

A Global Arms Trade Treaty: What States Want

Executive Summary

On 6 December 2006, 153 UN Member States voted in agreement on the principle of a legally binding and universal Arms Trade Treaty (ATT). As a first step towards an ATT, Resolution 61/89 requested the UN Secretary-General to “seek the views of Member States 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 and to submit a report to the General Assembly at its sixty-second session.”

To date, 97 Member States have submitted their views to the Secretary-General, making it the most successful exercise of its kind within the UN. It is also a strong indication that the global political will now exists to address the irresponsible and poorly regulated trade in arms, a trade which fuels conflict, results in gross human rights abuses and serious violations of international humanitarian law (IHL), destabilises countries and regions and undermines sustainable development. This political will must be galvanized and maintained through the work of the group of government experts (GGE), set to commence in 2008, to ensure the achievement of what is clearly the aim of a majority of States: a strong and effective ATT.

This paper provides an overview of the content of the Member States’ submissions¹ and highlights the main views contained in the submissions as to the feasibility, scope and parameters of an ATT. Arising out of the analysis, key points for consideration by the forthcoming GGE are outlined to assist in ensuring that an effective, comprehensive ATT can be achieved as soon as possible.

Feasibility

There is significant and diverse global will to create an ATT. An overwhelming number of states expressed their support for the development of a comprehensive, legally binding instrument aimed at the establishment of common international standards for the export, import and transfer of conventional arms. Some 86 of the 92 submissions analysed either explicitly reiterated their support or provided views as to how this initiative could move forward. For a number of States, the high level of initial support for UN Resolution 61/89 is a clear demonstration of the feasibility of an ATT. Another one of the main reasons given by States for the feasibility of an ATT is the numerous initiatives and mechanisms already existing at the international, multilateral, regional, and sub-regional levels. Despite the gaps in regional coverage and inconsistencies in formulation in these various documents and guidelines, a solid foundation exists from which to agree on common international standards. An ATT will build on this foundation.

However, challenges are also recognised. A key challenge will be to ensure that States maintain their genuine political will to achieve an effective ATT in the interests of all States, hence the need to deepen common understanding of the issues. The process towards an ATT must remain open, transparent and inclusive (especially including major conventional arms manufacturers and exporters).

Scope

¹ The paper provides analysis of 92 submissions publicly available at the time of writing.

57 submissions expressed the view that an effective ATT should include “all” conventional arms. The list of conventional arms covered could be an amalgamation of existing UN Register of Conventional Arms, and Wassenaar and European Union military lists with additions to include components, ammunition and small arms and light weapons. The range of activities that fall within the scope of an ATT must be clearly and precisely defined in order for the instrument to be effective and to avoid the creation of loopholes. States felt that the forms of transfer should include the broadest definition possible with a large majority of states expressing the view that it should include: import, exports, re-export, temporary imports, exports, re-exports, transshipment, re-transfer. Other forms suggested include: loans, gifts, temporary exports/imports, services and maintenance, and any other form of transfer of material good, credit or expertise. A majority of States, some 52, believe that brokering activities or brokered transactions should be included as a form of transfer and that consideration should be taken of the work of the GGE on brokering of small arms and light weapons.

Parameters

Most States agreed that there must be national provisions to ensure that each proposed transfer is assessed against agreed minimum criteria consistent with international law. National authorities must assess transfers on a case-by-case basis and all licensing decisions remain the sovereign right of all States.

The majority of States referenced the need for criteria to assess whether a particular transfer of conventional arms would violate UN Charter principles or breach UN Security Council arms embargoes. Submissions also refer to prohibitions on conventional arms transfers that arise in particular existing treaties.

The vast majority of States believe that one of the most fundamental elements of an ATT must be respect for international human rights law. 72 submissions recognised the key importance of assessing the potential for a transfer to be used for serious violations of human rights law. There is a need to ensure that criteria for authorizing transfers can be applied in an objective manner, highlighting the need for clear guidelines based on international law that defines “serious violations”, and procedures to assess the risk of whether particular proposed transfers will contribute to such violations. Respect for IHL is also a primary concern for States, with 65 submissions raising the need to consider whether the intended recipient of a transfer of conventional arms will comply with international humanitarian law.

A large majority of States have identified the need for criteria to assess the potential impacts or uses of particular transfers for terrorist attacks, or violent and organised crime, or that may have adverse effects on regional security or stability especially through excessive accumulation of arms, as well as the harm caused by transfers involving corrupt practices. Some 57 submissions believe that transfers should not be authorized where the arms are likely to be used to commit terrorist acts or to support or encourage terrorism, or where there is a risk of diversion of the transfers to be used for terrorist activities. 42 States wrote that a prohibition of arms transfers that are likely to be used in violent and/or organized crime should be codified in an ATT. Some 50 submissions cited assessment of potential adverse impacts on regional security or stability as a factor for inclusion within an ATT. 43 States raised sustainable development as an important consideration, with some submissions stating that at a minimum, an ATT should obligate States to consider the potential development impacts of arms transfers and to refuse authorizations where it is appropriate.

Transparency and the need for an information exchange mechanism that builds confidence in the implementation of the ATT by all States parties are also cited as core parameters. The GGE should explore all the possibilities of viable and effective transparency mechanisms including possible reporting procedures, meetings of state parties, and a body tasked with

verifying compliance. Institutional capacity building is also seen as an area that is vital to the successful implementation of the various provisions of the ATT. Procedures in an ATT to facilitate international assistance should be explored in some depth by the GGE.

Conclusion

A majority of States, including nearly all major arms exporting countries, have provided the UN and the forthcoming GGE with a detailed road map towards the creation of a universally fair and objective ATT, based on existing responsibilities of states under international law. It is hoped that this analysis of these submissions will assist the forthcoming GGE in determining the key points made by States to lay the groundwork for an ATT that can be 'negotiated on a non-discriminatory, transparent and multilateral basis' in order to fulfil the terms of UN General Assembly Resolution 61/89. If the GGE report is sufficiently constructive it could lead to the establishment by the UN General Assembly of an Open Ended Working Group in 2009 to negotiate the terms of a global Arms Trade Treaty so that the international community can agree and benefit from such a Treaty as soon as possible, hopefully by the year 2010.

Recommendations to the GGE:

- Compile all the existing international instruments that directly or indirectly have application to international transfers of conventional arms, whether legally binding or not, or adopted at the sub-regional, regional, multilateral or global level. From there, a determination of the commonalities can be made to gain an overview of widely accepted existing key principles for such transfers for inclusion in an ATT;
- Consider how to develop the most comprehensive list of conventional arms for inclusion within an ATT: the use of existing lists such as the UN Register of Conventional Arms, the Wassenaar and European Union military control lists provide a basis for creating a comprehensive control list for an ATT, noting the need to include components, ammunition, and small arms and light weapons;
- Include transfers of licensed production in an ATT and consider how to ensure emerging technologies are covered without needing to amend the treaty;
- Review the possible inclusion of dual use items and manufacturing equipment and technology, taking into account that the majority of states support their inclusion within the scope of an ATT;
- Determine the definition of "transfer" to ensure that all transactions are covered to avoid creating possible loopholes;
- Include brokered transactions in an ATT and to this end the work of the GGE on Brokering should be taken into account;
- Consider the development of a clear and objectively applied procedure in an ATT for establishing whether it is likely that a particular proposed transfer of conventional arms would be used to contribute to or facilitate gross violations of international human rights law or serious violations of international humanitarian law;
- The work of the GGE in developing criteria to prohibit transfers that are used or are likely to be used for terrorist attacks can be informed by reference to the numerous conventions relating to specific acts associated with terrorism or terrorist attacks;

- The GGE should explore methodologies to enable states to identify conventional arms transfers of concern for their potential negative impacts on sustainable development efforts;
- The development of a transparency mechanism to promote confidence in the implementation of an ATT requires the GGE to consider the full range of possible reporting and compliance mechanisms. The GGE should also consider what type of information should be reported by states under a transparency mechanism such as the inclusion of denied transfers;
- Institutional capacity building is an area that is vital to the successful implementation of the various provisions of the ATT. Procedures to promote international assistance should be explored in some depth by the GGE.
