

The Arms Trade Treaty

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Summary

While the Arms Trade Treaty initiative remains the most important initiative relating to conventional arms regulation within the United Nations, the lack of consensus on issues of scope, parameters and criteria and implementation and international assistance makes it likely that we could end up with a weak treaty. However, if provisions for subsequent revisions are made in the treaty, it could provide the scope for incremental improvements and realization of a treaty that sufficiently addresses the risks arising from illicit arms transfers.

“The best way to decrease tragic violence from occurring in the future is to establish a set of universal standards to guide the trade in arms....Drawing on existing international law; the Arms Trade Treaty (ATT) is a model for a legally binding international agreement establishing a set of basic rules to regulate the international transfer of conventional arms”.¹

States have recognized the compelling necessity to address problems posed by the unregulated trade in conventional weapons and their diversion to illicit markets. The process currently underway at the United Nations Conference on the Arms Trade Treaty July 2-27, 2012) to negotiate an international, binding treaty is in response to the need felt by states to formulate global guidelines for the trade and transfer of conventional arms.

The ongoing efforts at the Arms Trade Treaty (ATT) Conference to formulate an arms trade treaty can be traced back to December 2, 2009, when the General Assembly, in its 64th session, adopted Resolution 64/48, in which it decided “to convene a United Nations Conference on the Arms Trade Treaty to meet for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.”² It was decided that the Conference would be “undertaken in an open and transparent manner, on the basis of consensus, to achieve a strong and robust treaty.”³ In order to prepare for the 2012 ATT Conference it was decided to consider the remaining sessions of the Open Ended Working Group in 2010 and 2011 as a preparatory committee for the UN Conference on the ATT.⁴

The General Assembly also decided “to establish a fifth session of the Preparatory Committee in 2012 of up to three days duration to decide on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents” for the Conference and decided that intergovernmental organizations and specialized agencies could participate as observers in the General Assembly and the sessions of the Committee and stressed the need to ensure the widest possible participation in the Conference in 2012.⁵

Evolution of the Initiative to Frame an Arms Trade Treaty

While Resolution 64/48 of December 2009 gave concrete shape to the proposals for framing an ATT, it can be argued that the Treaty draws on the vision and efforts of the Nobel Peace

¹ Arms Trade Treaty, A Nobel Peace Laureates’ Initiative, May 1997, <http://www.spp.nus.edu.sg/ips/docs/events/PL/Arms%20Trade%20Treaty.pdf>, accessed on 1 June 2012.

² See http://www.un.org/ga/search/view_doc.asp?symbol=A/res/64/48&Lang=E, accessed on 13 June 2012.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Laureate and former Costa Rican President, Dr. Oscar Arias Sanchez, in 1995 to draw up an International Code of Conduct on Arms Transfers. The code sought to formulate criteria for arms transfers if the recipient state, *inter alia*, is in compliance with international human rights, humanitarian law, respects democratic rights, international arms embargoes and military sanctions and is committed to promote regional peace, security and stability. The code was to be submitted to the United Nations for adoption; however, at that time, it was not submitted due to the reservations expressed by a few member states.

The Code was followed by the Draft Framework Convention on International Arms Transfers, first circulated at the United Nations Small Arms and Light Weapons Conference in 2001. The Draft Framework focused on laying down core principles, reflecting extant international commitments of states and was proposed to be supplemented by additional protocols. These proposals were further worked upon by several non-governmental organizations (NGOs) specializing in work on arms control, human rights and development to achieve the goal of establishing the highest international standards in arms transfers.

Control Arms Campaign

In October 2003, the NGOs – Amnesty International, Oxfam and the International Action Network on Small Arms – launched the “Control Arms” campaign to primarily encourage states to work towards an Arms Trade treaty.⁶ The campaign sought to achieve an ATT based on states’ adherence to international human rights and humanitarian law and the UN Charter, include all categories of weapons, transfers and transactions and provide guidelines for encouraging transparency, compliance and accountability.⁷ In 2004, Brazil, Cambodia, Costa Rica, Finland, Kenya, Iceland, Macedonia, Mali, the Netherlands and the United Kingdom announced support for an ATT.⁸ The European Union (EU) Council backed the initiative for an ATT in October 2005, thus raising the number of countries supporting the ATT to 42.⁹

Resolution A/61/89

The efforts to formulate an ATT were given a concrete shape when, in July 2006, at the 61st session of the UN General Assembly First Committee, Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the United Kingdom circulated a draft resolution entitled “Towards an Arms Trade Treaty: Establishing Common International Standards for the

⁶ Refer to the website of the Control Arms campaign, <http://www.controlarms.org/about-controlarms>, accessed on 1 June 2012.

⁷ See http://controlarms.org/wordpress/wp-content/uploads/2011/02/ATT-one-pager_english.pdf, accessed on 3 June 2012.

⁸ See http://news.bbc.co.uk/2/hi/uk_news/politics/3704322.stm, accessed on 7 June 2012.

⁹ See <http://www.oxfam.org/fr/node/394>, accessed on 2 June 2012.

Import, Export and Transfer of Conventional Arms”, among the members of the First Committee. On October 26, 2006, the draft resolution was passed in the First Committee with 139 states supporting the resolution, 24 abstentions and only the United States in dissent.

Resolution A/61/89 reaffirmed “the right of all states to individual or collective self defense under Article 51 of the UN Charter” and to manufacture, import, export, transfer, and retain conventional arms.¹⁰ However, the resolution recognized that the absence of common international standards is a contributory factor to conflict and the displacement of people.¹¹ It requested the Secretary General to (a) seek the views of member states on the feasibility, scope and draft parameters for a comprehensive legally binding instrument and (b) establish a group of governmental experts, on the basis of equitable geographical distribution, informed by the report of the Secretary General submitted to the General Assembly at its 62nd session.¹²

Following the adoption of Resolution A/RES/61/89, the Secretary General, on January 16, 2007, invited member states to submit their views and also urged them to consider including information on: “(a) “elements of the conventional arms trade that should be included in the scope of the future arms trade treaty; (b) principles, guidelines and parameters that should govern the international transfer of conventional arms; and (c) any other features that might contribute to the development and adoption of an effective arms trade treaty.”¹³

Pursuant to the General Assembly resolution, 94 states submitted their response, which is presented in the August 2007 report of the Secretary General to the 62nd session of the General Assembly. The number subsequently increased to 101 member states and two regional organizations, namely the Caribbean community (CARICOM) and the EU. Most states in their submissions were in favour of negotiating an ATT and supported the inclusion or adoption of an existing list such as the UN Register of Conventional Arms in the list of categories to be covered by an ATT.¹⁴ The submissions strongly argued in favour of concluding a legally binding instrument with “common international standards for the import, export and transfer of conventional arms.”¹⁵

¹⁰ See http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/89&Lang=E, accessed on 17 June 2012.

¹¹ Ibid.

¹² Ibid.

¹³ See [http://www.un.org/ga/search/view_doc.asp?symbol=A/62/278\(Part%20I\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/62/278(Part%20I)), accessed on 3 June 2012.

¹⁴ See <http://unidir.org/pdf/activites/pdf2-act349.pdf>, accessed on 16 June 2012.

¹⁵ See <http://unidir.org/pdf/activites/pdf2-act349.pdf>, accessed on 13 June 2012.

Group of Governmental Experts

The Group of Governmental Experts (GGE) was established pursuant to the request made to the Secretary General in Resolution 61/89, “to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms.”¹⁶ The GGE included experts from the following 28 countries: Algeria, Argentina, Australia, Brazil, China, Columbia, Costa Rica, Cuba, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Kenya, Mexico, Nigeria, Pakistan, Romania, the Russian Federation, South Africa, Spain, Switzerland, Ukraine, the United Kingdom and the United States of America. The group was chaired by Ambassador Roberto Garcia Moritan of Argentina and met at the UN headquarters in three sessions in 2008, from February 11-15, May 12-16 and July 28 to August 8, and adopted the final report by consensus.¹⁷ The Group concluded that due to the complexity of the issue of arms transfers, further deliberations on the basis of consensus within the United Nations were necessary, in order to find a balance that will provide benefit to all.¹⁸ The Group also required states to ensure that their national systems and controls adhered to the highest possible standards.¹⁹

Open Ended Working Group

Following upon the work of the Group of Governmental Experts, in October 2008, the UK, Australia, Argentina, Costa Rica, Finland, Kenya and Japan tabled a new draft text in the UN General Assembly’s First Committee calling for further work on the ATT and a decision to establish an Open Ended Working Group (OEWG). On October 31, 2008, in the vote at the UNGA First Committee on the draft resolution, 147 countries voted in favour, 18 abstained and two countries, the United States and Zimbabwe, voted against. In December 2008, the draft was adopted as Resolution A/RES/63/240, in the UN General Assembly, 133 voting in favor of the resolution, 19 abstaining and only the United States voting against.

Through Resolution A/RES/63/240, entitled “Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms”, the General Assembly, in order to facilitate further consideration and consensus on the implementation of the recommendations contained in the Report of the Secretary-General established an open-ended working group. The group was designed to meet for six one week sessions starting in 2009.²⁰

¹⁶ See http://www.un.org/ga/search/view_doc.asp?symbol=A/63/334&Lang=E, accessed on 10 June 2012.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ See <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Disarm%20ARES63240.pdf>, accessed on 11 June 2012.

An organizational session of the Open Ended Working Group was held on 23 January 2009 and two substantive sessions were held from 2 to 6 March and 13 to 17 July 2009 and the report was submitted to the General Assembly at its 64th session (2 December 2009).²¹ Compared to the Group of Governmental Experts, the OEWG broadened participation in the ATT process, by making its proceedings public and including all UN member states, inter-governmental organizations, observer states and a few civil society organizations.

The Open Ended Working Group offered states the opportunity to put forward their views concerning the goals, objectives, scope, principles and draft parameters and other aspects to be addressed by a potential arms trade treaty. The Group reached consensus on the need to address the problems relating to the unregulated flow of arms to illicit markets as it risks fuelling “instability, international terrorism and transnational organized crime” and acknowledged the responsibilities of both exporters and importers to address the problems related to the trade in illicit arms.²² However, despite consensus being reached that the unregulated trade in conventional arms is a common problem for the international community, states remained divided over several key issues relating to goals and objectives, scope and draft parameters of a potential ATT. On submission of its report to the General Assembly, it was decided to convene a United Nations Conference to frame an Arms Trade Treaty in 2012.

The Preparatory Commissions

First Session

The first session of the Preparatory Committee convened at the UN headquarters in New York City from July 12-23, 2010 and it combined two of the four sessions requested in the General Assembly Resolution 64/48 into a single two-week session.²³ At its First session, the Committee held 11 plenary meetings during which many countries that were initially reluctant in formulating the treaty and had abstained in the 2009 First Committee vote that established the ATT process – India, China, Iran, Russia and Egypt (on behalf of the Arab Group) – actively contributed to the discussions and made statements. During the first session, the Committee adopted a draft discussion on the modalities of attendance of NGOs at its sessions.²⁴ The meeting’s Chair, Roberto Garcia Moritan of Argentina, presented

²¹ See http://www.un.org/ga/search/view_doc.asp?symbol=A/AC.277/2009/1&Lang=E, accessed on 16 June 2012.

²² Ibid.

²³ See http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/1&Lang=E, accessed on 14 June 2012.

²⁴ See http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/PC/L.2&Lang=E, accessed on 10 June 2012.

a draft paper, outlining the elements, principles and goals and objectives that could be included in a future treaty.²⁵ The weapons categories to be included in the Treaty and questions related to defining these categories (whether specifically or in a broad manner) remained some of the key unresolved issues at the meeting.

Second Session

The second session of the Preparatory Committee was held at UN headquarters from February 28 to March 4, 2011, comprising four sessions and focusing on scope (which weapons need to be included in the treaty), criteria (which transfers should be allowed) and on international cooperation. Prior to the PrepCom, Chairman Roberto Garcia Moritan circulated a non-paper on “scope”, “criteria and parameters” and “international cooperation and assistance” among the delegates, which served to facilitate discussions for the first three days of the meeting.²⁶ The fourth day of the meeting saw a new version of the Chair’s non-paper on criteria and parameters.²⁷

Discussions on the scope of the Treaty related to whether to restrict it to the seven categories of arms included in the Register of Conventional Arms or to expand it to include small arms, light weapons, ammunition, parts, components, technology and equipment. Discussions centred on whether the treaty should be composed of a positive list (listing only those weapons that should be covered) or a negative list of arms. The activities to be included under the rubric of “transfer” of arms – export, import, transit/ trans-shipment, financing, transporting and brokering – was also a topic of debate, with some countries insisting that it include all kinds of arms transactions (Norway, Sweden, Denmark) while others insisted that activities to be included should be precisely defined (China). Discussion on the criteria/parameters (i.e. the basis on which a state can deny the request of arms from another state) also made evident the divergence of views among states. While it was broadly agreed that arms transfers must not undermine the peace and security of a country, Cuba, China, Russia, Egypt and Pakistan sought deletion of criteria relating to international human rights and humanitarian law, development and corruption and organized crime on the basis that such criteria is highly subjective and politicized.

Third Session

The third session of the Preparatory Committee was held from July 11-15, 2011. The session comprised, in all, 10 plenary meetings with statements made by 82 states and four observers.

²⁵ Refer to <http://www.adh-geneva.ch/RULAC/pdf/ChairmanDraft22.07.2010.pdf>, accessed on 18 June 2012.

²⁶ Draft Proposal available at <http://www.adh-geneve.ch/RULAC/pdf/Chair-Draft-Proposal.pdf>, accessed on 21 June 2012.

²⁷ Ibid.

The session focused on the elements of the ATT, implementation of the Treaty and the final provisions. The Chair, under his own responsibility in order to assist in the Committee's work, provided non-papers to inform the discussions.²⁸ At the Committee meetings, divergent views were expressed by member states. Based on the Chair's report, Jamaica, Fiji, Canada, Italy, India, Australia, France, Sweden Costa Rica, Kuwait, Barbados (on behalf of Caricom), European Union, Nigeria (on behalf of the African group), and the US argued that when it comes to implementing the treaty, states have the prerogative to form and enforce their own standards. States also expressed support for setting up of an Implementation Support Unit (ISU) to assist state parties in the implementation of the treaty. The number of ratifications required for the entry into force of the treaty led to a number of views being expressed. While Uruguay, Lichtenstein, Mexico, Trinidad and Tobago and New Zealand stated that 30 ratifications were adequate for entry into force of the treaty, countries like Russia, Australia, United States, Cuba and Indonesia stated that as many ratifications as possible should be garnered.

The Chair, under his own responsibility, produced another non-paper dated July 14, 2011, intended to serve as one of the background documents for the Conference.²⁹ The non-paper was not intended to reflect all the views of the participants and was produced without prejudice to the views and positions of Member states and their right to put forward proposals on the treaty in the Conference.³⁰ Listed below are the main points as enumerated by the Chair:³¹

- 1) Preamble and Principle were separated into two different sections.
- 2) No change in the scope.
- 3) Significant changes made in the implementation section, in which international cooperation and assistance were incorporated.
- 4) In Final provisions, "Relations with states not party to this treaty" and "Relationship with other instruments" were introduced to emphasize the consultation mechanisms.

Fourth Session

The fourth session of the PrepCom was held at the United Nations headquarters in New

²⁸ See http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/1&Lang=E, accessed on 18 June 2012.

²⁹ See http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/1&Lang=E, accessed on 18 June 2012.

³⁰ Ibid.

³¹ See <http://www.iansa.org/system/files/ATTPrepCom-MorningPlenary140711.pdf>, accessed on 23 June 2012.

York from February 13 to 17, 2012, to discuss relevant issues pertaining to procedural matters and to conclude the substantive work still persisting after the three sessions.

For most part of this session, the Preparatory Committee considered agenda item 3, entitled “Adoption of Recommendations on all Relevant Procedural Matters, Including the Composition of the Bureau, the Draft Agenda and the Submission of Documents, for the United Nations Conference on the Arms Trade Treaty.”³² The main points of contention between delegations at this meeting related to the elements of the draft Rules of Procedure that required either consensus or voting and the extent of NGO participation in the Diplomatic Conference. Russia, India, Tunisia, North Korea, Iran, Qatar, Belarus, Syria, Israel and Nicaragua insisted that all decisions should be adopted by consensus and not by vote. Other countries like Sweden, New Zealand, Indonesia, Belize, Finland, Kenya, Republic of Cote d’Ivoire and Belgium specified that the basis of consensus does not pertain to every issue, but only to the final document of the treaty.

With regard to NGO participation, the majority of states – Switzerland, United Kingdom, Republic of Korea, New Zealand, Spain, Cuba, Japan, Turkey, Chile, Belgium, Australia, Mexico, Norway and Brazil – agreed that NGOs should be granted more access and the opportunity to speak more than once at the ATT Diplomatic Conference. However, others like Pakistan recommended limiting NGO participation, while Morocco wanted NGO statements restricted to specified times and sub-organizations.

At the 6th meeting, on February 15, 2012, the Chair introduced the draft report of the Preparatory Committee,³³ followed by a revised draft on February 17.³⁴ The final open plenary session of the 4th PrepCom adopted the Provisional Rules of Procedure and the Draft Report of the Preparatory Committee.³⁵ Issues relating to whether the Chair’s non-paper would form the background paper of a draft text in the July 2012 negotiations, interpretation of the term “consensus” and NGO participation were resolved. On the issue of “consensus”, it was decided that “the Conference shall take its decisions and consider the text of the treaty, by consensus, in accordance with General Assembly Resolution 64/48 and “if the question arises as to whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question”.³⁶ Regarding NGO participation,

³² See http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/1&Lang=E, accessed on 16 June 2012.

³³ See <http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/prepcom4/documents/CRP1.pdf>, accessed on 1 June 2012.

³⁴ See <http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/prepcom4/documents/CRP1Rev1.pdf>, accessed on 20 June 2012.

³⁵ See http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/L.1&Lang=E, accessed on 19 June 2012.

³⁶ Ibid.

their representatives would be allowed “to address the Conference during one meeting specifically allocated for this purpose” with provision for additional time during a subsequent meeting.³⁷ Regarding the Chair’s non-paper, it was decided to include it as a “Background paper” to the July Conference.

Main Actors Involved

A few actors whose positions are crucial to reaching a strong and effective arms trade treaty are the United States, Russia and regional organizations such as the EU, African Union, CARICOM and NAM as also civil society organizations such as Reaching Critical Will, Oxfam International, Amnesty International, and International Action Network against Small Arms.

United States

The US was initially opposed to framing an ATT, and it was only in 2009 that Secretary of State Hillary Clinton announced US support under the rule of consensus decision-making. The US is opposed to provisions which are seen as intruding upon its ability to import, export or transfer arms since it considers the decision to transfer arms an exercise in national sovereignty. It looks upon the arms treaty to be a regulating instrument, not intended for disarmament. It also does not support the inclusion of small arms and light ammunition in the scope and supports negotiating the treaty within the United Nations.³⁸

Russia

It supports an ATT that unites state parties in order to solve problems related to the uncontrolled proliferation and diversion of conventional arms to illicit markets.³⁹ It also advocates establishing, and where necessary strengthening, national legal systems to prevent illicit transfer of arms.

European Union

The EU has supported the ATT process since its inception, with all the member states voting in favour of successive resolutions leading towards an ATT. It is of the view that a legally binding ATT should regulate the trade in conventional weapons as also establish common international standards for the import, export and transfer of conventional arms.⁴⁰ The EU thus seeks to achieve an ATT that enjoys widespread state support.

³⁷ Ibid.

³⁸ See <http://www.state.gov/documents/organization/148527.pdf>, accessed on 9 June 2012.

³⁹ See <http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom3/2011-July-12/2011-07-12-Russia-E.pdf>, accessed on 9 June 2012.

⁴⁰ See http://www.consilium.europa.eu/uedocs/cmsUpload/016_09_EN_low.pdf, accessed on 15 June 2012.

African Group

It seeks the adoption of a treaty that is universally applicable, balanced and provides for technology transfer. It also stresses that adequate provision for assistance and cooperation in carrying out the provisions of the treaty needs to be ensured.⁴¹

CARICOM

Its position is that the aim of the treaty must be to prevent diversion of conventional weapons, including small arms, light weapons and their ammunition to illicit markets and non-state groups. It also views the ATT as buttressing existing regional and sub-regional initiatives as well as multilateral instruments to prevent the proliferation of arms.⁴²

NAM

NAM maintains that the ATT must respect the principles of non-intervention in the internal affairs of states and the peaceful resolution of international disputes. It has also emphasized the need to limit the transfer and sale of small arms and light weapons to state bodies or to entities authorized by the government.

Conclusion

While the Arms Trade Treaty initiative remains the most important initiative relating to conventional arms regulation within the United Nations, the lack of consensus on issues of scope, parameters and criteria and implementation and international assistance makes it likely that we could end up with a weak treaty. However, if provisions for subsequent revisions are made in the treaty, it could provide the scope for incremental improvements and realization of a treaty that sufficiently addresses the risks arising from illicit arms transfers.

⁴¹ See http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom4/13-February-2012/20120213_African%20Group_E.pdf, accessed on 10 June 2012.

⁴² See http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom4/15-February-2012/20120215_CARICOM_E.pdf, accessed on 11 June 2012.