the regime will be noticeable by the behaviour of the states after the implementation of regulations. Young analyzes effectiveness considering the structure problem, where the origin and complexity of the problem will define the characteristics and scope of the structure. The regime attributes deal with the capacity of the regime to adapt new realities, or challenges, and the social practices may finally take place when a successful cooperation occurs due to the regime functioning. Participants acquire new procedures, and even new actors may be involved in bringing a strong legitimacy to the regime (op. cit.: 117-21).
Keohane notices that states calculate their costs and benefits considering the certainty and stability of the joint cooperation. Compliance will be developed according to the cost-benefit balance and, if there is a negative balance, there is a change in the behaviour of the states (Müller 1993: 362). States are habit-driven actors that are conditioned to comply for internal reasons and historical concordant behaviour. State's actions have internal and external components, the latter emphasizing how regimes may modify incentives and constraints that directly affect states. The existence of the regime will affect and modify costs and benefits that are directly related with previous actions made by states. Nevertheless, this influence will change the actions of the states and, therefore, its capacity of compliance. Central components tend to internalize regime norms and rules into domestic structures and a successful adaptation in the domestic legal environment would provide a strong compliance (Duffield 1992: 835).

Haggard, Levy, Moravcsik, and Nicolaidis find that, under the interdependence environment, the behaviour of a group of states may vary if they are facing a cooperation process. Three types of approaches explain this situation: the institutional, liberal, and realist. For the first one, patterns of cooperation are not directly related with the actor's preferences and these may not necessarily converge into mutual coordination; problems with free riders, inefficiency of bargaining, or uncertainty can block the process. The institution is designed to overcome all these problems and achieve more aims rather than only reflecting certain interests and patterns of power. For the liberal tradition, security threats occur due to the power capacity and aggressive goals presented in one state; therefore, the international institution is heavily influenced by national interests that guide the inter-state bargaining process. Realism highlights the distribution of strategic capabilities projected on the institution (Haggard et al. 1993: 175).

With the acceptance and implementation of a new regime with regulatory procedures, a change of behaviour takes place in order to fulfil the new guidelines accorded in the regime. This change would be linked to the level of compliance that the participants of the regime are expected to deliver. For instance, some issues, such as trade regimes, may still operate successfully with recurring violations (Young 1999: 76). A high level of compliance is strongly required to achieve effectiveness; nevertheless, an arms control regime would compromise its effectiveness if one member does not follow the regulations; this situation affects the operational part of the regime. In the case of the proposals presented, effectiveness should come with the binding-factor that both includes.

This factor influences directly the behaviour of the actor; nevertheless, it is more important to create common practices and link retributions with compliance. If development policies are
implemented in exchange for regime observance and responsible use of military and economic resources, then the fulfilment of arms recipient would increase. International regimes may achieve a greater positive influence outside the primary issue areas that were conceived; for instance, relating it with armament control. The effectiveness of the regime can be measured if comparing it to previous situations where there was not any coordination among actors.

Stephan Haggard and Beth Simmons identified four ways that the regime may change over time: strength, organizational form, scope, and allocational mode (Haggard & Simmons 1987: 496-7). The first one refers to the degree of compliance when the interests of the members may overlap with the rules. The second way includes how the regime works; it can have a decentralized regulation with continuous interventions made by the members, but it is required to have a functional structure for the proper operation. The scope of the regime may change due to external factors that modify the issues covered by it. Lastly, the allocational mode explains that regimes can have different ways to assign and manage resources. These authors find four views to explain the development and changes within the regimes: structural, game-theoretic, functional, and cognitive (op. cit.: 500-12). The first three theories are focused on states as rational actors. Functionalist and game-theoretic approaches see a clear regime influence within states interaction, therefore, cooperation is more plausible.

The structural view is linked directly to the theory of hegemonic stability, where the regime is created and maintained by a dominant power; nevertheless, a decline in hegemony affects the regime directly. The game theory approach explains why the cooperation may lead to the creation of a regime, but at the same time, is unable to clarify organizational form, scope, or change. This view considers domestic factors that shape the actor’s preferences and is complemented by the external influence that facts or other actors may provoke. The functional theory explains a regime by its effects or results; it is related to economy issues where a modification within the regime is a sign of weak operation.

Cognitive theories include the previous three theories and suggest a complementary explanation regarding cooperation; it is stated that the existence of cooperation must include references about ideology, values, and beliefs that the participants of the regime have regarding interdependence and knowledge. While the structural, game-theory, and functional theories take for granted the stability and objectivity of the issue-area, the cognitive approach finds uncertainty. Keohane considers changes in the regime only when the principles or norms from the initial proposal are modified; if the content of the regime is changed, then the internal functioning is affected (Hasenclever et al. 1997: 13).
When applying these four views to this study, the rational character that is implied by the behaviour of the actors is determined by relative gains and power, personal interests, or it is meant to fulfil certain interests with absolute gains. The cognitive approach represents the perfect combination with the neo-liberal perspective, when combining the variability of knowledge and interests. The expected consequence of the comprehensive regime is to diminish armed conflict, and related situations, in strategic zones of the EU neighbourhood. The final aim is to create and maintain a stable period of stability in all regions included in the regime; improving their welfare and not only the interests of the EU. Shared interests are essential to create new knowledge within the states. When these actors practice an internalization of norms and rules, their behaviour is changed due to the effectiveness of the regime.

Strong cognitivists criticize the rationalist approaches regarding the source of identity and interest of the states; nevertheless, the examples presented in the previous point show that international institutions can influence rational actors, creating new practices, and improving their effectiveness at the same time. Considering this explanations, I find that states have the potential to leave rational and egoistic behaviour, in order to achieve common benefits. New practices and knowledge may be the keys to defeat non-compliance and distrust among states.

6.4. Europeanization of Security and Development

In the progress of the research, I realized that the original idea of the implementation of a binding regime on arms control by the EU could be improved and complemented with a comprehensive approach of policies that are not related to security issues. The establishment of international institutions needs a driving force behind it, the participation of one actor with enough potential and competence to put together governance patterns is crucial to reaching new levels of international cooperation. This last point of the study presents some theoretical considerations to support the proposal of a comprehensive security regime.

The idea to discuss Europeanization is to share the success of the EU in development, cooperation, and security with other regions. The role and position of the EU is still developing within the international system, therefore, it needs more time to consider final evaluations of achieving success or not; nevertheless, the EU has contributed on many levels and in many issues with new dimensions of cooperation.
Even with the usual disagreements and problems, this actor is moving forward and is strengthening the concept of civilian power and the civilizing process\textsuperscript{39}, while presenting the connotations that these notions imply (Linklater 2005: 369). The concept of Europeanization is relatively new and may have different interpretations; the general idea of this concept refers to the influence and changes that the EU exerts on its Member States. Alistair Cole and Helen Drake find four meanings of the concept: as an independent variable, an emulative policy transfer, a smokescreen, and an imaginary constraint. For this study, I will only use one according with the idea of Europeanization as a source of policy transfer and learning, where states take models from the EU and apply them for their own use (Wong 2005: 135).

It is possible to consider the progressive development of moral practices made by the EU towards other societies; the efforts to control interstate violence, sanctions against human rights violators, combating trans-national crime, and the legislating of environmental concerns go along with its promotion of principles of democracy, rule of law, social justice and, in this case, measures on arms control. (Linklater 2005: 381).

The main reason that increased the cooperation on arms control was the Europeanization of the arms industry in the early 1990s. This situation coincided with other events such as the Gulf War conflict, the implementation of the CFSP and the ESDP, the European Common Market, and the *European regime on dual-usage of goods and changes towards arms control in domestic political actors* (Bauer 2004: 130-1). It is possible to consider a process of Europeanization of security, in the case of arms control, with all the strategies that the EU has implemented, even though this situation did not come from a plan to coordinate export policies or regulate arms transfers specifically. For instance, the influence of the Code of Conduct on the Member States was commented in chapter four.

It is pertinent to mention that armament issues fall into different organizational fields within the EU administrative framework; the European arms industry is under the first pillar (market field) and defence issues are with the CFSP, the second pillar. Thus, there exists the involvement of the Commission, the European Council, and the Council respectively; this situation represents that the issues referring to the arms industry have to deal with intergovernmental and supranational instances (Mörth & Britz 2004: 963-4).

\textsuperscript{39} Duchêne’s concept of civilian power identifies a further development in the political relations where states can overcome the balance of power dynamic. See Duchêne (1973) ‘The European Community and the Uncertainties of Interdependence’ in Kohnstamm & Hager (eds.) Norbert Elias made an historical analysis how this process has been present in Europe; the EU appears as the perfect example of organization process beyond the nation state borders, mainly due to its commitment to pacify inter-states relations and strength development. See Elias (2000) *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*. 
Ian Manners describes, with other authors\textsuperscript{40}, how the EU diffuses its norms, recognizing with this diffusion, the normative power of this actor. Norms are passed on by contagion, informational, procedural, transfersences, overt diffusion, and cultural filter (Manners 2002: 244-5). In relation to this research, the informational diffusion is present in the promotion of the EU policies on arms control among third party countries. The procedural diffusion takes place with the institutionalization of inter-regional cooperation agreements. The diffusion includes the idea of establishing a security regime with countries in strategic areas for the EU; moreover, the agreements can be linked with the cultural filter norm that involves political learning and the acceptance of international norms. This informational diffusion leads to the creation of a social and political identity which, in this case, would strengthen arms control when other countries, in unstable and troubled areas, follow the EU policies on arms transfer.

Theories of knowledge assert that there is a learning process experimented by the states. Regimes create a framework where states share benefits of positive behaviour and, thus, the regime has the opportunity to be changed and improved for better functioning. The works of Kratchowil and Ruggie, related to the complex institutional theory, explain that regimes can create a normative system that works as a reference on how to behave and, consequently, states will follow and take actions according to networks of norms, principles, or institutions. This simultaneous learning process will develop into a stable regime which reinforces compliance (Müller 1993: 363).

There are two meaningful issues regarding the involvement of the EU towards international events that are still unclear. First, due to political disputes, the decision-making procedures and the operation of the external relations remain static until the adoption of the Lisbon Treaty. Secondly, the geographical dimension that the EU proposes for itself; its engagement in the international system could remain in regional operation or it may take more steps to be considered as a global actor (Hill & Smith 2005: 401). The Code of Conduct had implications with this second point, due to its applicability to all Member States and its promotion to other countries with successful cases of states that have aligned their policies with the Code. At the same time, the positive vote within the UN attempting to establish a treaty on arms of all Member States showed that the EU has a global commitment, at least in this area.

With the idea of a comprehensive security regime, I visualize a binding control on conventional armament combined with the promotion of EU policies on sustainable development. This

combination would create a generative regime which considers attention to regions that still suffer inter-state violence or other conflicts; the fundamental idea of this regime is to think of recipient countries in two regions, Africa and the Middle East. EU external relations cover practically all countries, international organizations, international actors, and issues of global governance. This means that inter-regional cooperation seems the perfect combination for arms control agreements, promoting together real levels of effectiveness and stability.

For example, the European Neighbourhood Policy (ENP) includes the improvement of political, security, economic and cultural cooperation with partners and neighbouring countries. The cooperation goes through the ENP Action Plans; these documents are specific for each country, regarding its problems and needs. The actions in cooperation include political dialogue, economic assistance, and social development. This policy, in fact, is quite relevant for the idea of this research, in the sense that it tries to address the objectives of the ESS; therefore, even by now, security issues are not included directly, the EU policies on arms control can be part of the cooperation and can be implemented in conflict zones. The ENP promotes measures that include regional reforms, but considering sub-regional processes; the Euro-Mediterranean Partnership complements the ENP. Launched in June 2008, the Africa-EU Strategic Partnership is another good example that involves all African countries. This includes strategies and action plans in many areas such as peace, security, democratic governance, human rights, trade, migration, and science. The proposal of a comprehensive regime can include other near countries in Europe or other regions. These policies show the difference between other great powers and the EU. If these policies are meant to benefit both sides without colonial or imperialist aims, then great success can be expected for cooperation processes.

The EU has increased its repertory of instruments to act beyond its borders; even when criticized about interventions where military missions were implemented, it is recognized that the EU attempts to reach a consensus and solve problems by diplomatic means. The use of multilateral diplomacy has been the signature of its foreign policy with other actors. Arms control agreements may have, in this actor, their best ally to fulfil their mission.

The creation of an institution, as the proposal presented of the comprehensive regime, implies that states must bring into play new actions, by consequence, new structures of interrelation between international actors would be expected. A cognitive process is necessary to fully achieve new conceptions and practices in security matters that may improve all other areas within the

41 Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine. With Russia exists a ‘Strategic Partnership’. 
international framework. The agent-structure understanding explains part of this idea. The EU can promote wider forms of security and cooperation with the implementation of regimes; the mutual influential relation within the dynamics between certain agents performing in a given structure can occur where both have the capacity to change. However, the latter is more resilient to do so; change is only possible if the agent opts for a consistent preference and, thus, the structure will have new perspectives.

Applying these ideas to the security field, agents have the possibility to choose different positions or strategies where security cooperation and binding regimes might be achieved with others. For constructivists, this cooperation is possible when the structure permits an actor to proceed in non-aggressive ways. As it does not imply crucial concerns for its survival, other agents would follow the same path, thus diminishing the insecurity factor within the global structure (Müller 2002:379).

For Alexander Wendt, cooperation and, hence, institutions created for so, are cognitive entities that exist within the conceptions of the actors regarding how the world works. Therefore, institutionalization implicates the internalization of new identities and interests, reaching deeper stages than only modifying behaviour (Wendt 1992: 399). Wendt find three types of security systems: competitive, under the logic of realist power-politics, the one who has been present in the Westphalian sense with the endless security dilemma. In the individualistic type, states care mainly about absolute gains and collective action is possible; both systems do not recognize mutual security as it is, and the actor remains egoistic concerning its security. Finally, Wendt finds an alternative called the cooperative system, where security is a common responsibility and national interest develops into international interests (op. cit. 400). Under this logic, arms control agreements should go into different stages to change the structure.

Manners, quoting Kenneth Twitchett and Hans Maull, explains that the characteristics of a civilian power are the use of diplomatic cooperation to solve international problems, to have enough economic power to achieve national goals, and the motivation to use legally-binding supranational institutions to achieve international progress (Manners 2002: 236-7). These three features are deeply related to the idea that I am suggesting; the EU has achieved enough economic power to be a reference in the international system. This capacity has placed the EU as a negotiator with other great powers in global governance issues; in this sense, less developed countries have tried to harmonize relations and interests with the EU, recognizing its importance within the international system and are open to accept its proposals.
Civilian and military powers are conditions shaped by capabilities, as Manners correctly differentiates. This author identifies that the normative power of Europe locates the discussion of the EU's international identity; he finds that the normative basis of the EU has been developed since its foundation considering the declarations, treaties, policies, and criteria (op.cit.: 239-42). The normative bases of the EU include its founding principles, fundamental rights, stable institutions, and the tasks and objectives of all these put together.

It is necessary to recognize the main obstacles to implement effective arms control; first, the economic and political interests of the arms producers, and the constant armed instability in some regions; this is complemented with the legitimate right of national security that is conceived mostly through military means. By now, the EU has influenced, in certain ways, the behaviour of its members, and other states concerning arms control. However, more actions are necessary to make it effective and definitive as those norms and principles that characterize a civilian power, assumed and practiced by the EU, should transcend its borders, materializing institutions that could permeate into nearby countries.

It is important to mention than the proposals of this thesis, visualized in a long term, are linked to the idea of change within the inter-state relations and their classical conceptions of national security. The proposed regime, if implemented, could develop into the concept made by Karl Deutsch regarding security communities. If the damage created by arms is to be diminished and effective arms control and a sustainable development are to be established, then it is necessary to change the behaviour, beliefs, and interests of the states. Deutsch finds that certain political communities have been able to eradicate the use of armed force and, therefore, war within their borders. Security communities require certain levels of human integration where a sense of belonging is developed; as well as practices and institutions; a sense of community is required as a culmination to solve problems in peaceful ways. Europe has been the stage of recurrent, and historical, warmongering. Since the creation of the European Community, and its further development and expansion, this example of security community has became closer to Deutsch’s idea. The creation of a community neutralizes any military antagonism within its members. Security community ensures mostly a collective participation and response if any of its members is involved in any act of aggression (Bailes & Cottey 2006: 201).

In the context of a comprehensive regime between countries in different continents, it is not possible to consider collective identities or a community outside of the EU; presently, it is only pertinent to talk about collective interests.
Emmanuel Adler and Michael Barnett, based on Deutsch’s proposals, made further studies into security communities and identified three steps within the community framework. The first tier considers exogenous and endogenous factors that place the states into a certain direction looking for cooperation; they call it *precipitating conditions*. The second tier implies processes of relations among the states and between, power, and knowledge; the process set the structure on where transactions, organizations, and a social learning take place. It is a phase where mutual trust and collective identity is developed; cognitive structures are needed for sharing understandings, where social institutions (international institutions, organizations, and the practices that come from them) are present. Finally, in the third tier, a developed mutual trust and collective identity would bring a peaceful change and the total establishment of the security community (Adler & Barnett 1998: 37-47).

It is clear that these three tiers are present and related to the comprehensive regime proposal; a *nascent* stage, when factors like armed conflicts, violence, international crime, failed states, refugees, illegal immigration, and others, can be present and may persist due to lack of coordination among states and the implementation of deficient policies on arms control. All these situations affect not only the developing countries in the EU neighbourhood, but can directly impact the fundamental interests of the Union.

*Power* is present in the capacity of the EU to integrate policies and programs to strengthen cooperation among other countries. These practices develop precedents of behaviour and respect the principles that have allowed the prosperity of the EU. When there is a stable balance in the regime and the community is strengthened by a cognitive transition and inter-subjective processes, this ascendant stage reaches stronger levels of interdependence (Acharya 1998: 202). In the framework of social practices, international institutions lead the cooperation efforts where collective interests, and even identities, are shared for a common good. All these previous situations would lead to a peaceful, prosperous, and solid coexistence among participants.
7. CONCLUSIONS

“There are over 550 million firearms in worldwide circulation. That's one firearm for every twelve people on the planet. The only question is: How do we arm the other 11?”

Lord of War film

This thesis has discussed the important need for more effective conventional arms control agreements and has also shown the possibilities for improvement within these instruments. The arguments presented promote the view that a reduction in the demand for armament, a change in the role of military means, and the control of conventional arms transfers are a priority on the international security agenda. Global arms trade is a multidimensional problem that presents many difficulties per se. Consequently, there are many factors that restrain the activities of its control and it is an exceptionally difficult area to regulate, due to the relationship between national security concerns and the political and economic interests involved in producing and trading armament. This research has put emphasis on the damage created by conventional arms when their use is indiscriminate and on the responsibility which producing and trading military items represents.

The combination of the method and theory applied in this study gave reasonable options to analyze the topic and to formulate proposals; the research questions and assumptions that motivated this study were acceptably answered. As presented with the structural realist and neo-liberal institutionalist perspectives, states are moved by different interests and conceptions. In this case, the state’s right of self defence has meant the legitimatization of the arms trade and the pretext for the unrestrained commerce of conventional armament. States must remain sovereign regarding security issues; however, this situation is habitually exploited by arms producers to protect their activity. Realist predictions about the null cooperation among states in certain areas seem to be partially correct in the sense that even if there are instruments of cooperation trying to regulate the arms trade, in the end, they fail to modify the behaviour of the states on this matter.

I believe that a significant part of the structure within the international system is based on a military order which provokes the security dilemma, and, consequently, the arms trade. It conclusion, this necessary right of self-defence has been manipulated from its original intended meaning. It has developed into a core-periphery business dependency where producer countries are not really interested in the security of other countries, but are merely concerned about their

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42 This quotation is from a fictional film; however, it reflects the logic that guides the arms trade. It is estimated 875 million of guns worldwide considering civilian, law enforcement and military firearms; there is a production of 8 million every year (Karp 2007: 39).
own benefit. It seems that leading arms producers promote intentionally the security dilemma dynamics to maintain its political and economic dominance.

I began this study with the argument that the inclusion of a binding status in the current arms control agreements can provide the needed restrictive regulation, and halt the sale or transfer of armament to regions or countries engaged in armed conflicts. However, during the research, I realized that all the deficiencies of the agreements are directly related to the conceptions and practices of security and cooperation within the dynamics of the international system. The binding-factor within arms control is part of the solution to the arms trade problem, but its implementation faces many difficulties. When reviewing the UNROCA, WA, or other international agreements implemented to regulate the transfers of armament, the evident lack of real control due to the voluntary basis of participation was noticed. The vague and ambiguous interpretations of specific non-binding criteria made by producers were also recognized in the case of the EU Code of Conduct.

As presented with the case study of this work or considering the scandals of arms transfers to regions in armed conflict, current controls fail because they are designed to obtain partial outcomes. They are violated or followed only when needed. Arms control has also failed their purpose due to the application of permissive legislation. Who is interested in continuing this huge profitable business without strict regulations? The beneficiaries of this trade are, and they take advantage of the support offered by the political establishment.

Conventional arms controls are not binding because states are not keen on performing effective regulations that would diminish their military options and, subsequently, arms trade. This is why norms are subject to ‘interpretation’ and the instruments are made on a voluntary basis. It must be recognized that, in some cases, arms transfers have not necessarily led to harm other states, for example, the transfer of major conventional arms between EU members. Nevertheless, this situation turns critical when armament is transferred to developing countries that are engaged in armed conflicts or that are threatened by the presence of criminal organizations. For instance, SALW and ammunition are produced and transferred by legal and illegal means to unstable and developing countries in conflict. Pressure from the powerful arms industry defeats any political will to adopt binding regulations. A real commitment to controlling the arms trade would involve armament companies not opening subsidiaries or spreading production capacity to other countries where export controls are more permissive or even non-existent.
Another meaningful example of the position of states about this matter is the ‘group of experts’ regarding the possibility to adopt the ATT. The GGE’s report explains that it must be considered that (UNGA 2008:13-14):

‘Global arms production and trade constituted a significant contribution to the economy and employment in a number of countries...some experts expressed the view that a potential legally binding arms trade treaty was not the only option for addressing the issue’

How do we understand these statements? Of course global arms production represents a significant contribution to the economy of arms producers, but their other contribution is the violence and human victims created by the use of this armament. The report made by the GGE never mentions or condemns the irresponsible behaviour of governments and companies that produce and trade arms. Major armament producers have been the main obstacle for regulating controls as they exert their influence to maintain the status quo. Even though these powerful countries have been blocking, and even boycotting, the attempts to regulate arms control, the efforts to control it must not be halted or diminished. Another aspect to take into account is the existence of a worldwide black market of armament, which mostly deals with SALW. If commercialization is sanctioned, the legal production that feeds the illegal trade must be regulated.

Regarding the EU policies on arms control; I find that there are visible weaknesses in the policies even though they represent an important effort in regulating this issue. I consider that there are diverse factors that impede the improvement regarding arms control issues. It starts with the restriction of the EU institutions to act regarding security and national interest issues. Under the CFSP pillar, foreign and security policy is decided by the inter-governmental framework where unanimity is needed (Long 2002: 430-2). Therefore, it is more likely to have disagreements when trying to implement obligatory, or stricter, controls.

The assessment of the Code of Conduct showed the contradictory actions taken when the criteria is applied. The case study presented about arms transfers made by the Member States shows that the application of the criteria on arms control is incomplete and incongruent. At the same time, the entire information analyzed showed that it is even more difficult to simultaneously apply binding regulations to major and SALW categories. Thus, the inclusion of the binding status towards arms control represents an exceptional positive step, as the case of the Ottawa Convention. However, when the regulations include a wider range of armament, a definitive consensus and commitment to achieve enforcement and compliance is needed.
Although access to information and transparency has improved, the motivations behind the decisions of granting or denying arms licenses still remain unknown. I believe that the main problem is to permit to the Member States the final application of the regulations on arms control, considering that they will only care for their interests, or to express it more precisely, the controls are applied according the interests of the arms industry. Directly related to this situation is the belief that states should maintain a defence industry, as stated in the Common Position. This instrument certainly improves the strategies taken by the EU regarding arms control, but the real impact of this policy can only be evaluated in 2010, after its first year of implementation. Unfortunately, the main arms producers are not interested in reducing their economic profits; consequently, they represent the main obstacle to arms control progress.

Another conclusion of the study is that the control of armament goes beyond the national sphere. Therefore, multilateral action is needed and I am convinced that the EU has the capacity to lead such action in order to generate new processes of international governance. Its support for the ATT, the Ottawa Convention, and the promotion of its policies on arms control are examples of the EU commitment to this issue.

In order to regulate conventional armament, a security regime seems like a suitable option to implement. The EU has been the only important political actor within the international system that has taken its own specific actions and regulations regarding conventional arms control. The EU has a real opportunity to transform a regional control on arms transfers into an international one, as it has leadership and a structural organization to achieve it. The current EU Common Position has all the elements required to implement a regime, but it would still need to achieve a stable degree of compliance. It is necessary to apply an appropriate function of the norms and a strong enforcement; however, even if recognizing the improvement that this Common Position represents, I remain sceptical on how Member States are applying the criteria, as there has not been declaration by the EU Council, nor by the Members, announcing that national legislations will strictly apply the criteria.

The source of my scepticism is rooted in the case of the EU arms embargo on China and arms transfers to Israel and African countries. As presented in the case study, even though it is an official embargo, China has been receiving armament from the EU uninterruptedly. The example of China shows that there are irregularities while applying regulations. The other cases mentioned above, entail that if the Common Position criteria is fully applied, these countries, among others, will not receive armament made in the EU. If diverse exemptions are considered every time
embargoes or control criteria are applied, it is useless to adopt restrictions that are not strictly enforced. I believe that governments have not crossed the line of political will.

Regime theory gave a clear understanding on how the states are engaged in a cooperation process with the circumstances that this represents. States appear to be rational actors fulfilling their needs and interests; regime theory finds that, through an institutionalization process, these actors may work collectively for a common benefit. The proposals of security regimes presented in this study consider different situations that can improve arms control. Measures such as categorical control in armament, weapon free spaces, and demilitarization should be included to strengthen the non-military option. The neo-liberal approach, as well as the cognitive one, offer interesting perspectives of regime formation and consider a change in the existing structures where social and political actors are involved. Hence, the two proposals that I consider to be most viable include the formation of an international institution materialized under an international regime with regulation on specific categories of armament such as SALW. However, real improvements in areas of the international system about security and political relations must start with the modification of the practices and the behaviour of the states. The adoption of binding regulations and the complete compliance of these instruments are needed for concrete changes and new perspectives for international cooperation. The proposal for a comprehensive security regime is based on the promotion of the principles and criteria of the EU Code of Conduct among third countries. For instance, Bosnia and Herzegovina, Canada, Croatia, the Former Yugoslav Republic of Macedonia, Iceland, Montenegro, and Norway have all officially aligned themselves with the criteria and principles of the Code.

If this promotion, and adoption, of the EU criteria is combined with strategies such as the ENP, it is possible to consider the future development and consolidation of a security community. A generative regime, able to create a trust-building dynamics with a social character, is needed to enhance new forms of cooperation in security and other areas in order to diminish the military option. For instance, when comparing the Common Position and the proposals presented in this study, the difference between them lies in the level of enforcement. I find that the Common Position has a weak level of enforcement even with its new binding status. This weakness comes from the fact, mentioned throughout this study, that Member States have the right to apply and interpret the criteria on their own and also from the existence of such a wide range of items subject to regulation.

Arms control and security must be attained through innovative ways that permit states to achieve security without the imperative necessity of acquiring weapons. Therefore, I believe that controls
should be implemented first in a certain category and once states have modified their behaviour and presented a commitment to comply, a wider range of conventional armament can be controlled.

The internalization of the norms and practices represents the first action that would give viability to the comprehensive regime, thus, leading to the gradual increase of compliance. The internalization process implies the creation of a framework that includes a learning process which enables changes in the behaviour of the states. Along with the control and the restriction of armament, a stable security regime must promote economic development, regional cooperation, and the implementation of confidence and security building measures. The constructivist proposal of security and the cognitive understanding in regime formation seem to be the most optimal approach to implement measures in order to achieve better levels of security cooperation among states.

I conclude that an intercontinental security community should be the ultimate goal in order to achieve stable security and development. Therefore, the political relations among states must take further steps and perform new practices guided by an institutional framework. Regarding armament, this would imply that suppliers and recipients must change their behaviour to achieve real compliance, and that the use of military means is performed without threat to civil societies. This new behaviour is intended to change the armaments dynamics, mostly through the compliance of norms to change the actual structure of military means. The reconstruction of Europe after the Second World War and the foundation of the EU are the perfect example of how it is possible to restore regional confidence and coexistence.

We cannot close our eyes and ignore all the human casualties that arms have provoked, considering them as a mere statistic or consequence of legitimized violence. The cause of violence against people does not matter: inter-state war, regional conflicts, organized crime, or terrorism. All of these situations affect human security. Governments and companies that commit irresponsible actions must be denounced and sanctioned. The right of self-defence can no longer be the justification to continue with arms transfers, considering the endemic problems of poverty, insecurity, political instability, and corruption that many countries still face. In the end, problems regarding arms control represent problems for humankind. So, then, which interest must prevail?
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EUROPEAN UNION Code of Conduct on Arms Exports

THE COUNCIL OF THE EUROPEAN UNION,
BUILDING on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992,
RECOGNIZING the special responsibility of arms exporting states,
DETERMINED to set high common standards which should be regarded as the minimum for the management of, and restraint in, conventional arms transfers by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency,
DETERMINED to prevent the export of equipment which might be used for internal repression or international aggression or contribute to regional instability,
WISHING within the framework of the Common Foreign and Security Policy (CFSP) to reinforce cooperation and to promote convergence in the field of conventional arms exports,
NOTING complementary measures taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms,
ACKNOWLEDGING the wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort,
RECOGNIZING that States have a right to transfer the means of self-defence, consistent with the right of self-defence recognized by the UN Charter,
HAS DRAWN UP the following Code of Conduct together with Operative Provisions:

CRITERION ONE
Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on non-proliferation and other subjects, as well as other international obligations
An export licence should be refused if approval would be inconsistent with, inter alia:
(a) the international obligations of Member States and their commitments to enforce UN, OSCE and EU arms embargoes;
(b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
(c) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
(d) the commitment of Member States not to export any form of anti-personnel landmine.

CRITERION TWO
The respect of human rights in the country of final destination. Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

(a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression.
(b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU. For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression.

In line with paragraph 1 of the Operative Provisions of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

CRITERION THREE
The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

CRITERION FOUR
Preservation of regional peace, security and stability
Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

When considering these risks, Member States will take into account inter alia:
(a) the existence or likelihood of armed conflict between the recipient and another country;
(b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
(c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
(d) the need not to affect adversely regional stability in any significant way.

CRITERION FIVE
The national security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries
Member States will take into account:
(a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other Member States, while recognizing that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
(b) the risk of use of the goods concerned against their forces or those of friends, allies or other Member States;
(c) the risk of reverse engineering or unintended technology transfer.

CRITERION SIX
The behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law Member States will take into account inter alia the record of the buyer country with regard to:
(a) its support or encouragement of terrorism and international organized crime;
(b) its compliance with its international commitments, in particular on non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
(c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

CRITERION SEVEN
The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions
In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:
(a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peacekeeping activity;
(b) the technical capability of the recipient country to use the equipment;
(c) the capability of the recipient country to exert effective export controls;
(d) the risk of the arms being re-exported or diverted to terrorist organizations (anti-terrorist equipment would need particularly careful consideration in this context).

CRITERION EIGHT
The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources. Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They will consider in this
context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

OPERATIVE PROVISIONS

1. Each Member State will assess export licence applications for military equipment made to it on a case-by-case basis against the provisions of the Code of Conduct.

2. The Code of Conduct will not infringe on the right of Member States to operate more restrictive national policies.

Member States will circulate through diplomatic channels details of licences refused in accordance with the Code of Conduct for military equipment together with an explanation of why the licence has been refused.

The details to be notified are set out in the form of a draft pro-forma set out in the Annex hereto. Before any Member State grants a licence which has been denied by another Member State for an essentially identical transaction within the last three years, it will first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it will notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

The decision to transfer or deny the transfer of any item of military equipment will remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorize the actual sale or physical export of the item of military equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

4. Member States will keep such denials and consultations confidential and not use them for commercial advantage.

5. Member States will work for the early adoption of a common list of military equipment covered by the Code of Conduct, based on similar national and international lists. Until then, the Code of Conduct will operate on the basis of national control lists incorporating where appropriate elements from relevant international lists.

6. The criteria in the Code of Conduct and the consultation procedure provided for by paragraph 3 of these Operative Provisions will also apply to dual-use goods as specified in Annex 1 to Council Decision 94/942/CFSP (1), where there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country.

7. In order to maximize the efficiency of the Code of Conduct, Member States will work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of conventional arms exports.

8. Each Member State will circulate to other Member States in confidence an annual report on its defence exports and on its implementation of the Code of Conduct. These reports will be discussed at an annual meeting held within the framework of the CFSP. The meeting will also review the operation of the Code of Conduct, identify any improvements which need to be made and submit to the Council a consolidated report, based on contributions from Member States.

9. Member States will, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of arms exports from Member States, in the light of the principles and criteria of the Code of Conduct.

10. It is recognized that Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the above criteria.

11. Member States will use their best endeavors to encourage other arms exporting states to subscribe to the principles of the Code of Conduct.

ANNEX II

Brief descriptions of EU Common Military List categories

ML1 Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, and specially designed components therefore.

ML2 Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches), projectors and accessories, and specially designed components therefor.

ML3 Ammunition and fuse setting devices, and specially designed components therefor.

ML4 Bombs, torpedoes, rockets, missiles, other explosive devices and charges and related equipment and accessories, specially designed for military use, and specially designed components therefor.

ML5 Fire control, and related alerting and warning equipment, and related systems, test and alignment and countermeasure equipment, specially designed for military use, and specially designed components and accessories.

ML6 Ground vehicles and components.

ML7 Chemical or biological toxic agents, ‘tear gases’, radioactive materials, related equipment, components, materials and ‘technology’.

ML8 ‘Energetic materials’, and related substances.

ML9 Vessels of war, special naval equipment and accessories, and components therefor, specially designed for military use.

ML10 ‘Aircraft’, unmanned airborne vehicles, aero-engines and ‘aircraft’ equipment, related equipment and components, specially designed or modified for military use.

ML11 Electronic equipment, not controlled elsewhere on the EU Common Military List, specially designed for military use and specially designed components therefor.

ML12 High velocity kinetic energy weapon systems and related equipment, and specially designed components therefor.

ML13 Armoured or protective equipment and constructions and components.

ML14 Specialised equipment for military training or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon controlled by ML1 or ML2, and specially designed components and accessories therefor.

ML15 Imaging or countermeasure equipment, specially designed for military use, and specially designed components and accessories therefor.

ML16 Forgings, castings and other unfinished products the use of which in a controlled product is identifiable by material composition, geometry or function, and which are specially designed for any products controlled by ML1 to ML4, ML6, ML9, ML10, ML12 or ML19.

ML17 Miscellaneous equipment, materials and libraries, and specially designed components therefor.

ML18 Equipment for the production of products referred to in the EU Common Military List.

ML19 Directed energy weapon systems (DEW), related or countermeasure equipment and test models, and specially designed components therefor.

ML20 Cryogenic and ‘superconductive’ equipment, and specially designed components and accessories therefor.

ML21 ‘Software’ specially designed or modified for the ‘development’, ‘production’ ‘use’ of equipment or materials controlled by the EU Common Military List.

ML22 ‘Technology’ for the ‘development’, ‘production’ or ‘use’ of items controlled in the EU Common Military List, other than that ‘technology’ controlled in ML7.