



CHATHAM HOUSE

Chatham House, 10 St James's Square, London SW1Y 4LE
T: +44 (0)20 7957 5700 E: contact@chathamhouse.org.uk
F: +44 (0)20 7957 5710 www.chathamhouse.org.uk

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The Arms Trade Treaty: What Next?

Chatham House in collaboration with Saferworld

Rapporteur: Zoë Pelter

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INTRODUCTION

A week before the beginning of the second Preparatory Committee (PrepCom2) on the Arms Trade Treaty (ATT) at the United Nations (UN) in New York, this workshop, organised by Chatham House in collaboration with Saferworld and entitled 'The Arms Trade Treaty: What Next?', was designed to inform the debate in the run up to the negotiation phase in 2012. This paper builds on previous efforts and engagement in this field, and aims to provide an accurate overview of the discussions and main themes examined during the debate in London, which was held under the Chatham House Rule.

CONTEXT

For a number of years the UK has been at the forefront of championing the ATT at the UN, and in working towards a comprehensive and robust Treaty built around humanitarian law, human rights and sustainable development. But now that a negotiating timetable has been secured by the UN for an ATT in 2012, there is a growing feeling among many working on the ATT that the UK may be at risk of pulling back its level of engagement, moving from 'leadership' to 'support' and thereby reducing the resources available.

The 18 months or so leading up to the negotiating conference in 2012 will be critical in determining the final Treaty text – and ultimately whether it is fit for purpose. Not all states are entirely supportive of the ATT – for example China, the Russian Federation and the Gulf Cooperation states – and it is possible that their efforts to oppose a Treaty could increase over the next year. Indeed, even among those states that support the ATT there is still a wide variety of opinion on important details of what the Treaty should look like. On 16 February Ambassador Roberto García Moritán, the Chair of the Arms Trade Treaty Preparatory Committee, released an informal draft paper which is expected to serve as the basis for discussions for PrepCom2. The Chair's paper will focus the process of deciding what the Treaty text should include and will put pressure on states to outline their position on the ATT at a key stage in treaty preparations.

This meeting aimed to promote a timely reflection on what remains to be done for the ATT to meet high expectations and achieve an ambitious and enforceable agreement.

THE ARMS TRADE TREATY: THE STORY SO FAR

At the beginning of the first session participants discussed the background of the ATT up to its current stage. They noted that discussions around some kind of global arms control began in earnest in the 1990s, arising from a need to address the patchwork system of controls on arms trade, in which some countries have relatively strong export controls, whilst others are very weak in this area. Furthermore, varying regional systems result in a global system that makes it easy for the illicit arms trade to find their way through the patchwork system. Participants also noted the humanitarian imperative for the ATT due to the havoc reeked by an arms trade under relatively little control; not just by the death and injury caused by an over proliferation of conventional arms, but also because of other factors such as the long-term social and economic costs of cyclical armed violence.

Work on a reform of arms control legislation, such as, in the UK, the 2002 Export Control Act, led to a progression to look at the international framework within which arms transfers could be brought under control. This was followed, in 2003, by an NGO platform campaign specifically focused on achieving the ATT. The process has been much accelerated since 2005, when the UK government gave its support to the process after initial reticence. Since then there have been three UN General Assembly resolutions on the ATT in 2006, 2008 and 2009, the last of which, UN Resolution 64/48, included the seminal shift to a negotiation mandate that the UN is timetabled to conclude in 2012.

THE ATT NOW: PERCEPTIONS AND PERSPECTIVES

The NGO Perspective

Participants looked at the NGO and civil society perspective on the ATT, noting that NGOs have been explicitly arguing for the ATT to be rooted in states' existing obligations to international human rights and humanitarian law, as well as commitments to sustainable development. There is a strong feeling in the NGO community that the ATT must get to the heart of the humanitarian problem that is currently seen in the world and that its criteria should include human rights aspects against which states must evaluate all arms transfers. Finally, discussants noted that it is vital to make as much progress as possible in the run up to Treaty negotiations if aims for a robust and effective treaty are to be achieved.

The Industry Perspective

Participants then discussed the industry's perspective on the ATT and the upcoming PrepCom2. They acknowledged that whilst the defence industry is already one of the most heavily regulated industries in the world, these regulations are by no means equal in different countries in their terms or effect. There was also agreement that while establishing what to control will be difficult, deciding how to control the chosen scope of transfers will be even more challenging.

While there was disagreement between discussants on the point, one participant argued that current discussion on the ATT seems to be moving towards a broad interpretation of the seven categories of weapons under the UN Register of Conventional Arms (UN Register), with the addition of small arms and light weapons, and also ammunition. The participant contended that discussions are likely to stay focused on a broad package based on the UN Register, given the complexities of gaining consensus on scope and the many practical aspects of including so many different elements within the scope of the Treaty. The participant maintained that responsible states have already chosen a much broader scope for their national control systems and insisted that the ATT should continue on this basis. The discussant argued that having a limited Treaty but broad national controls will risk exacerbating the problem of an unequal regulatory landscape faced by industry and governments.

However, another participant pointed out that the picture becomes less clear when one starts to address the issue of how arms transfers will be controlled.

The discussant felt that while the arms industry recognises that transfers are at the heart of international security policy, only governments can bring together the full range of relevant factors including strategic, business and moral considerations; and it is this range of factors that can lead individual governments to take opposing views on identical transfers. The ATT would also require states to consider their existing obligations under international law, but many states appear to have differing views as to how these obligations should be interpreted and brought to bear on arms transfer decisions. It will be a significant challenge to draft and implement meaningful parameters that take these different interpretations into account. One participant suggested providing a simple menu of options on scope and implementation, but noted that creating this list for implementation in a community of vastly different interests will be a significant challenge in 2012. It was noted that industry therefore has an important role to play as a major stakeholder in the ATT with key experience in transporting goods over the global supply chain and therefore an understanding of the complexities and practicalities of implementation. Industry will be a particularly important voice when sharpening the language of the ATT to make it pertinent to the practicalities of the arms trade and to drive the process to an implementable conclusion.

The UK Perspective

Participants noted that the outgoing Labour government was seen as heavily committed to ATT. Former Foreign Secretaries Jack Straw and David Miliband in particular were regarded as personally committed.

Since the 2009 resolution, one discussant suggested, there have been three key changes, namely: the UK's new coalition government; the change of US position to support the ATT; and the fact that the campaigning phase for the Treaty has moved into a negotiation phase, meaning that countries who have previously avoided being involved will now have to form positions on the treaty by 2012. The discussion recognised that the new UK Government seems to have a continued commitment to the ATT. One reason for this attitude could be the ATT's potential benefit for UK security, as an effective ATT would help to stop conventional weapons falling into the hands of those who would use them against the UK. The ATT is also important for the large UK defence industry, which the Government wants to ensure will prosper. Finally, the moral imperative for the ATT allows for a promotion of UK supportive views on human rights. The ATT was therefore said to stand at an

important junction between all three of these priorities for the UK Government.

Participants noted key evidence of the UK government's continued commitment in the ATT. In particular, the UK has gathered a strong representation for the UN process towards 2012, including members of the FCO, MOD and DFID who will be active in all sessions on scope, parameters and implementation. The UK government has continued engagement with Treaty stakeholders, consulting with industry, NGOs, faith groups and academia to bring wide-ranging expertise into the process. There was also said to be a strong senior political commitment to the ATT: it was specifically mentioned in the coalition government's Programme for Government as an international development priority, and in the 2010 Strategic Defence and Security Review. Participants highlighted a need for the government to put effort into lobbying partner states to take a more ambitious view of what is needed for the Treaty.

However, one participant stated the need for the UK to consider what changes it is willing to make to national controls in support of an effective Treaty. The UK must also address what concessions to scope and parameters it will, and will not, make to get countries such as the Russian Federation and China on board with the treaty. Another participant noted that if, through negotiations, the UK Government is required to take on additional obligations to those it already has, it will need clear arguments from other states on the benefits of taking on additional controls.

WHAT IS THE GOAL OF THE ATT?

Discussion then moved onto the keen need to develop a sense among supporters and stakeholders of the Treaty's objectives. Thus far there has been a positive dynamic but participants noted that it is rare at this stage of a treaty for there to be so much confusion amongst supporters as to what the treaty is actually for. Participants noted the need for a balance of strong normative and substantive provisions in the Treaty. It was suggested that although the ATT may not immediately be able to even out the regulatory environment of the ATT, it should be seen as a framework for the future achievement of this goal. The ATT must be seen as a treaty to establish a responsible arms trade in which risks, divergences and misuse are eliminated and which puts into place proper systems to ensure these changes. One participant advocated that whilst the Treaty may be normative for some states – underlining rather than changing their current obligations – it will also be a real benchmark for other states. The norms which are encouraged by the ATT will then need to be developed in other states through cooperation and assistance to achieve a high and equal standard of international arms controls.

Discussants clarified that the characterisation of the ATT is essential, noting that the ATT will neither an arms control treaty, nor a non-proliferation treaty nor even a trade treaty. The fact that the idea is under the framework of the UN General Assembly disarmament arena means that it has been incorrectly characterised by many as being akin to a disarmament treaty. One participant emphasised the example that the ATT will have no effect on the sovereign decisions taken by states about who to export to, leading participants to agree that clarifying the ATT's objective is vital.

Participants welcomed the fact that for the UK, the Treaty seems to be about the regulation of the legitimate arms trade and the establishment of international standards to govern that trade at the highest level. Furthermore, there is widespread agreement of this objective amongst certain states, such as the EU 27 and the US. It was considered important to develop this kind of consensus on objective to stop non-supporting states from using a lack of clarity to hinder the development of the details of the Treaty itself.

WHO IS THE ATT FOR?

Discussants noted the need for the ATT to be as much for importing states as for exporting states and that the responsibilities of importing states should be clearly delineated in the Treaty. The 'selling points' of the ATT therefore need to be approached from the perspectives of several different types of stakeholders, though it was noted that every importing state is also potentially an exporting state. Participants noted that although in the early stages of the ATT certain leverage points may lean towards exporting states, a broad scope of application of the treaty will help it to be relevant to all parties.

Participants acknowledged that there are certain states who are concerned that the ATT will prevent them from getting the weapons they feel they need for self defence and it is necessary to reassure them that the ATT will not do this. Discussants therefore pointed out that the Treaty's balance between export and import controls is a key consideration in terms of the kind of system to which states will be expected to conform.

From the UK perspective, participants noted that the ATT is seen very much as an export focused treaty which will try to set parameters to help states judge whether or not they should export. However, one participant pointed out that the UK government does acknowledge that there are a number of other elements in the supply chain of arms trades with which the ATT must deal (e.g. transit, brokering).

WHAT'S IN IT FOR OTHERS?

One participant argued that while addressing the objectives of the Treaty, there is a need to look at how non-supporting states can be persuaded to change their position. There are many states for which greater security and exchanges of military technology, as well as greater benefits of trade in arms within a secure environment, could be turning points towards the ATT. Furthermore, if approached as a treaty to ensure that the global business of the arms trade is dealt with in a responsible way and which could show benefits to those in the developing world, nations such as India could be won over.

Participants were keen to mention the effects of the current events taking place in the Middle East and North Africa (MENA) on the atmosphere surrounding the Treaty. Participants highlighted that current events are causing states to focus on the details of the ATT. The events will have a particular effect on the Gulf Cooperation states, which have viewed the ATT as being human rights focused and have therefore felt quite vulnerable in being net weapons importers from states who have different views of human rights. To be persuaded of the benefits of the ATT, these states must be reassured that the treaty will not prevent weapons imports.

SCOPE AND PARAMETERS

The participants then moved on to discuss three main questions: What should be the scope and parameters of an effective ATT? What upcoming challenges will arise when trying to include them? How can these challenges be overcome?

Scope

One participant commented that whilst there are pragmatic reasons for the ATT to refer to the UN Register – in particular the experience of the UN Register when it comes to the operational side of the ATT – the idea that the register is an easy way to address scope is a deeply confusing one. Instead, the natural launch point for scope is to consider: What is the typical scope of extant well-designed and effective national import, export and transit control systems? The starting point needs to be as broad a scope as possible and therefore there is a need to leave the reference point of the UN Register behind and focus on the ATT itself.

Participants agreed that the broad and permissive scope in the Chair's paper has several positive aspects. Firstly, focusing too early on specific points and substantive categories of the ATT would risk leading to conversations on abstract definitions during the negotiations. Too narrow a scope would therefore be the cause of distractions from defining objectives and substantive points of the Treaty. Furthermore, a broad scope allows for flexibility in future years, as the terms negotiated in 2012 will stand for many years to come. However, participants did suggest that the Treaty should stay away from discussions of hunting and sporting weapons being carried across borders for legitimate recreational purposes. Unfortunately, in the UN, the views of those representing the sports and hunting community have been presented as typical of broader industry and commercial interests. Discussants argued that this has perpetuated the incorrect perception that ATT is focused only on small arms and light weapons, and that issues of domestic transfers and private ownership will be included in the Treaty, even though these have been explicitly ruled out. Participants stated the need to ascertain whether this is still a live issue, particularly in the US, in which case it must be dealt with immediately.

One participant noted that achieving adequate scope involves a focused awareness of the distinction between the scope of the overall Treaty and of all its operational positions. It is still consistent to have a Treaty that covers a wide scope, while certain measures can cover a narrower range of equipment

or activities, which may or may not evolve as time goes on. Scope and parameters should focus on the basic elements of the Treaty and there is a need to distinguish clearly between scope and the range of operative provisions that might then follow the treaty.

When distinguishing between the responsibilities of exporting, importing and transit states to assess risk, participants highlighted the difficulties of transit nations. Countries such as The Netherlands, which functions as a transit hub, were said to be understandably reserved about accepting the same norms of risk assessment as they do for import and export. Again, participants stressed a need to distinguish between the broad scope of the treaty and what its operational provisions are. For example, if the Treaty could define the responsibilities of a transit state and what the expectations of that state are, then they may not have to conduct the same risk assessments as an importing or exporting state but instead would focus on the risks of diversion during transit. This need to disentangle state responsibilities is important when considering the scope of the Treaty.

Continuing this discussion on identifying and separating responsibilities, conversation turned to the role of importing states, with one participant arguing that there is currently an expectation among importing states that exporting states will take the bulk of responsibility for assessing the risks of prospective transfers under the Treaty. Participants stressed however, that an ATT will not be solely an export treaty. Discussants maintained that a properly authorised import licence should also reflect a proper risk assessment on the part of the importer, particularly when looking at who will be using the weapons in question. The provisions of the Treaty which are about international cooperation could take importing nations into consideration by helping them to control their own stocks of weapons. This cooperation works for all parties, as for licensing purposes exporting nations need to know the capacity of the end user to use weapons securely. Participants suggested that the Treaty would benefit from having mechanisms in place to let responsible importing states know that this cooperation is in place. There were several comments that transparency will be difficult but important to achieve with the ATT, as the UN Register will not be part of the Treaty but will exist alongside it as a mechanism for transparency for non-signatory states.

Another participant noted that certain areas of scope must be given specific attention, mentioning in particular overseas licensed production. It appears there may be a move to exclude licensed-production agreements from the ATT, but a huge loophole would be created if transfers of both the production technology and the knowledge of how to use it do not fall within Treaty scope,

particularly when these involve non-signatories. Participants added that the inclusion of this element would be a good selling point for the treaty to Russia, which would like to see something in the Treaty on this issue.

Again it was noted that the treaty's scope will very much depend on a clearly defined objective, so that scope and parameters are developed accordingly to create a robust treaty. One participant commented that the Treaty needs to be fixing a clear problem in the world and it will be useful to gain broad agreement on this before outlining the scope of the ATT. Participants observed that the lack of conflict in the Preparatory Committees so far is a bad sign and means that states are not looking into enough detail at areas where there certainly will be divergent views. Disagreements about the Treaty's objective must be highlighted and worked through to be able to progress.

Parameters

Participants emphasised the need for the avoidance of gross violations of human rights and international humanitarian law to serve as strong parameters in the Treaty, such that any use against human rights norms is not compatible with the export of weapons under the ATT. However, they noted that it will be difficult to get elaborations of those provisions through the negotiation process.

Additionally, one participant noted that governments were very quick to agree that they should be against the diversion of weapons to the illicit market, and have moved on to focus on more controversial issues of human rights. However, for a serious non-diversion policy to work in the ATT, there needs to be a systematic approach across the entire international arms trade. Rather than just agreeing with the need for anti-diversion considerations, exporting, importing and transit states now need to consider what a serious risk assessment for preventing diversion would involve; a consideration which will be vital when considering the parameters of the Treaty.

Discussion then considered what the implications would be once a risk is identified. The wording in the Chair's paper was described as quite strong, stating that 'A State Party shall not authorize (sic) a transfer of arms if there is, in the view of the potential transferring State a substantial risk...'¹. One participant highlighted that it will be important to have as tight a set of

¹ Roberto García Moritán, Draft Paper for the second session of the Preparatory Committee, February 17, 2011, Criteria/Parameters, Part B, p.4

operational provisions as possible but also, at this stage, to show some prospect for operational provisions which allow states to discuss risk assessments in the future, rather than getting into the minutiae of what risk assessment is during negotiations. An important outcome of the Treaty should be that states can no longer just say they have done risk assessments across these criteria when they have not.

WHAT NEXT FOR THE ATT?

The participants considered the recently released Chair's paper in some depth, espousing the need to identify possible 'game changers' in the current text and also to see whether the current paper is explicit enough and implementable. The nature of the ATT means that it must maintain its authority at the practical level such that its performance can be auditable.

From the UK perspective, the scope of the Chair's paper was said to be quite positive, as the UK is in favour of a broad scope of weapons but not a repeat of the UN register. One participant suggested that individual lists of weapon types with annexed definitions would be the best way to cover as many weapons as possible. The omission of software from the weapons list was highlighted as being a major problem for PrepCom2 to address, as certain non-military machines can be upgraded to weaponry with the use of software, which is also essential for most modern weapons. Participants agreed that the UK also agrees with the export focus of the paper, as raising export control standards will have a great impact on limiting the flow of conventional weapons into the illicit market and is less complex to control than other transfer types. One participant noted that a division of equipment into land, sea and air might also be an effective way to approach the scope of the Treaty.

In the view of one participant, the Chair's paper often used 'soft' language which leaves room for vagueness, for example the draft paper's suggestion that the transfer of arms not be authorised if peace and security are undermined by the 'excessive accumulation of conventional weapons stockpiles'². The participant questioned what the threshold of 'excessive accumulation' would be and argued that there needs to be more definition of terms to avoid a lack of understanding. The participant maintained that the need to be wide-ranging yet specific is especially true of weapon categories. Helicopters were mentioned in particular, with the participant noting that although the chair's paper states helicopters amongst weapons to be transferred, there are hundreds of types of helicopters, many of which are not a form of weaponry, but are used instead for geological survey data or crowd control. However the participant noted that by being wide and permissive, the scope of the paper could be viewed as 'loose', which could lead to the ATT being seen as full of loop holes. The participant highlighted the need to strike a balance to achieve wide-ranging yet focused Treaty.

² Roberto García Moritán, Draft Paper for the second session of the Preparatory Committee, February 17, 2011, Criteria/Parameters, Part B, p.3

The inclusion of ammunition in the scope of the Treaty was identified as a point of contention in the treaty's development and discussants noted that previous UN attempts at ammunition regulation have thus far been unsuccessful, in part because of the dual capability of ammunition for both police and military weapons. Furthermore, one participant cautioned against a Treaty that attaches a large administrative burden to the regulation of ammunition after it has been exported, as this may hinder developments to include ammunition within the scope of the Treaty.

The inclusion of ammunition in the paper's scope was noted as satisfactory to the UK Government, which feels that the ATT will be useful only with ammunition included. However, participants noted US reservations about including ammunition, though primarily in terms of non-licensing operational issues such as reporting. It was suggested that the UK, which already licenses ammunition transfers (as does the US), should continue to try to persuade the US that ammunition falls within the scope of the ATT.

Participants were also particularly interested in the concept of technology transfers, particularly in light of discussions on intangible transfers. Intangible transfers were described as the transfer of knowledge of weapons systems, which can even be applied to the point whereby a scientist travelling with full knowledge of how to develop and use a weapon could be considered a transfer. It was questioned whether it is necessary to include this type of transfer, if indeed it can be included, in the scope of the ATT.

On the paper's handling of criteria and parameters, some participants questioned the applicability of the parameters included; stating that it may seem too much like telling states what they can and cannot do, which will cause resistance to the Treaty. Additionally, it was noted that the use of the transferred weapon by the end user was only mentioned once in the working paper, which they felt was not enough consideration for such an important aspect of the ATT.

Finally, one participant inquired about the inclusion of victim's assistance – particularly what it would mean and how it would work - in the section on international cooperation and assistance. Discussants noted that the UK would question whether victim's assistance has a relevant part in an ATT and whether it has been included to appease platforms who have lobbied for its inclusion. One participant noted that the inclusion of victim's assistance could

encroach on international development efforts. Many felt that the paragraph itself is vague and unclear.

MOVING THE ATT PROCESS FORWARD

When discussing how to push the ATT process forward, participants noted the need to address the challenges of other states' approaches to the ATT. For example, certain countries are concerned about legitimate defence needs and that the ATT will cement the primacy of current major arms-exporting nations while hindering the development of their own defence industries and technology. Supporting states need to address ways to engage with sceptical states.

One participant commented that many of the states who are opposed or disinterested in the Treaty have not exposed their positions on the ATT yet, particularly those states who are worried by the human rights and anti-corruption aspects of the ATT. However, while Egypt's outward opposition to the ATT made it easy for others to abstain from explicit opposition to the treaty, recent changes in Egypt and the release of the Chair's paper may now be prompting them to develop their positions.

Supporting states will need to address how to incentivise countries to join the Treaty. One participant suggested that distinguishing and creating different levels of obligations between transactions involving only states parties and transactions involving non-states parties could isolate and create pressure to join on non-signatories. However, it was noted that any addition of obligations must be treated carefully. Moreover, it was pointed out that those states which already have advanced arms transfer control systems must be open to an ATT that would require changes to their national systems, given that this will be expected of less sophisticated and capacitated jurisdictions.

FINAL COMMENTS

Participants were invited to suggest final points for consideration with regard to PrepCom2. One participant highlighted the need to focus on the treaty's capacity to implement its terms, stating that it needs to be more than just a gesture to measure risk. The participant also suggested a need to consider what changes and updates must be made to national systems to be able to adhere to the terms of the Treaty. The discussant commented that the capacity of states to implement controls is also vital, and that risk assessment of issues such as diversion is essentially an assessment of the capacity of both exporting and importing states to mitigate those risks. This would involve a substantive information based process of assessment by states. Another participant suggested that in future, an ATT 'kite mark' could be established, highlighting a state's ATT compliance and acting as a go ahead for possible arms transfers.

Another participant underlined how difficult the negotiation process will be and suggested that the ATT must therefore be very clear in what it attempts to do while leaving states to implement in good faith through their national legislation. There is a need to be realistic about implementation as each state has a different legislative set-up. It is necessary to avoid getting caught up in perfecting language and systems that may not work as well for one state as for another. There needs to be a concise set of criteria and parameters, and a concise explanation of scope so that states can sign the Treaty and then focus on reporting on their attempts at implementation. A reporting process on national implementation, for example, would allow the UN to start analysing the effects of the treaty and then develop it accordingly, much like the 1540 Resolution Committee. The discussant deemed it important to note that reporting is not the same as transparency, but can instead be a process by which states inform the UN on the applicability of the ATT within their national legislation. In this way, the norms of the Treaty can be created through objective analysis, and any missing legislation can be checked without states being told what to do. Several participants noted that this will require scope and parameters to be discussed alongside implementation during the preparation and negotiation of the Treaty.

As well as legislative competence, one participant outlined the need for administrative competence to deal with new obligations caused by the Treaty, and stated that there is little point in good legislation evaded through bribery. Competent administrative arrangements are particularly necessary in transit states, especially in light of the fact that many of the weapons which kill civilians are not new but are older weapons which are already in circulation.

International cooperation is essential here to help these states build up administrative structures that will allow them to fulfil the obligations of the ATT.

Finally, participants discussed the need to address certain aspects of the Chair's paper, such as unsystematic listing of weapons in Annex A. One participant refuted the grouping of imports and exports with leases, loans and gifts, feeling that they need to be separated and that this section of the Chair's paper is generally unclear. Others noted the need for more specific language throughout the paper, such that it is able to give impetus to the reporting stage of the treaty. The language of the paper must make clear that objectives cannot be achieved without constant reflection and analysis and that reporting cannot be voluntary under the Treaty.

The participants concluded by highlighting that much remains to be done in the run up to the actual ATT negotiations for it to become a practical and effective treaty. There was hope that PrepCom2 will prove constructive in guiding the way ahead for those involved in the ATT process. However, it was agreed that work must be done earlier rather than later so as to avoid work on the Treaty being left until the negotiations themselves. Further research and conciliatory work will be needed for the negotiation phase to be successful. There are several questions that need to be addressed in the coming months. First, how can the Treaty be drafted to remain relevant in the face of advances in weapon technology? Second, how should transfer of relevant knowledge be included in the Treaty? Third, regarding the Treaty's implementation, should a light approach (whereby the Treaty should be clear on what is required but can remain relatively light on the how) be adopted? Finally, how can the Treaty encompass all key states without undermining the ambition of its message?

EPILOGUE

On 3 March, shortly after the Roundtable was held, during PrepCom2 the next version of the informal Chair's draft paper was produced, again reflecting Ambassador Moritán's interpretation of discussions so far. This new version amalgamates and updates drafts thus far, including the Chair's draft paper from the first meeting of the ATT Preparatory Committee (PrepCom1) in July 2010. It therefore stands as a comprehensive representation of the direction of discussions thus far and is valuable to review in light of the suggestions made at the Roundtable to assess the direction of Treaty preparations ahead of negotiations in 2012.

The combined informal paper includes suggested Treaty *Goals and Objectives*. This fits with the observation during the Roundtable of the need to consider, even informally, the goals of the Treaty before going into further preparation for the 2012 negotiations. The principles outlined are in keeping with those developed in PrepCom1 and highlight again—particularly to States that are reticent about the Treaty—that the ATT will not impinge on ‘the right of all States to manufacture, develop...import, export [and] transfer... conventional arms and related items and capabilities for self- defence and security needs³. The need to bring onside worried importing parties that are vulnerable to human rights concerns was highlighted by participants at the Roundtable, and the outlining of an acknowledgement of the rights of states to self-defence will aid this process. There is now a need to look at how non-supporting states, having been assured of the respect for sovereign rights to self-defence, can be further persuaded to change their position. In addition, the principles highlight the existing obligations of states under international human rights law and international humanitarian law, and therefore reflect the priorities of the NGO platform towards an ATT that were discussed at the Roundtable.

The *Goals and Objectives* outlined in the informal draft also help to establish the character of the future Treaty, which was said to be essential during the Roundtable. The goals make clear that the Treaty is not a disarmament treaty, in stating that its aim is to ‘establish the highest possible common international standards for the import, export and transfer of conventional arms’. It also notes that an ATT can contribute to international and regional peace, security and stability.

³ Roberto García Moritán, *Draft Paper during the second session of the Preparatory Committee*, March 3, 2011, p. 3, Principles : point 10

On *Scope*, the new draft extends the previous through more detailed distinctions, in specifying the inclusion of both manned and unmanned or guided and unguided conventional arms. This extra level of detail reflects a nuanced widening of discussions on the scope of the Treaty; a necessity highlighted at the Roundtable. It also specifies ammunition further, by linking it to the weapons listed in the current scope of the Treaty. This may reflect a shift towards accepting the inclusion of ammunition within the scope of the treaty. Notably, the detailed annexes of the previous draft, which expanded on weapon types and components and on the type of transactions to be included in the scope of the Treaty, are not included in the current draft. A reintroduction of these annexes in future drafts, in combination with the more detailed list of conventional weapons in the current draft, would allow for a much more comprehensive range of arms to be discussed in negotiations in 2012.

Criteria have also been extended somewhat from the draft first introduced to PrepCom2, through the expansion of points on the list of *Potential consequences of the arms transfer on peace and security*. The new draft now separates points that suggest forbidding arms transfer if there is a risk of violating international humanitarian law, human rights law and international law, thereby highlighting once more the importance of State adherence to existing legal obligations. Furthermore, the draft paper suggests prohibiting arms trade if there is a substantial risk that those conventional arms would '[be] used to support, encourage or perpetrate terrorist acts'⁴. Roundtable participants noted that elaborations of parameter provisions may be difficult to get through the negotiation process and so discussions on the inclusion of terrorist acts will need to become more specific before entering negotiations in 2012. Overall, *Criteria* outlined in the current version of the draft papers reflect the reintroduction of a set of *Goals and Objectives* that allow for a more structured framing of the necessary parameters to be established to allow for a robust treaty.

Points outlining possibilities for *International Cooperation and Assistance* have also been expanded somewhat in the new version of the draft paper. In addition to exchanges of legal, material and financial assistance to States parties to support their implementation of Treaty obligations, information may also be provided on best practices on the import, export and transfer of conventional arms. This development reflects the views of Roundtable

⁴ Roberto García Moritán, Draft Paper during the second session of the Preparatory Committee, March 3, 2011, p. 7, *Criteria* : point 8

participants who argued that legislative competence must be backed up by the administrative ability to deal with the new obligations of the Treaty, which would be aided by the exchange of experience-based knowledge for arms trade processes. The section also now suggests that the 'provisions of this Treaty shall be implemented in a manner that avoids hampering the economic or technological development of States Parties'⁵. As noted in the Roundtable, this may reflect a shift in discussions aimed at incentivising States that are currently reticent about the obligations of the treaty.

The list of *Elements* of the informal paper, like that of the draft paper from PrepCom1, includes sections which will address relationships with non- State Parties and with other agreements, such as the UN Register for Conventional Arms and the Programme of action for the illicit trade in Small Arms and Light Weapons in all of its Aspects. Discussants at the Roundtable event were keen for discussions to now turn towards the interaction of the States who will be party to the ATT and those who will not; and what, if any, measures will be developed to accommodate states outside the Treaty into responsible international arms trading or, instead, to exclude them from it.

The current informal draft does much to outline the direction of discussions following PrepCom2, showing developments in the possible goals and objectives, scope and criteria of the Treaty. However, it also serves to highlight areas that need to be explored in more depth and clarified to Treaty stakeholders ahead of the next session of the preparatory committee, which is to be held 11-15 July 2011, and indeed before negotiations begin in 2012.

⁵ Roberto García Moritán, Draft Paper during the second session of the Preparatory Committee, March 3, 2011, p. 9, International Cooperation and Assistance : point 7