

## Finishing the job: Delivering a bullet-proof ATT

### Summary

At the end of the consensus-based negotiation process in the July 2012 Diplomatic Conference for the Arms Trade Treaty, states failed to agree a treaty. A draft treaty text was produced that contains many of the elements necessary for effective control of the international arms trade. However, this text also contains a number of weaknesses and loopholes that threaten fundamentally to undermine its effectiveness. As statements throughout the negotiations demonstrated, the majority of states want to see a robust treaty agreed.

The Arms Trade Treaty is too important for any one state to be able to wield a veto. It is the voices of the overwhelming majority of states that want a strong treaty which must be heard in the next steps in the process, rather than the minority of states that do not support the aims and objectives set out by UN General Assembly Resolution 64/48 in 2009.

Given that the July 2012 DipCon was unable to produce agreement by consensus any decision to hold a follow-up conference on the same basis runs the risk of repeating this failure.

### Introduction

The July 2012 Diplomatic Conference (DipCon) for the Arms Trade Treaty (ATT) was intended as the concluding part of the UN ATT process, which formally began in 2006. After a month of detailed negotiations, a draft treaty text was presented on the penultimate day of the DipCon. Despite the desire of most states to see the treaty concluded, on the final day, the United States asked for “more time” to consider the text, thereby blocking a consensus outcome.

Despite this setback, there is now widespread support to deliver a treaty in early 2013 by building upon the outcomes of the July 2012 negotiations. While it is encouraging that states have proved willing to harness the momentum of the final days of the July DipCon, it is worrying that many states appear prepared to see the next stage in the process bound by the consensus decision-making rule. This presents a significant risk of the next stage in the process merely repeating the failure of the previous, or producing a very weak text. States need to safeguard an effective and productive process by allowing for the possibility of a vote if all feasible attempts to achieve consensus fail.

The draft text of 26 July 2012 contains many of the basic elements needed for effective control of the global arms trade, including:

- An obligation on arms-exporting states to conduct comprehensive risk assessments in line with international human rights and humanitarian law before approving international transfers of arms;
- A clear recognition that there are circumstances whereby transfers of arms should never be allowed, e.g. where weapons would be used to violate states’ international obligations;
- A scope that includes small arms and light weapons (SALW), which are responsible for the largest proportion of deaths from armed violence;
- A requirement that states report on their arms transfers and on steps that they take to implement the treaty;
- Positive provisions relating to record-keeping, international assistance, and implementation of the treaty; and
- The establishment of a Secretariat to assist signatories in implementing the treaty.

# control arms

## Closing the loopholes

However the current draft text has a number of problems and loopholes that would undermine its ability to adequately address the humanitarian and human rights problems fuelled by the poorly regulated international arms trade. Many of these were still being negotiated during the last hours of the July DipCon, when there appeared to be considerable resolve in favor of finding workable solutions so that a robust outcome could be achieved. These loopholes include but are not limited to the following:

### **Article 2: The Scope of the draft treaty is too narrow:**

- The draft treaty only includes arms that fall under the seven categories of major offensive conventional weapons covered by the UN Register of Conventional Arms plus SALW. This means that many types of conventional weapons—including armored troop-carrying vehicles and helicopters—are not controlled. Ammunition and munitions, parts and components are also missing from the scope section of the text, so transfers of these items are subject to less stringent control and are exempt from record-keeping and reporting requirements.

### **Article 2: The draft treaty should provide much greater clarity regarding what constitutes an international transfer of arms:**

- Current references to international “transfers” are conflated with definitions of the “international trade” in arms and are opaque and confusing; this could lead to states interpreting differently their obligations within the treaty.

### **Article 3: Prohibitions relating to arms for genocide, crimes against humanity and war crimes are too narrowly applied:**

- The current wording presumes an intent on the part of the supplying state that the weapons be used to commit prohibited acts, which would already place that state far beyond the bounds of international law and acceptability. Moreover, the range of war crimes to which even these provisions apply is far too narrow and excludes, for example, deliberate attacks on civilian populations.

### **Article 4: The threshold for risk assessment of human rights and humanitarian law violations and for commission of terrorist acts is unclear:**

- The draft treaty sets a threshold of “overriding risk” that states could interpret as requiring the refusal of a transfer only in extreme and exceptional circumstances.

### **Article 4.6: Provisions concerning diversion, corruption, development, and gender-based violence are weak:**

- The draft treaty does not require states to consider risks relating to diversion, corruption, development and gender-based violence as part of the grounds for refusing an international arms transfer.

### **Article 5.2: Exemptions created by language on ‘other instruments’ and ‘defence cooperation agreements’ are very problematic:**

- The assertion that the implementation of the treaty should not prejudice obligations with regard to other instruments could allow states to enter into agreements that undermine the treaty. There is also nothing to prevent States classifying all of their international arms trading operations as “defence cooperation agreements” thereby circumventing the treaty’s provisions.

**Article 10: Reporting requirements will do little to enhance transparency in the international arms trade:**

- The draft treaty makes no explicit provision for public reporting and, because of the narrow definition of scope, exempts reporting on ammunition and parts and components transfers. Exemptions for ‘national security’ and ‘commercially sensitive’ data pose the risk that states will withhold vital information even from the secretariat and other states parties.

**Article 16: Entry into Force (EIF) requirement of 65 is too high:**

- This means that it could be many years before the treaty can enter into force; a requirement for 30 states to ratify for EIF is the practice under some other instruments and would be more appropriate for the ATT.

**Article 20: Strengthening the treaty over time will be very difficult:**

- Decisions regarding amendments to the treaty will need to be taken by consensus, making it extremely hard to improve the treaty in future.

**Article 23: The possible absence of controls on certain transfers to states not-party to the treaty:**

- This article is ambiguous with regard to the application of treaty obligations to states not party to the treaty. It asserts only that Articles 3 and 4 should apply to international transfers to non-party states of conventional arms under the scope of the treaty. This suggests, for example, that there would be no controls on international transfers of ammunition and parts and components to non-party states.

## **The humanitarian objective**

Ultimately, the ATT will be judged according to its success in preventing arms transfers that risk contributing to or facilitating human suffering. An ATT that does not serve to enhance human security will represent a hollow victory for all those who have advocated for a robust treaty.

If the above-cited exemptions and loopholes remain, then there is a serious risk that irresponsible and illegal transfers of weapons will continue to fuel conflict, armed violence and human rights abuses around the world. In particular, if ammunition is absent from the scope of the treaty and obligations to address diversion risks remain inadequate, the treaty will fail to live up to the hopes of the millions of people threatened by armed groups around the world who currently have easy access to the weapons and ammunition they need to continue waging war. Moreover, the “defence cooperation agreement” exemption would provide legal protection for irresponsible arms transfers of the kind seen between Russia and Syria throughout 2012. These transfers—including the servicing and upgrade of attack helicopters—have been conducted under the guise of fulfilling existing contractual obligations. The loophole in the draft text would potentially legitimize and provide cover for such claims.