

## **Towards an Arms Trade Treaty: Continuing momentum at the UN**

by **Holger Anders** and **Virginie Moreau**, Researchers at GRIP

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### **Abstract**

#### **Towards an Arms Trade Treaty: continuing momentum at the UN**

In October 2008, states voted overwhelmingly to continue work towards an Arms Trade Treaty at the United Nations. The UN General Assembly mandated the establishment of an Open-Ended Working Group to further consider the feasibility of a comprehensive, legally binding instrument on the import, export, and transfer of conventional arms. There is still no consensus amongst states on a start of negotiations of such an instrument. Nevertheless, the working group can make an important contribution to further building the foundations for a future development of a global treaty to better control the conventional arms trade.

## 1. Introduction

States voted overwhelmingly to continue work towards an Arms Trade Treaty at the United Nations First Committee on 31<sup>st</sup> October 2008. 147 states voted in favour of a resolution that mandates the establishment of an Open-Ended Working Group to further consider the feasibility of an Arms Trade Treaty. Only two states voted against the resolution, the USA and Zimbabwe.<sup>1</sup> The creation of the working group is the latest step in the continuing efforts to arrive at a comprehensive, legally binding UN instrument on the import, export, and transfer of conventional arms. The following section provides background information on the arms trade treaty and existing international standards on conventional arms control. The briefing then reviews recent developments on an arms trade treaty at the UN and consider the role of the European Union in the UN process on an ATT. It is argued that establishment of the working group is encouraging. Nevertheless, important work still remains to be done.

## 2. Background

Today's arms trade takes place in a global environment that involves the transfer of arms, weapons systems, and their components from and to all parts of the world. France, Russia, the USA, Germany, and the UK continue to be the major arms exporters. China, for which there exists insufficient data, is assumed to also be an important arms exporter. At the same time, major arms producing companies in the industrialised world often assemble weapons with components that come from different countries. Many companies operate offshore production facilities and foreign subsidiaries that, in the words of arms control campaigners, are "sometimes in countries which have few controls over where the weapons go, or to what ends they are used".<sup>2</sup> Importantly, traditional arms exporters are joined by an increasing number of exporters from states that include Israel, India, South Korea, Brazil, Singapore, and South Africa.<sup>3</sup>

The global nature of the arms trade poses significant control challenges. The challenges are aggravated by irresponsible arms transfer decisions by governments and weak controls on arms exports, transfers, and imports. The situation contributes to the excessive and destabilising accumulations of arms in fragile regions of the world as well the diversion of arms into the illicit sphere. Unlicensed production of arms, unlawful re-exports, and illegal brokering facilitate violations of UN arms embargoes and the use of arms in violations of human rights and international humanitarian law. More than 1000 people are estimated killed each day as a direct consequence of the use of arms and many more are forced to flee from their homes, raped, tortured, or maimed.<sup>4</sup> Illicit arms are also used in terrorist acts, organised crime, and other criminal activities.

### *The proposed Arms Trade Treaty*

The idea of an arms trade treaty goes back to a group of Nobel Peace Laureates who publicly called for an international instrument to regulate the conventional arms trade in 1997. Non-governmental arms control organisations that include Amnesty International, Oxfam-GB, and the International Action Network on Small Arms launched the Control Arms campaign in support of the idea in 2003.<sup>5</sup> The proposed treaty would be legally binding for all states and cover all conventional arms, including small arms and light weapons, their parts and components and ammunition. The treaty would stipulate that all international transfers (including import, export, transit, transshipment, and brokering) have to be authorised by all states

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1. See Control Arms. 2008. *Landslide UN vote in favour of Arms Trade Treaty*. London: Control Arms, <http://www.controlarms.org/en/media/2008/landslide-un-vote-in-favour-of-arms-trade-treaty>; and UN General Assembly. 2008a. *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms* (UN document A/C.1/63/L.39). New York: UN General Assembly, October, available via <http://www.un.org/Docs/journal/asp/ws.asp?m=A/C.1/63/L.39>
  2. Control Arms. 2006. *Arms without borders*. London: Control Arms, October, p. 2, <http://www.controlarms.org/en/documents%20and%20files/reports/english-reports/arms-without-borders>
  3. *Ibid.*, p. 3.
  4. Control Arms, 2008, *op.cit.*
  5. The website of the campaign is available at [www.controlarms.org](http://www.controlarms.org)

with jurisdiction over any part of the transfer. The treaty would stipulate conditions when states shall not authorise transfers, including binding arms embargoes by the UN Security Council and if the arms or ammunition will be used or are likely to be used for violations of international law. Such violations would include gross violations of international human rights law, serious violations humanitarian law, or acts of genocide or crimes against humanity.

The treaty would also specify factors that states shall take into account when assessing arms transfer applications and that should lead to a license refusal. The factors include whether the arms or ammunition are likely to be used or to facilitate terrorist attacks or organised crime or adversely affect regional stability or sustainable development. Further, states would submit comprehensive national annual reports to an international registry on the transfers they authorised and develop specific mechanisms to control, amongst other things, brokering activities and transfers of arms and ammunition production capacities.<sup>6</sup>

### **Existing standards on conventional arms control**

An arms trade treaty would build on and complement existing global standards on arms controls. The UN Register of Conventional Arms, established in 1991, promotes public reporting by states on their conventional arms transfers. The five permanent members of the UN Security Council adopted Guidelines for Conventional Arms Transfers in 1991 that stipulate standards they agreed to consider when authorising arms transfers<sup>7</sup>. In 1996, the UN Disarmament Commission adopted guidelines for international arms transfers that states are encouraged to respect in their arms transfer decisions<sup>8</sup>. States agreed to common measures to combat illicit small arms in the 2001 UN Firearms Protocol, the 2001 UN Programme of Action to combat illicit small arms and light weapons, and the 2005 international instrument on tracing illicit small arms and light weapons.<sup>9</sup> States also adopted common standards on conventional arms and/or small arms and light weapons in the European Union, the Organisation for Security and Cooperation in Europe, the Wassenaar Arrangement, as well as in African sub-regions.<sup>10</sup>

Nevertheless, there exist no comprehensive and legally binding global standards to regulate the international trade in conventional arms. The guidelines on arms transfers that were adopted in the UN Security Council and by the UN Disarmament Commission are limited in their scope and non-binding on

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6. Control Arms, 2006, p. 32-34. A draft for an ATT that was developed by NGOs is available at <http://www.grip.org/bdg/g4508.htm>

7. UN General Assembly. 1991. *General and complete disarmament* (UN Document A/RES/36 H). New York: UNGA, 6 December, <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/581/24/IMG/NR058124.pdf?OpenElement>

8. UN General Assembly. 1996. *Report of the Disarmament Commission* (UN document A/51/42). New York: UNGA, 22 May.

9. UN General Assembly. 2008b. *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* (UN document A/63/334). New York: UN General Assembly, 26 August, p. 12-13, <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=B223053K28S95.55508&profile=bib&uri=full=3100001~!873726~!4&ri=1&aspect=alpha&menu=search&source=~!horizon#focus> ; **UN Firearms Protocol**: UN General Assembly. 2001a. *UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (UN document no. A/Res/55/2558). New York: UNGA, 8 June; entry into force 3 July 2005, [http://www.unodc.org/pdf/crime/a\\_res\\_55/255e.pdf](http://www.unodc.org/pdf/crime/a_res_55/255e.pdf) ; **UN Programme of Action**: United Nations. 2001. *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (UN document no. A/Conf.192/15). New York: UN, 21 July, <http://disarmament.un.org/cab/poa.html> ; **International Tracing Instrument**: UN General Assembly: *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (annex to UN document no. A/60/88). New York: UNGA, 8 December, [http://www.un.org/events/smallarms2006/pdf/international\\_instrument.pdf](http://www.un.org/events/smallarms2006/pdf/international_instrument.pdf)

10. See for example, Council of the European Union. 1998. *EU Code of Conduct on Arms Exports* (EU Council document no. 8675/2/98). Brussels: Council of the EU, 5 June, <http://consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf> , Organisation for Security and Cooperation in Europe. 2000. *OSCE Document on Small Arms and Light Weapons* (OSCE document no. FSC.DOC/1/00). Vienna: OSCE, 24 November, [http://www.osce.org/documents/fsc/2000/11/1873\\_en.pdf](http://www.osce.org/documents/fsc/2000/11/1873_en.pdf) ; Wassenaar Arrangement. 2007a. *Updated Best Practice Guidelines for Exports of Small Arms and Light Weapons*. Wassenaar: Wassenaar Arrangement, December, [http://www.wassenaar.org/publicdocuments/2007/docs/SALW\\_Guidelines.pdf](http://www.wassenaar.org/publicdocuments/2007/docs/SALW_Guidelines.pdf) ; Wassenaar Arrangement. 2007b. *Guidelines & Procedures, including the Initial Elements* (as amended and updated in December 2007). Vienna: Wassenaar Arrangement, December, [http://www.wassenaar.org/guidelines/docs/Initial\\_Elements.pdf](http://www.wassenaar.org/guidelines/docs/Initial_Elements.pdf) ; Nairobi Best Practices. 2005. *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons*. Nairobi, 21 June, <http://www.recsasec.org/pdf/Best%20Practice%20Guidelines%20Book.pdf> ; and Economic Community of West African States. 2006. *ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*. Abuja: ECOWAS, 14 June. <http://www.oecd.org/dataoecd/56/26/38873866.pdf>

states. Also, many states from especially Europe, Latin America, and sub-Saharan Africa supported the adoption of legally binding export criteria in the framework of the UN Programme of Action on illicit small arms. They failed to overcome the staunch opposition by states that included the USA to the adoption of detailed export criteria for small arms and light weapons. In compromise, the consensus-based UN Programme limits itself to stipulating that states are to “assess applications for export authorizations according to strict national regulations and procedures that [...] are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade.”<sup>11</sup>

### 3. The UN Process on an ATT

The UN General Assembly responded to calls for greater global controls on the arms trade by passing a landmark resolution that established the UN process on an ATT in December 2006. The resolution mandated the UN Secretary General to seek the views of states and establish a group of governmental experts on 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”.<sup>12</sup> The General Assembly passed the resolution by majority voting, thereby overcoming the opposition by the USA that was the only state to vote against the resolution. States that abstained from voting on the arms trade treaty resolution, included China, Egypt, India, Iran, Israel, Pakistan, Russia, Saudi Arabia, Sudan, Syria, Venezuela, Yemen, and Zimbabwe. Most of these states are important suppliers and/or importers of conventional arms and/or small arms and light weapons.<sup>13</sup>

#### *Views of states on the feasibility of an ATT*

Some 100 states had submitted their views on the feasibility of an ATT to the UN Secretary General by August 2007.<sup>14</sup> The analysis of their submissions shows that there is broad support for the establishment of common international standards to regulate the arms trade. Many states argued that an ATT was feasible, citing the support for the establishment of the UN process on an ATT and the existence of various international and regional instruments that promote arms trade controls. They also pointed out that the ATT would build on fundamental principles of which many are already established in customary international law and existing international instruments. Many states supported a comprehensive scope of controlled equipment and activities, including brokering and licensed production. States also made suggestions on the transfer criteria and operational mechanisms that an ATT should contain, including international cooperation and assistance; information-sharing and reporting; monitoring and end-use verification; and periodic reviews of the instrument.<sup>15</sup>

At the same time, some states cautioned against what they see as too high ambitions. India considered the development of a comprehensive and legally binding instrument to be premature. Russia pointed out that past disagreement among states had prevented the adoption of common transfer criteria on small arms and light weapons. Israel warned that an instrument that is based on the lowest common denominator may be counter-productive to effectively strengthening arms trade controls. Egypt suggested that a politically binding instrument may be more appropriate than a legally binding instrument. Another state sceptical on

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11. UN Programme of Action, section II, para. 11.

12. UN General Assembly. 2006. *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms* (UN document no. A/RES/61/89). New York: UNGA, 18 December, paras. 1-2, [http://disarmament.un.org/cab/ATT/Resolution\\_61\\_89.pdf](http://disarmament.un.org/cab/ATT/Resolution_61_89.pdf)

13. See <http://www.un.org/News/Press/docs/2006/ga10547.doc.htm>

14. UN General Assembly. 2007. *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms* (UN document A/62/278). New York: UNGA, 17 August, available via [http://disarmament.un.org/cab/ATT/report\\_of\\_the\\_SG\\_2007.html](http://disarmament.un.org/cab/ATT/report_of_the_SG_2007.html)

15. Parker, Sarah. 2007. *Analysis of States' Views on an Arms Trade Treaty*. Geneva: United Nations Institute for Disarmament Research, October, <http://www.unidir.ch/pdf/ouvrages/pdf-1-92-9045-008-A-en.pdf>.

the prospects for an ATT included Pakistan.<sup>16</sup> The USA, which had voted against the launch of the process, did not submit its views on the feasibility of an ATT.

### ***The UN Group of Governmental Experts on an ATT***

The UN Group of Governmental Experts on an ATT, mandated by the resolution of December 2006, met in three sessions in early and mid 2008. The group submitted its report to the UN Secretary General in August 2008. The group included representatives of China, Egypt, France, Germany, India, Pakistan, the Russian Federation, South Africa, the UK, and the USA. In its report, the group took note of the existing international instruments on the arms trade as well as of trends in this trade, including the increasing production of arms and their components in joint ventures and licensed production arrangements. The group observed that poor controls on the arms trade could contribute to violations of UN arms embargoes and the availability of illicit arms for use in terrorist acts and organised crime. The group also observed that “global arms production and trade constituted a significant contribution to the economy and employment in a number of countries.”<sup>17</sup>

In its discussion of the feasibility of an ATT, the group considered that any such treaty “would need clear definitions and be fair, objective, balanced, non-political, non-discriminatory and universal within the framework of the UN.”<sup>18</sup> The group reflected on the scope and draft parameters of an ATT but stopped short of making a decision on the feasibility of an ATT or recommending specific standards for such an instrument. Rather, the group concluded its report with the recognition that, “in view of the complexity of the issues of conventional arms transfers [...], further consideration within the United Nations to address the international trade in conventional arms is required”. The group added that such further consideration should be carried out “on a step-by-step basis, in an open and transparent manner [..., and] on the basis of consensus.”<sup>19</sup>

### ***The UN resolution on an ATT of October 2008***

With its resolution of 31<sup>st</sup> October 2008, the UN General Assembly mandates next steps towards an ATT by an Open-Ended Working Group. The group is to meet in six one-week sessions starting in 2009 and to submit an initial report to the General Assembly at its 64<sup>th</sup> session the same year<sup>20</sup>. The group is tasked to “further consider those elements in the report of the Group of Governmental Experts where consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms”.<sup>21</sup> The working group does not, therefore, have a mandate to negotiate an international instrument on the arms trade. Nevertheless, the establishment of the working group signals the continuing support by the majority of UN member states for the eventual negotiation of such an instrument.

## **4. Role of the European Union in the UN process on an ATT**

With a strong experience in arms export controls on the basis of the EU Code of Conduct on Arms Exports, the European Union considers that it can “bring a special contribution to the debate on these questions”.<sup>22</sup> It adopted a joint approach in favour of the development of an ATT and supported the ATT project in its

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16. Ibid., p. 4

17. UN General Assembly, 2008b, p. 13, para 14.

18. Ibid., p. 14, para. 17.

19. Ibid., p. 16, para. 27.

20. UN General Assembly, 2008. *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms* (UN document A/C.1/63/L.39\*). New York: First Committee, 17 October, para.5.

21. UN General Assembly. 2008a, para. 5.

22. Statement by Günter Gloser, President of the Council of the EU, 20 June 2007, Strasbourg. Available at [http://www2.hu-berlin.de/francopolis/germanopolis/db/sisdb.cgi?userid=guest&pw=guest&login=Gast&db=fr&view\\_records=1&ww=on&ID=2519&lang=fr](http://www2.hu-berlin.de/francopolis/germanopolis/db/sisdb.cgi?userid=guest&pw=guest&login=Gast&db=fr&view_records=1&ww=on&ID=2519&lang=fr)

submission in the UN consultations in 2007.<sup>23</sup> Several EU member states played active roles in the UN process. Finland and the United Kingdom participated in the design of the resolution on the ATT that was submitted to the First Committee of the UN General Assembly in October 2006. Seven European countries participated in the group of governmental experts that examined the feasibility, scope and draft parameters of an ATT in 2008.<sup>24</sup>

Opting for a joint and concerted strategy, the EU aims to play a leadership role in the UN process while seeking to ensure to not give the process a connotation that is 'too European'.<sup>25</sup> The 27 member states will continue their support with a planned common position for a project to promote the development of an ATT among third countries in 2009. The project will entail the organisation of six regional seminars around the world during a 15 month period. With this project, the EU hopes to not only engage reluctant states in a dialogue on an ATT but also with civil society, arms control experts, and representatives of the arms industry.

By demonstrating its support for an ATT, EU member states take a different approach than other principal arms exporting states. Nevertheless, the credibility of the EU and its support for an ATT is challenged by the continued lack of agreement among EU member states to transform the politically binding EU Code of Conduct into a common position with a legally binding character.<sup>26</sup> It is welcome, therefore, that the French presidency of the EU recently succeeded in having a revised EU Code adopted as a common position.<sup>27</sup>

## 5. Conclusions

Several states remain sceptical on the feasibility of an arms trade treaty and there still exists no firm commitment at the UN to start negotiations of an ATT. The consensus-bound procedures of negotiations at the UN will allow individual states, should they so decide, to bloc further developments towards an ATT within the UN framework. There remain significant challenges, therefore, to arriving at an arms trade treaty. Nevertheless, the continuing momentum towards and support for the development of an arms trade treaty at the UN are encouraging signs. The Open-Ended Working Group that will meet in 2009 and EU member states can make an important contribution to broadening the consensus on an arms trade treaty. Indeed, further consensus-building will be critical to the development of a universal and comprehensive treaty. Such a treaty remains an essential need to effectively limit and prevent the tremendous human suffering associated with poor controls in the international arms trade.

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23. Conclusions of the Council of the EU of 3 October 2005, 11 December 2006, 18 June 2007, and 10 December 2007 in support of an international treaty on the arms trade.

24. The seven participating European states were Finland, France, Germany, Italy, Romania, Spain, and the UK.

25. Concern expressed by representatives of the EU Council working group on conventional arms control (COARM) during a COARM-NGO meeting in Paris, 20 and 21 November 2008.

26. In 2003, EU member states undertook to revise the Code of Conduct on Arms Exports. Two years later, in June 2005, a draft *Council common position defining common rules governing the control of exports of military technology and equipment* was developed. See <https://www.grip-publications.eu/bdg/g1058.html>

27. See text of the CP on [http://www.diplomatie.gouv.fr/fr/actions-france\\_830/desarmement-maitrise-armements-controle-exportations\\_4852/evenements\\_5181/autres-evenements\\_19380/exportations-armement-adoption-un-code-conduite-europeen-une-avancee-10.12.08\\_69272.html?xtor=RSS-1](http://www.diplomatie.gouv.fr/fr/actions-france_830/desarmement-maitrise-armements-controle-exportations_4852/evenements_5181/autres-evenements_19380/exportations-armement-adoption-un-code-conduite-europeen-une-avancee-10.12.08_69272.html?xtor=RSS-1)

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