



# ORF ISSUE BRIEF

JULY 2012

ISSUE BRIEF # 39

## The Arms Trade Treaty: An Indian Perspective

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### Introduction

Today most of the trade between different countries is guided and regulated by one or the other international law or treaty. However, the global arms trade has continued to thrive without a comprehensive law or treaty governing it. Though there are international mechanisms in place that impact arms trade, there has never been a legally binding universal mechanism that could regulate the global arms trade. As Jeff Abramson, Director of the Control Arms Coalition puts it “It is an absurd and deadly reality that there are currently global rules governing the trade of fruit and dinosaur bones, but not ones for the trade of guns and tanks”<sup>1</sup>.

After years of discussions on the need for a treaty to regulate the sale and purchase of arms, the international community has now arrived at actual negotiations for an Arms Trade Treaty (ATT). Though, the need for such an international mechanism has been largely recognised, there are different positions taken by countries on the preferred actual content of the treaty. After holding four preparatory committee (PrepCom) meetings to clear procedural

issues and discussions within Open-Ended Working Groups and Group of Governmental Experts (GGE) under the auspices of the United Nations (UN), the negotiations on the content of the ATT will take place in July 2012 when a diplomatic conference will be held as per the General Assembly Resolution 64/48 in 2009. As per the resolution the conference will aim “to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.”

In this context, this paper outlines the evolution of the ATT by exploring the major historical developments leading up to the negotiations in the United Nations. The paper assesses the Indian position on the ATT and its content by studying the statements made by the government of India in the UN during the various occasions where the ATT was discussed and debated.

### The Need for a Treaty

Today, the arms industry has proliferated over the years across the globe and it is different from what it



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used to be two decades ago. New players have emerged both in the industry as well as the market. From 2007 to 2011, the international conventional arms transfers have increased by 24 percent as compared to 2002-2006<sup>2</sup>, indicating the growth of demand for weapons. Though the increase is not substantial, the figures reflect the reality that the global demand for arms is unlikely to go down significantly in the near future.

However, debates in the international community have brought out the weaknesses in the existing mechanisms to regulate arms trade and expressed the need for an international legally binding regulatory mechanism. There are several problems facing countries today due to poor regulation of arms trade across the globe. Several studies conducted by international NGOs have pointed out that the trade of arms has directly and indirectly had an adverse impact on socio-economic development apart from human costs. According to an Oxfam report, “the poorly regulated global trade in arms and ammunition weakens the ability of governments to sustain progress in development, both by fuelling and exacerbating conflicts and armed violence, and by diverting resources away from poverty reduction activities”<sup>3</sup>.

Apart from killings, arms trade has resulted in human rights violations such as rape, torture, restriction of rights to freedom of expression, movement, and education among others. “Inadequate and loophole-ridden national regulations of international transfers of conventional weapons, munitions and associated materiel permit arms to be supplied to those flagrantly violating international human rights and humanitarian law: destroying lives and threatening livelihoods,” Amnesty International stated in a report on the impact of irresponsible arms trade<sup>4</sup>.

The key idea that has emerged from the discussions in the UN over the arms trade is that there is a lack of common international standards on arms trade which contributes to conflict and undermines international peace and security. The need for common international standards has today been accepted by the international community.

However, the need for an international mechanism to control or regulate the arms trade is not a recent realisation and can be traced back to the early 1900s when the League of Nations Convention for the Control of the Trade in Arms and Ammunition was agreed in 1919. As noted in the Convention, there was a realisation that the large caches of arms produced during the World War I could endanger peace and public order<sup>5</sup>. The Convention dealt with aspects of licensing and required states to publish annual reports on licenses granted and details of exported arms and ammunition. Restrictions were also imposed on the sale of arms to countries, mainly in Africa and Asia and non-signatories. Many states refrained from ratifying the treaty and eventually it failed. Subsequent efforts by the League of Nations such as the new Arms Traffic Convention in 1925 also failed to achieve a consensus<sup>6</sup>.

### **Towards the ATT**

As the Cold War drew to a close, attention shifted from inter-state conflict between great powers to regionally oriented wars, often intra-state in nature, which were 'sponsored' by Cold War belligerents. These conflicts-civil wars, insurgencies, and revolutions, were in turn amplified by foreign intervention in the form of covert support, as the great powers used opposing actors to engage in proxy wars. The international discourse on these issues started highlighting the adverse effects of arms transfers such as escalation of conflicts and threatening international peace and security as well as effects on development. Illicit trafficking of arms also started getting recognised as a crucial component which contributed to regional tensions and conflicts. These issues have been reflected in disarmament resolutions passed by the UN since 1988. Effects of arms transfers on regional conflict, economic development and illicit and covert trafficking of arms were noted as issues that deserved serious attention<sup>7</sup>.

After the Iraq-Kuwait war of 1990, attempts were made by the US to stop arms transfers to the Middle East, as it was reported by post-war inspection teams that large caches of Western equipment were found in Iraq which were being used in illegal weapon programmes. The Bush administration proposed

certain guidelines in London in 1991, which called for consultations, notifications and exchanging annual reports about arms trade by the P5 countries<sup>8</sup>. But disagreement with other permanent members of the UN Security Council, particularly China on the matter of sale of arms to Taiwan, derailed the process.

Initially, in the 1990s steps were taken to form a code of conduct which eventually developed into the Framework Convention on International Arms Transfers. In 2003, it became the Arms Trade Treaty (ATT) but with very few states supporting it. But it was not until 2004-2005, when the United Kingdom publicly lent its support to a legally binding ATT, that the international community seriously began to examine the merits of such a treaty. In 2006, seven states (Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the UK) tabled a draft resolution “Towards an Arms Trade Treaty” which was later adopted in the General Assembly—Resolution 61/89. Over 150 states supported the resolution while the US voted against it. India on the other hand abstained from voting.

General Assembly resolution 61/89 of 2006, entitled “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms,” requested member states to submit their views on the feasibility, scope and draft parameters for a legally-binding instrument for regulating the international arms trade. Subsequently, a Group of Governmental Experts (GGE) was established to examine these aspects. Within the GGE, the nature, scope and content of the ATT were contested by participating countries.

In 2008, the second resolution on ATT was put to vote with the US again voting against, this time accompanied by Zimbabwe. The resolution was more progressive than the one in 2006 and it led to the creation of an Open-ended Working Group to examine the aspects of an ATT in detail. This group was open to participation from all States.

The process continued to move forward, with a third resolution, agreed in 2009, mandating a Treaty

negotiation. Crucially, this time the US voted in its favour; the only country that voted against was Zimbabwe. The support from the US, primarily due to the change of administration in Washington, was significant in taking the debate forward. A PrepCom was established and meeting schedules were decided to examine the nitty-gritty of the treaty.

After five weeks of PrepCom meetings, the preparatory stages of the ATT have been completed. At the end of the last PrepCom in February 2012, a UN Diplomatic Conference was scheduled in New York from July 2 to 27, 2012 to discuss the actual content of the Treaty. The Chairman's non-paper dated July 2011 has been accepted as one of the background documents for the July 2012 conference. The non-paper contains elements that could go into the ATT. For instance, the non-paper includes sections on objectives, scope, criteria and implementation procedures including record keeping and enforcement. The non-paper was prepared taking into account the views of different nations. However, it has been categorically clarified that the Chairman's paper does not reflect the views of all states and not all elements in the paper have been agreed upon. States were also asked to submit their views on what could be the content of the ATT in not more than 1500 words to be submitted by March 31, 2012; 47 submissions were received<sup>9</sup>.

### **India's Interests and Concerns**

India has been facing several threats to its security related to the illegal trafficking of small arms and light weapons (SALW). Home grown and international terrorism, left-wing extremism and insurgencies have been major security challenges for India from a long period of time. Cross-border support in terms of financial assistance and arms for these groups have contributed in escalating these tensions. Numerous persons who have been detained for illegally crossing the Indian border have been found in possession of arms and ammunition intended to be used to destabilise public order. According to Control Arms Foundation of India, “in Jammu and Kashmir and the north eastern states alone, the security forces have,

since 1990, seized approximately 46,000 weapons of all types, whose markings clearly indicated that these were brought into India through illicit channels from outside the country.

Experts in India have pointed out that the illicit trafficking of SALW impacts the country's polity and economy, in addition to the impact on security. "Conflicts in and around India provide possibilities for gun runners, who resort to means such as extortion, kidnapping, banditry and smuggling to acquire these weapons. Trade in small arms, like trade in narcotics, generates vast unaccounted wealth. This wealth also generates political clout and helps prevent a consensus on an international treaty"<sup>10</sup>.

This continues to pose a significant challenge to the Government. In the last two years alone (2006-07), the number of illicit SALW seized or confiscated by security forces in Jammu and Kashmir and in the north eastern areas was approximately 3,953"<sup>11</sup>.

Though this is a problem that many nations in South Asia and elsewhere have been facing, it is important to view the Indian position against this backdrop.

India has been an active participant during the ATT process. Close analyses of statements made by India in the UN during the various stages identifies the following as key aspects of the Indian debate on ATT.

### *Scope*

When discussions began on the ATT, as part of the GGE, Open-Ended Working Group and PrepComs, India's concerns largely related to the issue of illicit trafficking of arms, particularly SALW. This position was primarily adopted because of the internal disturbances faced by India due to illegal arms transfers from across the border. "India's security interests have been affected by illicit and irresponsible transfers, especially of small arms, light weapons and explosives... We have therefore maintained that the priority must be combating and eliminating the illicit trade in such arms," India stated in the First PrepCom<sup>12</sup>. India has also recommended inclusion of

a reference to non-state actors in the Goals and Objectives of the Chairman's draft paper.

On the issue of listing of weapons, India recommends using the weapon systems listed in the Conventional Arms Register. For instance, the Chairman's draft lists military vehicles as one of the items that are to be regulated. It is argued that this could include non-combat vehicles also which can complicate the implementation of the treaty. India suggested that ammunition, parts, components of weapons and technology should not be included in the scope of the ATT, and is also against the inclusion of transfer of technology and manufacturing<sup>13</sup>.

### *Universal Acceptance*

Universal acceptability of the treaty remains vital for India. In the rules of procedure for the July 2012 conference, there is a clause for procedural issues to be discussed by a 2/3<sup>rd</sup> majority, but the final adoption of treaty in July is to be by consensus. In the First PrepCom, held in 2010, India stated that any such instrument that intends to regulate the arms trade should be "non-discriminatory and...capable of the broadest possible universal adherence and should include all important producers, recipients and users of conventional weapons"<sup>14</sup>.

With regard to authorisation and notification systems, India believes that there should be a "better balance between the rights and obligations of different States which could be importers, exporters or transit countries"<sup>15</sup>. As India relies heavily on imported arms to secure its defence needs, it would not want the ATT to become an instrument which could constrain it from purchasing arms that are needed for its security.

### *Self Defence*

Another factor which is important for India is Article 51 of the UN Charter, which guarantees the right to self-defence. In order to defend itself, a country should be able to import, export and produce arms. The importance of this aspect has been stated at various

stages of the negotiation. This conforms to India's stance on maintaining strategic autonomy.

### *Implementation*

During the July 2011 PrepCom, India stated that there was no need for a separate body for implementing and monitoring the Treaty, but instead emphasised the need to agree on a treaty which can be implemented at the national level. India holds the view that national legislations play an important role in regulating arms transfers, and that countries may be reluctant to agree detailed and elaborate implementing clauses. In some states, including India, legislation may date back several decades. Any new international system should have enough flexibility to allow countries to implement the clauses in a manner appropriate to their particular circumstances. The Treaty should allow States to make necessary measures to update or amend their existing national laws.

In 2007, India emphasised that it was not just the absence of international procedures on the arms trade which results in illegal trafficking and easy access to weapons for non-state actors, but also the lack of implementation of existing obligations by States. In its report to the Secretary General, in accordance with the GA resolution 61/89, India gave priority to stricter implementation of existing laws and obligations, particularly those relating to the illicit trafficking of SALW.

### *Record-keeping*

For reporting and record-keeping, India suggested provisions that would involve the submission of annual reports, however the contents of the report should not be defined by the Treaty itself and should be left to State parties to decide. It argues that detailed reporting and record-keeping provisions should be avoided as they could become burdensome and could impinge on national security and commercial confidentiality. Regarding the transit of weapons, India has pointed out that the transit countries should not be burdened with record-keeping and some of this burden should be shared by the exporting countries.

With regard to sharing and distribution of denial of transfer notices, India has been of the opinion that it is up to States to do so on a voluntary basis and that this should not be made mandatory by the Treaty.

Regarding criminalisation in the context of violations of national laws as well as clauses of the treaty, India is of the opinion that this creates complications and should be worded in such a way that guarantees states' "legal authority to enforce their national system of control over arms transfers"<sup>16</sup>. India has also suggested deletion of references to adoption of legislation and establishment of penalties in the treaty "to allow space for state parties to pursue implementation in the light of their national legal and administrative frameworks"<sup>17</sup>.

There are several agreements that many countries have entered into before the evolution of the ATT. According to India's position, the content of the ATT should include some room to accommodate these pre-existing agreements. A possible way out could be inclusion of an exemption clause through which this issue can be addressed.

### **Conclusion:**

During the July 2012 Diplomatic Conference, we can anticipate that India, like other states, will voice its concerns and opinion on the actual content of the treaty. India's concerns are likely to be related to the aspects mentioned in the above sections.

Given the insurgencies and other threats that are a challenge for India and are supported by the unregulated and illicit transfer of arms, it is important for India that an international mechanism evolves which would curtail the illicit trade of arms particularly that of SALW. India will seek to secure the right to self-defence which may necessitate it to import and produce arms. India's emphasis would remain on an ATT which could be implemented using national administrative and legal frameworks. Any clauses in the treaty which may seem intrusive will be against India's interests, as India seeks regulation of arms trade from the ATT and not the ATT becoming an export control mechanism to constrain states. Another

element which is central to India is the universal acceptability of the treaty. India will lend support to a treaty which will emerge through a consensus as a limited number of subscribers to an ATT will not be able solve the problems that the world is facing today. While the international community has agreed upon

the need for a treaty to regulate the sale of arms across the globe, the content of the treaty remains to be decided. Since states hold consensual as well as conflicting views on many aspects, it is difficult to predict the likely final shape and form of the treaty post the July 2012 Diplomatic Conference.

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This issue brief is an outcome of a joint project by the Observer Research Foundation and Saferworld on India and the Arms Trade Treaty. This will form a part of a larger publication which will include papers presented during a symposium on 'India and the Ideal Content of an Arms Trade Treaty' held in April 2012.

#### Ends Note:

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