



UNITED NATIONS INSTITUTE  
FOR DISARMAMENT RESEARCH



EUROPEAN UNION

**Supporting the Arms Trade Treaty Negotiations through  
Regional Discussions and Expertise Sharing**

**FINAL REPORT OF THE EU–UNIDIR PROJECT**

Elli Kytömäki

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## **About the author**

Elli Kytömäki was the Project Manager for the EU–UNIDIR project Supporting the Arms Trade Treaty Negotiations, which is a follow-on activity to the project Promoting Discussion on an Arms Trade Treaty and consisted of a series of regional seminars and other activities organized in 2010–2012. Before assuming responsibility for these projects at UNIDIR, Ms. Kytömäki worked as a Forum for Security Co-operation (FSC) Support Officer at the Conflict Prevention Centre of the Organization for Security and Co-operation in Europe (OSCE) Secretariat in Vienna. As part of her duties there, she provided support to the FSC in the implementation of OSCE documents on politico-military aspects of security. Ms. Kytömäki worked at UNIDIR also in 2003–2006, when she specialized in research on small arms and light weapons and explosive remnants of war, and worked on a project to build states' capacity to report on their implementation of the United Nations Programme of Action on Small Arms and Light Weapons. Ms. Kytömäki has also worked for the Geneva-based research institute Small Arms Survey, the United Nations Office for the Coordination of Humanitarian Affairs, and the Permanent Mission of Finland for the United Nations Conference on Disarmament. She has co-authored and edited several papers on security policy, small arms and light weapons, and the United Nations Programme of Action.

## **Foreword**

An international, legally binding Arms Trade Treaty (ATT) is a unique and long overdue arms control initiative. At least a third of a million people are killed every year directly with conventional weapons and many more die, are injured, abused and displaced as a result of armed violence. Consequently, transfers of conventional weapons to undesirable purposes or with the risk of diversion to the illicit market cannot rely solely on traditional national or regional export controls systems. Effective control of a global arms trade requires new international standards and regulations based in international law.

A process towards an ATT is fortunately ongoing at the international level. I have had the pleasure of chairing all the meetings held at the United Nations about the ATT, beginning with the Group of Governmental Experts in 2008 up to the diplomatic conference on the treaty, which was held in New York on 2–27 July 2012.

In my task as the chair of the various meetings I have really appreciated the tireless efforts and various activities organized by governments, regional and international organizations and civil society actors to support our common goal, an effective and robust ATT. The two projects initiated by the European Union and implemented by the United Nations Institute for Disarmament Research (UNIDIR) are an excellent example of such support activities.

The projects, which consisted of two series of regional seminars, were immensely helpful for me in advancing discussions on the ATT, raising awareness and facilitating the exchange of views among United Nations Member States and other relevant actors. The projects, especially the latter one implemented in 2010–2012 and concluded during the ATT negotiations, were extremely important also more generally as they allowed us to enlarge the debate around the ATT, improve our understanding of the political and technical complexities surrounding arms trade controls, and bring up many concrete regional-level priorities.

National positions and mutual respect towards each others' situations and priorities are at the core of any international negotiations, and the EU–UNIDIR projects succeeded in my view perfectly in bringing states together around the same table to exchange views and work together in the spirit of mutual respect and understanding. Also, regional views are central when addressing matters of peace and security, particularly when they are taken into context and feed into a global perspective and approach to these issues. The projects implemented by UNIDIR brought these two aspects together in an effective and creative way.

As can be seen from the outcomes of the EU–UNIDIR project that are presented in this report and were circulated to all United Nations delegations on the eve of the July negotiations, the common messages from the regional seminars echoed in many instances the discussions had in New York. I am sure that this is not a coincidence but a proof of how the efforts—at their best—of research institutes and organizations such as UNIDIR can support ongoing negotiations at the United Nations.

The goal of the 2012 conference was to elaborate a global, legally binding treaty on the conventional arms trade. The principle objective of such a treaty is to prevent irresponsible transfers of arms by adopting the highest possible international standards

for their transfer. Unfortunately, the conference was not able to agree on the treaty text within the month that was available to it. However, we were able to make significant progress on the road towards a treaty, and in my mind the eventual adoption of the treaty is inevitable. There is now more than ever a need for continued, inclusive dialogue, through which Member States and other actors in the process can work together towards concluding the adoption of a strong and robust treaty in the near future.

I sincerely hope that all states will make the best use of the outcomes of the EU–UNIDIR project to reinforce their participation in the ATT discussions and their commitment to work towards a better and safer environment for us all.

Ambassador Roberto García Moritán  
President of the United Nations Conference on the Arms Trade Treaty

## **Introduction**

The conventional arms trade is an issue that is of relevance to all states, no matter whether they export or import weapons or are more concerned with potential transit issues or illicit trafficking. The United Nations is currently in a process of developing an international, legally binding Arms Trade Treaty (ATT), which when negotiated in July 2012 aimed at establishing the highest possible common international standards for the import, export and transfer of conventional weapons.

This is an extremely challenging task, and quite possibly the most important initiative in the field of conventional arms control since the founding of the United Nations. It has been argued that once in force, an ATT will help create more equal standards for the international trade in arms, prevent their misuse and diversion to illicit end-users, help reduce the scourge of conflict and crime, improve humanitarian and human rights situations across the globe, and indirectly foster development, transparency and accountability.

While these are goals that all United Nations Member States would sign up to, views as to how exactly an ATT could contribute to them, what the Treaty should cover and how it should operate, differ greatly among the United Nations membership. This seems natural, as even though the issue of conventional arms trade is common to all states, their specific situations as well as capacities and transfer control procedures vary widely. An ATT aims to bring together arms producing states, importers and exporters, as well as states that wish to develop their defence capabilities or are concerned mostly about illicit brokering or smuggling of weapons. Some of them have in place sophisticated systems to control this trade, while others are yet to establish minimum controls.

The time for negotiating the Treaty is very limited, and issues on the table are multiple and multifaceted. To support the process and provide alternative fora to states where these issues can be discussed, the United Nations Institute for Disarmament Research (UNIDIR) has worked with the European Union. UNIDIR implemented the project Promoting Discussion on an Arms Trade Treaty, which consisted of six regional seminars and other support activities, and was carried out between February 2009 and July 2010. From July 2010, UNIDIR implemented a follow-on project, entitled Supporting the Arms Trade Treaty Negotiations through Regional Discussion and Expertise Sharing.

This report presents a summary of the second EU–UNIDIR project. It discusses both the seven regional seminars organized between November 2010 and May 2012, and the background research papers that were commissioned to support the other project activities and the United Nations process.

Section 1 describes the Preparatory Committee process, and section 2 discusses the ATT negotiating conference, held in New York from 2 to 27 July 2012.

Section 3 presents the activities of the project by going briefly through the structure and outcomes of the seven regional seminars as well as other support activities, commissioned research and distributed materials. General project results are provided in section 4.

Section 5 discusses the thematic ideas and recommendations put forward about the ATT during the seminar, both in its activities and in its commissioned background research. Reference is made, wherever relevant, to the Group of Governmental Experts, Preparatory Committee and ATT conference discussions and the draft treaty text of 26 July 2012.

## **1. Towards an Arms Trade Treaty—Preparatory Committee process**

Patterns in international trade in conventional arms can be traced far back in history, and attempts to control and regulate this trade are not new. However, until today, there have not been any international instruments governing the trade in conventional weapons, as efforts of the international community have mostly concentrated on controlling weapons of mass destruction. The idea of an international code of conduct for arms transfers was first born within civil society, which in the mid-1990s started promoting the concept of joint global responsibility and common rules for the transfers of weapons.<sup>1</sup>

At the United Nations, the process towards an Arms Trade Treaty is ongoing since 2006.<sup>2</sup> The first ATT resolution, A/RES/61/89, was introduced at the United Nations General Assembly in 2006 and adopted by a large majority—153 votes in favour, 1 against, 24 abstentions. This was followed by an exchange of views between United Nations Member States on the proposed Treaty,<sup>3</sup> as well as by meetings of a Group of Governmental Experts (GGE) on an ATT in 2008. Following from the exchange of views and the work of the GGE, the General Assembly adopted a second resolution on an ATT in the fall of 2008.<sup>4</sup> This resolution endorsed the previous reports on the subject and—on the recommendation of the GGE—established an open-ended working group (OEWG) to “further consider those elements ... where consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms”. Compared to the GGE, the OEWG broadened participation in the ATT process by making its proceedings open to all United Nations Member States. The OEWG met in March and July 2009, and submitted a consensus report to the United Nations General Assembly that year.<sup>5</sup>

At the sixty-fourth session of the General Assembly in New York in December 2009, 151 states voted in support of a new ATT resolution that decided to “convene the United Nations Conference on the Arms Trade Treaty to sit 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>6</sup> To support this decision, the remaining sessions of the OEWG for 2010 and 2011 were transformed into meetings of a Preparatory Committee for the ATT Conference (PrepCom). These meetings were mandated “to make recommendations to the United Nations Conference on the Arms

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<sup>1</sup> See *The Nobel Peace Laureates' International Code of Conduct on Arms Transfers*, <[www.hartford-hwp.com/archives/27a/028.html](http://www.hartford-hwp.com/archives/27a/028.html)>.

<sup>2</sup> For a more detailed description about recent trends in the conventional arms trade and the process towards an ATT, see Elli Kytömäki, *Promoting Discussion on an Arms Trade Treaty: Final Report of the EU–UNIDIR Project*, UNIDIR, 2010.

<sup>3</sup> Summaries of states' views are contained in General Assembly, *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms. Report of the Secretary-General*, UN document A/62/278, 17 August 2007. In addition, UNIDIR prepared two studies analysing these views: Sarah Parker, *Analysis of States' Views on an Arms Trade Treaty*, UNIDIR, 2007; and Sarah Parker, *Implications of States' Views on an Arms Trade Treaty*, UNIDIR, 2008.

<sup>4</sup> General Assembly, *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms*, UN document A/RES/63/240, 8 January 2009.

<sup>5</sup> General Assembly, *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*, UN document A/AC.277/2009/1, 20 July 2009.

<sup>6</sup> General Assembly, *The Arms Trade Treaty*, UN document A/RES/64/48, 12 January 2010. Twenty states abstained and one voted against the resolution.

Trade Treaty on the elements that would be needed to attain an effective and balanced legally binding instrument”.<sup>7</sup>

A significant development in 2009 was that, at the beginning of the PrepCom process, the United States changed its position against the ATT (it voted against the General Assembly resolutions in 2006 and 2008) to a position for the process. The condition for that support was that the 2012 negotiating conference was to be conducted on the basis of consensus.<sup>8</sup>

The PrepCom met for the first time on 12–23 July 2010. During this meeting, Chairperson Ambassador Roberto García Moritán of Argentina invited all states to engage in the discussions and identify key elements and issues to be considered in the ATT process. The agenda featured informal sessions dedicated to the three major themes of the proposed Treaty: its possible scope, criteria/parameters, and implementation. Each of the themes were discussed during two informal sessions, and summaries of the deliberations were then formally presented to the PrepCom by the facilitators of the informal sessions.

During the session on an ATT’s possible scope, states devoted much time to discussing the possibilities: some requested a detailed definition of scope, while others preferred more general definitions. Most support seemed to be expressed towards including in the Treaty, at minimum, the seven categories of the United Nations Register of Conventional Arms (UNRCA)<sup>9</sup> together with small arms and light weapons (SALW). In addition, many states maintained that additions to the UNRCA scope would be needed since many major weapon systems are not included in the present instrument. Here, the additional categories mainly discussed included ammunition, related parts and components, technology and explosives. These additions met with varying degrees of support. Many states emphasized the importance of including SALW and ammunition in the Treaty, although this was met with some concern from others. The meeting also discussed which types of transfers should be considered and how these should be defined.

In the session concerning criteria/parameters, states discussed what criteria should be considered before allowing an arms transfer under an ATT, and how these criteria should be interpreted and implemented by states. Discussions also highlighted the need for criteria that are transparent and non-discriminatory. The participants suggested a number of possible criteria. These involved considerations of the risks to peace and security, illegal use or proliferation resulting from the transfer, the past record and situation of the receiving state, and whether the transfer is consistent with international law. A number of questions were raised, including how to evaluate risks and what standards of consideration should be given to the criteria before transfer. Many states suggested that there should be guidelines on how states are to interpret the criteria.

The session on implementation issues highlighted some of the key questions an ATT has to address with regard to its future operation as well as transparency measures. Discussions focused on what mechanisms should enforce an ATT and by whom these

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<sup>7</sup> General Assembly, *The Arms Trade Treaty*, UN document A/RES/64/48, 12 January 2010, p. 3.

<sup>8</sup> US Department of State, “U.S. Support for the Arms Trade Treaty”, 14 October 2009, <[www.state.gov/secretary/rm/2009a/10/130573.htm](http://www.state.gov/secretary/rm/2009a/10/130573.htm)>.

<sup>9</sup> For details on the arms encompassed by the UNRCA, see <[www.un.org/NPT2010/RCA/English/categories.html](http://www.un.org/NPT2010/RCA/English/categories.html)>.

should be employed. States identified a number of mechanisms central to an ATT involving national obligations, international cooperation and reporting obligations. States also discussed whether the task of implementation should be the sole responsibility of the state or if an international secretariat should be involved with assistance, monitoring, verification and enforcement. Other views discussed were how to deal with disputes and possible actions against non-compliance. It was recognized that the extensive range of issues will have to be defined, narrowed down and structured in order for states to find common views.

At the end of the first meeting, and based on the input from states, the Chair presented his draft paper on the elements, principles, objectives and goals of the ATT.<sup>10</sup> At the end of the first PrepCom, and based on the input from states, the Chair presented his consolidated draft paper on the elements, principles, objectives and goals of the ATT. The paper identified the framework for a possible ATT and a number of important topics, providing one, non-conclusive or non-exclusive informal basis for further discussions. The Chair also stressed the importance of future meetings that should continue to be held in a transparent and all-inclusive manner. Having presented the draft paper, the Chair opened the floor for discussion and many states took the opportunity to comment on the paper and the meeting proceedings. The spirit of the majority of statements remained extremely positive and supportive towards the approach that the Chair had selected, with some cautioning remarks made about the need for further discussions and evaluations as well as the need to find consensus.

The next meeting of the PrepCom was held 28 February–4 March 2011. During the meeting, all states as well as regional organizations and non-governmental organizations (NGOs) were invited to discuss and make contributions to the updated draft ATT paper circulated by the Chair immediately preceding the PrepCom, consisting of elements on scope, parameters, implementation, and cooperation and assistance. Many states took the opportunity to express their support for the ATT and there were some positive remarks from otherwise critical parties. Also some concerns were raised and amendments suggested.

The first meeting discussed the issue of scope. The draft paper's section on scope<sup>11</sup> covered a detailed and comprehensive range of arms, items and transfers. The draft included certain elements of scope that have been frequently debated—elements such as SALW, ammunition, technology transfers, brokering and research. The reception of the proposed scope was generally positive, and a large proportion of states appeared prepared to accept the general framework, as most delegations proceeded to discuss details and uses of language. Some states did however object to including the contended elements aforementioned; the inclusion of ammunition was particularly debated. While the definitions and language of the UNRCA proved to be widely accepted, it was however the object of debate; some delegations argued that the UNRCA would make a good model for an ATT, while others argued that the register was designed for other purposes and does not meet the needs of an ATT.<sup>12</sup> Another question that was much

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<sup>10</sup> The draft document, the session summaries and other relevant documents are available at <[www.reachingcriticalwill.org/legal/att/prepcom1/index.html](http://www.reachingcriticalwill.org/legal/att/prepcom1/index.html)>.

<sup>11</sup> The Chair's informal draft paper on criteria, as circulated before the meetings, is available at <[www.reachingcriticalwill.org/legal/att/prepcom2/docs/ChairPaper-Scope.pdf](http://www.reachingcriticalwill.org/legal/att/prepcom2/docs/ChairPaper-Scope.pdf)>.

<sup>12</sup> For a detailed discussion on the question of scope, see Anne-Charlotte Merrell Wetterwik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

discussed was whether an ATT should include positive or negative provisions. Some delegations argued that, with a comprehensive list of items to be regulated, negative provisions, or exceptions, in an ATT would be unnecessary—while other delegations argued for a treaty that regulated all items unless they are specifically excluded.

The second PrepCom came to feature many discussions on the element of criteria. The draft paper's chapeau paragraph on criteria was the object of some debate. The paragraph stated that "states should, as appropriate, take into consideration the following criteria".<sup>13</sup> Some states found this statement to be too lenient, and argued that if the paragraph were not removed or strengthened, the Treaty would be non-binding. Other areas of the paper were conversely viewed as too far-reaching by some sceptical states, particularly the criterion prohibiting transfers that may risk violations of humanitarian and human rights law.<sup>14</sup> Many states stressed that in order to avoid a politically motivated or biased ATT, its criteria must be made objective and non-discriminatory, and that they must reflect the states' sovereign right to self-defence. The sovereign right to self-defence as well as the right to obtain arms to this end is a fundamental principle for states and has been a recurring remark during the ATT discussions, a principle which the founding resolutions of the ATT acknowledge,<sup>15</sup> however some sceptical states have expressed their concern that an ATT may infringe upon this right. Relating to this, many delegations stressed that only state actors should be considered for transfers, many further calling for an explicit prohibition of trading with non-state actors.

The meeting concerning cooperation and assistance addressed the possible measures to be adopted in order to assist the implementation of an ATT. The Chair's draft proposed that each state should have the right to request and receive implementation assistance, which would be offered by states, the United Nations or other organizations on a voluntary basis.<sup>16</sup> The level of support from the delegations for cooperation and assistance measures was generally high and many stressed in their statements the value of including such elements in an ATT. Developing states were especially supportive of such measures and it was often argued that many states would be unable to effectively implement an ATT without international support. Many states suggested that an international secretariat be created with the purpose of facilitating implementation and assistance measures, and although this suggestion was not in the Chair's draft, it received a large amount of support from the delegations. Victim assistance, measures suggested for the support of victims of armed conflict and irresponsible arms trade, was included in the draft paper but received little support from the delegations. It was often argued that victim assistance, although important, is not appropriate in a trade treaty—others argued that such measures would be in line with and supportive of the stated goals of the Treaty.

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<sup>13</sup> The Chair's informal draft paper on criteria, as circulated before the meetings, is available at <<http://reachingcriticalwill.org/images/documents/Disarmament-foa/att/prepcom2/docs/ChairPaper-Criteria.pdf>>.

<sup>14</sup> *Ibid.*, para. B.2.

<sup>15</sup> Chapeau paragraphs of General Assembly, *The Arms Trade Treaty*, UN document A/RES/61/89, 18 December 2006; and General Assembly, *The Arms Trade Treaty*, UN document A/RES/64/48, 12 January 2010.

<sup>16</sup> The Chair's informal draft paper on cooperation and assistance, as circulated before the meetings, is available at <<http://reachingcriticalwill.org/images/documents/Disarmament-foa/att/prepcom2/docs/ChairPaper-Cooperation.pdf>>.

After the meetings on elements and reflecting their outcomes, the Chair presented a revised draft paper.<sup>17</sup> Despite some notable delegations making sceptical remarks during the meetings, the revised draft retained its more contended elements such as ammunition and victim assistance. It also strengthened and disambiguated much of its language, something that was often called for during the meetings—notably it included stronger obligations concerning a number of issues including the aforementioned chapeau paragraph on criteria. The reactions to the revised draft were largely positive, and many were pleased that its language was clearer—there were however issues where ambiguities remained. Many delegations for example considered it unclear whether the draft covered explosives and munitions such as hand grenades. It was clear that there are still many disparate views and varying priorities among states, and that there is still work to be done to reach common positions.

Finally, the last session of the PrepCom to discuss substantial issues for the Conference was held 11–15 July 2011. The meetings were particularly concerned with elements of implementation. During this meeting, the Chair presented his compiled draft paper on the elements of an ATT, building upon the work of the previous PrepCom sessions as well as his consultations with various states. As Ambassador Moritán noted in his report to the United Nations General Assembly’s First Committee in October 2011,<sup>18</sup> the general feeling about the new draft paper was largely that of discontent. Ambassador Moritán did however recognize that there were shared views, particularly on the issue of cooperation and assistance, and that there was general agreement among the delegations that implementation should be national.

National implementation was the first issue to be addressed, and the discussions mainly concerned the Chair’s paper on national implementation,<sup>19</sup> which was circulated before the discussions. The paper outlined that each respective state was to have the responsibility of adopting adequate measures for the implementation of the provisions. The paper also included obligations towards other parties, including mutual assistance between states, obligations to notify other states of transfer denials as well as other measures of transparency.<sup>20</sup> The responses of the delegations to the draft were varied, and as Ambassador Moritán noted in his First Committee address, “the different points of view reflected the different degrees of ambition in the room”.<sup>21</sup> Some delegations argued for stronger and more comprehensive national obligations stressing mutual cooperation, while others considered that the provisions should be short and simple, emphasizing the role of the sovereign state.

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<sup>17</sup> The Chair’s revised draft paper is available at <[www.adh-geneve.ch/RULAC/pdf/Chairmans-draft-paper.pdf](http://www.adh-geneve.ch/RULAC/pdf/Chairmans-draft-paper.pdf)>.

<sup>18</sup> The statement by Ambassador Moritán to the First Committee is available at <[http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com11/statements/17Oct\\_Moritan.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com11/statements/17Oct_Moritan.pdf)>.

<sup>19</sup> The Chair’s paper on national implementation, as circulated before the meetings, is available at <[www.adh-geneve.ch/RULAC/pdf/Implementation-11-July-2011.pdf](http://www.adh-geneve.ch/RULAC/pdf/Implementation-11-July-2011.pdf)>.

<sup>20</sup> For a detailed analysis of ATT implementation and transparency, see Paul Holtom and Mark Bromley, “Implementing an Arms Trade Treaty”, SIPRI Policy Paper no. 28, 2011, <[http://books.sipri.org/product\\_info?c\\_product\\_id=426](http://books.sipri.org/product_info?c_product_id=426)>.

<sup>21</sup> Quote from Ambassador Moritán’s address, translated from Spanish, <[http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com11/statements/17Oct\\_Moritan.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com11/statements/17Oct_Moritan.pdf)>.

Following the discussions on national implementation, the Chair presented a new text.<sup>22</sup> The new draft sparked a lot of reactions, and there were again wide-ranging views from the delegations on a number of issues.

In his address to the First Committee, Ambassador Moritán considered that pursuing a detailed draft paper had been helpful in creating “a better understanding of all the problems involved in the negotiation of the Treaty”.<sup>23</sup> The new draft did indeed raise new questions and issues regarding the Treaty and prompted some otherwise silent states to join the discussions. However many delegations reacted with some reservations to the new draft, and some questioned the use of discussing details when some fundamental issues still appeared to remain unsettled. Undoubtedly, the conference of July 2012 would be faced with multiple challenges. The PrepCom discussed a wide range of issues that are of central importance to the proposed Treaty. Instead of starting to narrow those down on areas where consensus could best be sought, its approach was until the end that of inclusion and expansion.

In addition to its scheduled meetings in July 2010, March 2011 and July 2011, the PrepCom was set to meet for the final time in early 2012, “to decide on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents”.<sup>24</sup> Furthermore, as tasked by the 2009 resolution, the Secretary-General sought the views of Member States on elements to be included in a possible ATT as well as other related issues, and reported on it in July 2011,<sup>25</sup> with an addendum submitted in September.<sup>26</sup> The submitted views reveal that certain parties, including particularly influential states, still will only support a treaty that is significantly narrower in scope than the current draft outlines. Despite this, in nearly all submissions, states described their interest in an ATT and reaffirmed their commitment to the process.

In addition to the main meetings, the margins of the PrepCom meetings featured a number of side events where different international, regional and non-governmental organizations and networks were presenting their views on the proposed Treaty’s different aspects and were invited to voice their views as well as to offer recommendations. The discussions involved both ATT supporters and sceptical voices.<sup>27</sup>

While there were many encouraging signs of more positive and active involvement from some previously silent or sceptical states, the PrepCom process still finished with a few cases where differences in view seemed to be pretty wide and in some cases contradictory. Furthermore, some major arms exporting and importing states remained relatively silent throughout the conference preparations.

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<sup>22</sup> The Chair’s draft paper, as presented to the delegations, is available at <[www.adh-geneve.ch/RULAC/pdf/Chairman-Draft-ATT-blog.pdf](http://www.adh-geneve.ch/RULAC/pdf/Chairman-Draft-ATT-blog.pdf)>.

<sup>23</sup> Ambassador Moritán’s address, translated from Spanish, <[http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com11/statements/17Oct\\_Moritan.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com11/statements/17Oct_Moritan.pdf)>.

<sup>24</sup> General Assembly, *The Arms Trade Treaty*, UN document A/RES/64/48, 12 January 2010.

<sup>25</sup> General Assembly, *The Arms Trade Treaty. Report of the Secretary-General*, UN document A/66/166, 20 July 2011.

<sup>26</sup> General Assembly, *The Arms Trade Treaty. Report of the Secretary-General*, UN document A/66/166/Add.1, 19 September 2011.

<sup>27</sup> A number of statements from these meetings are available at <[www.un.org/disarmament/convarms/ATTPrepCom/Statements.html](http://www.un.org/disarmament/convarms/ATTPrepCom/Statements.html)>.

## **2. Arms Trade Treaty conference**

On 2–27 July 2012, United Nations Member States convened at the United Nations Headquarters in New York for a month-long diplomatic conference to negotiate an ATT. Ambassador Roberto García Moritán of Argentina was elected as the Chair of the Conference, following his presiding over the previous sessions on the ATT, the GGE, the OEWG and the PrepCom meetings. Delegates from the United Nations Member States, together with advocates, campaigners and survivors of armed conflict around the world, came together to continue the work done during the OEWG and the PrepCom meetings, and to put forward their views on the goals and objectives, scope, parameters, implementation and final provisions of the Treaty.

The negotiations got underway after being delayed by a couple of days due to a disagreement over Palestine’s status in the conference.<sup>28</sup> In his remarks to the conference on 3 July, United Nations Secretary-General Ban Ki-moon described the historic lack of action on regulating the international trade in arms a disgrace, and noted that rising military expenditures, armed conflict and human rights violations are requiring concerted, collective action.<sup>29</sup> In the coming days of high-level statements, several ministers called for the conference to agree on an effective, legally binding ATT that would prevent arms from falling into illegal hands and situations where they would contribute to prolonged conflict, crime and terrorism and undermine human security, development and good governance. Also civil society organizations, working together under the Control Arms Campaign, actively participated in the conference by lobbying delegates and by organizing demonstrations in front of the United Nations, calling for better regulation of the arms trade and claiming that the trade in bananas and children’s toys are more heavily regulated than weapons. Many civil society actors also followed and commented on the negotiations.<sup>30</sup>

After several high-level statements the work proceeded into details of the possible Treaty, and was conducted both in the plenary and on 3–20 July also in two main committees.<sup>31</sup> The first committee, chaired by Mr. Bouchaib Eloumni of Morocco, was to deal with the preamble, principles, goals and objectives, and criteria. The second committee, chaired by Ambassador Paul van den Ijssel of the Netherlands, would address scope, implementation (including cooperation and assistance), and the final provisions. Deliberations and exchanges of views were largely based on the Chair’s discussion paper circulated on 3 July 2012 as well as the papers of the two committee chairs, and conducted largely in an informal setting. It was not until 24 July 2012 that the Chair circulated the first complete consolidated text of the Treaty, which was discussed, modified and issued as an official conference working document on 26 July 2012. The new version of the text seemed to gather wide support.

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<sup>28</sup> The conference ran into difficulties at the outset when Egypt demanded that the Palestinian delegation have the status of a state, not merely of an observer as is usually the case at United Nations General Assembly meetings. “UPDATE 1—Arms trade treaty negotiations begin, Syria casts shadow”, Reuters, 2 July 2012.

<sup>29</sup> Secretary-General, *Secretary-General, in Remarks to Conference on Arms Trade Treaty, Calls Absence of Global Instrument Dealing with Conventional Weapons ‘A Disgrace’*, UN document SG/SM/14394—DC/3363, 3 July 2012.

<sup>30</sup> See for example the ATT Monitor blog at <<http://attmonitor.blogspot.co.uk>>; and the Arms Trade Treaty legal blog at <<http://armstradetreaty.blogspot.co.uk>>.

<sup>31</sup> For the procedural report of the conference, see General Assembly, *Report of the United Nations Conference on the Arms Trade Treaty*, UN document A/CONF.217/4, 1 August 2012.

In the morning of the final day, however, the United States made a statement declaring that they needed more time to consider the draft Treaty and that the text needed further work. To do this, they proposed convening another conference to conclude negotiations.<sup>32</sup> The Russian Federation, Cuba, the Democratic People's Republic of Korea and Venezuela supported the US position. Thus the conference did not agree on an Arms Trade Treaty by 27 July 2012 despite the efforts put forth by delegations during the intense negotiations. This was a disappointment for many, who had hoped that the conference would have been the culmination, through the adoption of the Treaty, of all the hard work devoted to the ATT process in the past decade. Also the United Nations Secretary-General expressed his disappointment that the four-week-long meeting ended without agreement on a treaty text that would have set common standards to regulate the international trade in conventional arms, and described the conference's inability to conclude its work a setback.<sup>33</sup>

The draft treaty text presented on 26 July 2012 was adopted as an annex to the report of the conference. At the time of writing, the next steps in the ATT process are still to be confirmed: co-authors of the original ATT resolution of 2006 have put forward a new draft resolution in the First Committee of the General Assembly, whereby they propose the convening of the final ATT negotiating conference in March 2013. Whether the initiative goes through or not, it seems clear that the process is not over, and further concerted efforts are needed to ensure that the ATT can be agreed upon in the near future.

Discussions at the negotiating conference showed that there appeared to be a broad acceptance among all states about the need to agree a treaty to regulate the conventional arms trade to contribute to efforts to combat the illicit arms trade. However, views remained divided on many aspects of the draft Treaty, ranging from its goals and objectives to the items and activities covered, and the application of transfer criteria. The draft treaty text provides a basis for states to build on, and it is hoped that also the findings and recommendations presented in this report will be taken into account when improving the current draft and continuing the work towards the Treaty.

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<sup>32</sup> US State Department, "Arms Trade Treaty Conference", 27 July 2012, <[www.state.gov/r/pa/prs/ps/2012/07/195622.htm](http://www.state.gov/r/pa/prs/ps/2012/07/195622.htm)>.

<sup>33</sup> Statement by the Secretary-General on the Arms Trade Treaty conference, London, 27 July 2012, <[www.un.org/sg/statements/index.asp?nid=6218](http://www.un.org/sg/statements/index.asp?nid=6218)>.

### **3. EU–UNIDIR project—supporting the negotiations**

#### **General structure of the project**

The trade in conventional arms touches upon all United Nations Member States. However, the ways in which this issue is of relevance and importance to them varies widely. Because of this, it was decided from the outset that all United Nations Member States should be approached within the project, and its scope should be both geographically and thematically comprehensive.

The project was largely designed following feedback received from participants and other stakeholders that participated in the activities of the first EU–UNIDIR project in 2009–2010. When asked about their needs and wishes for further action, many called for continued, inclusive regional-level dialogue. Also, further in-depth research and a widened participation base to support the ATT process were mentioned by many as central building blocks for the United Nations process. Finally, the feedback also pointed out that we needed to move towards concrete training and capacity-building in parallel with diplomatic negotiations.

To answer these calls—to move from mere awareness-raising to capacity-building and to link the diplomatic debates of the United Nations better with the real-life challenges of people actually implementing arms transfer controls—it was decided that the project should have a two-fold objective:

- to support the preparatory process leading up to the United Nations Conference on the Arms Trade Treaty to ensure that it is as inclusive as possible and able to make concrete recommendations on the elements of the future ATT; and
- to support United Nations Member States in developing and improving national and regional expertise to implement effective arms transfer controls, in order to ensure that the future ATT, when coming into force, will be as effective as possible.

In line with these objectives, the project consisted of seven regional seminars together with support activities, such as three side events organized in the margins of the PrepCom meetings and the United Nations General Assembly's First Committee. In addition, UNIDIR was tasked to commission up to 12 research papers from research institutes or individual experts to focus on elements of the future ATT and the United Nations process. The research papers also served as background for relevant discussions in the regional seminars.

Throughout the project, UNIDIR cooperated with a range of international and regional organizations, civil society actors and individual researchers, both in relation to the seminars and other project activities, and especially with regard to background studies, which were commissioned as part of the project.

Based on both written and verbal feedback received from the project's stakeholders, it can be concluded that the target audience warmly welcomed all the activities and materials. The project resulted in increased awareness of the ATT process on the part of states, regional actors, civil society and the private sector. It also encouraged a more active involvement of all United Nations Member States and regional organizations in

the ATT process, and fostered debate among states, both in terms of political/diplomatic issues and with regard to the practical implementation of arms transfer control systems.

### **Regional seminars**

All the regional seminars were three-day events that consisted of two parts. The first part was designed to support the first goal of the project—the ATT negotiation process—and provide a general overview of an ATT and the current stage in the discussions. The second part, again in line with the project objectives, was built to be more practice-oriented and practical.

In each of the regions, states were invited to nominate two participants to the seminar: one representing diplomatic personnel responsible for national policies vis-à-vis an ATT, including national delegates participating in the ATT PrepCom; and one from agencies working in export controls, customs or law enforcement as they relate to an ATT. In addition, representatives from international and regional organizations, regionally based NGOs and the defence industry were invited to participate, together with technical experts on aspects of export controls on conventional arms, including EU experts.

Participants in the regional seminars included representatives from states in the regions, representatives from regional organizations, NGOs, representatives from UNIDIR and the United Nations Office for Disarmament Affairs (Conventional Arms Branch and Regional Branch, including regional centres), and technical experts from EU member states. A side event was organized in the margins of the United Nations meeting of the ATT PrepCom (64th session of the General Assembly) to present to stakeholders gathered in New York the results of the project to date. While following the same main structure and format, the agenda of each of the seminars was tailored to suit the realities in the regions, taking into account regional specificities.

Project activities in chronological order:

- Project launching event, New York, 15 July 2010
- Regional seminar for countries in South and Central Asia, Kathmandu, Nepal, 10–12 November 2010
- Regional seminar for countries in Central, West and North Africa, Casablanca, Morocco, 2–4 February 2011
- Side event in the margins of the meeting of the ATT Preparatory Committee, New York, 1 March 2011
- Regional seminar for countries in the Americas, Montevideo, Uruguay, 27–29 April 2011
- Regional seminar for countries in East Asia and the Pacific, Bali, Indonesia, 6–8 June 2011
- Side event in the margins of the meeting of the ATT Preparatory Committee, New York, 15 July 2011
- Side event in the margins of the meeting of the United Nations General Assembly's First Committee, New York, 17 October 2011
- Regional seminar for countries in East and Southern Africa, Nairobi, Kenya, 29 February–2 March 2012

- Regional seminar for countries in the Middle East, Beirut, Lebanon, 27–29 March 2012
- Regional seminar for countries in Wider Europe, Belgrade, Serbia, 18–20 April 2012
- Project concluding event, New York, 17 July 2012

The following sections present summaries and main messages from each of the project activities. More detailed summary reports containing recommendations and ideas put forward for an ATT in the seminars were prepared after each activity, and they, together with audio files of presentations, can be found at <[www.unidir.org/att](http://www.unidir.org/att)>.

### Launching event

United Nations Headquarters, New York, 15 July 2010.<sup>34</sup>  
Over 90 participants.

The project was launched at United Nations Headquarters in New York in the margins of the first meeting of the Preparatory Committee for the Arms Trade Treaty on 15 July 2010. It brought together over 90 participants from United Nations Member States, international organizations and civil society. The objective of the launch was to present the project and to ensure that all target groups became well informed about it. The launch encouraged their wide and active participation in all project activities and sought input from United Nations Member States, civil society, researchers and NGOs about the project implementation plan.

The event consisted of thematic presentations on the United Nations and the Arms Trade Treaty, the EU's support to the ATT process, regional views from the Economic Community of West African States on the ATT, and key issues and regional considerations for 2010–2012. At the end of the presentations, the floor was opened for general discussion and questions. The presentations were very well received and the launch attracted wide interest among the target groups regarding further activities foreseen in the project. The level of participation was high, even despite the many ongoing activities in the margins of the PrepCom meeting. Many United Nations Member States were represented by ATT experts. From the side of the European Union, the EU High Representative's Personal Representative on Non-Proliferation was present, and the United Nations was represented by the High Representative on Disarmament. In addition, many prominent organizations of the Control Arms Campaign took part. The presentations gave a good general overview about the issues relevant to the project, and the discussion that followed brought up additional aspects in an interactive manner.

Both the presentations and the following discussion highlighted the importance of taking regional aspects and challenges into account in the ATT process on the side of national and international priorities. It was noted that an effective ATT will benefit from strong regional input and, vice versa, regions will benefit from an effective ATT. An ATT should under no circumstances put at risk or lower the standards of existing regional instruments, such as the Convention of the Economic Community of West African States, the Southern African Development Community's Protocol on the

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<sup>34</sup> More information about the launching event can be found at <[www.unidir.org/bdd/fiche-activite.php?ref\\_activite=539](http://www.unidir.org/bdd/fiche-activite.php?ref_activite=539)>.

Control of Firearms, Ammunition and Other Related Materials, and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa. The EU–UNIDIR seminars were mentioned to be useful fora for increased understanding of participants of the ATT process and for the expression of subregional priorities and concerns. In addition, especially the importance of continued civil society participation in the ATT process was called for.

Based on the feedback received from participants, the seminar was seen as a stimulating and encouraging launch for the project.

#### Regional seminar for countries in South and Central Asia

Kathmandu, Nepal, 10–12 November 2011.<sup>35</sup>

About 40 invited participants. In addition, opening and closing sessions were open for all interested parties.

The seminar in Nepal brought together close to 40 representatives from 15 countries in South and Central Asia, representing ministries of foreign affairs, defence, economy and interior, and the armed forces. In addition, several non-state expert participants were invited to contribute to the discussions and to make presentations. The first part of the seminar concentrated on the ATT negotiations, with an overview of the process and the Treaty's possible elements. It also provided opportunities for states to share their national and regional views on the ATT and its different aspects, including transparency and assistance measures. The second half of the seminar discussed cooperation, assistance and capacity-building to regulate trade in conventional weapons as related to the establishment and enforcement of effective arms transfer control systems.

The first seminar of the series proved successful and met its goals. The event attracted high-level participation from the host Nepal, the United Nations and the EU, and the overall level of attendance was high. From the side of Nepal, the seminar was opened by the Honourable Deputy Prime Minister and Foreign Minister of Nepal, Dr. Sujata Koirala, whereas the EU was represented by the Head of the EU delegation in Nepal. This added importance to the seminar and also helped attract wide media attention. Presentations made during the seminar were received positively by participants: even though the majority of participants in both first and second part of the seminar said they were either completely or generally/partially aware of the ATT initiative before the seminar, the vast majority reported to have improved their knowledge about the Treaty and arms transfer controls as a result of the presentations and discussions. The discussion that followed the presentations revealed participants' great interest in the project and the ATT process as a whole, and highlighted the importance of continued regional-level dialogue. Also the background papers circulated before the seminar and the working group discussions were noted as specifically useful. Most participants noted that the seminar helped their state to make recommendations or present ideas at the PrepCom and to review/enhance/enforce technical arms transfer controls.

The seminar discussions touched upon all the main aspects of the proposed ATT. It was noted that the desired goals and objectives of the Treaty will determine its scope,

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<sup>35</sup> The summary report of the seminar including its agenda and list of participants, together with audio files and documents of the presentations, are available at <[www.unidir.org/bdd/fiche-activite.php?ref\\_activite=561](http://www.unidir.org/bdd/fiche-activite.php?ref_activite=561)>.

parameters and the implementation architecture. An ATT's intention should be to establish the highest possible set of common standards and practices at the global level to effectively control and regulate conventional arms transfers. The need to combat the illicit trade in SALW and to prevent the illegal trade in conventional arms more generally were mentioned as desirable goals, as these issues are relevant for all states and chances for consensual support for their inclusion is high. Further, the future Treaty should aim to prevent diversion and help increase transparency in arms transfers, as well as enhance states' commitment to their existing international obligations and commitments.

On the possible scope for an ATT, most participants seemed to favour taking the categories of the UNRCA as the starting point, and including also SALW. Also, it was noted that the definition of the seven categories should be revised and enlarged to ensure that all relevant weapons are included and that the future Treaty's scope will be truly comprehensive. Many participants called for clear definitions of types of weapons and activities, as well as for taking a consensual and pragmatic approach to defining the scope. On ammunition, views were more divided than on weapons, as some participants were absolutely in favour of their inclusion, while others pointed to the possible difficulties in implementing a treaty should it also cover ammunition.

On parameters and criteria to be followed in an ATT, the seminar discussions covered states' existing commitments as well as possible additional criteria. The most commonly mentioned were the inherent rights of states to defend themselves, to regulate their internal affairs, to maintain territorial integrity and of political independence. Many participants further underlined the rights of states to manufacture, import, export, transfer and hold conventional arms for self-defence and security needs. An ATT should give due consideration to confidentiality as regards security and military concerns. The possibility of ranking the parameters into a hierarchy was also mentioned.

To ensure the efficacy of an ATT's future implementation, the importance of strong, national-level authorities and centralized decision-making and coordination systems was underlined. The roles of different agencies in this coordination system should be carefully studied and it should be clearly decided at the national level which agency or body will take the lead. Country studies could be conducted about different systems and models in place at the moment. Most participants seemed to favour the inclusion of strong cooperation, capacity-building and assistance mechanisms in an ATT. In information exchange, it was specifically suggested that exchanges of experience in national legislation and processes related to an ATT be studied in advance of the Treaty's entry into force. Meetings of state parties to oversee progress made in implementation received wide support among the participants. Views were more diverse regarding the possibility of establishing an international secretariat, implementation unit or committee of experts, especially as it was noted that these would have financial consequences.

Discussions during the seminar clearly revealed that regional-level discussions and action are crucial in developing and enhancing arms transfer controls. It was noted that regional initiatives could be useful for the ATT process even in cases where their focus is not specifically on arms transfers. Further interaction and support among national, regional and international processes was called for.

## Regional seminar for countries in West, Central and North Africa

Casablanca, Morocco, 2–4 February 2011.<sup>36</sup>

63 invited participants. In addition, opening and closing sessions were open for all interested parties.

The second regional seminar was held for countries in Central, West and Northern Africa. It brought together representatives from 22 of the 26 states invited to the event. Altogether, close to 40 representatives from ministries of foreign affairs, defence and interior, and the armed forces took part in one or both parts of the event. In addition, several non-state expert participants from international and regional organizations, the United Nations and civil society were invited to make presentations and contribute to the discussions.

As in the first seminar in Nepal, the first 1.5 days of the Casablanca event concentrated on the ATT negotiations, with an overview of the process and the future Treaty's possible elements. Opportunities were also provided for participating states to share their national and regional views on the ATT. The second half of the seminar was more technical and discussed *inter alia* existing arms transfer control systems, challenges in their implementation, as well as possibilities for further cooperation, assistance and capacity-building to ensure effective implementation of the future ATT.

The seminar proved successful and attracted active participation from countries in Central, West and Northern Africa, as well as from the host Morocco. High-level participation by the host, the United Nations and the European Union further contributed to the success of the seminar and helped attract wide media attention in Morocco. In the feedback forms anonymously circulated among participants, many indicated that they were already somewhat familiar with the ATT process but that more information was needed and that the materials and discussions at the seminar contributed to their knowledge about the subject. Especially, participants in the political part of the seminar mentioned discussions on end-user controls, issues of definition, and difficulties ahead in the negotiations as issues they were interested in hearing more about. In the second part, feedback revealed that discussions on import controls and transparency measures as well as on, for example, distinguishing tangible and intangible transfers were welcomed. Especially, participants appreciated hearing about the systems of other countries in the regions and in the EU. Participants of both parts of the seminar also noted that the event was very useful for them in establishing contacts with colleagues and in improving networking on the subject.

The seminar heard a range of interventions from regional organizations that work in Central, West and North Africa on security issues. Work done by the Economic Community of West African States, the Economic Community of Central African States and the African Union, for instance, illustrates that in many ways these regions could function as examples for others of what can be developed at the regional level and how regional and international components of arms transfer controls could work together under the future ATT.

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<sup>36</sup> The summary report of the seminar including its agenda and list of participants, together with audio files and documents of the presentations, are available at <[www.unidir.org/bdd/fiche-activite.php?ref\\_activite=579](http://www.unidir.org/bdd/fiche-activite.php?ref_activite=579)>.

When discussing the scope for the Treaty, most participants seemed to favour bringing in as wide a range of conventional arms as possible, going beyond the categories of the UNRCA. Many were specifically advocating the inclusion of SALW and ammunition. SALW was noted as a category of specific importance in these regions, and problems in the illicit circulation of weapons goes back to the conflicts that left many countries awash with weapons that are now used for illegal purposes and that destabilize regions. The best way to address scope might be to have a general heading of weapons and equipments in the treaty text itself, and then have annexes with more specific lists of weapon categories. On the activities to be covered in an ATT, there seemed to be wide support for a comprehensive scope with the inclusion not only of export, import, transfer and transit of weapons, but also of, for example, brokering activities. Categories where some reservations were expressed included loans, gifts and temporary exports.

A question was raised about how the use of weapons by non-state actors (NSAs) could be addressed in an ATT. Despite various views expressed about different possible scenarios of arms transfers involving NSAs, a common view seemed to be that addressing the question of NSAs explicitly in an ATT would prove politically and practically challenging. However, the importance of taking NSAs into account when considering issues related to controlling conventional arms transfers was underlined, for example through the establishment of robust and implementable end-user controls at the national level.

Since the beginning of the ATT process, cooperation and assistance have been mentioned as very important aspects to be included in the future Treaty, to ensure that it will be implementable and effective in all countries. Generally, it seemed that assistance under an ATT should not be made conditional and should remain on a voluntary basis. Exchange of information at regional level and cooperation between exporter and importer states more generally was welcomed, both to enable building capacity and to build confidence within regions and internationally.

When discussing the implementation priorities of the future ATT, it was stressed that the main responsibility will lie with states and that they all should put in place effective and robust national systems based on their specific situations and needs. In addition, for example regional bodies could assist in monitoring or observing arms transfers and treaty compliance more generally, to complement efforts at the international level. This would also allow taking regional specificities and priorities into account on the side of international action. Most participants seemed also to be in favour of establishing some kind of international body or secretariat to support the implementation of the future Treaty as well as to assist in measuring its impact and monitoring arms transfers. Taking into account the resources that would be associated with the establishment of an independent secretariat, it was suggested that an Implementation Support Unit (ISU) could be set up within the existing structures at the United Nations to support the Treaty's implementation in a cost-effective manner. Also transparency measures, national contact points, committees of experts and meetings of state parties were supported as important implementation measures.

### Side event at the PrepCom meeting for the ATT

United Nations Headquarters, New York, 1 March 2011.  
Around 80 participants.

The side event organized in the margins of the second meeting of the United Nations Preparatory Committee for the Arms Trade Treaty provided an update on the project mainly by sharing the results of the first two regional seminars with all relevant stakeholders present in New York. It was also an occasion to discuss substantive elements relating to the current ATT debate and process, especially as they relate to the future Treaty's possible scope and parameters. Presentations highlighted key messages from the Nepal and Morocco seminars (see above). Participants also heard interventions specifically related to the possible scope of an ATT as well as technical capacity-building and assistance.

Regarding an ATT's possible scope it was noted that the debate in the PrepCom has been increasingly moving from discussing the seven categories of the UNRCA plus SALW and ammunition (the "7+1+1" approach) as a basis for the scope of the Treaty, to considering a broader set of weapons categories. The possible inclusion of ammunition in an ATT's scope was discussed with reference to the possible technical challenges of controlling the transfer of ammunition as well as to the number of successful national systems to control and keep record of ammunition transfers.

The technical aspects of the regional seminars were presented by discussing some of the practical outcomes of the first project activities. One of the aims of the regional seminars is to support United Nations Member States in developing and improving national and regional expertise to implement effective arms transfer controls. Through the presentation of national and regional systems to control the trade in conventional weapons, and by discussing aspects of establishment and enforcement of licensing systems, including legal and administrative procedures, the seminars have brought up a number of priorities and challenges faced by practitioners working on arms export and import controls. At the Nepal seminar these were related especially to the need to put in place strong national-level authorities and centralized decision-making systems, coordination among different actors, and further studies on the operationalization of practical assistance tools and mechanisms best suited to enhancing technical cooperation. In Morocco, participants highlighted challenges related in particular to illicit weapons flows, especially across porous land borders; insufficient technical capacities in stockpile management, marking and tracing and in customs cooperation; as well as inadequate exchange of information at the regional level.

The outcomes of the regional meetings together with the thematic presentations were analysed in light of the work currently ongoing at the United Nations, by elaborating synergies of discussed issues as well as concrete proposals about the way forward.

The side event was carried out successfully and received positive feedback from participants, who had been interested to learn about the outcomes of the first regional seminars and were also eager to hear about the next steps planned in the project's implementation. Despite some competing lunchtime activities ongoing on the PrepCom premises during the EU–UNIDIR event, it attracted a good audience and evoked lively conversation among participants.

## Regional seminar for countries in the Americas and the Caribbean

Montevideo, Uruguay, 27–29 April 2011.  
Close to 100 participants.

In April 2011 UNIDIR held a seminar for countries in the Americas and the Caribbean. This third regional seminar followed its predecessors in fully meeting its goals by resulting in an active exchange of views and expertise, and by being able to identify areas of convergence as well as issues on which further discussions were necessary. It attracted a good level of participation from countries in the Americas and the Caribbean, as well as from host Uruguay. High-level participation on the part of the host state, the United Nations and the European Union further contributed to the success of the seminar and helped attract broad media attention. Both parts of the seminar had close to 100 participants from 28 of the 35 countries in the region, in addition to international experts, all of whom actively participated in the discussions and many of whom also contributed by making presentations.

As in the other seminars, participants discussed the possible scope of an ATT at length. Most states called for a more comprehensive approach to the issue of scope than the often-quoted “7+1+1” model, and noted that a robust Treaty would probably have to address the issue of international transfers of conventional arms as a whole. Many participants seemed to be in favour of a list to be annexed to the treaty text. The importance of SALW as a specific category under an ATT was highlighted by most participants, as were ammunition and technological developments. In addition, it was noted that parts and components as well as technology and equipment, which were seen as separate but equally important categories, should be further analysed with regard to their possible inclusion in the Treaty.

The seminar also discussed the possible parameters that should be included in the transfer criteria under an ATT. Special focus was placed on human security considerations. It was noted that illicit and uncontrolled flows of especially SALW pose various problems to states in the Americas and the Caribbean, from increased crime rates to other forms of social violence and armed conflicts. Many participants called for an ATT to establish transfer criteria that would help to address these problems and for their part improve human security in the region. Corruption and diversion were also noted as acute problems in the region and something that an ATT should seek to address. Also criteria to prevent transfers of arms where they would seriously impair poverty reduction and development efforts were noted to be of direct concern to human security in the region.

In addition to discussing the principles, objectives, scope and parameters of the ATT, determining the treaty implementation modalities is a crucial aspect that will largely determine its success and effectiveness. Seminar presentations brought out different aspects of ongoing efforts at all levels and highlighted areas of convergence and complementarity. The primary role of national-level action, both in the lead-up to the negotiations and later in implementing the Treaty, was underlined by many participants, who also noted that sovereign decision-making should in no instance be sacrificed under the Treaty. Many echoed the necessity to put in place the essential legal, administrative and organizational national structures. Some called for international cooperation and assistance to support states in these efforts. Coordination among different national actors as well as outreach to external partners were mentioned by many as key to

effective arms transfer controls. The need to improve inter-agency coordination was also highlighted. The ATT should remain flexible both with regard to different national approaches to transfer controls and to future developments in trade and technologies. It should also not set a ceiling for controls but should allow states to introduce stricter national controls than specified in the Treaty, should they so wish.

In addition to various national systems, practices and challenges, considerable time was devoted to possible international mechanisms that could or should support the implementation of the ATT. Almost all interventions seemed to support having some kind of institutional follow-up system as part of the Treaty, as this would help assess the degree to which the Treaty was functioning, assist all parties in meeting their commitments, increase transparency on arms transfers in general, and develop shared understandings about the standards of acceptable practice. The possibility of having an international secretariat or an ISU was discussed. Possible tasks for an ISU/secretariat included collection of national reports and other information related to the Treaty's implementation, coordination of assistance and cooperation efforts and matching needs with resources, coordination of efforts among regional organizations and arrangements, providing administrative support and general advice to governments regarding joining and implementing the Treaty. Participants' views diverged over whether the possible ISU or secretariat should be established as an independent body, or whether parties should seek to place implementation support within a pre-existing structure, such as the United Nations. Meetings of states parties and review conferences to facilitate implementation were also discussed, together with possible mechanisms of dispute settlement, peer review systems and continuous treaty review and development.

In addition to aspects of institutional follow-up systems to support implementation of the future Treaty, one prominent theme throughout the seminar was transparency. The importance of regular (annual) national reporting as a means to increase transparency in conventional arms transfers was stressed as crucial, and information exchange in the form of national reports was noted to be a central building block for an ATT's implementation system. Some noted that the reporting system should be made compulsory for all Treaty parties, while others were firm in their view that any possible information exchange mechanism should rather be kept general and voluntary in nature. Areas where views seemed diverse were on the question of transfer denial reporting, the nature of reporting in terms of items and types of information to be covered, as well as the frequency of reporting. It was noted that the Treaty's scope should not be seen as uniform in its future transparency function. An ATT could cover some materials for which states would exchange more information, and others with regard to which this information exchange would be less frequent or more limited. Some information under the Treaty could be made publicly available on the internet, whereas other information could be released only to Treaty parties, or be exchanged bilaterally.

Further, in relation to transparency and information exchange, participants also mentioned the possibility of holding bilateral consultations regarding arms transfer decisions to coordinate and network with colleagues both domestically and abroad.

Interventions by experts were received positively by participants: in the anonymous feedback forms distributed to participants, participants of the first part of the seminar in particular noted that they were quite familiar with the ATT process and the current stage of discussions already before the seminar, but that the exchanges of views were still useful. Participants of both parts of the seminar also noted that the event was very

valuable in establishing contacts with colleagues and in improving networking on the subject.

#### Regional seminar for countries in East Asia and the Pacific

Bali, Indonesia, 6–8 June 2011.

Over 40 participants.

The fourth regional seminar of the project was organized for countries in East Asia and the Pacific and held in Bali, Indonesia, in June 2011. It brought together over 40 representatives from ministries of foreign affairs, interior and defence, and the armed forces from 14 of the 23 states invited from the region. Following the model of the other seminars, several international expert representatives from the United Nations and regional organizations as well as civil society participated in the meeting by making presentations and contributing to the discussions.

The event was divided into two parts. The first part concentrated on the ATT negotiations, with an overview of the process and the elements of the future Treaty, placing special emphasis on different issues related to the Treaty's future implementation. The second part of the seminar was more technical and practice-oriented, and discussed practical arms transfer control systems in the region, challenges in their implementation, and possibilities to improve current systems through coordinated capacity-building and assistance measures.

During the discussions at the seminar, it was highlighted that negotiating an international legally binding treaty, which would establish the highest possible common international standards for the transfer of conventional arms, will require the participation of all relevant parties at the national, regional and international levels. The primary role of states, whether exporters or importers or both, cannot be overlooked. In addition, in order to be effective, an ATT should not be seen as an exporter's treaty, but it should be relevant to both importer and exporter states and be universally applied.

Several presentations were made about existing national arms transfer control systems in different countries in the regions. Many speakers addressed the minimum necessary technical national structures that will have to be put in place and maintained to implement effective transfer controls. The primary responsibility of states to develop and enforce control mechanisms, both at present and under the future ATT, was underlined. Small island states of the Pacific in particular referred to their limited capacities and their need to develop sophisticated transfer control systems, and it was concluded that the ATT should not try to establish a "one-size-fits-all" solution to transfer controls, but should be more about what needs to be put in place as minimum controls.

While some of the smaller states that participated in the seminar were quite positive and optimistic about their ability to introduce and enforce effective controls based on their particular needs, many also called for an ATT to establish a system of international or bilateral assistance. The provision of assistance should however remain voluntary, maintain mutual respect of parties involved, aim at building the recipient states' own capacities and be tailored to each specific case in question. The issue of technology transfers was discussed in particular in relation to states' capacity-building and some

participants noted that mechanisms related to this could be used as incentives for developing states to join the ATT.

Discussions during the seminar concentrated mostly on the implementation aspects of the future ATT. The role of an international body in facilitating the matching of needs to resources was raised and participants generally seemed positive about such a role, which could help to channel requests and offers of assistance. Some also touched upon the issue of compliance, and pointed to the important difference between non-implementation and non-compliance.

In addition to national systems, the seminar also addressed the possible international mechanisms that could or should support the implementation of the ATT. In terms of the institutional system, the possibility of having some kind of mechanism for dialogue or consultation between importer and exporter states was particularly discussed in some detail. Many participants saw the possibility of thus increasing transparency and dialogue through an ATT as one of its most prominent aspects. Views were exchanged as to what kind of consultation mechanism could be included in an ATT, how it could function and what the benefits would be. It was observed that a pre-authorization/delivery dialogue would be more efficient and politically sustainable than establishing a formalized platform of post-transfer consultations. The possibility of establishing a forum in which to discuss transfer denials under the ATT was also addressed, with some supporting voices and other remarks of caution. Participants also went further in discussing a possible peer review system and a mechanism of dispute settlement, which could form part of the new international arms transfer control framework. Many argued strongly in favour of such mechanisms, as they could provide a platform where concerns or dissatisfaction beyond single transfers could be raised in a public forum. However, as with many of the issues, other participants expressed caution towards such a system, especially with regard to its practical applicability and functioning. Generally, bilateral consultations among importers and exporters throughout the transfer process were encouraged, and it was noted that the ATT could facilitate such relations, for example through a requirement to establish national contact points.

In addition to the consultation aspects, one central theme in the discussion on implementation was transparency. This was touched upon most prominently with regard to the possibility of having regular national or regional reporting under the future ATT. Participants discussed both reporting on implementation of the Treaty (steps taken to ensure compatibility and effective functioning of the Treaty requirements at the national level) and statistical reporting about transfers of arms themselves that would fall under the scope of the Treaty. Most participants seemed to favour some kind of national reporting on both these aspects, even though detailed views as to the type of information exchanged and the frequency of information exchange varied. In general, it seems that reporting on implementation steps could be done on a less frequent/ad hoc basis whenever states have developments to report, whereas statistical reporting on exports, imports or transfers could be conducted on a regular basis, for example annually. Some suggestions were made regarding an electronic system of information exchange, which could facilitate transparency under an ATT and also help states to avoid reporting fatigue. Regional reporting or a mechanism whereby regional organizations could facilitate the gathering of data related to issues subject to national reporting were also explored.

Overall, the Bali seminar was successful in meeting its goals and in securing a good level of participation from the target countries, especially given the wide geographic area that the activity covered. The high-level participation and strong support of the host state, together with the United Nations and the European Union, further contributed to the success of the seminar and helped attract media attention. Interventions by experts were positively received by participants. Anonymous feedback forms were returned by almost all participants, in which an overwhelming number of participants considered the event to have been informative and to have increased their knowledge on various national arms transfer control systems and on the ATT initiative.

#### Side event in the margins of the PrepCom

United Nations Headquarters, New York, 13 July 2011.

Around 90 participants.

The next event of the project was a side event held on 13 July 2011 in the margins of the third meeting of the ATT PrepCom. The purpose of the meeting was to provide an update on the project mainly by sharing the results of the Montevideo and Bali regional seminars (see above). It was also an occasion to discuss substantive elements relating to the implementation aspects of the future Treaty, especially as they relate to possible transparency measures that could be introduced at the national, regional and international levels. Presentations made at the event highlighted key messages from the regional seminars held in Montevideo for the Americas and the Caribbean, and in Bali for countries in East Asia and the Pacific. Participants also heard an intervention specifically related to the possible national reporting mechanisms that could be included in an ATT.

On the issue of reporting it was noted that in the ATT discussions several possible transparency measures for the Treaty have been suggested, such as regular national reporting, other forms of information exchange, consultations, networks of contacts, peer review mechanisms, dispute settlement and national record-keeping requirements. Reasons for including these measures include the need to monitor and improve treaty implementation; build confidence among relevant parties and identify general trends in the conventional arms trade. Specifically on national reports it was suggested that they could encompass two types: information exchange on states' national implementation mechanisms, such as the establishment and updating of regular laws and regulations; and information exchange about actual transfers of arms that will fall under the scope of the Treaty. In any case, transparency measures should by no means be confused with implementation itself—not everything to be included in the ATT would have to be subject to a similar level of transparency. Also, the balance between transparency and national security concerns should always be respected. While most states seem to be in favour of some kind of transparency mechanism, the exact nature and level of detail of reporting remains to be decided. Once the Treaty is in place, states should think about possibilities to update and modify the transparency mechanism, when deemed necessary.

The presentations were followed by a series of questions and comments from the floor, both relating to specific aspects presented by the speakers and to the ATT process generally. The event, held with simultaneous interpretation in English and Spanish, was attended by almost 90 representatives of governments, international and regional organizations and civil society, and received positive feedback from the target audience.

Its timing during the third meeting of the PrepCom proved advantageous and helped keep momentum around both the event and the EU–UNIDIR project as a whole. Many participants had attended the regional seminars and our previous side events, which shows continuity and commitment on the part of the various stakeholders.

Side event in the margins of the United Nations General Assembly’s First Committee

United Nations Headquarters, New York, 17 October 2011.  
Around 110 participants.

On 17 October 2011, UNIDIR held a lunchtime event as part of its contribution to the debate of the United Nations General Assembly’s First Committee. Given that the PrepCom process for the ATT negotiating conference was at its final stages, the side event concentrated on discussing some of the key issues on the table for the Treaty. It presented two background studies that UNIDIR was commissioning as part of its ATT project: one on the possible inclusion of ammunition in the Treaty and another one looking at technology transfers as a possible type of activity to be covered.

The event was open to all interested parties and attracted a wide audience: around 110 representatives from permanent delegations, United Nations agencies, international organizations and civil society listened to the presentations and participated in the discussion. The seminar received active and encouraging feedback from the participants. Presentations made at the event were generally noted to be of importance and interest in the ATT process, and participants welcomed the materials distributed during the event.

The first presentation introduced a paper prepared for UNIDIR on the possible inclusion of ammunition in the scope of an ATT. It concentrated on two key questions: first, whether the scope of the Treaty should include ammunition; and second, if “yes”, how ammunition in the ATT should be treated in terms of reporting and transparency. On the question about the desirability of including ammunition in the Treaty’s scope, it was noted that in order for the goals and objectives of the Treaty to be met, the inclusion of ammunition is of crucial importance. Most states already regulate their international ammunition transfers as standard practice and apply the same standards to ammunition as they do to arms. Existing practice also suggests that controlling the large amount of transferred ammunition is in fact not as problematic as sometimes claimed, and also licensing is manageable. It was noted that, in principle, ammunition should be subject to similar reporting requirements as arms and other items falling under the Treaty. Reporting creates the possibility for accountability, and there is no less need for accountability for decisions about international ammunition transfers than for international arms transfers. Further, a significant number of states, including EU member states and the United States, already report on their international ammunition transfers.

The second presentation was about the scope of an ATT—challenges related to effective controls of transfers of defence technology both with regard to large conventional weapons and small arms, and how this issue could be addressed in an ATT. In today’s world we see a multiplicity of sources of defence technologies for both advanced and developing countries. Challenged by a global economic downturn, many states have in recent years been forced to cut down their military budgets and to find new solutions to simultaneously meet defence needs and budget cuts. One way is to develop new defence

technologies in cooperation with other parties. Different ways of transferring defence technologies were listed, including manufacturing under licence, joint developments and offset deals as examples. It was noted that offset deals are often accomplished through complex foreign sales agreements in which the buyer purchases a few copies of an advanced fighter or tank, for example, assembles a second batch under license, and manufactures the rest indigenously. In general, defence technologies range in sophistication from low-tech weapons to highly sophisticated systems and equipment. While there are several instruments recording the international trade of conventional weapons, information on technology transfers is limited and remains a challenging category in which to accurately reflect developments currently ongoing across the globe. However, numerous national export control systems provide examples of comprehensive and strict control over transfers of national defence technologies. These export control systems could perhaps be regarded as manuals for good practices, however keeping in mind that, as no single state can control the ultimate distribution of advanced weapons and the technologies necessary to build them, international controls are needed to support national and regional efforts.

The presentations were followed by an active question-and-answer session, where many points raised by the speakers were further highlighted by comments from the floor. Especially regional views from Africa were prominent in the remarks, echoing the debates held shortly before the First Committee within the African Union about forming a common position on an ATT. Transparency and reporting requirements, as well as the overall implementation framework of the future Treaty were prominent in both the presentations and the following discussion, and the participants identified many areas where further work and exchange of views were needed in the lead-up to the July 2012 ATT conference.

#### Regional seminar for countries in East and Southern Africa

Nairobi, Kenya, 29 February–2 March 2012  
Over 80 participants.

From 29 February–2 March 2012 UNIDIR organized a regional seminar in Nairobi, Kenya, directed to countries in East and Southern Africa. The seminar, divided into two parts following the model of the previous regional events, brought together over 80 representatives from 24 of the 26 countries in East and Southern Africa, mostly from ministries of foreign affairs, defence and interior and the armed forces. In addition, several international expert representatives from the United Nations and regional organizations as well as civil society were invited to attend the meeting and to make presentations.

The three days of the seminar were full of presentations and discussions, both in the plenary and in smaller working groups, which allowed for a more in-depth analysis of issues and a more informal exchange of views. Both the political part and the more technical, practice-oriented part saw extremely active and constructive participation of national representatives and experts, who were asked to discuss issues from strategizing towards the July 2012 negotiations and national positions on the ATT, to the day-to-day realities of national and regional arms transfer control systems.

In terms of the scope of the Treaty, there was general support for the goals and objectives of the ATT as outlined in the Chair's non-paper of 13 July 2011. It was noted

that the most important goal for the Treaty will be to achieve universality, because only a global agreement can address the challenges and problems currently posed by uncontrolled trade in conventional arms. Some noted that in addition to writing down the goals of the Treaty in the text itself, the negotiators should be committed to widely communicating them to their fellow citizens and other governments, especially when we enter the implementation phase.

Many states spoke strongly for the need to include SALW and ammunition in the ATT. In addition to stressing the importance of the inclusion of these, participants seemed to generally favour a comprehensive approach to the scope that should include all conventional arms, ammunition, plus parts and components, and a wide variety of activities from export and import of weapons to brokering, transit and re-transfer. In terms of transfer criteria, many called especially for the inclusion of human rights law and international humanitarian law. A couple of states also expressed concern about the inclusion of these criteria, as in their mind these could be used for purposes of political abuse.

International cooperation and assistance were mentioned again by the majority of participants as a critical part of the ATT. As states' capacities as well as their level of expertise and sophistication of transfer control systems vary widely, many will need assistance and capacity-building both in the lead-up to joining the Treaty and in ensuring its effective implementation. Some expressed concern about how to ensure that support reaches the right states and how to structure and channel these efforts to learn from previous instruments and to avoid some mistakes previously made in related processes.

Throughout the discussions, emphasis was placed on regional arms control efforts and instruments already adopted and in process within, for example, the Nairobi Protocol and the African Union. It was noted that despite some clear and natural differences in arms transfer control situations in various African states, most of them are primarily importing states and concerned thereby especially about imports, obligations of transit states and end-user modalities. Many participants stressed the need of Africa to quickly come up with a strong and effective common position. There was also discussion about the specific elements that African states should push for. Specifically, it was suggested that African states could provide more details on import and transit controls in the drafting exercise. In thinking about the implementation of the Treaty, it was noted that, in the future, more regular meetings should be held in Africa.

Overall, the seminar proved fully successful and met all the goals set for it. As in the previous events, UNIDIR was able to enjoy very good support from the local United Nations Development Programme office, the European External Action Service and the host state, which all for their part contributed to the success of the event. The discussions during the three days were extremely active, open and constructive, and participants commended the seminar for being an extremely timely and valuable contribution to the ATT process. As a result of the seminar, some participants noted that they will try to organize a national workshop/seminar before the July negotiations, reach out to their defence industry and civil society organizations and also keep in touch with the representatives from other countries in the regions that were invited to the event.

## Regional seminar for countries in the Middle East

Beirut, Lebanon, 27–29 March 2012.

Close to 50 participants.

The sixth regional seminar of the project was organized for countries in the Middle East and was held in Beirut, Lebanon, on 27–29 March 2012. As with the previous regional activities, the seminar was divided into two parts. The first 1.5 days concentrated on the ATT negotiations, with an overview of the process and the elements of the future Treaty, while the second half was more practice-oriented and discussed practical arms transfer control systems in the region, challenges in the implementation of national and regional systems, and possibilities to improve current practices. Unlike in some other seminars, most participants ended up participating in the full three days of seminar discussions and hence were able to explore both the ATT process and related instruments, and concrete national transfer control practices. The seminar brought together close to 50 representatives from nine of the 14 states invited to the event, representing ministries of foreign affairs, interior and defence, and the armed forces. In addition, several international expert representatives from the United Nations and regional organizations as well as civil society participated in the meeting.

In the seminar discussions, one of the main goals of an ATT was noted to be the need to fight against illicit and uncontrolled proliferation of conventional arms and to fight diversion. Even though one of the main objectives of an ATT is to improve controls over the legal international trade in weapons, it should not affect the ability of states to acquire the arms and equipment that are needed to keep up their legitimate defence capabilities and pursue their sovereign rights. The hope was expressed that an ATT would contribute to more predictable and transparent system, where issues could be more easily taken up and explored.

For the Treaty to succeed in this, many participants recommended that it should build on already existing instruments such as the UNRCA and use its categories as the basis of formulating the coverage for the new Treaty, even if some underlined that the categories of weapons of an ATT should be wider than the current register coverage. Categories such as ammunition, weapon technologies and SALW were met with some resistance in terms of their inclusion in the Treaty's scope. On the other hand, the same categories, especially SALW, were noted as some as being of primary importance. Some participants called for the inclusion of also the production and stockpiling of conventional arms in the Treaty as the first and important steps in the trade and transfer cycle. It was noted that while an ATT would primarily concentrate on trade, some links with production should also be made in the Treaty text, especially to combat diversion.

Participants underlined the primary responsibility of states to implement the future Treaty at the national level, according to their specific situations but obeying the goals and spirit of the Treaty. States should ensure that, when in force, the ATT requirements are translated into national law in all its state parties. Some suggested that under an ATT, a national control system should be established in all Treaty members to consider the parameters agreed in the ATT while making decisions on issuing transfer licenses. However, it was also noted that some kind of regional and international implementation support structure could be set up to facilitate efforts at national level. It was suggested that annual meetings of Arab contact points should be held. Most participants seemed to favour the establishment of an implementation support unit or another international

support structure to assist in treaty implementation and respond to possible enquiries and assistance requests.

Transparency was noted to be a difficult but not unsolvable issue, where Treaty parties should be encouraged to exchange information as much as possible, however without jeopardizing their national strategic interests and secrecy requirements. Participants recommended that examples from already existing information exchange systems be applied when developing a transparency mechanism for an ATT, also to avoid reporting fatigue and overlapping or contradictory information being circulated.

It was noted that the time remaining between the seminar and the July ATT negotiations was limited. As priorities for action in preparation for the ATT conference it was mentioned that states should organize inter-agency consultations and—to the extent possible—regional discussions and coordination of positions.

As can be seen from the wide range of topics covered in the seminar discussions, the Beirut seminar met its goals and also secured a good level of participation from the target countries, especially given the somewhat difficult political situation in some of the countries. The high-level participation and strong support of the host state, together with the United Nations and the European Union, further contributed to the success of the seminar and helped attract media attention. Interventions by experts were positively received by participants. Based on anonymous feedback, most were either totally or partially aware of the ATT and their own national arms transfer control system before attending the seminar. However, almost all still thought that the event improved their knowledge of these. Participants thanked especially presentations on national and regional systems and the Treaty's possible future implementation mechanisms. Also the historical perspective taken up during the first part of the seminar was seen as interesting and useful for the discussions. The working group sessions of both parts of the seminar were praised as the most interactive and enlightening parts of the event, together with presentations from other countries of the region.

#### Regional seminar for countries in Wider Europe

Belgrade, Serbia, 18–20 April 2012.  
Close to 50 Participants.

The final regional seminar in the series of events that UNIDIR organized for the European Union as part of the project Supporting the Arms Trade Treaty Negotiations through Regional Discussions and Expertise Sharing was held for countries in Wider Europe in Belgrade, Serbia, on 18–20 April 2012. The project aimed at supporting the negotiations on the future ATT by ensuring that the process is as inclusive as possible and that states will be able to make concrete suggestions and recommendations on the elements of the future Treaty. The project also aims at supporting all United Nations Member States to develop and enforce their national and regional arms transfer control systems.

The first 1.5 days of the Belgrade seminar were directed to diplomats and other representatives in charge of the political aspects of the ATT process, while the latter half of the three-day event was designed to be more practical and discussed national and regional arms transfer control systems and possibilities to improve current practices. During the first part, participants discussed the way ahead towards the ATT

negotiations, scheduled for July 2012, with an overview of the process and the elements of the future Treaty. They also had the chance to share their views on the ATT and its possible implementation system. The second half heard presentations about practical arms transfer control systems in the region, challenges in the implementation of national and regional systems, and exchanged views among the participating countries, regional organizations and independent experts.

The seminar brought together close to 50 representatives from 15 of the 26 states invited to the event, representing ministries of foreign affairs, defence and interior, and customs. In addition, several international expert representatives from the United Nations and regional organizations as well as civil society participated in the meeting by making presentations and contributing to the discussions.

Most states voiced their firm support to the ATT initiative and noted that they have been actively participating in the discussions since their inception. It was noted that an ATT should be a “floor”, not a “ceiling”, for transfer controls, and that it should be clear-cut and ambitious but practical enough to provide states guidance to effectively develop their own systems and regulatory frameworks. An ATT would be a good incentive for all states to strengthen their national systems, bring their regulations up-to-date and learn from each other. Many also mentioned the human security goals for the ATT, and some went further to link the Treaty’s goals also to combating corruption and promoting sustainable development.

Most often it was recommended that the ATT should cover a comprehensive set of weapons and equipment, as well as a range of activities and transactions. Categories mentioned as being of specific importance included SALW and ammunition, where most favoured their inclusion, but some also expressed concern. Many noted that the negotiations would have to clarify the approach that the Treaty will take towards its scope. Some called for a clear list of weapons, while others called for more general categories that could be further specified at the national level.

Participants said that all states should formulate their own national positions and be prepared for the negotiations well in advance of July 2012. Also the active involvement of regional organizations, such as the Organization for Security and Co-operation in Europe, was called for. At the national level, it was noted that further coordination efforts are needed to ensure that all the relevant officials and experts are aware of the initiative and can contribute to the process. As in the other seminars, the primary responsibility of states to ensure that the ATT becomes functional was underlined by many. All states should ensure as soon as possible that they have the necessary legal system and legislative procedures in place. Special emphasis should be placed on awareness-raising for the defence industry. All states should ensure that the text of the Treaty will be translated into national languages. It was also suggested that we should start developing templates for benchmarking the actual level of treaty implementation and effectiveness as soon as it is adopted. National reporting and other transparency measures were mentioned as one of the primary strategies through which the effective functioning of an ATT could be ensured, and some named increasing transparency as one of the most important functions of the Treaty.

The Belgrade seminar for countries in Wider Europe was fully successful in meeting all the goals set for it: the organizers secured a good level of attendance from the target countries, and the discussions at the seminar were insightful and active. Unlike in some

of the other regional seminars, most participants attended either the first or second part of the seminar, and not both.

The exceptionally active contribution and participation of the host state, together with the support from the European External Action Service, contributed to the success of the seminar and also helped attract media attention in Serbia. Most participants were quite familiar with the ATT process and/or their national arms transfer control system already before attending the seminar. However, everyone who returned the anonymous feedback forms said that their knowledge about arms transfer controls and the upcoming ATT negotiations had improved either significantly or “partially” as a result of their participation. Also the interventions by experts were positively received by participants: especially the national examples and updates about the ATT process were seen as useful, and some for example noted that the seminar allowed them to gain a “much better understanding of all the open issues and their complexity”. As in the other regional seminars, the working group sessions were noted as being among the most useful parts of the event, and some noted that even more time could have been devoted to discussing ATT-related issues in a smaller setting. Finally, all participants who provided feedback noted that the seminar helped them to network with colleagues from other countries and that they think their presence will help activate their country’s participation in the upcoming negotiations.

The opening and closing sessions of the seminar attracted media attention in Serbia, following press releases sent out by both the local United Nations Development Programme office and the EU delegation to Serbia. Also the Serbian Ministry of Foreign Affairs was instrumental in attracting media attention and in coordinating interview requests. Both the opening session and the outcome of the event were noted in print and electronic news media. The active role of the European Union and the host state were particularly recognized in the articles written about the event.

#### Project concluding seminar

United Nations Headquarters, New York, 1 March 2011.  
Around 50 participants .

The seminar in New York presented the main outcomes and findings of the project. It was noted that in total 126 states and close to 400 participants had attended the project’s regional activities. On the goals and objectives of the Treaty, the most commonly mentioned general goal in the seminars was the one derived from the ATT resolutions, referring to the “highest possible common international standards for the transfer of conventional arms”. On scope, the most feasible approach seemed to be to use the UNRCA as the starting point, however with expanded, generally defined categories and additions such as SALW. Through the ATT’s parameters, it was mentioned, the seminar participants would want to harmonize current practices and make transfer decisions more predictable, reliable and consistent.

In addition to presenting the outcomes of the EU–UNIDIR project, the seminar wanted to contribute to the ongoing ATT negotiations by concentrating specifically on two aspects related to the ATT process: transparency through national reporting and the possible hierarchy of transfer criteria to be included in the Treaty. Also the President of the negotiations, Ambassador Roberto García Moritán, attended and made some introductory remarks.

The Stockholm International Peace Research Institute (SIPRI) presented a paper produced by SIPRI and UNIDIR on transparency and reporting in conventional arms trade, addressing some of the concerns and challenges that have been raised regarding reporting on international transfers under the future ATT. The International Committee of the Red Cross (ICRC) brought up some points related to the possible hierarchy of transfer criteria to be used in the ATT, and especially considerations regarding the inclusion of international humanitarian law. It was noted that transfer criteria can either be based on states' existing express international obligations prohibiting transfers, or on the potential consequences of the transfer of weapons. As examples of the first kind relevant regional and international obligations and United Nations Security Council resolutions were mentioned. Under the second type the presentation listed serious violations of international humanitarian law or human rights law, genocide, crimes against humanity, diversion, regional stability and terrorist acts.

The seminar was open to all interested parties and attracted a good audience despite several simultaneously ongoing consultations. Around 50 representatives from permanent delegations, United Nations agencies, international organizations and civil society listened to the presentations and participated in the discussion.

### **Commissioned background research**

As part of the project, UNIDIR commissioned 12 background research papers from academic institutions, NGOs and individual experts on issues related to the production and trade of conventional weapons. The papers were commissioned to strengthen the research component of the project, to ensure the broadest possible substantive input to it, and to improve its overall value and policy relevance.

The following presents a short description of each of the research papers.

#### Implications of an ATT for international law

The background study on the implications of the future ATT for international law was provided to UNIDIR by the Geneva Academy of International Humanitarian Law and Human Rights.<sup>37</sup> The paper is intended for the non-legal specialist as well as government legal advisers following the ATT process and negotiating the Treaty. It covers the following aspects:

- implications of the Charter of the United Nations for the arms trade (including principles related to the right to self-determination, territorial integrity, sovereign equality and territorial integrity, among others);
- United Nations Security Council resolutions affecting the arms trade;
- existing regulation of the arms trade by international humanitarian law;
- existing regulation of the arms trade by international human rights law;

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<sup>37</sup> The Geneva Academy is a research centre under the Graduate Institute of International and Development Studies that provides teaching and training, and as well conducts research on international humanitarian law, the law of collective security and peacekeeping, human rights, international criminal law and the law of refugees and internally displaced persons. Within the ATT initiative, the Academy is working in partnership with a number of governments and civil society organizations and is keeping a unique blog on the legal aspects of the ATT negotiations with contributions from a wide range of experts (<http://armstradetreaty.blogspot.com/>).

- existing regulation of the arms trade by international criminal law;
- how could international criminal law be affected/supported by an ATT;
- how could international human rights law be affected/supported by an ATT;
- how could international humanitarian law be affected/supported by an ATT; and
- recommendations to governments for the negotiation of the future Treaty.

The preliminary draft of the paper was distributed, presented and discussed at the regional seminars in Nepal and Morocco. The Geneva Academy incorporated feedback from seminar discussions into a final version of the report.

#### International assistance and cooperation in an ATT

UNIDIR together with representatives of the European Union External Action Service (EEAS) identified the need to commission a paper as part of the project looking specifically at the aspects of technical cooperation and assistance under the future ATT. Once states have agreed the scope and parameters of the ATT, assistance and cooperation will be key not only for operationalizing and implementing the Treaty but also for garnering support for its adoption.

The background paper “International Assistance and Cooperation in an ATT: Possibilities of a Future Treaty” explores the possibilities for addressing international assistance and cooperation in an ATT and aims to provide states with a background on how assistance and cooperation has been approached within the ATT process, including an overview of the views of states expressed on the subject. It also summarizes how related agreements and instruments approach assistance and cooperation. The paper further puts forward some suggestions of substantive and operational elements that could be considered in an ATT.

The preliminary draft of the paper was distributed, presented and discussed at the regional seminars held in Nepal and Morocco. The author incorporated feedback from the seminar discussions into a final version of the report.

#### Possible scope of an ATT—options and implications

The third background study was commissioned from the Center for International Trade and Security (CITS) of the University of Georgia.<sup>38</sup> It discussed the possible scope of the future ATT and its implications. This paper is intended for export control practitioners as well as government delegations following the ATT process and negotiating the Treaty. It covers the following aspects:

- different options of approaching the scope of an ATT (“all conventional weapons”, UNRCA “plus”, other proposed approaches);

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<sup>38</sup> The CITS, based at the University of Georgia, focuses on providing research, training and outreach on export controls, non-proliferation and weapons of mass destruction security to government officials as well as industry representatives, educators, students and the general public. Related to the ATT initiative, the CITS is working in partnership with a number of governments and civil society organizations on the practical export control aspects of the proposed ATT. For instance, the CITS has published a series of four documents on different topics related to an ATT. The Center, together with co-authors at Saferworld and Oxfam, have also authored the report “National Implementation of a Proposed Arms Trade Treaty: A Practical Guide”, which aims to be a tool of support for states wanting to put in place a national control system for international transfers of conventional arms.

- discussion on the possible implications of these different approaches for the implementation of the Treaty (for instance on how the definitions of the UNRCA could be modified/enlarged to ensure a comprehensive scope and what that would mean); and
- the possibility of including parts and components (where to draw the line), and ammunition versus munitions, in the Treaty, as well as possible definitions (e.g. “small arms and light weapons”).

The paper takes into account, discusses and builds upon the ongoing international negotiations on the scope of the ATT, most importantly the outcome of the PrepCom meeting held in New York 28 February–4 March 2011. The preliminary draft of the paper was presented and discussed at the February 2011 side event in New York. The author incorporated feedback from the seminar discussions into a final version of the report.

#### Enforcing effective arms transfer controls in the Americas—brokering

UNIDIR together with EEAS representatives identified SIPRI<sup>39</sup> as the contracting party to provide one background study paper on enforcing effective arms transfer controls in the Americas with specific focus on brokering controls.

The paper gives a brief overview of the situation in conventional arms control in Latin America, taking into account both existing national systems and their implementation and regional mechanisms. The specific focus of the paper is, following from the brief overall presentation of the situation, arms brokering in the region and how the situation could/should be improved, especially with regard to the future ATT. The paper introduces the topic of brokering controls, discusses the standards already agreed by states in the region, analyses levels of national implementation and then makes some suggestions regarding how the issue of brokering controls could be addressed in an ATT.

The preliminary draft of the paper was distributed, presented and discussed at the regional seminar held in Montevideo. SIPRI incorporated feedback from the seminar discussions into a final version of the report.

#### Transparency in an ATT—national reporting and other measures

As part of UNIDIR’s in-house contribution to the research component of the project, a paper on transparency and an ATT was written to analyse different alternatives through which it could be addressed in the future Treaty. Transparency measures and especially the possibility of introducing national reporting into the implementation of the Treaty has been a crucial element in discussions around the ATT. While the format and types of information exchange to be included in an ATT will largely depend on the future Treaty’s scope, parameters and other elements, it was felt that consideration of the

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<sup>39</sup> SIPRI is an independent research institute that conducts research on questions of conflict and cooperation of importance for international peace and security, with the aim of contributing to an understanding of the conditions for peaceful solutions of international conflicts and for a stable peace. SIPRI possesses extensive institutional knowledge and experience on issues that are of direct relevance to the UNIDIR project. The Institute also maintains a range of unique and extensive databases on arms transfers, national export control systems, arms production and military expenditures.

transparency functions of an ATT should not be left until the last stages of negotiations but kept in mind throughout the preparatory process.

The paper takes a closer look at the issue of transparency as it relates to the proposed ATT and its future implementation. It is assumed that once an ATT comes into force it will be in the interests of all states parties to show that they are acting responsibly under it and working in the spirit of the Treaty to improve global standards for responsible transfers of conventional arms. An ATT does not foresee the establishment of any kind of supranational body or system to authorize arms transfers or licensing. Hence the success of an ATT will largely depend on states' national implementation measures, which should be undertaken in good faith, through domestic legislation and regulations, with decisions on the approval and denial of transfers made at the national level. However, it is hardly contestable that certain international mechanisms, such as those of transparency, assistance and capacity-building and follow-on meetings of states parties will have to be utilized to support national-level implementation.

The paper offers a short justification of why transparency measures are seen as an important element of regional and international security policy initiatives and what arguments states have made in support of transparency in an ATT. A close look is then taken at possible national reporting requirements under an ATT—what this could mean, what information could be covered, how often and to whom reports could be submitted, and what other possible information exchange mechanisms could be included in the Treaty. The paper also examines some proposed and existing systems of dialogue, consultation and networking, such as peer review mechanisms and dispute settlement. Finally, as a practical and national-level measure of transparency, record keeping and possibilities of further transparency enabled by technological developments are discussed.

The draft elements of the paper were presented and discussed at a side event organized by UNIDIR in the margins of the PrepCom meeting in July 2011. Feedback from the discussion was incorporated into the final version of the study.

#### Including ammunition in an ATT

On the topic of ammunition, UNIDIR identified Saferworld<sup>40</sup> as the contracting party to provide a background study paper on its possible inclusion in an ATT and the related practical implications.

Finding a suitable scope for the future ATT is one of the most important and challenging issues that had to be addressed in the time leading up to the ATT conference in 2012. One of the specific issues falling under the potential scope of the

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<sup>40</sup> Saferworld is an independent, United Kingdom-based NGO that works with governments, international and regional bodies, as well as directly with local communities to prevent violent conflict and encourage cooperative approaches to security. It conducts information and action campaigns with local partners concerning regions affected by conflict or the proliferation of SALW and makes recommendations to international policymakers. It also conducts broad security-related research and produces publications in the field of human rights, justice, the political economy of violence, security, etc., and maintains archives and blogs on these subjects. The third aspect of Saferworld's work consists of proposing commentaries about current conflicts and events of relevance to its mandate. Concerning the process towards an international, legally binding ATT, Saferworld is following up the developments by producing academic studies and reports on the United Nations meetings, as well as by making detailed commentaries on the progress of the negotiations and on the future practical implementation of an ATT.

Treaty is the question of whether ammunition could be included in its scope. Ammunition has been one of the categories that have raised many voices both for and against inclusion in an ATT. Some states are advocating a comprehensive ATT that would also include ammunition relevant for the weapon categories to be included, whereas others have come out to say that its inclusion would make the Treaty too difficult to implement and monitor.

It was felt that more thinking had to be devoted to how the inclusion of ammunition in the Treaty could be done in practice, and whether, for example, diversified reporting and transparency measures could be introduced to address the different natures of ammunition and weapons in the Treaty. Therefore, the commissioned paper explores the pros and cons of the possible inclusion of ammunition in the scope of an ATT. The paper contains the following elements:

- previous studies on ammunition as part of transfer controls;
- a brief look into how ammunition is currently controlled in selected national systems, as well as in international and regional agreements;
- analysis of “ammunition” versus “munition” in terms of its possible coverage in the Treaty;
- overview of states’ views on the inclusion of ammunition in the proposed ATT;
- work of the GGE, OEWG and PrepCom; definitional issues (ammunitions versus munitions; “military ammunition”, etc.);
- suggestions regarding the inclusion of ammunition in an ATT (how to include in treaty terms, wording, etc.); and
- analysis of issues related to an ATT’s implementation (including transparency measures), should it cover also ammunition.

The preliminary draft of the paper was distributed, presented and discussed at a side event organized by UNIDIR in the margins of the United Nations General Assembly First Committee meeting in October 2011. Feedback from the discussion was incorporated into the final version of the study.

#### Non-state actors and the ATT—options and alternatives

Following the successful completion of the paper on brokering controls in the Americas, UNIDIR and the European External Action Service identified SIPRI as the best partner to provide a background paper on controlling conventional arms transfers to NSAs, especially in the framework of the future ATT.

The transfer of arms and military equipment to the armed and security forces of states is internationally deemed an acceptable activity if it contributes to the legitimate national defence needs of the recipient. The transfer of arms and military equipment to NSAs is considered to be more complex: although it has been recognized that uncontrolled arms flows to certain types of NSAs contribute to conflict, terrorism, armed violence and insecurity around the world, there are cases in which responsible governments would justify the provision of arms and military equipment to such actors. Several states—including many in the Global South—have called for a prohibition on transfers to unauthorized NSAs to be included in the text of an ATT.

The paper addresses the challenge of a blanket prohibition on transfers to unauthorized NSAs and proposes alternative ways in which the issue could be addressed in an ATT. It outlines a range of actors that could be covered by the NSA label. Further, it identifies the circumstances under which certain NSAs could be regarded as legitimate recipients and also as unacceptable recipients. Finally, the paper proposes possible provisions and mechanisms for an ATT to regulate transfers of arms to authorized NSAs and prohibit the same transfers to unauthorized NSAs.

The first draft of the background paper was presented at the regional seminar in Kenya. It was completed in mid-2012 based on seminar feedback and the outcome of the ATT negotiating conference.

### Technology transfers

The Russian Center for Policy Studies<sup>41</sup> was identified as the partner to provide a background paper on how to address transfers of defence technology in the future ATT, highlighting existing national regulations of defence technology transfers and proposing some good practices in this sphere.

The paper addresses the question of defence technology transfers by highlighting existing national regulations in place in different countries across the world. By analysing these practices the paper identifies both gaps and areas for improvement and also areas of strength. Following this, some sets of good and recommendable practices are proposed, which could be adopted at the international level. In addition to a general presentation of states' practices, special focus is placed on examining defence industries of some countries under embargo to try to get certain lessons from the way they deal with technology transfers.

The study plan of the paper was presented and discussed at a side event organized by UNIDIR in the margins of the United Nations General Assembly First Committee meeting in October 2011. Feedback from the discussion was incorporated into the draft study and submitted to UNIDIR in early 2012.

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<sup>41</sup> The Russian Center for Policy Studies is an independent NGO that carries out research, as well as educational, public awareness and publishing activities, and provides consulting services. From the time of its founding in April 1994, the priority areas of the Center's research studies remain international security, and control and non-proliferation of weapons of mass destruction. The Center has become a leading Russian non-governmental research organization in the area of international security. In its day-to-day operations, the Center maintains close contacts with executive and legislative agencies. Since 1997, the Center has been developing educational programmes in the area of non-proliferation and international security and makes intensive efforts to involve young specialists in its work. Since its establishment, the Center has been publishing materials on non-proliferation, arms control and international security. Over its 9-year history, the Center has published several monographs. See <[www.pircenter.org](http://www.pircenter.org)>.

### ATT and development: how developmental considerations should be taken into account in an ATT's transfer criteria

The background paper on ATT and development was commissioned from Oxfam International UK.<sup>42</sup> It analysed how developmental considerations should be taken into account in an ATT's treaty text, transfer criteria and implementation.

The paper analyses the issue of sustainable development and how parameters related to promoting developmental aspects could be promoted through an ATT in three aspects: 1) how development could/should be reflected in the Treaty's preamble as relevant to its principles, goals and objectives; 2) what developmental criteria could/should be included in an ATT's transfer criteria; and 3) how the implementation of an ATT could benefit from the inclusion of developmental considerations/criteria. By highlighting examples where development has been hampered by irresponsible arms transfers, the paper makes a case for the inclusion of developmental (and related issues such as security sector reform, corruption, etc.) arguments in an ATT.

The first draft of the background paper was presented at the regional seminar in Montevideo, and feedback received through the seminar discussions was incorporated into the final version of the study.

### Key factors to consider in the design of an ATT reporting mechanism

Given the importance of transparency in the design of an ATT, it was decided that a second paper on this subject be commissioned, concentrating specifically on the details and possible implications of a national reporting system. The paper was assigned to be written by UNIDIR's partners at SIPRI together with an in-house contributor.

The paper addresses some key factors to consider in the design of an ATT reporting mechanism. It starts by discussing the relationship between possible ATT reporting with existing reporting mechanisms at the United Nations, at the regional and national levels, and also from the point of view of reporting burden and capacity. From there, the paper moves to the key elements for an ATT reporting mechanism and considers the levels of details of reporting on authorization and/or deliveries, the level of aggregation of data with regard to activity, number of units and/or their financial value, categories of items and/or descriptions of items, and possible information on supplier state and recipient state.

On the scope of activities, the paper takes up reporting practices with regard to exports, imports, transit and brokering, and highlights challenges and solutions with regard to existing practices and options used by some states, sources of information, and priorities for reporting. On the scope of items to be covered, the paper discusses reporting practices with regard to the categories of weapons proposed in the Chair's draft paper of

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<sup>42</sup> Oxfam is an international confederation of 15 organizations working together in 98 countries and with partners and allies around the world to find lasting solutions to poverty and injustice through campaigning, advocacy and policy research. Oxfam has been actively involved in the ATT process since its beginning and is one of the leading organizations of the civil society movement Control Arms Campaign ([www.controlarms.org](http://www.controlarms.org)). Oxfam possesses proprietary information and conducts comprehensive research *inter alia* on illicit arms transfers, corruption, trends in global trade in different commodities and on combating poverty. The background paper builds on research undertaken at Oxfam on the impact of global arms transfers on the fulfilment of the Millennium Development Goals.

2012. It highlights points where the UNRCA categories overlap and notes that the UNRCA approach could be a challenge for some items of large quantities, while the Wassenaar List as used by EU member states provides a possible example of how to deal with reporting on challenging categories. Other issues raised include a standardized reporting template versus submission of “nationally defined reports” (e.g. existing reports to UNRCA, regional instruments, or national reports), and the relationship between the scope of the Treaty and the scope of reporting.

The draft paper was presented and discussed at the closing event of the EU–UNIDIR seminar and the final version of the report was posted on the UNIDIR website in July 2012.

### The Arms Trade Treaty and Russian arms exports—expectations and possible consequences

It was realized that also some country-specific research might prove useful to support the ATT process and a case study was commissioned, looking at specifically the export policies and practices of the Russian Federation, as well as the possible consequences of the ATT on them. The EU and UNIDIR identified the Russian Center for Analysis of Strategies and Technologies<sup>43</sup> as the contracting party to provide this background study paper, which was finalized in mid-2012.

The paper consists of three parts. The first is a study of Russian arms exports during the past 10 years; its structure, recipients, volume and trends; as well as transparency measures through reporting to the UNRCA. The second part presents Russian expectations and attitudes to the ATT by including views from the Russian arms-trade-related establishment and representatives from the arms industry. It includes the official position of the Russian Federation on the ATT, gathered by interviewing representatives of governmental agencies responsible for arms trade and control and members of the diplomatic corps; polling executives of main Russian arms industry companies; and interviewing arms trade, military and political experts in the Russian Federation. The third and last part analyses the possible consequences of the ATT on Russian arms exports and presents some conclusions and recommendations for the international process from the point-of-view of Russian expertise and experience.

### **Other project activities and materials**

To support the regional seminars and other activities, the project produced a series of materials that were distributed at the events and made available electronically. The core

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<sup>43</sup> The Centre for Analysis of Strategies and Technologies is a leading non-governmental research centre in the area of security policy, founded in 1997, that offers consultations, analysis and information services on the Russian defence industry to the Russian government, foreign institutions and defence industry companies. For instance, SIPRI is annually using data provided by the Centre to produce its annual report on the top 100 arms export producers. The main goal of the Centre is to promote innovative research addressing the security challenges and implications of arms and technology trade and defence restructuring, and it has concentrated especially on conducting relevant analysis of the Russian arms trade. It also publishes a magazine, the *Moscow Defense Brief*, which provides a unique Russian perspective on key security and defence policy issues beyond Russian borders. The Centre has been following the ATT process since its inception, especially concerning the expectations and attitudes of official Russian arms trade-related agencies and experts, as well as representatives of its defence industry. It has also analysed the impact of an ATT on Russian arms exports.

of these materials was the commissioning of a series of background research papers (see above). In addition, and building on its previous ATT project, UNIDIR compiled a vast amount of ATT-related resources to distribute to its seminar participants, and encouraged participants to distribute their own materials at the seminars.

During the project, the UNIDIR website maintained the latest information about the project activities and seminar outcomes. In addition, USB keys and project brochures were produced.

#### USB keys

Following the successful example of the first EU–UNIDIR project, UNIDIR purchased 1,000 data storage devices (USB memory keys) in order to distribute all relevant background material on the ATT initiative among the project’s target audience and reinforce the awareness-raising component of the project.

These were regularly updated to contain region-specific and the most up-to-date information available on the ATT initiative, and participants of the regional seminars were encouraged to continue updating the information package of the USB keys on their own. During the regional seminars and side events organized in New York, USB keys proved to be a very good outreach tool for the project. They were essential in maintaining the high visibility of EU Council Decision 2010/336/CFSP.

#### Brochure

To meet the awareness-raising objective of the project, UNIDIR produced a brochure in English and French about the project, outlining its main goals and activities. This brochure was distributed at all the regional seminars and side events of the project, as well as at UNIDIR’s other related activities. The brochure was well received and proved to be a very good outreach tool for the project in maintaining high visibility of the EU Council Decision.

#### **4. Project results**

During two years of operation, the project achieved a number of goals and objectives.

**(a) The project provided support for the preparatory process leading up to the 2012 United Nations Conference on the Arms Trade Treaty, among other things, through the following means:**

**(i) Increasing awareness, knowledge and understanding of the ATT process among United Nations Member States, civil society and industry representatives.**

All the regional seminars and side events organized in the margins of the PrepCom and United Nations General Assembly First Committee were successful in increasing the awareness of national and regional actors and other relevant stakeholders of the ATT process. This was demonstrated by the interest showed by a vast number of participants towards the different project activities, through the lively discussions and exchange of views, and the positive and active feedback received by UNIDIR. Several participants approached UNIDIR staff thanking them for the possibility of participating in the project activities, and underlined how being part of the project had helped them to increase their knowledge on the ATT and to support their country's participation in the ATT process. The outcomes of the regional seminars and other activities organized as part of the project were widely distributed and made available also in electronic format on UNIDIR's website, hence further supporting the goal of awareness-raising and deepening of knowledge among the project's stakeholders.

**(ii) Promoting inclusive, active and effective participation of as many United Nations Member State as possible in the Preparatory Committee to be held in 2010–2011.**

The project activities have supported the ongoing process around an ATT at the United Nations. This has been demonstrated for example by the number of statements made about the project in the meetings of the PrepCom and the United Nations General Assembly First Committee, as well as feedback and comments received from different stakeholders.

The regional seminars have met their objective also of contributing to better involvement of states in the ATT process, demonstrated by the wide interest expressed towards the seminars as well as the large number of participants that have taken part in the activities.

Through providing additional fora for all relevant stakeholders to discuss issues related to the ATT process, the project has also been successful in encouraging the exchange of views and fostering debate. This has also been demonstrated by the anonymous feedback provided by seminar participants, the great majority of whom noted that the seminars were beneficial for their networking and helped them establish new contacts.

**(iii) Identification and formulation of concrete proposals on the content of an ATT, including the most comprehensive scope, parameters and implications.**

Discussions at the regional seminars and especially during the working group sessions proved invaluable in identifying concrete challenges, priority areas and proposals regarding the future ATT. Questions posed to the participants during the seminar working group discussions enabled the formulation of clear and concrete messages on the content of the Treaty, including its scope, parameters and future implementation. The achievement of this objective set for the project is demonstrated in the detailed summary reports produced after each of the regional seminars.

**(iv) Promotion among third countries of the highest possible standards for the ATT, also on the basis of regional experiences and instruments.**

The expert presentations by international and regional experts (among them EU member state representatives), together with an exchange of views with national representatives invited to contribute to the seminars by making presentations on their national arms transfer control systems, enabled the project to promote the highest possible common standards for the ATT. This was further supported and enhanced by the participation of all key regional organizations in the seminars, which allowed for lessons to be learned also from regional experiences and instruments, and complemented the national-level views with valuable regional-level inputs.

**(v) Supporting preparation for the 2012 conference by reinforcing the negotiation capacities of participants.**

Related to and stemming from the points above, the project was also successful in supporting the preparations for the 2012 ATT conference by reinforcing the awareness and negotiation capacities of participants. The anonymous feedback provided by seminar participants showed that a great majority of them have seen the seminars as beneficial to their country's participation in the ATT process and helped them establish new contacts, which will further facilitate their taking part in the ATT negotiations.

**(b) The project provided support to third countries in their efforts to establish, improve and implement, as appropriate, export and transfer control systems, including through:**

**(i) Assistance in the establishment and enforcement of licensing systems.**

**(ii) Assistance in improving compliance with and enforcement of national controls implementing a future ATT, including border controls, and monitoring on arms exports and transfers.**

**(iii) Support for the development of national and regional reports on arms exports and imports in order to promote transparency and accountability of the arms trade.**

**(iv) Support for further transparency and accountability of the arms trade through participation in the UNRCA.**

**(v) Assistance to national efforts to mark and trace SALW.**

The project was successful in fulfilling all the sub-goals (i-v) identified above. This was ensured by the active and expert-level participation of several invited international, regional and national expert speakers to the seminars, whose presentations on *inter alia*

the UNRCA, the importance of cooperation and assistance, and marking and tracing of weapons have supported the efforts of third states to establish, improve and implement arms transfer controls.

Most significantly, the exchange of practices and lessons learned between the EU expert representatives and the national authorities from the states in the seminars' target regions proved practical and beneficial in achieving this goal. The vast majority of participants indicated in their anonymous feedback forms that the practice-oriented presentations and informal discussions during the seminars' working groups increased their knowledge on effective arms transfer control systems, its minimum requirements, and the links with other, related instruments such as the UNRCA and regional arrangements.

## **5.1. Thematic findings—ideas and recommendations for the ATT**

Through the regional seminars and commissioned background research, the project was able to identify a number of priority issues and ideas that various stakeholders wanted to convey to the ATT negotiations. The following section presents those findings divided into three main categories: scope, criteria/parameters, and implementation and application, following the common approach to the ATT-relevant issues in recent discussions. The main findings, drawn from the project's two years of active interaction with a wide range of stakeholders in over 120 countries, as well as expert consultation and analysis, were compiled into briefs and sent to all United Nations missions in Geneva and in New York immediately prior to the commencement of the ATT conference.

The findings, as well as the longer and more elaborate findings presented here, are those of the project, not of the participants at the regional seminars, the governments they represented, the sponsors of the project or the United Nations.

### **Goals and objectives**

All states need to be clear on the goals and objectives of the Treaty in order to agree on its scope, parameters and implementation, as all these aspects are intricately connected. A wide range of regional and national priorities for the proposed goals and objectives of the Treaty have been expressed and consensus has yet to be forged.

The question was not addressed in the initial submissions of national views in 2007, as states were instead asked to give their opinion about the feasibility of the Treaty. In the following year, the GGE devoted some discussion to the topic, and concluded that the fundamental goals and objectives of a potential Treaty should be clearly defined. It was also noted that a broad range of factors could be considered, “including regional stability, armed conflicts, issues relating to unlawful transfers to non-State actors (understood as individuals or entities not acting under the lawful authority of any State), international human rights law and international humanitarian law and social and economic development, among others”.<sup>44</sup>

The Chair's non-paper of 2011 listed six goals and objectives for the ATT: 1) promote the goals and objectives of the Charter of the United Nations; 2) establish the highest possible common international standards for the import, export and transfer of conventional arms; 3) prevent, combat and eradicate the illicit transfer, illicit production and illicit brokering of conventional arms and their diversion; 4) contribute to international and regional peace, security and stability by preventing international transfer of conventional arms that contribute to or facilitate human suffering, serious violations of international human rights law and international humanitarian law, violations of United Nations Security Council sanctions and other international obligations, armed conflict, the displacement of people, transnational organized crime and terrorist acts; 5) promote transparency and accountability; and 6) be universal in its application.

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<sup>44</sup> General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, p. 14.

These were very much echoed also in the EU–UNIDIR regional seminars, with some regional specificities. For instance in the Nepal event it was noted that an ATT’s intention should be to establish the highest possible set of common standards and practices at the global level to effectively control and regulate arms transfers and to combat the illicit trade in SALW and other conventional weapons. The seminars held for countries in Central, West and North Africa and for the Middle East put special emphasis on the ATT’s goal of curbing the illicit circulation of weapons and the illicit trade. Indeed, even though the Treaty is designed to improve regulation of the legal trade in conventional arms, one of the important goals for an ATT should be to combat their illicit trade and diversion through enhancing controls over the legitimate international trade. *Although most states accept that states should be regulated, many delegations refer to illegitimate transfers only in terms of transactions to NSAs.*

In the Bali event participants noted that the Treaty should be relevant both for importers and exporters, set minimum controls on the necessary structures and procedures that states parties should follow, and contribute to fighting the illicit arms trade and its negative impacts. As many of the states in Asia and the Pacific are mostly importing conventional arms, the Bali seminar heard active discussion about practical cases of complicated or problematic transfers, where a more universal platform for discussing arms trade contracts would have been needed, and where, from an importer’s point-of-view, the added value of an ATT could lie.

Many Wider Europe and Americas participants raised the promotion of human security as one specific goal for the ATT, especially from the point-of-view of exporting countries.

Specific support to the Chair’s draft of 2011 was expressed in the East and Southern Africa seminar, where it was noted that the most important goal for the Treaty will be to achieve universality, because only a global agreement can address the challenges and problems currently posed by uncontrolled trade in conventional arms. Indeed, by its nature, the Treaty should be universal in its application and be relevant to all states, whether mainly involved in the export or import of conventional arms or affected by this trade as transit points. In this way it could become an umbrella agreement to help harmonize already existing regional and subregional control systems. In addition to the first two goals proposed in the Chair’s paper—references to the Charter of the United Nations and the need to establish the highest possible standards for the arms trade—delegates seemed to favour especially goals three and four: preventing, combating and eradicating the illicit transfer and production and brokering of arms, and contributing to international and regional peace and security as central to the Treaty. Quite lengthy discussion was devoted to the details of proposed goal four, especially related to the impact of arms transfers on prolonging conflicts. In addition, the possible hampering of economic development was raised.

Some participants in the East and Southern Africa seminar noted that in addition to writing down the goals of the Treaty in the text itself, the negotiators should be committed to widely communicating them to their fellow citizens and other governments, especially when we enter the implementation phase of the process.

The draft ATT text circulated at the ATT conference on 26 July 2012<sup>45</sup> takes as a backdrop the “need to prevent and combat the diversion of conventional arms into the illicit market or to unauthorized end users” by improving the regulation of legal trade, and states:

The goals and objectives of the Treaty are:

- For States Parties to establish the highest possible common standards for regulating or improving the regulation of the international trade in conventional arms;
- To prevent, combat and eradicate the illicit trade in conventional arms and their diversion to the illicit market or for unauthorized end use;

in order to:

- Contribute to international and regional peace, security and stability;
- Prevent the international trade in conventional arms from contributing to human suffering; and
- Promote cooperation, transparency and responsibility of States Parties in the trade in conventional arms, thus building confidence among States Parties.

The approach is simpler than in the non-paper and the link between the goals and objectives and the preceding “principles” has been revisited so that references to the Charter of the United Nations, Security Council arms embargoes, details of previous goal four and the last goal about reaching universality have been moved up to principles. The goal of transparency and accountability was retained but reworded to include also references to cooperation and state responsibility.

Undoubtedly, increasing transparency and accountability in the conventional arms trade should be one of the central goals of the ATT, keeping in mind the specific nature of weapons transfers and determining the necessary balance between openness and strategic secrecy. Transparency as an issue in the ATT is discussed in more detail in the section below on implementation.

As noted by many regional seminar participants, a strong link between the Treaty’s goals and objectives and its other operative parts must be maintained in the finalization of the Treaty to ensure that it will be effective and implementable, respond to the needs for which it was designed, and enhance states’ commitment to their existing international obligations.

#### Recommendations on goals and objectives

- A strong link between the Treaty’s goals and objectives and its other operative parts must be maintained to ensure that the Treaty will be effective, respond to the needs for which it was designed, and enhance states’ commitment to their existing obligations.

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<sup>45</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, pp. 2–3.

- Even though the Treaty is designed to improve regulation of legal trade, one of its goals should be to combat their illicit trade and diversion through enhancing controls over the legitimate international trade.
- The Treaty should be universal in its application and be relevant to all states, whether mainly involved in the export or import of conventional arms or affected by this trade as transit points. In this way it could become an umbrella agreement to help harmonize already existing regional and subregional control systems.
- One goal for the Treaty should be to increase transparency and accountability in the conventional arms trade, keeping in mind the specific nature of weapons transfers and determining the necessary balance between openness and strategic secrecy.
- In addition to promoting the goals and objectives of the Charter of the United Nations, the Treaty should specifically refer to a range of more specific goals and objectives such as preventing transfers that would fuel or prolong armed conflict, contribute to international organized crime and terrorism, violate international humanitarian law or human rights, or be contrary to resolutions of the United Nations Security Council.
- It seems apparent based on the Treaty discussions that states are constructing a Treaty that, through creating means to meet its goals and objectives, will help achieve the larger principles contained in international agreements and instruments, such as the Charter of the United Nations. It should be ensured that the goals and objectives support the wider principles surrounding the Treaty, while at the same time being concrete enough to bridge with its operative paragraphs.

## Scope

One of the most crucial and most challenging aspects in the development of an ATT is the need to determine what the Treaty would cover: which weapons would be regulated, and to which activities the Treaty would apply. States will also have to determine the exact way and the level of detail in which the elements that will form the ATT's scope will be reflected in the treaty text: for an ATT to be objective and effectively implementable, it has to contain some level of specificity on both of these aspects, keeping in mind also the Treaty's implementation modalities. The outcomes of the GGE in 2008, the OEWG, the regional seminars held by the EU–UNIDIR project, as well as the debates of the PrepCom in 2011 demonstrated that the question of the Treaty's desirable and feasible scope needed to be deepened in many aspects to ensure that it would not constitute an unnecessary stumbling block during the negotiations.

With regard to weapons and equipment, the two most discussed issues in the seminars were the inclusion of SALW and ammunition in the Treaty. While both of them gained wide support in the ATT deliberations, some states raised strong concerns over the inclusion of these two categories.<sup>46</sup> Other items taken up during the UNIDIR regional seminars and the PrepComs on this part of the future Treaty's scope include the possible

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<sup>46</sup> For a deeper discussion related to the possible inclusion of SALW and ammunition, see UNIDIR seminar *The Scope of an Arms Trade Treaty: Including Small Arms, Light Weapons and Ammunition*, held on 2 December 2010. The summary report of the seminar as well as audio files of the presentations are available at <[www.unidir.org/bdd/fiche-activite.php?ref\\_activite=571](http://www.unidir.org/bdd/fiche-activite.php?ref_activite=571)>.

inclusion of parts and components, and technology and equipment specifically designed and used to develop, manufacture or maintain weapons and weapon systems falling under the Treaty's scope.

In terms of the international activities and transactions that could or should fall under an ATT, there seems to be convergence of views that the Treaty should cover—at minimum—export, import, transfer, transit and trans-shipment of the specified conventional arms. The Chair's non-paper of 2011, which was used as a reference in the regional seminars, also includes a list of other activities that have gained wide support among United Nations Member States, such as brokering, manufacture under foreign license and technology transfers. All of these were discussed at length during the UNIDIR project and will be addressed in the following sections. In addition there were issues such as tangible versus intangible transfers of technology, temporary transfers such as transferring weapons for peacekeeping operations and other possible specific cases like exports for private hunting purposes, which were discussed in some seminars (see the Morocco and Belgrade seminar reports), but which it was felt did not merit a section of their own in this report.

Finally, related to the scope of the future Treaty, much discussion was devoted in the regional seminars as to how the inclusion of the selected items and activities should be practically done in the ATT. Different views were expressed regarding this issue, and the final section of this chapter is devoted to those.

### **Building on the United Nations Register plus SALW**

During the seminars, various approaches to the scope of the ATT were addressed. In the first regional events in 2010, the categories of the UNRCA were the most frequently cited. From there, there was a move towards states calling for a more comprehensive scope, even one covering all conventional weapons and with more specific definitions, for example in a technical annex. Once the negotiations were approaching in early 2012, many said that the approach most likely to succeed for the ATT's scope would build, at minimum, on the seven categories of the UNRCA with the addition of SALW, but not go much beyond or into technical definitions. It was noted that the UNRCA categories should be revised and expanded to ensure that all relevant weapons are included and that the future Treaty's scope will be both comprehensive and implementable.

The draft ATT circulated on 26 July 2012 refers to the covered items in article 3:

This Treaty shall apply to all conventional arms within the following categories:

- a. Battle Tanks
- b. Armoured combat vehicles
- c. Large-calibre Artillery systems
- d. Combat aircraft
- e. Attack helicopters
- f. Warships
- g. Missiles and missile launchers
- h. Small Arms and Light Weapons<sup>47</sup>

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<sup>47</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 3.

It also notes that each state party shall establish and maintain national control systems that include the above-mentioned items, “as defined on a national basis, based on relevant United Nations instruments at a minimum”, and that will regulate the export of munitions and the export of parts and components to the extent necessary to ensure that national controls on the export of the conventional arms covered by paragraph A1 are not circumvented.

On covered activities, it notes that “this Treaty shall apply to those activities of the international trade in conventional arms covered in paragraph A1 above, and set out in Articles 6–10”, hereafter referred to as “transfer” , and that it “shall not apply to the international movement of conventional arms by a State Party or its agents for its armed forces or law enforcement authorities operating outside its national territories, provided they remain under the State Party’s ownership”.

Throughout the seminars, participants brought up especially one category of weapons that was felt to be of specific importance in an ATT—small arms and light weapons. Participants overwhelmingly called for the inclusion of SALW in an ATT as an item of central importance, especially given the negative impacts of their illicit trade and uncontrolled proliferation. SALW was also often linked with the goals and objectives of an ATT, which were, among other things, stated to include combating the illicit trade in these weapons. SALW are also strongly associated with efforts to combat diversion.

There were regional differences in the reasons given for the desirable inclusion of SALW. In the South and Central Asia seminar, where most participants stressed that SALW should have central focus in an ATT (a 1+7 approach rather than 7+1). They were mentioned as a weapon category of priority importance especially with regard to preventing the diversion of arms to terrorists and unauthorized NSAs. Also participants in the West, Central and North Africa seminars advocated the inclusion of SALW in the Treaty’s scope. Here, SALW was noted as a category of specific importance because of their crucial and devastating role in conflicts that have left many countries awash with weapons that are now used for illegal purposes and that destabilize regions. Although it was also noted that the inclusion of SALW in the ATT would not entirely be sufficient for tackling the problem of the proliferation of illicit SALW, it would contribute to increasing security within the region.

Also in the Americas, the importance of SALW as a specific category under an ATT was highlighted by most participants. There, the problems related to the uncontrolled and illicit trade in these weapons was mostly linked with organized crime, urban violence and trade in illegal drugs. As with the seminar in Nepal, participants at the Americas seminar urged that the scope of the ATT be thoroughly comprehensive and they made specific calls for the category of SALW to be considered. The views expressed in the Bali seminar generally echoed those of the previous seminars.

In Kenya, participants spoke quite passionately about the need to include SALW and ammunition in the Treaty, some going as far as to say that they would not be in a position to support the final Treaty should it fail to include SALW and related ammunition in its scope. In addition to stressing the importance of the inclusion of these weapons, participants seemed to generally favour a comprehensive approach to the scope, that should include all conventional arms, ammunition, plus parts and components. In the Middle East seminar, many participants mentioned the need to build on already existing instruments such as the UNRCA, and use those categories as the

basis of formulating the coverage for the Treaty, even if the categories of weapons of an ATT would be broader than the current UNRCA coverage. It was noted that some categories of weapons do not have the same direct impact on security and/or human lives in societies around the world as other categories, and—departing from the discussions in many other regions—the inclusion of SALW, ammunition and weapon technologies was met with some resistance. On the other hand, especially SALW were noted by some in the Middle East seminar as being of primary importance in an ATT.

Finally at the Belgrade seminar participants called for a comprehensive set of weapons and equipment in the ATT. SALW was noted as a category of specific importance, but some also expressed concerns about their inclusion. Some discussion was also devoted to the possible distinction between military and civilian weapons, and it was noted that the ATT might have to limit itself to specifically “military” weapons following the example of most regional instruments. Sporting and hunting SALW would under this specification not fall under the ATT.

The inclusion of SALW in the scope of the ATT generated a lot of discussion also in both the PrepCom and in the background papers produced by NGOs and think tanks.<sup>48</sup> It is widely acknowledged that SALW play an important role in the majority of violent conflicts, and yet they have not been subjected to the same levels of monitoring concerning trading and transfers as major weapons. The majority of states seem to strongly support the inclusion of SALW in the ATT.<sup>49</sup>

This was the approach already during the meetings of the GGE on an ATT in 2008, where “due to the fact that small arms and light weapons, among conventional arms, have caused immense human suffering and political instability in different parts of the world, experts expressed the view that combating illicit trade and unlawful transfers to non-State actors must be adequately addressed”.<sup>50</sup>

The calls for the inclusion of SALW in an ATT are undoubtedly a result not only of their potentially devastating impacts but also of existing instruments that take these weapons into account in their transfer control systems.<sup>51</sup> Currently, SALW are addressed in a mix of instruments with various degrees of legally binding commitment.

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<sup>48</sup> Further, the background paper produced for the 2010 Boston Symposium on an ATT concludes its section on small arms with a clear recommendation: “SALW should be included as a separate category in the scope of the ATT”. In the paper “Arms Without Borders”, the Control Arms Campaign strongly advocates the need for SALW to be included in the ATT; see <[www.amnesty.org/en/library/asset/POL34/006/2006/en/34ec3a8b-d403-11dd-8743-d305bea2b2c7/pol340062006en.pdf](http://www.amnesty.org/en/library/asset/POL34/006/2006/en/34ec3a8b-d403-11dd-8743-d305bea2b2c7/pol340062006en.pdf)>.

<sup>49</sup> Anne-Charlotte Merrell-Wettervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

<sup>50</sup> General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007.

<sup>51</sup> The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods includes small arms and light weapons under both its control and reporting categories and the organization also has adopted best practice guidelines for exports of small arms and light weapons. Although the Arrangement is a politically binding instrument for its 40 participating states, a majority of them have chosen to incorporate its decisions into national legally binding commitments. The other example is the legally binding EU Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, adopted 8 December 2008, that includes control provisions for SALW.

The lack of consistency, information and congruency makes getting a comprehensive overview very difficult. To a certain extent SALW are already included in the majority of national export control systems. However, as has been argued during the project, these cannot replace an international control arrangement that would create common rules for all.<sup>52</sup> By creating a better global network of controls for international transfers of these types of weapons the risk of diversion would clearly be diminished.

In the seminars, as mentioned above, a handful of states also expressed caution against the inclusion of SALW. Arguments mentioned for this were that SALW are already handled within another United Nations instrument, the Programme of Action,<sup>53</sup> and that their inclusion would expand the scope too much and might make an ATT difficult to agree on or to implement.

### **Ammunition**

The question of whether ammunition as a category should be included in an ATT has raised active conversation since the beginning of the ATT process and was one of the most debated topics related to the future Treaty's scope in the regional seminars. Linked with the issue of SALW, the uncontrolled proliferation of ammunition undoubtedly poses many problems through, *inter alia*, the prolongation and intensification of conflict, armed violence, crime and terrorism.

Many participants at the seminars insisted that, without ammunition, the ATT would fail to meet its goals and objectives. Others then again expressed strong concern about both the feasibility and desirability of including ammunition. This made ammunition the most debated issue on an ATT's possible scope. During 2011, when the majority of states had come out in support of the inclusion of ammunition, though some remained firm in their opposition, it was speculated that the issue would later be used as a bargaining chip by the few but vocal opponents to make gains in other parts of the Treaty.<sup>54</sup>

The majority of initiatives established to curb the illicit flow of SALW, such as the Firearms Protocol, have tried to address the ammunition component at the same time, as the two categories are technically linked, but the discussions have often been

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<sup>52</sup> Anne-Charlotte Merrell-Wetervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

<sup>53</sup> Included in *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects*, UN Document A/CONF.192/15, 2001, <[www.poa-iss.org/poa/poahtml.aspx](http://www.poa-iss.org/poa/poahtml.aspx)>. Also, one of the three supplementary protocols to the legally binding United Nations Convention against Transnational Crime, adopted in November 2000, is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition—the Firearms Protocol—and it also addresses SALW. See General Assembly, *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Conventional against Transnational Organized Crime*, UN document A/RES/55/255, 8 June 2001.

The purpose of the Protocol is to promote, facilitate and strengthen cooperation among states parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. At the moment the Firearms Protocol is the only legally binding global instrument addressing the issue of SALW.

<sup>54</sup> Saferworld, *Ammunition and the ATT: Options for and Implications of Its Inclusion*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf18-act537.pdf](http://www.unidir.org/pdf/activites/pdf18-act537.pdf)>; Anne-Charlotte Merrell-Wetervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

complicated to the point of frustration. Unlike SALW, ammunition lacks an international instrument for marking and tracing similar to the International Tracing Instrument (ITI). There are several examples of regional instruments that cover ammunition,<sup>55</sup> and several national marking and tracing systems also deal with ammunition, but none of them are internationally recognized or accepted. The fear of arriving at a similar type of debate as with the Programme of Action or ITI has possibly fuelled the contention regarding ammunition within the ATT discussion.<sup>56</sup>

States that have expressed their support for the inclusion of ammunition in an ATT often use arguments similar to those for SALW: better controls over these items would positively contribute to the goals and objectives of the Treaty by helping to minimize the detrimental effects of the diversion of arms and ammunition to the illicit market. It has also been said that including ammunition in the Treaty would consolidate a variety of current regional and multilateral practices. Some have gone even further to claim that it would be detrimental or “paradoxical” not to subject ammunition to the same scrutiny as arms, arguing that the two are intrinsically linked.<sup>57</sup>

Calls for the inclusion of ammunition in the scope of an ATT have been strong, especially in Africa, where the uncontrolled proliferation of ammunition is seen as a central contributor to continued conflict, crime and armed violence, along with illicit SALW.<sup>58</sup> This was the case also in the EU–UNIDIR regional seminars, where states from the African subregions often said that an ATT would be largely irrelevant to them if it were not to cover ammunition. In the Asia seminars, then again, views were more divided on ammunition than on weapons, as some participants pointed to the possible difficulties in implementing the Treaty should it also cover ammunition. In the Americas, the importance of including ammunition was highlighted by most participants, whereas in the Middle East the category was met with resistance, together with SALW and weapon technologies, for instance. Finally, in the Wider Europe seminar, where most participants were in favour of the inclusion of comprehensive categories, ammunition was mostly noted as a category to be included in the Treaty.

Participants that have opposed the inclusion of ammunition in the regional seminar discussions often said that the controls of ammunition are inherently different from the control of weapons. Reasons listed for their exclusion have included problems related to defining “ammunition”, the administrative burden that would accompany their inclusion in an ATT and the operational constraints that including ammunition in the Treaty would place on peacekeeping missions.<sup>59</sup> It has also been argued that due to the

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<sup>55</sup> These include the 1996 Wassenaar Arrangement, the 1997 Inter-American Firearms Convention, the 2001 United Nations Firearms Protocol, the 2001 United Nations Programme of Action, the 2006 Convention of the Economic Community of West African States, and the 2008 EU Council Common Position.

<sup>56</sup> Anne-Charlotte Merrell-Wettervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

<sup>57</sup> Saferworld, *Ammunition and the ATT: Options for and Implications of Its Inclusion*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf18-act537.pdf](http://www.unidir.org/pdf/activites/pdf18-act537.pdf)>.

<sup>58</sup> Joseph Dube, “SALW and ammunition in the scope of an ATT: rationale from Africa”, UNIDIR seminar *The Scope of an Arms Trade Treaty: Including Small Arms, Light Weapons and Ammunition*, held on 2 December 2010; slides of the presentation are available at <[www.unidir.ch/pdf/conferences/pdf-conf870.pdf](http://www.unidir.ch/pdf/conferences/pdf-conf870.pdf)>.

<sup>59</sup> Saferworld, *Ammunition and the ATT: Options for and Implications of Its Inclusion*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf18-act537.pdf](http://www.unidir.org/pdf/activites/pdf18-act537.pdf)>.

consumable nature of ammunition and the large volume of transfers it would be very cumbersome if not impossible to mark, trace and keep records of all transferred ammunition. Another argument often put forward is that states are reluctant to disclose their imports or exports of ammunition.

In reality, the overwhelming majority of exporting states already control ammunition for export in their licensing procedures and therefore already have the framework in place and the capacity for regulation. Also positive examples show that marking and tracing ammunition is possible and that it is already being done in several countries.<sup>60</sup>

One of the goals stated for an ATT has been that it would promote transparency in conventional weapons transfers. As noted, some states have expressed concern especially regarding this aspect, as they claim that exchanging information on ammunition transfers would pose a threat to their national security and reveal too much militarily sensitive information. Another concern raised during discussions regards the potentially damaging consequences of revealing the value and quantity of transferred ammunition, which is information that is considered to be commercially sensitive. However, previous experiences of states that have adopted this level of transparency have not encountered problems with this. To solve the problem between reporting requirements and the overall inclusion of ammunition in an ATT, it has been suggested to delink the control and reporting requirements for the items that are covered by an ATT.<sup>61</sup> For example in the Montevideo seminar it was suggested that it could be foreseen that an ATT could cover materials where states would exchange more information, and others with regard to which this information exchange would be less frequent or more limited in terms of detail, for example in the form of annual aggregated data on the number or value of granted licenses.

Tracing and record-keeping in different commodities that are traded in bulk is more a rule than an exception in international trade. Conventional arms and ammunition have so far been one of the very few items that have not been globally regulated. Given the existing mechanisms for tracing and recording the trade in other commodities, it has been argued that the inclusion of ammunition in an ATT would be technically feasible.<sup>62</sup>

However, throughout the seminars it was noted that the Treaty's proponents should keep listening to the arguments of the sceptics to ensure that the debate stays well informed and comprehensive. Overall, the exchange of views on ammunition seemed to conclude in the direction that one should not discuss whether ammunition should be included in an ATT, but rather how this could be done and whether special clauses to that effect could be included in the Treaty. More thinking has to be devoted to how this can be done in practice, and whether for example diversified reporting and transparency measures could be introduced to address the different natures of ammunition and weapons in the Treaty.

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<sup>60</sup> Claudio Gramizzi, "Ammunition in the scope of the Arms Trade Treaty", UNIDIR seminar The Scope of an Arms Trade Treaty: Including Small Arms, Light Weapons and Ammunition, held on 2 December 2010; slides of the presentation are available at <[www.unidir.ch/pdf/conferences/pdf-conf872.pdf](http://www.unidir.ch/pdf/conferences/pdf-conf872.pdf)>.

<sup>61</sup> An example of such a construction is the Wassenaar Arrangement, whose munitions list consists of 22 categories, compared to the only eight categories of the reporting list for military items.

<sup>62</sup> See the UNIDIR seminar The Scope of an Arms Trade Treaty: Including Small Arms, Light Weapons and Ammunition, held on 2 December 2010. The summary report of the seminar as well as audio files of the presentations are available at <[www.unidir.org/bdd/fiche-activite.php?ref\\_activite=571](http://www.unidir.org/bdd/fiche-activite.php?ref_activite=571)>.

The PrepCom Chair's draft paper of 21 July 2011 included ammunition related to the Treaty's covered weapons as part of its scope. In the draft, "ammunition and munitions", originally referred to as two categories of which munitions were considered as composing a larger group of items than ammunition, were merged to a single category.<sup>63</sup> During the ATT conference states expressed strong opinions both for and against the inclusion of this category. Finally, despite the calls especially from many African and Caribbean states, the reference to ammunition/munitions was removed from the alphabetical list of the scope section to a separate article covering the export of conventional weapons and by which each state party to the Treaty "shall establish and maintain a national control system to regulate the export of ammunition for conventional arms under the scope of this Treaty, and shall apply article 3, and paragraphs 1, 2, 3, 4 and 5 of article 4 prior to authorizing any export of ammunition".<sup>64</sup>

### **Parts and components**

Parts and components as a possible category for an ATT did not evoke as much discussion during the regional seminars as SALW or ammunition. However, the issue was taken up for example in the Americas seminar, where it was noted that parts and components as well as technology and equipment should be further analysed with regard to their possible inclusion in the Treaty. Also participants in the Nairobi seminar referred to the issue when calling for a comprehensive scope for the ATT that in addition to SALW and ammunition would also cover parts and components.

During the PrepCom meetings, many states spoke in favour of the inclusion of parts and components. For example, it was stated that an ATT that would control only end products and not the parts, components and technologies used to construct those items would neither be comprehensive nor reflect the reality of the conventional arms trade.<sup>65</sup> As discussed further under the section on technology transfers, the modern-day arms market is such that very few weapons or weapon systems are manufactured by one producer or in one country. Therefore, if parts and components were excluded from the Treaty, the arms trade practiced by many states would de facto fall outside the Treaty's coverage.<sup>66</sup>

At the same time, many also raised concerns about the inclusion of these items in an ATT, saying that it would prove too complicated and difficult to define. Indeed, controlling parts and components would probably not be easy as many of the items under this category are considered dual-use products and thus also have a civilian use in addition to their military application. Identifying the relevant thresholds or cut-off points for what is uniquely military would have to be carefully considered as controlling

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<sup>63</sup> "Ammunition can be defined as 'projectiles with their fuses, propelling charges, or primers fired from a gun'. Munitions on the other hand can include ammunition, but can also be referred to as armament and would thus indicate a much broader definition than was intended in an ATT context. Munitions can be used as a term for larger caliber weapons but also considered as weapons considered collectively, as the title for the Wassenaar Arrangement conventional arms control list indicates, the so called 'Munitions List'". Anne-Charlotte Merrell-Wettervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>, p. 11.

<sup>64</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, art. 6(4).

<sup>65</sup> Anne-Charlotte Merrell-Wettervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

<sup>66</sup> Anne-Charlotte Merrell-Wettervik, *Possible Scope of the Future ATT and the Implications of the Different Options*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf19-act537.pdf](http://www.unidir.org/pdf/activites/pdf19-act537.pdf)>.

all parts and components that go into the weapons falling under an ATT, from the type of aluminium used or the bolts, to highly sophisticated detection equipment, would undoubtedly prove impossible to implement merely because of the vast amount of licences needed. The sliding scale of sophistication will always be present when discussing parts and components and finding the appropriate threshold for control was therefore noted to be very important.

The Chair's draft paper from July 2011 included parts and components as a category under the Treaty, with a definition that they have to be "specially and exclusively designed" for the subcategories of weapons included earlier in the Treaty text. In the draft circulated during the ATT conference, the reference to parts and components was changed to be similar in structure to that of ammunition:

Each State Party shall establish and maintain a national control system to regulate the export of parts and components, to the extent necessary, for the conventional arms under the scope of this Treaty, and apply article 3 and paragraphs 1, 2, 3, 4 and 5 of article 4 prior to authorizing any export of those parts and components.<sup>67</sup>

In the reference, the Treaty's coverage of parts and components is limited to national systems and exclusively to export controls. The problem of where to draw the line between parts and components relevant for inclusion and those insignificant for the fulfilment of the goals and objectives of the Treaty has been solved by introducing "to the extent necessary" in the text.

## **Brokering**

As noted earlier, most states seem to agree that an ATT should cover, at minimum, export, import and transfer of weapons. In addition to these categories, one of the most debated activities for possible inclusion is arms brokering. The idea that arms brokering should be included in the Treaty has been present since the United Nations process began in 2006. The first United Nations General Assembly resolution on an ATT did not mention arms brokering directly, referring instead to controls on the "import, export and transfer of conventional arms",<sup>68</sup> but brokering as an activity potentially falling under the scope of the Treaty was advocated already by over 60 states in their national submissions the following year. Since then, many more states have come out strongly in support of its inclusion, noting that without the controls over the intermediaries, the Treaty would not be able to meet the goals and purposes set for it. One additional reason for the debate was probably that there is no universally agreed definition of what constitutes arms brokering, and one of the most contentious issues in this area is the question of which activities constitute brokering activities.<sup>69</sup>

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<sup>67</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, art. 6(5).

<sup>68</sup> General Assembly, *Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms*, UN document A/RES/61/89, 18 December 2006.

<sup>69</sup> In the field of SALW, the United Nations GGE established to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons defines a broker as "a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise"; General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider*

The Chair's draft papers circulated before and during the February–March 2011 ATT PrepCom mentioned “brokering” as one of the transactions or activities that would be covered by an ATT. The first version provided a lengthy definition of brokering and referred to SALW.<sup>70</sup> Several states argued in favour of simplifying the definition and expanding its coverage to include all of the items covered by the scope of an ATT, not only SALW.<sup>71</sup> The July 2011 version of the Chair's draft paper only referred to “brokering” without attempting to define it further. The draft treaty text of July 2012 takes a different approach to defining the activities falling under the scope of the Treaty, and contains a reference to brokering under article 8: “Each State Party shall take the appropriate measures, within its national laws, to regulate brokering taking place under its jurisdiction for conventional arms under the scope of this Treaty. Such controls may require brokers to register or obtain written authorization before engaging in brokering transactions”.<sup>72</sup>

Even though the majority of states appear to be in favour of including brokering controls within the scope of an ATT, unresolved issues remain. These include the exact coverage of brokering activities and the involved parties' relationship with the future Treaty; the criteria that states would be required to apply when deciding whether to grant or deny a brokering license; whether brokering controls will apply also when the broker is operating outside their national territory; and whether states will be required to introduce systems of brokering licenses or whether other systems of control will be acceptable.<sup>73</sup> As all issues could not be addressed during the July 2012 ATT negotiating conference, definitional issues going beyond the possible wording of the Treaty itself will have to be carefully considered when entering the debate.

In the regional seminars, following the general ATT process, many states called for a comprehensive range of transactions to be included in the Treaty, comprising export, import, transfer and retransfer of weapons, but also brokering, loans, gifts, technological developments, manufacturing and temporary exporting of weapons, just to mention a few examples. In the Nepal seminar, for example, participants were divided over the inclusion of categories other than export, import, transit and retransfer—some called for wide coverage such as the inclusion of brokering, while others cautioned against broadening the future Treaty too much. Categories such as gifts and donations, temporary exports and financing were taken up as potentially problematic or less relevant categories for an ATT. In the Morocco seminar, then again, there seemed to be wide support for a comprehensive scope with the inclusion not only of export, import, transfer and transit of weapons, but also of, for example, brokering activities. Remarks also touched upon transfers of weapons for peacekeeping operations, and other possible specific cases of temporary export or import such as for private hunting purposes. It was noted that more discussion on these kinds of exceptional cases would be needed. It was

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*Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, para. 8.

<sup>70</sup> Chair's draft paper, 16 February 2011.

<sup>71</sup> The new version of the paper defined brokering as “(t)he facilitation by an intermediary who brings together relevant parties and arranges or facilitates a potential transaction of conventional arms in return for some form of benefit, whether financial or otherwise”. Chair's draft paper, 3 March 2011.

<sup>72</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, art. 8.

<sup>73</sup> See the background paper by SIPRI for further discussion on these points: Mark Bromley, *Arms Brokering Controls in the Americas and the Caribbean and a Future Arms Trade Treaty*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf14-act537.pdf](http://www.unidir.org/pdf/activites/pdf14-act537.pdf)>.

also noted that in considering the activities to be covered the existing national practices as well as differing situations of countries should be observed and respected. Also states in the Americas and the Caribbean appear to be broadly supportive of the inclusion of brokering controls in an ATT.<sup>74</sup>

In the Nairobi seminar, the participants called for the inclusion of a wide variety of activities from export and import to brokering, transit and retransfer. There was also some discussion about the need to include training and other potential categories in the scope, with some participants talking strongly in favour of their inclusion and others pointing to the complexity of regulating these items. In the Beirut and Belgrade seminars, brokering as an activity was mostly discussed through practical case studies.

### **Licensed production overseas and technology transfers**

Issues regarding the possible inclusion of licensed production and transfers of technology have been discussed among other, more generally supported activities and transactions in the ATT process. Views were divided already in the submission of national views on an ATT in 2006, where close to 40 states mentioned technologies related to production capabilities in their responses, but only 15 states mentioned technologies in relation to the scope of an ATT. Over 50 states seemed to support the inclusion of technologies in a future ATT, particularly considering the inclusion of “manufacturing technology, technology or technological development”.<sup>75</sup> Some states have commented that the inclusion of transfers of technology in the scope of the future Treaty is necessary because it would fall short of its primary objective without such inclusion. At the same time, a large majority of developing countries, especially ones with growing defence industries, opposed the inclusion of transfers of technology clauses in the Treaty’s scope. According to these states the inclusion of a clause regarding transfers of technology in the regulations set up by a future ATT would discriminate against the states seeking to develop their own defence capacities.<sup>76</sup> As a backdrop to the possible inclusion of technology transfers in an ATT, recent developments in weapons technology and international trade were often cited, together with the growing competition among exporters and the evolution of customer demands and needs towards increasingly complicated subsystems requiring the integration of foreign technologies into local systems.

To follow suit and to further explore the possibility of their inclusion, UNIDIR commissioned background papers on these issues, looking for instance into what arrangements are already in place at national and regional levels to control them within the Wassenaar Arrangement, the EU and the United States. Also some seminar discussions touched upon their definition and participants shared differing views about whether technology transfers and licensed production should be part of the ATT. Licensed production overseas and especially problems related to unlicensed manufacturing were discussed in most detail in the Wider Europe seminar, where it was said that the ATT should under no circumstances limit the ability of states to develop

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<sup>74</sup> Mark Bromley, *Arms Brokering Controls in the Americas and the Caribbean and a Future Arms Trade Treaty*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf14-act537.pdf](http://www.unidir.org/pdf/activites/pdf14-act537.pdf)>.

<sup>75</sup> Sarah Parker, *Implications of States’ Views on an Arms Trade Treaty*, UNIDIR, 2008, p. 15; and Sarah Parker, *Analysis of States’ Views on an Arms Trade Treaty*, UNIDIR, 2007, p. 6.

<sup>76</sup> See Bruno Gruselle and Perrine Le Meur, *Technology Transfers and the Arms Trade Treaty: Issues and Perspectives*, Fondation pour la Recherche Stratégique, 2012, <[www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=141315](http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=141315)>.

their own legal defence capabilities, even if it were to help improve controls over technology transfers.

Participants in the Nairobi seminar took up technology transfer as a potentially problematic issue and noted that an ATT should not hinder the possibilities of African states to receive and develop new technical capacities, but should increase scrutiny on arms transfers to prevent irresponsible transfers and the diversion to illicit trade. Similar statements came out in the Beirut seminar, where the importance of making a distinction between military and civilian use of transferred technologies was brought up, and it was noted that the ATT should not prevent the transfer of technology to or within the Middle East region.

In the Chair's draft paper of July 2011,<sup>77</sup> there was a double reference to technology transfer within an ATT's scope: technology was mentioned as one of the categories of materials to be covered by an ATT, but transfer of technology was also listed as one of the activities. In addition, the definition used was relatively broad and covered both tangible and intangible exports of technologies that have a military use. The draft ATT circulated at the end of the ATT Conference of July 2012 omitted any reference to technology transfer.

The question remains highly sensitive especially for importing states, particularly among developing countries for which the transfers of technology have become a competitive argument and to some extent provide a way to continue developing their defence economies and capabilities, as could be seen in the regional seminar discussions.

Based on the project findings, it appears necessary that all states involved in the arms trade create robust export control systems that have the capacity to manage both material goods and technological know-how. As with other aspects of the future ATT's scope, there seems to be the necessity to obtain international consensus on a clear definition of "transfer of technology", which could not be discussed in detail during the July 2012 conference. In discussing the issue during the seminars and at the United Nations, it was stressed that some differentiation between different types of technology transfers must be introduced in the Treaty to avoid too broad a definition that would prove both ineffective and irrelevant from the point of view of sensitive controls and become impossible to implement because of the increased bureaucratic burden.<sup>78</sup> Many have noted that the ATT negotiators should continue working on a comprehensive and efficient definition of technology transfers, as the inclusion in the future Treaty would be in many aspects important and also possible, as demonstrated by existing national and regional arrangements. An international framework on transfers of technology within the ATT should build on existing models and systems in trying to create some universal obligation on post-export mechanisms.

During the project's discussions, it was suggested that technology transfers could perhaps be rather addressed as an activity falling under the scope of the Treaty rather than as a type of weapon/equipment. Limiting technology transfer as an activity might

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<sup>77</sup> Chair's draft paper, 14 July 2011, <<http://controlarms.org/wordpress/wp-content/uploads/2011/11/ChairPaper-14July2011.pdf>>.

<sup>78</sup> See UNIDIR seminar Towards a Practical and Implementable Arms Trade Treaty: Addressing Technology Transfers, 14 November 2011, Geneva. Documents of the seminar are available at <[www.unidir.org/bdd/fiche-activite.php?ref\\_activite=657](http://www.unidir.org/bdd/fiche-activite.php?ref_activite=657)>.

help avoid situations where all the multiple acts of “technology transfer” related to a single transfer contract would under an ATT risk being subject to multiple licensing requirements and allow for the issuance of a single comprehensive technology transfer licence. Finally, the establishment of some kind of technical working group composed of experts from the defence industry and national export control regimes was suggested as a possibly fruitful way forward in pinning down the most productive and implementable definition of technology transfers under an ATT.

### **Effective end-user assurances**

The project also took up the question of NSAs and some of the seminars specifically discussed how the use of weapons by such groups could be addressed in an ATT. The issue seems to be of primary importance especially in some regions in Africa and in the Middle East. In the national submissions of 2007, the issue was mostly addressed through possible transfer criteria, where the replies showed that prohibitions on transfers to NSAs might prove quite controversial, even though the issue was explicitly discussed only by seven states. In addition, 13 states noted that state-to-non-state end user transfers should be covered.<sup>79</sup>

In the Nepal seminar, the issue was mostly discussed with regard to SALW, where the ATT was seen as an instrument that could contribute to preventing their diversion to terrorists and unauthorized NSAs. In the Morocco seminar, questions were raised about how the use of weapons by unauthorized NSAs could best be addressed in an ATT, and a suggestion was made to put special emphasis on ensuring effective end-user controls in both national systems and in the future ATT. Despite various views expressed about different possible scenarios of arms transfers involving NSAs, a common view in the Morocco seminar discussion seemed to be that addressing the question of NSAs explicitly in an ATT would prove politically and practically very challenging. However, the importance of taking NSAs into account when considering issues related to controlling conventional arms transfers was underlined, and it was noted that an ATT should somehow prevent weapons ending up in the “wrong hands”, that is to say with non-authorized NSAs. Indeed, one suggestion put forward also in the background papers of the project in terms of how to address NSAs through the ATT was that the Treaty could contain specific and clear clauses on the need to establish robust and implementable end-user controls at the national level. In this, the primary responsibility would lie with states as the main negotiators and objects of an ATT, but introducing regulations on end users would indirectly contribute to solving the problem of unauthorized acquisition of weapons by NSAs.

In the Chair’s non-paper of July 2011, given the controversial nature of the NSA issue, reference was only made to considerations regarding end use. Under parameters it is noted that states shall assess their arms transfer decisions “taking into account information on the nature of the arms to be transferred and risk assessment of the potential use of the weapon and the end-user”.<sup>80</sup> The issue is also absent from the draft treaty text of July 2012.

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<sup>79</sup> Sarah Parker, *Analysis of States’ Views on an Arms Trade Treaty*, UNIDIR, 2007; Sarah Parker, *Analysis of States’ Views on an Arms Trade Treaty*, UNIDIR, 2007, pp. 9–11.

<sup>80</sup> Chair’s non-paper of July 2011, p. 5.

## **How to cover the scope in an effective and implementable way?**

In terms of the concrete manner in which categories of weapons and activities—once defined—could be covered in an ATT, participants in most seminars<sup>81</sup> seemed to favour having a general heading of weapons and activities in the treaty text itself. Views were expressed as to the best way to handle the definition issue or to leave the specifics to be handled at the national level by the future ATT's states parties. This was the approach for example in the Morocco seminar, where it was mentioned that the best way to address scope might be to have a general heading of weapons and equipments in the treaty text itself, and then have annexes with more specific lists of weapon categories, as this might be clearer than a mere reference to “all conventional weapons”, as it would give the implementers some concrete guidelines to work with, but would still be comprehensive in its formulation. Having the lists as annexes would also allow for later modifications and developments without risking the narrowing of the Treaty's coverage.

Others were of the view that the ATT would suffice without going into detail of what the different items covered under it would mean. They argued that such a “light” treaty without, for example, long detailed lists of weapons categories would also be easier to negotiate. Such a treaty would have to be implemented by each state in good faith, through national legislation and regulations.

In other statements, it was noted that simple and unified implementation of the Treaty would probably require something more than general chapeaux to determine the scope of the instrument. It has been pointed out that attempting to agree on detailed lists of categories of equipment, parts and components in the body text of an ATT would however present enormous challenges for the negotiation process and the Treaty's subsequent review. The body text of an ATT on scope could define broad categories of equipment and types of transfers covered by it, and then include a technical annex or annexes on specific lists, possibly with illustrative photos and descriptions. Reasons mentioned for this are, among others, that it would make the Treaty easier to negotiate and it would also be simpler to keep the categories up-to-date and relevant.

During the EU–UNIDIR events, some states continued to advocate the “everything except” approach, whereby the Treaty would cover all conventional weapons except types listed in an annex. This would be an alternative solution to the problem of detailed definitions, as it would presuppose that everything—with the exception of specific items, for example sporting and hunting guns or antique weapons—falls under the Treaty's coverage.

However, the majority of states were calling for more precision, for the main reason that more detailed definitions would give the implementers some concrete guidelines to work with, while remaining comprehensive in their formulation. For example, in the Nepal seminar, when asked about the concrete manner in which categories of weapons and activities could be covered in an ATT, most participants seemed to favour the inclusion of definitions in a technical annex, as this would make it easier to keep the categories up-to-date and relevant.

While most states advocate a comprehensive scope for the ATT, it was also noted that the control list of the future Treaty has to be manageable to remain relevant for states in

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<sup>81</sup> Those being the seminars held in Nepal, Morocco, Uruguay, Kenya and Serbia.

their future national implementation efforts. It was noted that it would not be advisable to copy lists from other non-proliferation instruments that were created for different purposes and perspectives. For example, in the Middle East seminar many participants mentioned the need to build on already existing instruments such as the UNRCA and use its categories as the basis of formulating the coverage of the ATT, even if the categories of weapons of an ATT should be wider than the current UNRCA coverage. It was also noted that the possibility of revisions and updates should be kept in mind so that the Treaty could when necessary be adapted to changing realities on the ground and be kept relevant also in light of future technological developments in arms production. Some suggested that a way out of the problem of definitions could be to add references to other, already existing treaties and their scope, and thereby limit and define the weapons that would fall under an ATT.

In the Belgrade seminar, many noted that the negotiations will have to clarify the approach that the Treaty will take towards its scope—how much detail will be included, will existing instruments such as the UNRCA be specifically referenced, and what will be left for national decision makers to define? Some participants called for a clear list of weapons, while others called for more general categories that could be further specified at the national level, based on the needs and systems of different states. During the technical part of the seminar, many participants pointed out that no matter how the ATT's scope will be defined it will have to leave room for national interpretation and allow for states to apply their own system to licence applications, while respecting the jointly agreed upon rules and minimum requirements.

In the Montevideo seminar it was suggested that an ATT could make use of additional protocols. This could facilitate state participation in the Treaty, as they would not have to adopt and implement the Treaty immediately in its entirety, but could take a step-by-step approach to accession. The model of having separate protocols to the future Treaty (following for instance the model of the Convention on Certain Conventional Weapons) was taken up in the Nepal seminar, but seemed to gather only limited support.

In terms of concrete control lists for the Treaty, the possibility of having different specifications and levels of detail for import and export lists was also suggested. This would probably help reduce the burden, particularly on small states that primarily import weapons, but would risk blurring the transparency mechanism under the Treaty by making comparisons between export and import statistics more cumbersome, if not impossible.

The approach taken in the Chair's non-paper of July 2011 was towards general categories of weapons and transactions, with short explanatory annexes regarding the covered activities added to the treaty text. The draft ATT circulated on 26 July 2012 took a different approach to the scope altogether, listing the covered items and activities only briefly under article 2 (see above) and specified activities and, for example, the coverage of ammunition, further in separate articles pertaining to national controls.

#### Recommendations on scope

- The approach most likely to succeed builds, at the minimum, on the expanded categories of the UNRCA with the addition of SALW. The most feasible manner in which the various categories of weapons and activities could be covered in an

ATT would be to have general categories instead of detailed lists or detailed categories.

- With reference to both ammunition and parts and components it seems that solutions regarding more limited reporting than in other categories should be explored in order for them to be feasibly included in the scope.
- At a minimum, activities to be covered in the ATT should include export, import and transit of weapons. The Treaty should also detail the necessary level of specificity according to the nature of the activities and the resulting possibilities and limitations for controls.
- The Treaty's scope should be formulated so that it remains flexible for future developments in weapons technology.
- Regardless of the level of detail of the ATT's scope, it will have to be clear for all states parties. It should also leave room for national interpretation and allow for states to apply their own system both to licence applications and to the definition of activities.

## **5.2. Parameters**

The parameters, that is, transfer criteria that should be followed when making transfer decisions under the Treaty, are undoubtedly at the heart of the future ATT. Without parameters, an ATT will not impact states' decision-making processes and the Treaty will not have the impact it aims to have. The absence of common international standards in the export and import of arms currently undermines stability and security, and hence the effectiveness of an ATT will first and foremost be determined by the parameters it establishes. Criteria or parameters can be defined as “the standards that States should apply when determining whether to authorize a transfer of arms”.<sup>82</sup>

Most states that have participated in the ATT discussions argue that for an ATT to be effective and implementable it should be based on clear, common and objective transfer criteria that build on international law and existing practices and that are feasible for all states parties to follow when making their national arms transfer decisions. In the words of the latest ATT resolution, these criteria should be such that they establish the “highest possible common international standard for arms transfer decisions”, are easy enough to interpret but clear enough that they cannot be politically abused or interpreted in vastly different ways. This is one of the central added values of an ATT: by creating universal norms for conventional arms transfers, the Treaty will harmonize current practices and make transfer decisions more predictable, reliable and consistent. This was the view of the 2008 GGE, in which experts “emphasized the importance of objective and agreed global criteria that reflect respective responsibilities of exporters and importers”. Regardless of which specific issues are covered, many participants in the EU–UNIDIR project said that the criteria should be unambiguous to avoid different interpretations.

The transfer criteria that are to be considered before any transfer is accepted are not only one of the most important but one of the most debated issues of an ATT. Various remarks have been made with regard to the specific possible criteria that could be used to form the parameters. This was the case also in the EU–UNIDIR project. For example, in the Nepal seminar, many referred to the founding principles of the future Treaty, but also noted that we should not confuse founding principles with parameters. Participants referred to what should be the principles underpinning the Treaty, the most commonly mentioned being the inherent rights of states to defend themselves and to regulate their internal affairs. Territorial integrity and political independence were also stressed. Many participants further underlined the rights of states to manufacture, import, export, transfer and hold conventional arms for self-defence and security needs. These issues were also taken up in the Bali seminar, where participants underlined that it is the sovereign right of every state to decide to either grant or refuse licenses.

Some of the proposed criteria would by nature be relatively “either–or”, and be based on, for example, the existence of international sanctions, while others would obligate the exporter to assess the risk of the transfer in question to be used for illegitimate purposes—for example the risk of proliferation, uses of terrorism, or aggression. This different nature of the different possible elements of the parameters led some

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<sup>82</sup> Nathalie Weizmann, “Background paper: parameters”, The Boston Symposium on the Arms Trade Treaty, 29 September 2010, p. 1. Further, Weizmann distinguishes three types of criteria: criteria relating to express international obligations, criteria relating to likely post-transfer events, and criteria relating to the expected user of the transferred weapons.

participants, for instance in the Nepal seminar, to suggest the Treaty to contain a hierarchy of parameters, meaning that some criteria would result in the absolute prohibition of a transfer, whereas others could be classified as cases where, for example, “serious or careful consideration” should be exercised when making the transfer decision. Wording to this effect in an ATT could include reference to, for example, “thorough and meaningful assessment”, “serious consideration” or certain risks that should be “taken into account”.

### **Charter of the United Nations, Security Council arms embargoes**

The least controversial parameters to be included in the Treaty are those that would reconfirm states’ already existing obligations, such as those under the Charter of the United Nations and relevant Security Council resolutions, in particular arms embargoes, as well as states’ other international obligations. The GGE report noted that “principles enshrined in the Charter of the United Nations would be central to any potential arms trade treaty”.<sup>83</sup>

It is generally accepted that arms transfers should not be authorized if there is a risk that they would be used or further transferred to violate states’ existing obligations under the Charter or under international humanitarian law. Besides this, most would agree that states should prohibit arms transfers that would violate United Nations Security Council arms embargoes or prohibitions to which states are party.<sup>84</sup>

This is reflected in the 26 July 2012 draft Treaty in article 3:

A State Party shall not authorize any transfer of conventional arms if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes [or] if the transfer would violate its relevant international obligations, under international agreements to which it is a Party.<sup>85</sup>

Taking the example of arms embargoes, all United Nations Member States are obliged under international law to respect and enforce mandatory United Nations arms embargoes by virtue of Article 2(5) of the Charter of the United Nations, which states that they “shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action”. Practice has shown that embargoes are not always obeyed, and that violations occur quite frequently and the international community lacks means to effectively address the problem. In this way, including this criterion in the ATT could contribute to strengthening the implementation of arms embargoes, “especially when there are substantial risks that weapons will be diverted in breach of the embargo”.<sup>86</sup> Further, this parameter might “sanction states that have not

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<sup>83</sup> General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, p. 16.

<sup>84</sup> Amnesty International, Arms Trade Treaty Steering Committee, *Compilation of Global Principles for Arms Transfers*, 2006.

<sup>85</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 3.

<sup>86</sup> Kenneth Epps, *UN Arms Embargoes and the Arms Trade Treaty*, working paper 10-2, Project Ploughshares, 2010.

complied with arms embargoes by preventing arms transfers to or from these states”,<sup>87</sup> which has also caused some states to express caution towards the inclusion of this criterion in the ATT.

Criteria relating to the Charter and to Security Council arms embargoes were the most commonly referred to possible parameters in all the regional seminars, and almost all participants were in favour of their inclusion.

### **International humanitarian law, human rights law, international criminal law**

Some of the contentious parameters under discussion are the risk that the transfer of conventional arms will lead to violations of international humanitarian law (IHL) or human rights law (HRL). This was already clear based on the work of the GGE, which in its report noted that the GGE had “discussed, with differing views, the applicability of existing international human rights law and international humanitarian law”.<sup>88</sup> Most states participating in the debate argue that arms transfer should not be authorized to destinations where there is a substantial risk that they would be used to violate international laws, including violations of HRL and IHL but also international criminal law (ICL), which includes crimes against humanity, war crimes, genocide and the crime of aggression.<sup>89</sup>

IHL and HRL can be considered among the most important necessary parameters for responsible arms transfer, and for instance are mentioned to be central to “the development of further principles and norms regarding the transfer and misuse of small arms and light weapons”.<sup>90</sup> They were also among the most frequently mentioned desirable parameters to be included in the ATT, according to the views submitted by states in 2007.<sup>91</sup>

While forcefully promoted by many states, the proposed criteria related to IHL, HRL and ICL have also faced objections, also in the EU–UNIDIR seminars, most commonly because they are said to be too vague and open to subjective interpretation, allowing the Treaty to be used for abusive political purposes. For example, in the Nairobi seminar, many participants called especially for the inclusion of HRL and IHL. A couple of states also expressed concern about the inclusion of these criteria, as these could be used for purposes of political abuse or to “unjustifiably prevent arms transfers” by claiming IHL or IHR concerns. Some said that the details of what is meant by the currently proposed criteria will have to be further explored, as for example the meaning of “serious violations of IHR and IHL” and “to undermine poverty reduction” were not

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<sup>87</sup> Sarah Parker, *Implications of States' Views on an Arms Trade Treaty*, UNIDIR, 2008, p. 30.

<sup>88</sup> General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, p. 16.

<sup>89</sup> According to the Rome Statute of the International Criminal Court, “International Criminal Law is also relevant to States arms transfer decisions. All States have an obligation to prohibit the provision of conventional arms to any person or entity, which would knowingly assist in the commission or the attempted commission of international crimes”. Amnesty International, *How to Apply Human Rights Standards to Arms Transfer Decisions*, 2008, p. 7.

<sup>90</sup> See Office of the High Commissioner for Human Rights, *The Prevention of Human Rights Violations Caused by the Availability and Misuse of Small Arms and Light Weapons*, UN document E/CN.4/Sub.2/RES/2002/25, 14 August 2002.

<sup>91</sup> Sarah Parker, *Implications of States' Views on an Arms Trade Treaty*, UNIDIR, 2008, p. 16.

clear in their minds at the moment, and it was noted that it would be difficult to, for instance, measure the level of human rights violations. It was also pointed out that it might prove very difficult to have objective and non-discriminatory policies for using certain criteria.

The concern of some states seems to be that parameters such as ones related to human rights could create a pretext and an instrument for a state to politically punish another by denying them arms transfers and consequently infringing their right of self-defence. For example, the Arab Group clearly expressed this concern, by noting:

while the Arab Group sets high the priority of human rights and sustainable development, it firmly rejects, at the same time, attempts to employ and politicize human rights and sustainable development as a pretext for intervening in the internal affairs of other countries, or to control their assessed required means of self-defence ...<sup>92</sup>

It has been argued that IHL and HRL criteria are too difficult to objectively judge and that the relevant treaties have not been signed by all states, and that they would therefore be an obstacle to negotiations. Although most sceptical delegations have left room for the mention of IHL and HRL in the Treaty, others have suggested that all references be entirely removed, highlighting the sensitivity of such provisions.

There have been several proposals about how one could overcome the problem of risk assessment in cases of possible IHL or HRL violations. For example, the ICRC and Amnesty International have published guides on international law and arms transfers, and provided indicators that states could use when assessing potential risks.<sup>93</sup> Concerning the contentious criteria, it has also been proposed that the definitions could be strengthened and clarified.

In the regional seminars, states were advocating the inclusion of these criteria in the ATT, but also made cautious remarks about the possibility for their practical implementation if included. In the draft ATT text of 26 July 2012, IHL and HRL are covered under article 4, “National Assessment”, where it is noted that:

Prior to authorization and pursuant to its national control system, the State Party shall assess whether the proposed export of conventional arms could:

- a. be used to commit or facilitate a serious violation of international humanitarian law;

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<sup>92</sup> Statement of the Group of Arab States at the second PrepCom, 28 February 2011, available at <[www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom2/20110228/20110228Bahrain-ArabGroup-E.pdf](http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom2/20110228/20110228Bahrain-ArabGroup-E.pdf)>.

<sup>93</sup> In order to help authorities to assess the risks, Amnesty International recommends that states look carefully at three factors before authorizing arms transfers: 1) an assessment of the recipient state’s respect for international human rights law in relation to those rights likely to be impacted; 2) a more specific assessment of the nature of the equipment, its stated end-use and the stated end-user, as well as the route, those involved in the transfer and the risk of diversion; and 3) an overall assessment as to whether there is a “substantial risk” that the transfer in question will be used or is likely to be used for serious human rights violations or abuses. Amnesty International, *How to Apply Human Rights Standards to Arms Transfer Decisions*, 2008, p. 9.

b. be used to commit or facilitate a serious violation of international human rights law.<sup>94</sup>

### **Corruption, terrorism, diversion**

Further criteria for arms transfers were already considered in the GGE, which “also raised the need to address the following thematic aspects: terrorism, organized crime and other criminal activities; maintaining regional stability; promoting socio-economic development; unlawful transfers to non-State actors, unauthorized re-export, unlicensed production, illicit brokering; right to manufacture and import; end use/end-user assurances; diversion; and compliance with Security Council arms embargoes and other existing international obligations as a necessary condition for transfers”.<sup>95</sup>

In the EU–UNIDIR project seminars there were strong calls especially in some regions for the Treaty to include criteria to prevent transfers of arms where they would risk to be diverted to illicit markets, and seriously impair poverty reduction and development efforts, especially as these were noted to be of direct concern to human security. Also corruption in the arms trade was often noted as a concern, which many participants hoped the ATT could address.

At any stage of a transfer from the exporting state to the recipient, states should consider the likely unauthorized and unintended uses of arms transfers, such as the risk that the transfer involves corruption, leakages to the illicit arms market, or possible use for the purposes of terrorism or organized crime. Regarding corruption, the exporting states should, for instance, take into consideration if the recipient state has ratified the United Nations Convention against Corruption. In addition, states should “refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists”.<sup>96</sup>

In the draft ATT, terrorism is covered under the same paragraph of article 4 as IHL and HRL (assessment of whether the proposed export of conventional arms could be “used to commit or facilitate an act constituting an offense under international conventions and protocols relating to terrorism to which the transferring State is a Party”), and references to corruption and diversion are included in the last paragraph of the article:

Each State Party, when considering a proposed export of conventional arms under the scope of this Treaty, shall consider taking feasible measures, including joint actions with other States involved in the transfer, to avoid the arms:

- a. being diverted to the illicit market or for unauthorized end use;
- b. being used to commit or facilitate gender-based violence or violence against children;
- c. being used for transnational organized crime;
- d. becoming subject to corrupt practices; or

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<sup>94</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, art. 4.

<sup>95</sup> General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, p. 16.

<sup>96</sup> See Security Council, UN document S/RES/1373, 28 September 2001, para. 2(a).

e. adversely impacting the development of the importing State.<sup>97</sup>

The other aspects listed above, such as gender-based violence and development, were also discussed in the seminars, albeit to a lesser extent. As noted earlier in this paper, UNIDIR commissioned a background paper looking specifically at the possible adverse impacts of arms transfers on the development of importing states, and what measures could be taken to assess this. As noted in this background paper, states should consider the risks for and impact on regional security and stability when authorizing arms transfers. Indeed:

excessive armament and military spending can have negative impact on development and divert financial, technological and human resources from development objectives. Armaments in themselves may not be the root cause of violence and conflict. However, their spread and availability can threaten physical safety, endanger stability and welfare and diminish social and economic confidence, thus discouraging investment and economic development and contributing to a cycle of poverty, under-development and distress.<sup>98</sup>

In terms of regional security and stability, it remains important to have a clear picture of the military balance of the region because arms transfer might engender hostile feelings and exacerbate tensions.

### **How should the parameters be formulated?**

As with the question on scope, the formulation of the parameters to be included in the ATT was a topic of discussion in the regional seminars. As noted earlier, many participants noted that the parameters should be clear (i.e. wording should be clear to avoid a vast range of interpretation), objective and non-discriminatory. As was seen also in the United Nations discussions, most states agree that “it is the responsibility of each State Party to the ATT to apply the agreed transfer criteria each time it is considering whether to authorize a weapons transfer”.<sup>99</sup>

A robust national control system will be necessary in all ATT states parties. As decisions about whether to approve, deny, suspend or revoke authorizations for the export of items should remain the sovereign right of every state under the future Treaty, the national risk assessment process will be the most important part of the transfer control system. States will have to apply the Treaty’s criteria consistently, taking into account all relevant information, including the nature and potential use of the weapons or equipment to be transferred and the record of the end user. As part of the assessment, states should evaluate whether there is a substantial or serious risk that the transfer would violate the criteria set out in the Treaty, and act under a presumption against authorization unless appropriate precautionary or preventive action is taken to mitigate or remove the risk.

Such criteria require risk assessments for potential uses and users that independent and objective entities such as NGOs or the United Nations are the most able to conduct.

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<sup>97</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 4.

<sup>98</sup> General Assembly, *The Relationship between Disarmament and Development in the Current International Context*, UN document A/59/119, 23 June 2004, para. 18.

<sup>99</sup> Nathalie Weizmann, “Background paper: parameters”, *The Boston Symposium on the Arms Trade Treaty*, 29 September 2010, p. 5.

Case-by-case risk assessments of arms transfers are needed when there might be a possibility that the arms could be diverted or used to violate international law, and should consider the degrees of risk generally qualified as “substantial risk” or “clear risk”.<sup>100</sup> However, it remains important to determine at what point does a risk become “substantial” or “clear”. In order to respond to this question, Amnesty International points out two determinant aspects of violation that should be taken into consideration: “scale and persistency of the violations” and “character and pervasiveness of the violation”.<sup>101</sup> Furthermore:

the ICRC proposes that, to assess the risk, the current and past records of the recipient need to be examined. Isolated incidents of violations of international humanitarian law may not by themselves be considered a sufficient basis for denying an arms transfer. But, any sustained pattern of violations or any failure by the recipient to take appropriate steps to put an end to violations and to prevent their recurrence, should be a serious concern.<sup>102</sup>

Both the ICRC and Amnesty International advise that in case of substantive doubt about the possibility of international law violation, “the presumption should be against authorizing the arms transfer”.<sup>103</sup>

#### Recommendations on parameters

- The Treaty’s transfer criteria should be clear, focused, feasible and objective. By creating universal norms for conventional arms transfers, the Treaty will harmonize current practices and make transfer decisions more predictable, reliable and consistent. Regardless of which specific issues are covered, criteria should be unambiguous to avoid different interpretations.
- The least controversial parameters to be included are those that would reconfirm states’ existing United Nations obligations, such as those under the Charter of the United Nations and relevant Security Council resolutions, in particular arms embargoes, as well as states’ other international obligations. These should result in the automatic denial of a transfer request (“shall not transfer” formulation).
- Of criteria, where states have more differing opinions, the most frequently called for inclusion in the regional seminars were serious violations of HRL and IHL and prolongation of conflicts. In addition, especially in some regions, there were strong calls to include criteria to prevent transfers of arms where they would risk to be diverted to illicit markets, or seriously impair poverty reduction and development efforts, especially as this was noted to be of direct concern to human security.
- A robust national control system will be necessary in all ATT states parties. As decisions about whether to approve, refuse, suspend or revoke authorizations for the export of items should remain the sovereign right of every state under the

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<sup>100</sup> PrepCom Facilitator’s July 2010 paper on “Standards and Criteria”.

<sup>101</sup> Amnesty International, *How to Apply Human Rights Standards to Arms Transfer Decisions*, 2008, p. 3.

<sup>102</sup> Nathalie Weizmann, “Background paper: parameters”, The Boston Symposium on the Arms Trade Treaty, 29 September 2010, p. 5.

<sup>103</sup> Amnesty International, *How to Apply Human Rights Standards to Arms Transfer Decisions*, 2008, p. 13.

future Treaty, the national risk assessment process will be the most important part of the transfer control system.

- States will have to apply the Treaty's criteria consistently, taking into account all relevant information, including the nature and potential use of the weapons or equipment to be transferred and the record of the end-user. As part of the assessment states should evaluate whether there is a substantial or serious risk that the transfer might violate the criteria set out in the Treaty, and act under a presumption against authorization unless appropriate precautionary or preventive action is taken.

### **5.3. Implementation**

In addition to discussing the principles, objectives, scope and parameters of the ATT, determining treaty implementation modalities is a crucial aspect that will largely determine its success and effectiveness. Much discussion was devoted to considerations on this aspect during the EU–UNIDIR project’s regional seminars, and the topic was also part of the GGE, OEWG, PrepCom and the ATT conference of 2012.

Given the schedule of the regional events and especially the PrepCom themes,<sup>104</sup> implementation was chosen as the main topic for the regional seminars held in early 2011 in Montevideo and in Bali. However, participants throughout the project raised questions regarding the future Treaty’s implementation, and linked this also with considerations on scope and parameters. In addition to addressing various national systems, practices and challenges, considerable time in the seminars was devoted, especially during the first two days, to possible international mechanisms that could or should support implementation of the ATT. Almost all interventions seemed to support having some kind of institutional follow-up system as part of the Treaty, as this would help assess the level to which the Treaty was functioning, assist all parties in meeting their commitments, increase transparency on arms transfers in general, and develop shared understandings about the standards of acceptable practice.

#### **National implementation efforts**

Negotiating an international legally binding ATT, to establish the highest possible common international standards for the transfer of conventional arms, will require the participation of all relevant parties at the national, regional and international levels. The primary role of states, whether exporters or importers or both, cannot be overlooked. This applies both to negotiating the Treaty and to its eventual implementation. Many states have specifically noted that sovereign decision making should in no instance be sacrificed under the future Treaty, no matter what its scope, parameters or implementation modalities will be.

The importance of national efforts was recognized in the report of the GGE, where the experts recognize in their conclusions “the need for all States to ensure that their national systems and internal controls are at the highest possible standards”.<sup>105</sup> The subsequent ATT resolutions of 2008 and 2009 followed on the same path, by asking<sup>106</sup> “all States to implement and address, on a national basis”, the relevant recommendations of the GGE report, and commending that all states “carefully consider how to achieve such implementation in order to ensure that their national import and export control systems are of the highest possible standard”.

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<sup>104</sup> As noted earlier in this paper, the PrepComs were divided in their discussion topics.

<sup>105</sup> General Assembly, *Report of the Group of Governmental Experts Established Pursuant to General Assembly Resolution 60/81 to Consider Further Steps to Enhance International Cooperation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons*, UN document A/62/163, 30 August 2007, p. 16.

<sup>106</sup> The 2008 resolution uses “encourages”, while the 2009 resolution uses “calls upon”. The 2008 resolution ends the last quoted sentence with “in order to ensure that their national systems and internal controls are at the highest possible standards to prevent the diversion of conventional arms from the legal to the illicit market”.

The report of the OEWG does not cover implementation of the ATT directly, but issues related to these aspects were included in discussions of “other aspects to be addressed by the potential Arms Trade Treaty”.<sup>107</sup>

In the Chair’s non-paper of July 2011 there is a separate chapter on “National authority and systems” to implement the ATT. It lists the establishment and maintenance of necessary laws, regulations and administrative systems to implement the Treaty, and makes reference *inter alia* to national control lists, authorizations and brokering controls. Building on this, the draft Treaty circulated on 26 July 2012 contains several references to national implementation. In article 5, “General implementation”, the draft notes that “Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, in accordance with the goals and objectives of this Treaty”, and *inter alia* “shall take all appropriate legislative and administrative measures necessary to implement the provisions of this Treaty and designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms”. In addition, the text refers to the establishment of one or more national contact points, cooperation and the need to prevent diversion.<sup>108</sup>

The necessary and desirable national-level structures were also highlighted in the regional seminars. In the Morocco seminar, for example, participants stressed that national responsibility on arms transfer controls is an implementation priority for an ATT, and all states should put in place effective and robust systems based on their specific situations and needs. It was also stressed that an ATT could convey a moral message that establishing minimum criteria for arms transfers is essential for all states, be they exporters or importers, large or small. In addition, it was noted that the Treaty could provide more concrete guidelines as to what kind of systems are good practice.

In the Americas seminar, many participants referred to the necessity of putting in place the essential legal, administrative and organizational national structures required to implement the ATT. During the Bali seminar, speakers addressed the minimum necessary technical national structures that will have to be put in place and maintained to implement effective transfer controls.

In the Nairobi seminar, participants from East and Southern Africa noted especially the differing national capacities and systems currently in place in different regions, and reminded that many changes will be needed to effectively implement the ATT. In the Middle East seminar, discussions showed that controls are already quite strict and, for example, legislation and laws regulating arms transfers, possession and sanctions have already been put into practice. Many participants underlined the primary responsibility of states to implement the future Treaty according to their specific situations but obeying its goals and spirit. It was also noted that states should ensure that, when in force, the ATT requirements are translated into national law in all its state parties. Wider Europe participants also said that their transfer control systems are already quite widely enforced, but that some changes and adaptation will be needed under an ATT. Border management and cross-border cooperation were mentioned as possible priority

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<sup>107</sup> See General Assembly, *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*, UN document A/AC.277/2009/1, 20 July 2009, p. 5.

<sup>108</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, pp. 4–5.

areas for improvement in the region, and it was noted that special emphasis should be placed on awareness-raising for the defence industry.

Participants in all the regional seminars said that national-level coordination and cooperation are of primary importance, as arms transfer decisions by nature require the involvement of and information from several national ministries and agencies, not only the ministry of foreign affairs or defence, for instance. In this, the seminars benefited from the exchange of ideas and experiences among various agencies and actors, which revealed quite a wide variety of different practices in place as well as differing priorities and challenges. In addition, many touched upon the need to ensure not only the establishment of the necessary systems but also the enforcement of transfer controls under these structures, in line with their obligations under the Treaty.

Throughout the discussions it also became clear than the ATT should remain flexible with regard to different national approaches to transfer controls and to future developments. It should also not set a ceiling for controls but should allow states to introduce stricter national controls than specified in the Treaty, should they so wish. As the future ATT will bring together a range of states that have different capacities and needs with regard to transfer controls, most states seem to be advocating that it should not aim at finding a “one size fits all” solution but should rather determine the necessary elements for effective controls and other critical factors that are of relevance to the Treaty and its implementation. It should therefore not aim at defining “how” states should implement its different aspects but rather describe “what” needs to be put in place as minimum controls: what are the necessary structures that should be put in place and what procedures should be followed, irrespective of whether a states is a major importer or exporter of weapons, or is affected by trade through transfers. As noted several times during the OEWG and PrepCom discussions, no matter what the details of the Treaty will be, equal rights and responsibilities of all states have to be accounted for. The ATT should not enter into the details of how the necessary national structures should be established, but leave it as an internal issue subject to each state’s national legislation, regulations and needs.

National-level implementation efforts were often discussed in conjunction with the possibility to establish some kind of assistance and capacity-building structures to facilitate treaty implementation (discussed below).

### **Reporting and other transparency measures**

The success of an ATT will largely depend on states’ national implementation measures, which should be undertaken in good faith, through domestic legislation and regulations, with decisions on the approval and denial of transfers made at the national level, as discussed in the section above. However, certain international mechanisms, such as those of transparency, will have to be utilized to support national-level implementation and to strengthen the effectiveness of the Treaty. Transparency has been a central element in the ATT’s implementation discussions throughout the process. States have discussed especially how information exchanges between future states parties to an ATT could support its functioning and effectiveness, and what those information exchanges could look like.

Different kinds of transparency measures are used across international policy processes to promote compliance, enhance the implementation of a treaty or an agreement,

increase mutual understanding and advance consensus. In the ATT context, transparency has been called for to monitor the Treaty's future implementation, to build confidence and ensure lucidity between relevant parties, and to build the basis for a peer review system of verification or other further measures.<sup>109</sup> Moreover, civil society organizations have listed the purposes of a strong transparency mechanism via public reporting in an ATT to encompass confidence- and security-building measures, democratic accountability, public scrutiny, preventing diversion, improving mutual understanding and countering unfounded fears.<sup>110</sup>

Transparency and reporting for the sake of increasing accountability were prominent in the submissions of states to the United Nations Secretary-General in 2007, when over 40 states noted the need for an ATT to include provisions on information-sharing when asked about the elements that should be included in an ATT.<sup>111</sup> Suggested international transparency measures include national reporting, consultations, networks of contacts, peer review mechanisms, and record-keeping systems, both at international and national levels. The issue of information exchange and transparency was discussed also by the GGE, which considered whether and how an ATT could promote multilateral and ad hoc exchanges of information among states on a periodic or case-by-case basis. Specifically, national points of contact, the promotion of regular implementation and transparency reports were mentioned as possibilities.<sup>112</sup> Different possible information exchange mechanisms continued to be discussed at the meetings of the OEWG and during the meetings of the PrepCom. In the March 2011 PrepCom Chair's draft paper on the future ATT, transparency was mentioned as a separate element, with subsections on reporting, information-sharing, record-keeping and consultation. In the latest Chair's draft, presented in July 2011, transparency is included in a subsection under "implementation", with the title "Record keeping, reporting and transparency".<sup>113</sup>

Transparency and national reporting were also widely discussed topics in all the regional seminars. While states' views regarding the detailed nature of national reporting and other transparency mechanisms seem to vary to some extent, there was a general call for an ATT to improve transparency of international transfers of conventional arms by increasing the level of information shared among the Treaty's states parties.

In the Americas seminar, the importance of regular (annual) national reporting as a means to increase transparency in conventional arms transfers was stressed as crucial, and it was noted to be a central building block for an ATT's implementation system. While some noted that the reporting system should be made mandatory for all Treaty parties, others were firm in their view that any possible information exchange mechanism should rather be kept general and voluntary in nature. It was suggested that

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<sup>109</sup> The Geneva Forum, *Elements, Options and Challenges of a Future Arms Trade Treaty, Report of a Residential Seminar*, 21–22 March 2011, Glion, Switzerland, <[www.genevaforum.ch/Reports/Glion%2021-22032011.pdf](http://www.genevaforum.ch/Reports/Glion%2021-22032011.pdf)>.

<sup>110</sup> Amnesty International, *Our Right to Know: Transparent Reporting under an Arms Trade Treaty*, 2011, <[www.amnesty.org/en/library/asset/ACT30/116/2011/en/c6a0310e-81fa-47eb-be10-87e596823f16/act301162011en.pdf](http://www.amnesty.org/en/library/asset/ACT30/116/2011/en/c6a0310e-81fa-47eb-be10-87e596823f16/act301162011en.pdf)>.

<sup>111</sup> Sarah Parker, *Implications of States' Views on an Arms Trade Treaty*, UNIDIR, 2008, p. 40.

<sup>112</sup> General Assembly, *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/RES/63/334, 26 August 2008.

<sup>113</sup> Chair's revised draft paper, 13 July 2011, § VI, B.

the information exchange system could be made relative to a state's volume of imports or exports of conventional arms, either through making reporting compulsory only once a state's transfers reach a certain annual level, or that major exporters or importers would have to report more frequently than states whose transfers are lesser. Regarding the different types of material and equipment in an ATT, it was noted that the Treaty's scope should not be seen as uniform in its future transparency function. An ATT could cover materials for which states would exchange more information, and others with regard to which this information exchange would be less frequent or more limited in terms of detail.

In the East Asia and Pacific seminar, transparency was touched upon most prominently with regard to the possibility of having regular national or regional reporting. Participants discussed both reporting on implementation of the Treaty (steps taken to ensure compatibility and effective functioning of the Treaty requirements at the national level) and statistical reporting about transfers of arms themselves. As in the other seminars, most participants seemed to favour some kind of national reporting on both of these aspects, even though detailed views as to the type of information exchanged and the frequency of information exchange varied.

Participants in the Middle East seminar noted transparency to be a difficult but not unsolvable issue and said that the Treaty parties should be encouraged to exchange information as much as possible, however without jeopardizing their national strategic interests and secrecy requirements. Participants recommended that examples from already existing information exchange systems be applied when developing a transparency mechanism for an ATT, also to avoid reporting fatigue and overlapping or contradictory information being circulated.

Further, in some seminars (Montevideo, Bali, Belgrade) it was recommended that bilateral consultations regarding arms transfer decisions be held regularly to coordinate and network with colleagues both domestically and abroad. This type of information exchange could be done more in real-time than national reporting, which would likely be exchanged with a delay of one to two years at minimum. It would help states to assess their treaty implementation and efforts, as it would establish a right to raise queries or concerns and codify procedures for dealing with problematic or complicated transfer cases.

Throughout the seminars, delegates expressed somewhat differing views regarding the nature of reporting in terms of its compulsory versus voluntary nature, the items and types of information to be covered, as well as the frequency of reporting and its level of restrictiveness/openness. An area where views seemed diverse was also on the question of denial reporting and its possible details and timing. Many have also raised questions related to the sensitive nature of the information to be exchanged and called for a balance between transparency and national defence needs in terms of confidentiality of strategic information. The level of detail, for example, of national reports under the ATT was debated and it seemed that general categories of weapons and equipment and aggregated data rather than predetermined detailed categories seemed more acceptable.

When discussing transparency, many states have brought up the problem of multiple, partially duplicate reporting requirements and noted that any possible reporting mechanism under an ATT should seek to ease, not to add, to the already existing reporting burden. Some suggestions have been made regarding an electronic system of

information exchange, which could facilitate transparency under an ATT and also help states avoid reporting fatigue. Regional reporting or a mechanism whereby regional organizations could facilitate the gathering of data related to issues subject to national reporting were also explored, and some initiatives are currently underway in this regard, for example in the Pacific Islands Forum. While national reports under an ATT will probably have to be formally submitted by states themselves, regional bodies could, upon states' request, possibly undertake a larger role in facilitating this information exchange and in coordinating information submitted under other relevant instruments.

Based on the exchange of views, the most obvious means to increase transparency under an ATT seems to be the establishment of a regular national reporting system. Based on previous experience and the nature of international trade in conventional arms, it seems clear that reporting should include two types of exchanges: reporting on national implementation measures, and statistical reporting on transfers. The national reporting on granted and/or denied licenses could be done annually, whereas reports on national implementation efforts could be submitted once and subsequently updated when relevant. It is foreseen that national implementation reporting could include information on *inter alia* national laws, regulations and administrative processes; the overall national system and procedures for authorizing and licensing; penalties; as well as sample documents and national control lists of items subject to the Treaty. In order to be effective, an ATT should also require/recommend states to report on the actual activities undertaken as part of the Treaty, i.e. transfers undertaken and/or licenses granted. States should be encouraged to provide information on both authorizations and deliveries when reporting on international arms transfers to an ATT reporting instrument. However, it is acknowledged that flexibility on this issue will be necessary and states may provide information on either authorizations or deliveries. If this approach is taken, then states shall indicate whether they are reporting on authorizations or actual transactions.<sup>114</sup>

To balance between the need for transparency and national security concerns, it could be considered that there be different requirements for reporting on some categories of items. For example, one could expect that reporting for some categories of items could be mandatory and detailed, whereas for categories such as ammunition, parts and components, and technology transfers, it might be necessary to consider that reporting for such categories might have to be voluntary in the first instance and that the information provided would be less detailed and more aggregated than for other categories.<sup>115</sup>

At a minimum, states should exchange data on licences granted, indicating what transactions have been authorized, for the transfer of which weapons, in what quantity, to which recipients and for what end use. Ideally, this should be combined with reporting on actual deliveries, where similar details would be provided. Mindful of the concrete risk of reporting fatigue, which has negatively affected the frequency and quality of reporting in several transparency systems, a clear format should be developed for both types of reporting. In this, synergies should be sought in reporting on international arms transfers under an ATT and states' other reporting commitments,

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<sup>114</sup> Elli Kytömäki, Paul Holtom and Mark Bromley, *Implementing an Arms Trade Treaty: Reporting International Arms Transfers*, UNIDIR, 2012.

<sup>115</sup> *Ibid.*

such as those under the UNRCA and regional instruments. One approach on this issue would be to develop a standardized reporting template that is compatible with the reporting template used for reporting to the UNRCA. Also, as in many other instruments, “nil reporting” should be allowed as a way to fulfil Treaty obligations in cases where no activities falling under the Treaty have taken place during the reporting period.

In addition to national reporting as a means to increase transparency, an ATT should establish a network of individuals/departments that work on conventional arms transfer controls and are responsible for the implementation of the Treaty. These could either be individuals or, preferably, institutional bodies, whose contact information would be submitted to the ISU and distributed among all states parties. It has also been suggested that the Treaty could establish a consultation mechanism between importing and exporting states to avoid potential politically unpleasant cases of transfer denials as a pre-licensing dialogue would create more transparent and mutually supported communication structures. This will be discussed in more detail in the section below.

Once an ATT comes into force it will be in the interests of all states parties to show that they are acting responsibly under it and working in the spirit of the Treaty to improve global standards in responsible transfers of conventional arms. Greater transparency in considering, approving and undertaking arms transfers will be a most important tool in this endeavour.

### **Regional-level action**

In addition to underlining the importance of national responsibility to implement the future Treaty, many participants in the ATT discussions have raised the issue of regional cooperation and called for a more active involvement of regional organizations in the Treaty process. The GGE, established to address the feasibility, scope, parameters and implementation of the ATT, noted that “over the past three decades, international, regional and subregional organizations have undertaken initiatives addressing elements of the conventional arms trade” and discussed “those instruments, arrangements and documents, noting that their scope varies and some also include transfer criteria and guidelines”.<sup>116</sup>

During the PrepCom discussions, many states underlined the importance of regional-level action in conventional arms transfer controls, and called for the ATT to take into account and build on the action already taken and initiatives underway at the regional level.

In the draft treaty text of 26 July 2012 references to regional-level action are limited to assistance and cooperation and a reference to “regional stability”. The draft text of 24 July contained also references to “regional integration organizations” as implementers of the Treaty, which raised strong opposition from the floor and were removed from A/CONF.217/CRP.1.

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<sup>116</sup> General Assembly, *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/RES/63/334, 26 August 2008, p.13.

In the EU–UNIDIR events, regional aspects also were actively discussed. For example, the Nepal seminar clearly revealed that regional-level discussions and action are crucial in developing and enhancing arms transfer controls. It was noted that regional initiatives can be useful for the ATT process even in cases where their focus is not specifically on arms transfers, such as in the case of the South Asian Association for Regional Cooperation, which has so far concentrated its efforts on combating terrorism. The Central, West and North Africa seminar discussed mostly the common positions that had already been agreed or were underway in the regions at the time of the seminar, and called for the formulation of regional positions in other parts of the world in advance of the ATT negotiations. This view was echoed in the seminars held for the Middle East and for East and Southern Africa, where both the an African Union common position and an Arab League position were called for. In the Beirut seminar, participants in addition proposed that annual meetings of Arab contact points should be held, following the model of current meetings of the national focal points of Arab League member states on the United Nations Programme of Action.

Further interaction and support among national, regional and international processes were called for, as was more active involvement of regional organizations in the ATT process. Regional-level involvement was called for not only in the ATT negotiations but also in the Treaty’s future implementation. Indeed, regional bodies (for instance through the secretariats of regional organizations) could assist in monitoring or observing arms transfers, and treaty compliance more generally, to complement efforts at the international level. This would also allow taking regional specificities and priorities into account in international action.

### **International implementation support structure**

While the primary responsibility in implementing an ATT will lie with its states parties, it has been widely suggested that some kind of international support structure be introduced to assist states in their efforts and to provide support in the Treaty’s follow-up and implementation.

In the beginning of the ATT process in 2006–2008, discussion was mostly devoted to considerations of the future Treaty’s scope and parameters. Possible international systems to facilitate its implementation were not on the table during the GGE nor do they feature in the ATT resolutions. However, when asked about their views on the ATT in 2007, 13 states mentioned the international aspects of implementation and suggested establishing a secretariat or some kind of permanent, semi-permanent or ad-hoc body to support and administer the implementation of an ATT. It was proposed that such a body could *inter alia* serve as a point of contact for the submission of national reports and other possible exchanges of information, help channel assistance requests and provision in national capacity-building or even take up more proactive tasks such as monitoring or fact-finding missions.<sup>117</sup> An implementation secretariat or an ISU for an ATT was for the first time discussed as a separate agenda item during the first meeting of the PrepCom in July 2010.<sup>118</sup>

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<sup>117</sup> Sarah Parker, *Implications of States’ Views on an Arms Trade Treaty*, UNIDIR, 2008, p. 51.

<sup>118</sup> *Facilitator’s Summary on Implementation and Application*, 22 July 2010, <[www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf](http://www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf)>.

The implementation support structures of other instruments, such as the ISU of the Biological and Toxin Weapons Convention<sup>119</sup> or even the Organisation for the Prohibition of Chemical Weapons established under the Chemical Weapons Convention,<sup>120</sup> probably provided some inspiration and guidance to states' thinking about the support structure for the ATT.

The Chair's non-paper of July 2011 talked about the ISU under the heading "Implementation". According to the non-paper, the ISU's tasks would include acting as a repository for the national reports submitted by states and on transfer denials, assisting in the organization of the meetings of states parties, acting as a clearinghouse for assistance offers and requests, conducting outreach activities and coordinating activities with regional and other bodies.<sup>121</sup> The specific possible activities of the ISU were included in the draft treaty text of July 2012 under article 12, where the support structure is called a "Secretariat", established to assist states parties in the effective implementation of the Treaty and responsible to them. The following responsibilities are listed:

- a. Receive, make available and distribute the reports as mandated in this Treaty;
- b. Maintain and distribute regularly to States Parties the list of national points of contact;
- c. Facilitate the matching of offers and requests for assistance for Treaty implementation and promote international cooperation as requested;
- d. Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
- e. Perform other duties as mandated by this Treaty.<sup>122</sup>

The possibility of an implementation support structure as part of the ATT was actively discussed also in the regional seminars, where most participants seemed to favour the establishment of some kind of international system to assist states in implementation and facilitate follow-up and review. In the Central, West and North Africa seminar it was even suggested that this body might take up some functions in monitoring arms transfers falling under the scope of the Treaty. In the Americas seminar, different views were expressed concerning the possible tasks for an ISU, ranging from being mainly a depositary organ that would function as the institutional memory of the Treaty regime and facilitate information exchange, to a more proactive role of a secretariat in monitoring the Treaty's implementation, seeking clarifications and conducting analyses. Possible tasks that participants listed for an ISU/secretariat included collection of national reports and other information related to the Treaty's implementation,

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<sup>119</sup> The Convention did not include an ISU at its inception, but established it in 2006 as part of its review process to provide support and assistance for administrative matters, national implementation, confidence-building measures and obtaining universality of the Convention.

<sup>120</sup> The Organisation was established as the implementing body of the Convention to "achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties"; see <[www.opcw.org/about-opcw/](http://www.opcw.org/about-opcw/)>.

<sup>121</sup> Chair's non-paper, pp. 10–11.

<sup>122</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 7. See also Saferworld, *An Implementation Framework for the Arms Trade Treaty*, 2011, <[www.saferworld.org.uk/downloads/An%20Implementation%20Framework%20for%20the%20ATT.pdf](http://www.saferworld.org.uk/downloads/An%20Implementation%20Framework%20for%20the%20ATT.pdf)>.

coordination of assistance and cooperation efforts and matching needs with resources, coordination of efforts among regional organizations and arrangements, providing administrative support for treaty implementation (organization of meetings of states parties and review conferences, maintaining a website), providing general advice to governments regarding joining and implementing the Treaty, and developing shared understandings about the standards of acceptable practice in the arms trade.

In East Asia and the Pacific, participants called for an ISU—if established—to be strong, independent and efficient. A treaty review system facilitated by an ISU was very much welcomed as an element of the future Treaty to ensure that it is not something written in stone but instead something that can be modified and developed as situations and technologies change. In the Middle East and Wider Europe seminars, participants raised especially the issue of funding of an ISU and, in the Beirut seminar, it was for instance suggested that maybe the functioning of the support structure could be financed as a percentage payment depending on the participant state's arms sales. The role of an ISU in identifying problems in implementation and in facilitating lessons learned and good practices was underlined by many. In the Wider Europe seminar, it was pointed out that if an ISU were to be established, it could function as a clearinghouse for assistance requests and also be the main focal point to coordinate cooperation among different institutions relevant to an ATT's implementation.

The exact size and structure of an ISU or a secretariat as well as its required funding will largely depend on the tasks it is requested to undertake, and the draft treaty text only notes that “the secretariat shall be adequately staffed” and that the staff “shall have the necessary expertise to ensure the secretariat can effectively undertake the responsibilities described in paragraph 3”.<sup>123</sup> Many states have expressed concern regarding the potential costs of establishing and maintaining an ISU or a secretariat, and it has been noted that its composition and functions should be kept streamlined and as minimal as effectively possible. In any case, it seems logical that the costs of the unit be borne by the states parties to the Treaty or even better, again following the Biological and Toxin Weapons Convention model, by the participants of the meetings of the states parties. Taking into account the amount resources that would be needed to establish a structurally independent secretariat (such as the Organisation for the Prohibition of Chemical Weapons), it was mostly suggested that an ISU be set up within the existing structures at the United Nations to support the implementation in the most cost-effective manner. The Office for Disarmament Affairs was mentioned as a possible host for an ISU, following the example of the ISU of the Biological and Toxin Weapons Convention. The supporting role of regional organizations has been also noted and it has been suggested that the links between an ISU/secretariat and regional bodies could be formalized through memoranda of understanding to avoid the duplication of effort and to ensure the best possible utilization of resources.

With regard to agreeing on the modalities of the international implementation support system or structure, in the interest of time and effectiveness the Treaty could perhaps firstly establish a general umbrella structure or elements, which could later be further specified and modified in follow-up meetings and through practical implementation efforts.

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<sup>123</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 7.

## Follow-up meetings of states parties

In addition to an ISU/secretariat, the most commonly suggested international support mechanism for the implementation of an ATT is the organization of regular meetings of states parties (MSPs) to oversee the Treaty's functioning and help develop it. As with the ISU, MSPs were first specifically discussed at the first meeting of the PrepCom in July 2010, where they were included as a point for consideration in the facilitator's paper on implementation.<sup>124</sup>

As an ISU, MSPs are a usual feature in international disarmament and arms control treaties and agreements. Most commonly, they consist of two types of meetings: annual or biannual MSPs to assess the implementation of the treaty or instrument, and review conferences, usually organized every five or six years to review the agreement as a whole and—if necessary—make updates and changes to it, or adopt new protocols, for example.

Possible issues to be covered by annual or biannual ATT MSPs have been suggested to include: 1) assessing the status of treaty implementation and trends in membership development, possibly with the assistance of reports provided by an ISU; 2) discussing the operation of the Treaty including, for example, mechanisms for reporting and assistance; 3) requesting clarification of compliance and addressing disputes, whenever deemed necessary; 4) initiating any possible procedural, technical or administrative changes to the Treaty, including amendments to the list of items/activities falling under the scope of the Treaty; 5) deciding the agenda for the review conferences; and 6) any other matter arising from treaty implementation.<sup>125</sup>

The review conferences, then again, have most commonly been suggested to be organized every five years. Their possible tasks could include: 1) reviewing all aspects of the operation of the Treaty, including its implementation; 2) reviewing treaty procedures *inter alia* for reporting, compliance and cooperation, and assistance; 3) reviewing existing institutional arrangements for treaty implementation; 4) developing outreach strategies in pursuit of securing the broadest possible participation in the Treaty; and 5) discussing any possible substantive amendments to the Treaty and agreeing on the convening of an amendment conference, if deemed necessary.<sup>126</sup>

These were the most commonly cited possible tasks for MSPs and review conferences also in the regional seminars. In the Nepal seminar, it was also suggested that additional, informal intersessional meetings should be considered, both in the lead-up to the negotiations and in following up on treaty implementation. In addition, further regional consultations and seminars were welcomed as necessary additional fora for discussions. In the East and Southern Africa seminar, especially the role of assistance coordination of the MSP was highlighted, and in the Wider Europe seminar participants suggested regular meetings of governmental experts to assess the level of implementation. It was noted that the meetings of governmental experts could agree on

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<sup>124</sup> *Facilitator's Summary on Implementation and Application*, 22 July 2010, <[www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf](http://www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf)>.

<sup>125</sup> See Saferworld, *An Implementation Framework for an Arms Trade Treaty*, July 2011, pp. 5–6, <[www.saferworld.org.uk/downloads/An%20Implementation%20Framework%20for%20the%20ATT.pdf](http://www.saferworld.org.uk/downloads/An%20Implementation%20Framework%20for%20the%20ATT.pdf)>.

<sup>126</sup> *Ibid.*

sets of technical implementation recommendations that could then be taken into consideration during the MSPs.

The Chair's non-paper of 2011 contained two types of meetings under its "Final provisions": an assembly of states parties that should be convened no later than one year after entry into force of the Treaty (subsequent meetings and their frequency to be decided at the first meeting), and review conferences every five years with two PrepComs.

As with the ISU, MSPs have evoked questions about cost and organizational modalities. The best solution to the problems of funding and organization seems to be that the meetings be organized under the auspices of the United Nations, and financially supported either through assessed contributions or by the participants, following the model of the Biological and Toxin Weapons Convention. Should an ISU or secretariat be established, it would be the most natural body to assist in the logistical arrangements of the meetings, including coordinating dates and invitations, and dealing with issues related to interpretation and documentation needs, just to mention a few examples.

The draft ATT of 26 July 2012 dealt with possible problems related to deciding the form, frequency and funding of follow-on meetings by including only a reference to the first conference of states parties in article 21:

A Conference of States Parties shall be convened no later than one year following the entry into force of this Treaty. The Conference of States Parties shall adopt rules of procedure and rules governing its activities, including frequency of meetings and rules concerning payment of expenses incurred in carrying out those activities.

It also lists the tasks of this meeting, including the formulation of recommendations regarding the implementation of the Treaty, its possible amendments, the tasks and budget of the secretariat and any possible subsidiary bodies that could be established.<sup>127</sup>

### **Dialogue and consultations, dispute settlement**

By their nature, most international instruments contain some form of intensified or institutionalized dialogue among the participating states. In some cases these are left voluntary and/or uninstitutionalized, while in others the approach is more rigid and consultations are used to settle disputes and to monitor or even verify treaty implementation.<sup>128</sup> It is also foreseen that an ATT will help intensify dialogue on

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<sup>127</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 10.

<sup>128</sup> For instance the Biological and Toxin Weapons Convention has no clearly defined internal dialogue or dispute settlement procedure, but the Convention states that disputes or complaints can be brought before the Security Council. Instead of dispute resolution measures, the review conference focuses on mechanisms to avoid and prevent disputes occurring in the first place. The Convention also includes measures to ensure that when there is a compliance concern (regarding the alleged breaking of treaty obligations) formal consultative meetings can take place to deal with the issue.

In the Convention on Certain Conventional Weapons there is also no specified standard procedure for dispute settlement. However, in Amended Protocol II, article 14(4), it mentions that the disputing states are required to cooperate with each other bilaterally by making use of either the United Nations Secretary-General or an international forum to refer to for clarification regarding the interpretation and application of the Protocol. Similarly the Mine Ban Convention stresses the need for cooperation when dealing with a dispute and in instances of compliance issues, the Secretary-General can be called on in a

conventional arms transfers, both among its signatories and in the international community more widely. Indeed, increased transparency in the arms trade through more information exchange and consultation among relevant parties has been a widely called for function that an ATT should perform. The issue was referred to in the facilitator's paper for the first PrepCom, where possibilities for specific tools were mentioned to include "a consultation and clarification mechanism, with a possible dispute settlement procedure and follow-up set of measures to address cases of (non-)compliance".<sup>129</sup>

The Chair's non-paper of 2011 contained a reference to dispute settlement, and the text remained largely unchanged as article 22 of the first draft treaty text of 2012, entitled "Dispute Settlement":

1. States Parties shall consult and cooperate to settle any dispute that may arise between them with regard to the interpretation or application of this Treaty.
2. States Parties shall settle any dispute between them concerning the interpretation or application of this Treaty through negotiations, mediation, conciliation or other peaceful means of the [Parties'] mutual choice.
3. States Parties may pursue, by mutual consent, third party arbitration to settle any dispute between them, regarding issues concerning the implementation of this Treaty.

Also participants in a couple of regional seminars called for some kind of mechanism for dialogue or consultation between states parties. In the Bali seminar, this issue was addressed in particular with regard to a dialogue between importer and exporter states, and many participants saw the possibility of increasing transparency and dialogue through an ATT as one of its most prominent aspects. It seemed that most Bali participants were in favour of having a more profound bilateral dialogue between trade partners early on in the licensing/purchasing process in order to ensure a smooth and efficient progress of negotiations. It was observed that a pre- authorization/delivery dialogue would be more efficient and politically sustainable than establishing a formalized platform of post-transfer consultations. The seminars held for Central, West and North Africa and East and Southern Africa prompted similar discussion on the role of a dispute settlement mechanism. When the idea of a mechanism for dispute settlement by a committee of experts and peer review were mentioned in the Americas and Wider Europe seminars as a possible inclusion in the Treaty, it was met with mixed response and mostly critical or sceptical views.

Proposals regarding enhanced dialogue and consultation vary from a voluntary, informal and multilateral setting to visions about more firmly established and rigid systems. Among these, the mostly commonly proposed alternatives are a system of peer review, committees of experts, and dispute settlement structures.

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"Request for Clarification" (art. 8(4)). Disputes can also be brought before a meeting of states parties (see art. 10), but there is no obligation for the disputing states to take heed of the advice or assistance offered to them.

Both the Tlatelolco Treaty (art. 25) and the Bangkok Treaty (art. 21) are examples of dispute settlement provisions in regional arms controls treaties. They stipulate that if peaceful agreements cannot be achieved through negotiation, mediation or conciliation, then the matter can be brought before the International Court of Justice, provided that all parties concerned consent to this.

<sup>129</sup> *Facilitator's Summary on Implementation and Application*, 22 July 2010, p. 3, <[www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf](http://www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf)>.

Several background papers produced by NGOs and as a result of early ATT meetings discuss the possibility of appointing a group of experts to act as a permanent or semi-permanent body within the ATT to thoroughly investigate treaty compliance and mediate disagreements regarding any possible breaches of ATT obligations, challenges to decisions regarding refusal or approval of specific transfers, or challenges to the realistic ability of a state to implement the ATT. These papers suggest that a group of experts could be appointed on the basis of a rotating membership system whereby the members would periodically change to represent a wide range of different states and these members would have to be approved by all states parties. This seems to resemble the model of the Human Rights Council, which monitors implementation through a rotating peer-review system. While enthusiastically proposed and supported by some, this suggestion seems unlikely to be incorporated in an ATT, and references to these kinds of arrangements are absent from the current draft treaty text.

Indeed, non-judicial and less formalized dispute settlement is more common than judicial settlement in arms control and disarmament. One of the main reasons for this is that since the outcome of a judicial settlement is legally binding but cannot be conclusively predicted, disputing parties might often prefer non-judicial routes since this ensures there are no future limitations to their aim of safeguarding their national interests. Within the ATT process, there have also been suggestions that instead of an internal body, disputes could be referred to external institutions such as the International Court of Justice, the United Nations General Assembly or the United Nations Security Council and that if a state party persistently violates the terms of an ATT then the United Nations General Assembly should be able to place appropriate sanctions on the offending state or body.

Participants of the project activities noted that a dialogue or consultation mechanism should be a practical system that would allow all involved parties to make well-informed and solid decisions by linking all relevant actors under the common umbrella of the ATT by encouraging networking with colleagues both domestically and abroad. This way, cases of transfer denials could also perhaps be avoided through establishing more transparent and mutually supported communication structures.

In the East Asia and the Pacific seminar, participants went further in discussing a possible peer-review system and a mechanism of dispute settlement, which could form part of the new international arms transfer control framework. Many argued strongly in favour of such mechanisms, as they could provide a platform where concerns or dissatisfaction beyond single transfers could be raised in a public forum. However, as in many of the issues, other participants expressed caution towards such a system, especially with regard to its practical applicability and functioning. Generally, bilateral consultations among trade partners throughout the transfer process were encouraged, and it was noted that the ATT could facilitate such relations and thereby also increase the norm of transparency in the conventional arms trade overall.

### **Capacity-building and assistance**

Once adopted, the ATT will establish the highest possible international standards for the transfer of conventional arms. At the national level, this means that many states will have to review their arms transfer control legislation and regulations, and introduce updates and precisions to both legislation and practices in order to comply with Treaty requirements. As studies have shown, many states, including a majority of those that

produce arms and defence equipment, already have in place regulatory frameworks and legislation controlling national transfers. However, controls in other states remain rudimentary or incomplete.<sup>130</sup>

One of the goals of the idea behind an ATT is to create general minimum standards for national controls, at the same time allowing states to implement stricter and more sophisticated regulations should they so choose. To ensure the efficacy of the Treaty, states parties must have strong, national-level authorities and centralized decision-making and coordination mechanisms in place. As this will undoubtedly require reinforced efforts by a number of states, it also implies that capacity-building and assistance activities will be needed to ensure that all of the ATT's future states parties have the capacity and know-how to implement its provisions.

The aspect of assistance has been prominent in the ATT process since its inception. Undoubtedly, even though other aspects such as agreeing on the future Treaty's scope and transfer criteria are essential, assistance and cooperation will be key not only for operationalizing and implementing the Treaty but also for garnering support for its adoption. If assistance is viewed as an incentive to adopt the ATT, there would have to be some kind of resource mobilization mechanism devised in order to provide some assurance that resources will be available and accessible, as appropriate to states that adopt the Treaty.

Following the call for national views on an ATT, pursuant to General Assembly resolution 61/89, 44 states made reference to the fact that an ATT should contain provisions on assistance and cooperation, and an additional 14 states focused on the aspect of enhancing cooperation under the Treaty. In the national views, several states highlighted that an ATT would only be feasible if it factored in the capacity of states to implement the Treaty and that it would depend on whether or not assistance would be forthcoming for those states that would request it.<sup>131</sup> Similarly, the GGE report notes that international cooperation and assistance was a relevant issue in the discussions on the feasibility of an ATT, and that cooperation and assistance was also considered relevant to discussions on the draft parameters and operational mechanisms of the Treaty. The report concluded by highlighting "States in a position to do so could render assistance ... upon request".<sup>132</sup>

Cooperation and assistance continued to feature in statements made during the course of the work of the OEWG and the PrepCom. In the July 2010 PrepCom, the facilitator of the session "Implementation and Application of an ATT" produced a summary report that contained a subsection on assistance and cooperation which noted the following views:

- Allow requests for assistance to be initiated by potential recipient.
- Provide for assistance in implementation.

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<sup>130</sup> CITS, Saferworld and Oxfam, *National Implementation of the Proposed Arms Trade Treaty: A Practical Guide*, 2010, <[www.oxfam.org/sites/www.oxfam.org/files/English\\_PATT\\_full\\_web.pdf](http://www.oxfam.org/sites/www.oxfam.org/files/English_PATT_full_web.pdf)>.

<sup>131</sup> See Kerry Maze, *International Assistance and Cooperation in an ATT: Possibilities for a Future Treaty*, UNIDIR, 2011, <[www.unidir.org/pdf/activites/pdf12-act537.pdf](http://www.unidir.org/pdf/activites/pdf12-act537.pdf)>.

<sup>132</sup> General Assembly, *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/RES/63/334, 26 August 2008.

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- Explore possible nature and mechanism for assistance (Legislative/Legal, Administrative, Technical or Financial, etc.).
- Exchange experiences in legislation related to an ATT and in its practical implementation.
- On technical assistance, it can include assistance in implementation of a licensing system, training, technology transfer, industrial cooperation, stockpile management, etc.)<sup>133</sup>

The draft treaty text of 26 July 2012 notes under article 14, “International Assistance”, that states parties “may seek, inter alia, legal or legislative assistance, institutional capacity building, and technical, material or financial assistance. Each State Party in a position to do so shall, upon request, provide such assistance”. This assistance can be sought or received through, *inter alia*, the United Nations; international, regional, subregional or national organizations; NGOs; or bilaterally. The draft Treaty also refers to the possibility of the creation of a voluntary trust fund, which could be administered by an ISU/secretariat.<sup>134</sup>

Not surprisingly, the inclusion of systems of cooperation and assistance was also called for in the EU–UNIDIR regional seminars. In the Nepal seminar, the participants noted that in fact the ATT will only be the beginning of the process—the real work will start when the Treaty comes into force, and it was suggested that country studies be conducted about different systems and models currently in place. To facilitate national-level implementation efforts and the link between national and international action, it was suggested that states establish national focal points on the future ATT, following the model of many other international instruments. It was noted that taking into account the differing capacities of states to implement their obligations, international cooperation and assistance, as well as the exchange of experience and know-how on arms transfer controls, should be explicitly included in the text of the future Treaty. Specifically, it was noted that manufacturing and exporting states as well as states in the position to provide assistance should be active in ensuring the inclusion of assistance measures.

Cooperation and assistance were mentioned also in the Morocco seminar by many participants as very important aspects to be included in the future Treaty, to ensure that it will be implementable and effective in all countries and not only in those that already have well-developed and sophisticated control systems. On the other hand, the need to keep the system of assistance voluntary was underlined, and states noted that an ATT should not contain the requirement to provide or receive assistance in implementing it. Generally, it seemed that assistance under an ATT should not be made conditional—depending on, for instance, a state’s accession to the Treaty or recent arms purchases. Stockpile management, marking and tracing of weapons, customs cooperation and technical equipment for different agencies working on arms transfer controls were identified as areas of activity where further capacity-building is needed.

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<sup>133</sup> *Facilitator’s Summary on Implementation and Application*, 22 July 2010, <[www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf](http://www.adh-geneva.ch/RULAC/pdf/Implement-and-applica-22.07.2010.pdf)>.

<sup>134</sup> General Assembly, *The Draft of the Arms Trade Treaty*, UN document A/CONF.217/CRP.1, 26 July 2012, p. 8.

In the Montevideo seminar, some called for international cooperation and assistance to support states, as many of them currently have relatively underdeveloped national arms transfer control systems and would find it difficult to immediately meet their ATT obligations. In the Bali seminar, while some of the smaller states that participated in the seminar were quite positive and optimistic about their ability to introduce and enforce effective controls based on their particular needs, many participants called for an ATT to establish a system of international or bilateral assistance. It seemed also from the feedback in this seminar that the provision of assistance should remain voluntary, maintaining mutual respect of parties involved, aim at building the recipient states' own capacities and be tailored to each specific case in question.

In the seminar for East and Southern Africa, participants echoed the need for assistance and capacity-building. While there was a general call for the need of assistance, some participants expressed concern about how to ensure that it reaches the right states and how to structure and channel these efforts to learn from earlier instruments and to avoid some mistakes previously made in related processes. Specifically, it was noted that some states that are currently providing assistance put strict conditions on the assistance and sometimes the provided assistance is not of the quality that the recipients need. It was also pointed out that in the provision of assistance, the involvement and ownership of the receiving state is of crucial importance, and any assistance measures should be designed and developed from the beginning jointly by the providing party and the recipient(s).

The topic was not so prominent in the Middle East and Wider Europe seminars, but participants in these seminars touched upon the need to include a system of capacity-building in the Treaty.

In terms of what areas cooperation and assistance under an ATT could cover, it has been suggested both in the regional seminars and in background research that they should address all aspects of arms transfer controls, including national control systems and legislation; administrative regulations and procedures; licensing procedures; enforcement; disarmament, demobilization and reintegration; education; marking and tracing; record-keeping; stockpile management; information technology; reporting and information-sharing; training of personnel; victim assistance; and sponsorship programmes.<sup>135</sup>

As pointed out in several instances, the ATT should reflect progress made through existing instruments and assistance tools in order to avoid duplication and to minimize the costs and burden placed on states.<sup>136</sup> For example, building on expertise gained in implementing other agreements, and ATT could refer to the preparation of national assessments and/or national action plans or strategies to implement effective arms transfer controls. Other points from existing treaties that may be relevant to consider for the ATT could include establishing the right of states to the exchange of equipment and

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<sup>135</sup> Roy Isbister, *Background Paper: Implementation*, The Boston Symposium on the Arms Trade Treaty, 29 September 2010; Kerry Maze, *International Assistance and Cooperation in an ATT: Possibilities for a Future Treaty*, UNIDIR, 2011, pp. 5–6, <[www.unidir.org/pdf/activites/pdf12-act537.pdf](http://www.unidir.org/pdf/activites/pdf12-act537.pdf)>.

<sup>136</sup> For an overview of existing legally and politically binding instruments and regional organizations providing assistance on issues potentially relevant to an ATT, see Kerry Maze, *International Assistance and Cooperation in an ATT: Possibilities for a Future Treaty*, UNIDIR, 2011, pp. 9–15, <[www.unidir.org/pdf/activites/pdf12-act537.pdf](http://www.unidir.org/pdf/activites/pdf12-act537.pdf)>.

scientific and technological information, and for beneficiary states to facilitate the entry and exit of personnel, materiel and equipment associated with the assistance.<sup>137</sup>

An ATT will have to address whether assistance under the Treaty would be based on a voluntary system, or whether some sort of obligatory financing of assistance activities could be included. Despite some encouraging views expressed towards an established, compulsory assistance system, it looks highly unlikely that an ATT could encompass something like that. Further, it should be considered whether assistance under an ATT could or should be subjected to any kind of conditionality. For instance, the ATT may consider disqualifying a state from receiving assistance for a period of time if that state has recently participated in a questionable transfer. States may further question the political will of a requesting state to implement the ATT if the state recently could afford to purchase weapons. Or, in order for a state to be eligible to transfer weapons within an ATT, it could be required to prove certain minimum capacities in this area.<sup>138</sup>

### Recommendations on implementation

- States will have the primary responsibility in implementing the future Treaty and their right to sovereign decision-making should in no instance be compromised.
- All states should establish an effective, predictable and transparent licensing system that fully takes into account all parameters and other required elements of an ATT. The systems should not be one-size-fits-all, but be tailored to the needs of each individual state. The Treaty should determine the necessary elements for effective controls and other critical factors that are of relevance to the Treaty and its implementation.
- The national system should provide for effective coordination and collaboration between all relevant agencies and departments to ensure a robust licensing system. The establishment of national working groups or commissions in this regard should be considered.
- Regular meetings of states parties should oversee the Treaty's functioning, its status and operation, and take into consideration further developments.
- Under an ATT, states should be asked to provide information on their national implementation and on statistical information about granted licenses and/or transfers. The ATT should establish a general, common reporting format to be used by all states parties in their annual statistical reporting. The format should be based on the current reporting under the UNRCA, but tailored to fit the scope of the ATT. All states should ensure that appropriate and sufficiently detailed records are kept of licensing decisions and transfers to enable reporting.
- A small and effective ISU should be established to support implementation. It could, *inter alia*, receive national reports, provide administrative support for treaty implementation, help channel assistance requests, and coordinate efforts among regional organizations and arrangements.
- Capacity-building and assistance activities will be needed to ensure that all states parties have the competence and expertise to implement the Treaty's provisions. Assistance should be voluntary, and address all aspects of arms transfer controls.

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<sup>137</sup> Ibid., p. 17.

<sup>138</sup> Ibid.

- The Treaty should take into account and build on the action already taken and initiatives underway at the regional level. Regional organizations could assist in monitoring or observing arms transfers, and treaty compliance more generally. Regional consultations and seminars should be encouraged as additional fora for further discussions.

## Conclusions

Through its seven regional seminars, series of background studies and other activities, the EU–UNIDIR project on the ATT supported the international process towards the Treaty in many ways and achieved a number of detailed goals and objectives. First of all, it increased awareness, knowledge and understanding of the ATT process among United Nations Member States, civil society and industry representatives, over 400 of whom participated in the activities of the project. It also promoted inclusive, active and effective participation of as many United Nations Member States as possible in the PrepCom meetings and in the 2012 ATT conference. The anonymous feedback provided by seminar participants showed that a great majority of them saw the seminars as beneficial to their state’s participation in the ATT process and helped them establish new contacts, which further facilitated their taking part in the ATT negotiations.

By providing additional fora for all relevant stakeholders to discuss issues related to the ATT process, the project was successful in encouraging the exchange of views and fostering debate. Discussions at the regional seminars—especially in their working group sessions—proved invaluable in identifying concrete challenges, priority areas and proposals regarding the ATT. These specific items are discussed in detail in this report under the sections on goals and objectives, scope, parameters and implementation, and the main outcomes on these issues are outlined at the end of each thematic session.

The expert presentations by international and regional experts, together with an exchange of views with national representatives invited to contribute to the seminars by making presentations on their national arms transfer control systems, enabled the project to promote the highest possible common standards for the ATT, and raise awareness also about the existence of regional instruments and good practices that could be used as a basis for the formulation of the ATT.

Finally, through especially the second part of the regional seminar discussions, the project provided support to third countries in their efforts to establish, improve and implement their transfer control systems. This was ensured by the active participation of several invited international, regional and national expert speakers at the seminars, whose presentations on *inter alia* the UNRCA, the importance of cooperation and assistance, and marking and tracing on weapons, supported the efforts of third countries to establish, improve and implement arms transfer controls. Also, the exchange of practices and lessons learned between the EU expert representatives and the national authorities from the states in the seminars’ target regions proved practical and beneficial.

While the ATT conference of July 2012 did not agree on a legally binding ATT during its four weeks of negotiation, work on the ATT continues. It is hoped that the EU–UNIDIR project and the findings presented in this report will continue to support the work of all United Nations Member States on the road towards a legally binding Arms Trade Treaty.

## **Abbreviations**

ATT	Arms Trade Treaty
EEAS	European Union External Action Service
GGE	Group of Governmental Experts
HRL	human rights law
ICL	international criminal law
ICRC	International Committee of the Red Cross
IHL	international humanitarian law
ISU	Implementation Support Unit
ITI	International Tracing Instrument
MSP	meeting of states parties
NGO	non-governmental organization
NSA	non-state actor
OEWG	open-ended working group
PrepCom	Preparatory Committee for the ATT Conference
SALW	small arms and light weapons
SIPRI	Stockholm International Peace Research Institute
UNRCA	United Nations Register of Conventional Arms