

## THE ARMS TRADE TREATY

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### 1. The Historical Context

The Arms Trade Treaty is the first legally-binding instrument ever negotiated in the United Nations to establish common standards for the international transfer of conventional weapons. The development of common international standards for the trade of conventional arms has been a long time in the making, with origins in the League of Nations draft convention on the arms trade which was never adopted.<sup>1</sup> However, while international law during the Cold War developed prohibitions on the transfer of chemical, biological and nuclear weapons, no such progress was to be found with respect to conventional arms.

After the Cold War, the devastating impact of widespread armed violence, particularly in situations of poverty and extreme inequality, came to the fore of the international community's attention. In the early to mid-1990s, to help counter the proliferation of conventional arms, several sets of guidelines or principles on arms transfers emerged among groups of countries, which included some of the largest arms exporters. The Permanent Five (P5) members of the United Nations Security Council and Germany were the top six leading suppliers of major conventional weapons during 1993-1997.<sup>2</sup>

The risk of human rights violations in a recipient country was one of the reasons for many supplier countries to follow a restrictive arms transfer policy.<sup>3</sup> Recognising that arms proliferation was a global problem, the United States called on the P5 countries to meet at senior levels to discuss the establishment of guidelines for transfers of conventional arms. Despite the P5's commitment in 1991 to elaborate a set of "Guidelines for Conventional Arms Transfers" which included a set of arms transfer criteria, serious disagreements meant that the P5 process ended by 1992.

Meanwhile, in 1991, the United Nations Register of Conventional Arms was established as the key international mechanism to promote predictability and transparency in the conventional arms trade. An International Code of Conduct on Arms Transfers developed by a group of Nobel Peace Prize laureates, led by Dr. Oscar Arias, the former President of Costa Rica, was launched in 1997. With Western Europe as the second largest arms exporting region,<sup>4</sup> by 1998, the European Union became the first group of States to accept a regional Code of Conduct on Arms Exports.

Illicit trafficking was particularly an issue in Africa, Latin America, the Pacific and South-East Asia. In 1999, a study carried out by the International Committee of the Red Cross (ICRC) demonstrated that the unregulated availability of weapons was a major contributing factor to civilian suffering during and after armed conflicts and increased civilian casualties.<sup>5</sup> As long as weapons were too easily available, violations of

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<sup>1</sup> *SIPRI Yearbook 2007, Armaments, Disarmaments and International Security*, Towards an arms trade treaty?, appendix 10C.

<sup>2</sup> *SIPRI Yearbook 1998, Armaments, Disarmaments and International Security*, Part II: Military Spending and Armaments, 1997, chapter 8: Transfers of major conventional weapons, table 8.1.

<sup>3</sup> *SIPRI Yearbook 1998, Armaments, Disarmaments and International Security*, Part II: Military Spending and Armaments, 1997, chapter 8: Transfers of major conventional weapons, p. 2.

<sup>4</sup> *World Military Expenditures and Arms Transfers (WMEAT)*, 1996, U.S. Arms Control and Disarmament Agency, p. 21.

<sup>5</sup> *Arms Availability and the Situation of Civilians in Armed Conflict*, International Committee of the Red Cross, Geneva, June 1999.

international humanitarian law and human rights law would more likely occur and the provision of humanitarian and development assistance would be hampered. A 2003 report by the Small Arms Survey attributed death, injury, violations of human rights, international humanitarian law, forced displacement and economic collapse, in Fiji, the Solomon Islands and Papua New Guinea, to the ready availability of conventional weapons.<sup>6</sup>

Progress in the United Nations was first realised in the area of small arms and light weapons, which were seen as the preferred weapon in modern-day internal armed conflicts and armed violence. A consensus decision to address small arms and light weapons was achieved at the United Nations Conference on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects, which took place from 9 to 20 July 2001. The 2001 Conference resulted in the non-binding United Nations Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons, in All Its Aspects.

By 2006, international attention shifted back to concerns over conventional weapons as a whole. The fact that the international trade in bananas was more tightly regulated under international law than conventional arms was beginning to resonate strongly with many States.

Following a civil society campaign supported by the group of Nobel Peace Prize Laureates, seven Governments (Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the United Kingdom of Great Britain and Northern Ireland – known as the “co-authors”) sponsored the first United Nations General Assembly resolution on an arms trade treaty in 2006.<sup>7</sup> The resolution recognised that the absence of common international standards on the import, export and transfer of conventional arms was a contributory factor to conflict, the displacement of people, crime and terrorism as well as undermining peace, reconciliation, safety, security, stability and sustainable development.

The road from 2006 to the adoption of the Arms Trade Treaty (ATT) on 2 April 2013 was not straightforward. States approached the negotiations from a wide range of perspectives. Exporting States saw the ATT as a framework to allow their defence industries to participate more transparently in the legitimate international arms trade and level the playing field with an agreed set of standards. Along with transit and trans-shipment States, they wanted to ensure that any new regulatory burdens were not excessive. Importing States wanted an ATT that brought greater clarity to their ability to choose a defence mix in pursuit of their legitimate right to self-defence.

There were also States affected by armed violence and instability which were exacerbated as a result of illicit arms transfers. These States saw practical benefit to their national security and the security of their communities through a strong and well implemented ATT. There were other States which had long supported the achievement of strong universal humanitarian outcomes from the ATT. Regional organisations were also key stakeholders given existing instruments related to transfer controls and arms transfers at regional levels.

Political will to reach a consensus on the Arms Trade Treaty was never a foregone conclusion. The United Nations had not seen success in negotiating a multilateral arms control agreement since the 1990s.<sup>8</sup> The adoption of the ATT by an overwhelming majority of States in the General Assembly was, therefore, a historic achievement for the United Nations and multilateralism.

## 2. The Negotiating History

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<sup>6</sup> Philip Alpers and Conor Twyford, “*Small Arms in the Pacific*”, Occasional Paper No. 8, Small Arms Survey, Geneva, 2003.

<sup>7</sup> General Assembly resolution 61/89 of 6 December 2006, adopted by 153 votes, 1 against and 24 abstentions (Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms).

<sup>8</sup> The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their destruction and the Convention on Cluster Munitions were each negotiated outside the United Nations system.

The ATT negotiating process started with the General Assembly's request for the Secretary-General to seek views from Member States on the feasibility, scope and draft parameters of an arms trade treaty. This yielded replies from around 100 States in 2007, signalling the interest and importance of this first step towards a treaty.

A Group of Governmental Experts (GGE) was also established to examine the feasibility, scope and draft parameters of a legally binding instrument. The GGE met for three sessions in 2008 under the chairmanship of Ambassador Roberto García Moritán of Argentina. Based on the recommendation of the GGE, the United Nations General Assembly decided to establish an Open-Ended Working Group (OEWG) to further consider the matter. The OEWG met twice in 2009, again with Ambassador Moritán as Chair, producing a procedural report with no recommendations.

The General Assembly, in its resolution 64/48 of 2 December 2009, 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.<sup>9</sup> In particular, it was decided that the Diplomatic Conference would be undertaken in an open and transparent manner, on the basis of consensus, to achieve a strong and robust treaty.<sup>10</sup> Three substantive Preparatory Committee sessions were held in 2010 and 2011.<sup>11</sup> A final fourth session, held from 13 to 17 February 2012, focussed largely on procedural matters.

The Diplomatic Conference was held in New York from 2 to 27 July 2012 under the Presidency of Ambassador Moritán. The Conference, however, was delayed by almost two days due to questions concerning the status and participatory rights of the Holy See and Palestine. A compromise was reached which allowed the Conference to open on 3 July. On 9 July, a provisional programme of work was approved which established two main committees, working in parallel until 20 July, to conduct negotiations on the elements of the ATT. On 26 July 2012, the President's comprehensive draft treaty text<sup>12</sup> was presented but did not find consensus. Divergent views over key areas of the text remained until the last hours of the Conference. In the end, some delegations argued for more time to examine the draft text.

In its resolution 67/234A of 24 December 2012, the United Nations General Assembly decided to convene the Final United Nations Conference on the Arms Trade Treaty from 18 to 28 March 2013, with the 26 July 2012 draft treaty text being the basis for future work. The General Assembly also decided that the Final Conference would be governed by the July 2012 Conference's rules of procedure, in an open and transparent manner, utilising the modalities of the July 2012 Conference, applied *mutatis mutandis*. Ambassador Peter Woolcott of Australia was nominated President-designate of the Final Conference.

Delegates and civil society were well prepared leading into the 2013 Final Conference. The 26 July 2012 text was known intimately and its impact on particular national interests was well understood. With only nine working days allocated for the Final Conference, it was critical for the Conference to get to work without delay.

When the Final Conference opened on 18 March, the issue of the status of the Holy See and Palestinian delegations had been quietly settled. A novel arrangement had been agreed by which the Holy See and the State of Palestine would be seated alphabetically among United Nations Member States with speaking rights during the Conference, but short of an "all States" arrangement. Both the Holy See and the State of Palestine noted that this compromise was reached because they did not want to block negotiations towards a strong and effective ATT, but said this arrangement would not be a precedent for future United

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<sup>9</sup> The resolution was adopted by 151 votes, 1 against and 20 abstentions.

<sup>10</sup> General Assembly resolution 64/48, paragraph 5.

<sup>11</sup> The Preparatory Committee meetings, chaired by Ambassador Moritán, were held on 12-23 July 2010, 27 February-3 March 2011 and 11-15 July 2011.

<sup>12</sup> A/CONF/217/CRP.1.

Nations meetings. This result demonstrated that New York delegations recognised that the negotiations needed to get to work quickly. This was a key factor in helping preserve the confidence of delegations in the negotiations – a reminder of the value in multilateral negotiations of having settled procedure.

After the build-up and disappointment of the July 2012 Conference, there was considerable political will to collectively reach an outcome at the Final Conference. During the Final Conference, delegates were provided with three draft texts of the President which were progressively stronger than the last, with the goal of broadening the supportive constituency and bringing all delegations along. Facilitators were also appointed by the President to conduct informal discussions on key aspects of the text, which was a useful process in confirming where a likely consensus would be.<sup>13</sup> Some of these discussions led to a significant reshaping of elements of the 26 July 2012 text as well as adding important new elements. However, some discussions indicated that there could be little further development of a particular issue.

As a result, the treaty text was balanced and as strong as it could be while still holding together the disparate interests demonstrated at the Conference. No delegation left the Final Conference getting everything they wanted, but no one walked away empty-handed. While there was initially a considerable divergence of views, delegations ultimately demonstrated a preparedness to take ownership of the process and compromise in order to achieve an effective and balanced treaty. Delegations understood that balance was vital to ensuring the legitimacy of the final treaty text.

Throughout the negotiating process, a consensus outcome remained the goal. While this was not ultimately achieved, the Final Conference showed what was possible when delegations engaged in a consensus-governed process and were determined to strive for a negotiated consensus outcome. On the final evening of 28 March 2013, the President ruled that due to the objections of the delegations of Iran (Islamic Republic of), Democratic People's Republic of Korea and the Syrian Arab Republic, there was not a consensus in the Final Conference for the adoption of the draft treaty text.

Although the Conference did not adopt the treaty, the negotiating process produced a robust text with almost universal acceptance. It was the willingness of States to stay the course with the United Nations system that helped guarantee the broadest possible constituency of States for the ATT, adding to its legitimacy and potential for effective action into the future.

General Assembly resolution 67/234A, which had convened the Final Conference, had a built-in redundancy, an off-ramp. The President was required by the resolution to report to the General Assembly on the outcome as soon as possible after the Final Conference concluded. This allowed delegations legitimately to take the text to the General Assembly for adoption. This proved to be the measure of last resort. On 2 April 2013, Ambassador Woolcott's final text of the ATT was adopted by General Assembly resolution 67/234B.<sup>14</sup>

### **3. The Treaty's Key Provisions**

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<sup>13</sup>Ambassador Mari Amano (Japan) – Brokering; Ambassador Paul Beijer (Sweden) – Scope; Mr. Robert Dondisch (Mexico) – Diversion; Mr. Bouchaib Eloumni (Morocco) – Preamble, principles, object and purpose; Ambassador Dell Higgie (New Zealand) – General implementation and relationship with international organisations; Ambassador Paul van den Ijssel (Netherlands) – Record-keeping and reporting; Ambassador Federico Perazza (Uruguay) – Final provisions; Mr. Zahid Rastam (Malaysia) – Transit or trans-shipment; Ms. Shorna Kay Richards and Ms. Michelle Walker (Jamaica) – Prohibitions; Mr. Rob Wensley (South Africa) – International cooperation and international assistance; and Ambassador Ritta Resch (Finland) – Other considerations.

<sup>14</sup> The resolution was adopted by 154 votes, 3 against and 23 abstentions.

The ATT will prove its impact and effectiveness in how it requires States to display responsibility and transparency in arms transfers with greater respect for international law. Under article 5 on the general implementation of the Treaty, States parties are encouraged to apply the provisions of the Treaty to the broadest range of conventional arms.

The minimum scope of arms covered by the Treaty begins with article 2, paragraph 1, which sets out the categories of conventional arms to which the Treaty shall apply, being the seven categories covered by the United Nations Register of Conventional Arms<sup>15</sup> and an eighth category on small arms and light weapons.

Article 3 of the Treaty requires States parties to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under article 2, paragraph 1, and to apply articles 6 and 7 prior to authorising their export. Similarly, article 4 requires States parties to regulate the export of parts and components where the export is in a form that provides the capability to assemble conventional arms covered under article 2, paragraph 1, and to apply articles 6 and 7 prior to authorising their export.

Article 6 addresses explicitly prohibitions against arms transfers that would be contrary to international legal obligations, or where the State knows the arms would be used in the commission of genocide, crimes against humanity and certain war crimes. This provision sets a clear benchmark to allow States parties to effectively and consistently implement these prohibitions.

However, it was recognised that a potential export could still cause serious humanitarian consequences, even if it was not prohibited at the outset under article 6. Therefore, article 7 of the Treaty sets the standard upon which a State is obliged to refuse the export of arms based on a risk assessment. This export risk assessment requires a State to undertake a complex balancing of a range of considerations that, when applied, will ensure better regulation of the weapons industry. This risk assessment framework recognises that the impact on civilians needs to be an essential consideration of how the weapons industry conducts its business.

Under article 7, export authorities will need to consider the potential that the arms or items:

- would contribute to, or undermine, peace and security; and
- could be used to
  - commit or facilitate a serious violation of international humanitarian law or international human rights law;
  - commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism or transnational organised crime, to which the exporting State is a party,
- and taking into account the risk of the arms being used to commit serious acts of gender-based violence or violence against women and children.

Article 7, paragraph 3, requires that if, after conducting this risk assessment and considering available mitigation measures, the exporting State party determines that there is an overriding risk of any of the negative consequences in article 7, paragraph 1, the export shall not be authorised. The concept of “overriding risk” was introduced in the 26 July 2012 text and remained in the final Treaty text.

What will also be critical for the success of the ATT is the implementation of article 11 to prevent the diversion of transferred arms covered under article 2, paragraph 1. The prevention of diversion of conventional arms is one of the stated objectives of the Treaty outlined in article 1. Efforts to mitigate the risk and consequences of diversion will make

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<sup>15</sup> That is, battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers.

the most difference to the security, stability and development of communities which are vulnerable to and seriously impacted by arms diverted for illicit use. Article 11 requires exporting States to assess the risk of transferred arms being diverted and consider mitigation measures. Cooperation and information exchange between exporting, transit, trans-shipment, and importing States must be promoted in order to mitigate the risk of diversion. Measures to address a diversion of transferred arms when it is detected, including by alerting potentially affected States parties, also need to be encouraged.

Under articles 12 and 13, States parties are required to maintain national records of exports of conventional arms and to submit reports on implementation of the ATT. The ATT's reporting requirements and regular dialogue among States parties during Conferences of States Parties are additional mechanisms to achieve the ATT's stated purpose to promote cooperation, transparency and responsible action in the international trade in conventional arms, thereby building confidence among States parties.

Under article 20, an amendment to the Treaty cannot be proposed until six years after its entry into force. This will allow time for the Treaty to be implemented by States parties, lessons learned to be considered and gaps in implementation to be identified. Thereafter, amendments can only be considered by a Conference of States Parties every three years. Every effort will be made to achieve a consensus decision on each amendment. However, if all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority at the Conference. As the Treaty's implementation unfolds and States parties are increasingly confident in the system, there is potential for States parties to further develop and improve the Treaty over time by way of amendment.

#### **4. The Influence of the Treaty**

The Arms Trade Treaty matters to a broad cross-section of countries. The successful conclusion of the negotiating process on 2 April 2013 was just the first step. The humanitarian and security potential of this Treaty will only be realised when countries at all points in the supply-chain, both major arms producing States and developing countries alike, join and implement the Treaty.

The Treaty's impact will be measured by how it is implemented on the ground. The political will of States to ensure the Treaty's robust implementation will need to be maintained. Many States will need to allocate resources to strengthen their own national systems for controlling imports and exports and to meet reporting requirements set out in the ATT. For many States, they will not be able to do this alone. For those States in a position to do so, their willingness to support and assist other States which may require legislative, technical or financial assistance or institutional capacity-building in order to implement the ATT will also be crucial. In the future, States' progress in meeting ATT obligations will need to be monitored.

The ATT is already prompting States to take stock of their existing transfer controls – be they exporting, importing, or transit States – and to identify weaknesses and gaps.<sup>16</sup> When the Treaty enters into force and as the regular Conference of States Parties take hold, it will underscore that the discussions and scrutiny of the arms trade have firmly found a place on the multilateral agenda.

#### **Related Materials**

##### ***A. Documents***

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<sup>16</sup> Sarah Parker, "Breaking New Ground? The Arms Trade Treaty" in *Small Arms Survey 2014: Women and Guns*, Cambridge University Press, Cambridge, 2014, p. 99.

Guidelines for Conventional Arms Transfers, Letter dated 22 November 1991 from the leader of the delegation of the United Kingdom of Great Britain and Northern Ireland addressed to the President of the Conference on Disarmament transmitting the official text of the *Communiqué* issued following the meeting held in London on 17 and 18 October 1991 between representatives of the five States permanent members of the United Nations Security Council concerning arms transfers and non-proliferation ([CD/1113](#), 26 November 1991), annex.

[United Nations Register of Conventional Arms](#), General Assembly resolution 46/36L of 9 December 1991, annex.

International Code of Conduct on Arms Transfers, New York, May 1997.

European Union Code of Conduct on Arms Exports, Brussels, 5 June 1998.

United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Report of the United Nations Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001 ([A/CONF.192/15](#)), chapter IV.

[General Assembly resolution 61/89 of 6 December 2006](#) (Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms).

Report of the Group of Governmental Experts 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, 26 August 2008 ([A/63/334](#)).

Report of the Open-ended Working Group towards an Arms Trade Treaty: establishing common international standards for the import, export and transfer of conventional arms, 20 July 2009 ([A/AC.277/2009/1](#)).

[General Assembly resolution 64/48 of 2 December 2009](#) (The arms trade treaty).

Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty, 7 March 2012 ([A/CONF.217/1](#)).

Draft treaty text submitted by the President of the Conference on the Arms Trade Treaty on 26 July 2012 ([A/CONF.217/CRP.1](#)).

[General Assembly resolution 67/234A on 24 December 2012](#) (The arms trade treaty).

Report of the Final United Nations Conference on the Arms Trade Treaty, 2 April 2013 ([A/CONF.217/2013/2](#)).

[General Assembly resolution 67/234B on 2 April 2013](#) (The arms trade treaty).

## ***B. Doctrine***

International Committee of the Red Cross, [Arms availability and the situation of civilians in armed conflict: a study presented by the ICRC](#), Geneva, June 1999.

Small Arms Survey, P. Alpers and C. Twyford, [Small Arms in the Pacific, Occasional Paper No. 8](#), Geneva, 2003.

Small Arms Survey, S. Parker, "[Breaking New Ground? The Arms Trade Treaty](#)" in *Small Arms Survey 2014: Women and Guns*, Cambridge University Press, Cambridge, 2014.

Stockholm International Peace Research Institute, *SIPRI Yearbook 1998, Armaments, Disarmaments and International Security*, Part II: Military Spending and Armaments, 1997, chapter 8: Transfers of major conventional weapons, Oxford University Press, Oxford, 1998.

Stockholm International Peace Research Institute, *SIPRI Yearbook 2007, Armaments, Disarmaments and International Security*, Towards an arms trade treaty?, appendix 10C, Oxford University Press, Oxford, 2007.

U.S. Arms Control and Disarmament Agency, [World Military Expenditures and Arms Transfers \(WMEAT\)](#), 1996.