

11 March 2013

Advice concerning the global Arms Trade Treaty

1 Introduction

In March 2013, all the Member States of the United Nations will gather in New York to negotiate a treaty about global standards for trade in conventional arms, the so-called Arms Trade Treaty (ATT). The conference should finalize more than ten years of negotiations and lobbying to achieve a universal treaty. The treaty is considered historic. To this point there has been no global treaty that establishes a comprehensive framework with terms and conditions for trade in conventional arms. In July 2012, a treaty was negotiated for four weeks without, however, reaching a compromise. The negotiations in the second half of March 2013 should provide an outcome.

The origin of the ATT goes back to an initiative from several Nobel Peace Prize Laureates who, in 1997, took the initiative to establish an International Code of Conduct. The Code of Conduct not only includes all types of military arms and paramilitary police equipment, but also all their components, all types of ammunition, military and dual-use technology and training. This proposal subjected trade in these items to high standards. The Code of Conduct was intended for all States that export conventional arms.¹ Based on this Code of Conduct, an initial proposal for a framework treaty was launched at the UN Conference for Small and Light Arms in 2001. Since October 2003, NGOs across the world have mobilized public support and have been engaged in a “Control Arms” network which has strongly advocated a strong, internationally binding treaty for the last ten years. In 2006, the United Nations (UN) General Assembly adopted Resolution 61/89, entitled “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms”. Since then, there has been a great deal of consultation among UN Member States about the potential content of such a treaty. Expert groups and open working groups were convened to guide the process. In 2008, a second UN Resolution (Resolution 63/240) was adopted, and in 2009, a third (Resolution 64/48). In this latter Resolution, it was decided to convene a conference in July 2012 to negotiate a legally binding instrument which pursued the highest possible common standards for the transfer of conventional arms.

On the final day of the conference in July 2012, it became clear that no compromise would be reached. The proposal by Ambassador Roberto García Moritán (Argentina) – Chairman of the conference – was ultimately rejected by the United States, which was then followed by Russia, North Korea, Cuba and Venezuela. The United Nations General Assembly was referred to for the continued course of negotiations concerning the ATT. On 7 November 2012, the First Committee of the General Assembly decided that the negotiations would soon be continued in order not to lose the momentum. The Draft Treaty of 26 July 2012 shall serve as the basis for the final negotiations between 18 and 28 March 2013.

On the eve of the negotiations, the Flemish Peace Institute wishes to draw attention and give support to the realization of the Treaty. The present note takes a brief look at parliamentary initiatives already taken concerning the ATT, outlines the substance of the Treaty and points out key issues. The Peace Institute formulates recommendations to the Regional and Federal

Governments in Belgium, as well as the other actors involved in the negotiations, concerning specific positions which can be defended during the negotiations of 18-28 March 2013.

“Our common goal is clear. A robust and legally binding arms trade treaty that shall have a real impact on the lives of those millions of people suffering from the consequences of armed conflict, repression and armed violence.”

United Nations Secretary General, Ban Ki Moon, July 3rd 2012.

2 Belgian position on ATT

In 2010, at the Belgian level, the ATT was regarded as a mixed treaty by the Working Group on Mixed Treaties, with shared responsibility for the regions and the Federal Government.² A cooperation agreement between the Federal Government, the Communities and Regions arrange the procedure for concluding mixed treaties. After its signing, a mixed treaty must be approved by the parliaments involved.³ In the matter of trade in military equipment, it was agreed that the Federal Government would assume a coordinating role and take responsibility for representing Belgium at European and UN Assemblies. The Belgian position is always determined in mutual consultation. Representatives of the Federal Government as well as the regions shall participate in the UN Conference on the ATT. If the Federal Government is not or cannot be present during a certain (sub) assembly, one of the regions shall stand in, always after mutual agreement.⁴

In the response to a parliamentary question, it was also mentioned that the Flemish Government focuses on defending the EU acquis on the matter, as well as on a number of specific human rights themes, such as: the prohibition of arms exports to countries where child soldiers are used in the regular army; the rights of children in general, and; the focus on avoiding ‘gender-based’ violence.⁵ On 9 February 2012 in the Federal Parliament, a resolution was approved with regard to a strong international arms treaty.⁶ In the Federal Parliament, reference was also made to support for the treaty by the Belgian Government, inter alia by reinforcing the EU position.⁷

3 Content of the Draft Treaty

This section presents the content of the Draft Treaty and indicates some problematic issues which may be of importance at the negotiations in March 2013.¹ A general point of interest is the lack of definitions and specific provisions in the text. The general wording is in part due to the nature of diplomatic negotiations with 193 UN Member States, which makes it difficult to achieve a detailed agreement. Nonetheless, specific word choices have very specific meanings. Specific wording shall be discussed during the negotiations. While it is defensible to work out certain

ⁱ The text of the Draft Treaty is available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/CRP.1&Lang=E.

matters in the implementation of the Treaty, other word choices and (a lack of) definitions are crucial to the scope of the Treaty. In what follows, we will run through the content of the Draft Text of 26 July 2012 with attention focused on the most important points of discussion.

3.1 Preamble, principles and objectives of the Treaty

The Draft Treaty commences with the *preamble* and *principles*. The *preamble* explains the general principles of the UN, general objectives which are relevant to the ATT, cites existing UN initiatives with regard to arms trade, and refers to the issue of illegitimate arms trade which inspired the ATT. The text of the preamble also refers to the legitimacy of legal arms trade. Under the heading, *principles*, more specific principles are laid down which serve as the foundation for this specific Treaty. During the negotiations, certain Member States advocated combining the preamble and the principles of the Treaty under one heading because the distinction is not entirely clear. In the current proposal, however, they are distinguished.

Article 1 describes the objectives of the Treaty. The objective of the Treaty is twofold:

1. To establish the highest possible common standards for regulating or improving the regulation of the international trade in conventional arms.
2. To prevent, combat and eradicate illicit trade in conventional arms and their diversion to the illicit market or for unauthorized end use.

While there is no contradiction at all between these two objectives, there has been significant debate among the Member States of the United Nations about their weight. In particular, the debate concerns whether the emphasis lies mainly on combating illicit arms trade, or rather on regulating legal trade. The overarching objective of the Treaty is to contribute to international and regional peace, security and stability, as well as to prevent the trade in conventional arms from contributing to human suffering, and to build confidence among States Parties through cooperation, transparency and responsibility with regard to arms trade.

3.2 Scope

Article 3 delineates the scope of the Treaty. Section A presents the material scope. This includes a list of items to which the Treaty applies. Section B presents the trade activities that the Treaty regulates.

3.2.1 Items

Section A lists those items which are included under 'conventional arms'. The Treaty gives no definition of 'conventional arms', but refers to the seven categories from the UN Register of Conventional Armsⁱ. Since 2003, small and light arms have been added to the Register as an

ⁱ The UN Register of Conventional Arms was created in 1992 on the basis of Resolution 43/36L of the UN General Assembly.

optional category.⁸ In the Draft Treaty, small and light arms are included as the eighth category. The categories are:

1. Battle tanks
2. Armoured combat vehicles
3. Large-calibre artillery systems
4. Combat aircraft
5. Attack helicopters
6. Warships
7. Missiles and missile launchers
8. Small and light arms (Art. 2.A.1)

Additionally, Art. 2.A.2 includes the obligation for each State Party to establish a national control list which, at minimum, includes the eight categories from Art. 2.A.1. States thus have the freedom to control more items, including technology and components, on a national basis.

The UN Arms Register was created at a time when interstate conflict was prominent on the political agenda and in which large arms systems for offensive military operations were considered to be the greatest threat to peace. The categories are rudimentary, but are still relevant today. Since the start of the UN Arms Register, however, and in light of technological developments and changing forms of conducting war, it has been acknowledged that the list of conventional arms must be dynamic in order to remain relevant. A procedure was therefore foreseen in order for a group of experts to evaluate the Register every three years.⁹ The insertion of the eight categories in the ATT risks being an overly static representation in which new technological developments, such as unmanned aircraft, fall outside the scope. Small and light arms were indeed added to the categories. This was a breaking point for many UN Member States. It was not a major point of discussion during the negotiations: all Member States agreed that small and light arms effectively form part of conventional arms.

Ammunition, on the contrary, is not listed under Article 3. There was heavy debate in July 2012 about the inclusion of ammunition in the scope of the Treaty. African States in particular attach great importance to the inclusion of an ammunition category. Ammunition is in fact deadlier than weapons themselves. European states also defend this vision. Other States, among which the voice of the United States is the loudest, are against the inclusion of ammunition.¹⁰ The argument is that ammunition is impossible to trace, and that monitoring of trade in ammunition as well as its reporting with a view to diversion to illicit markets and end-users is unfeasible.¹¹ Nevertheless, ammunition is monitored in the EU Export Control Regime and by the Wassenaar Arrangement in which various large export countries, including the US, Russia, France, Germany and the United Kingdom, have joined. The US also controls exports of ammunition on a national basis. The argument that control of diversion to illicit ammunition markets is difficult to put into practice constitutes an additional argument for controlling end-use at the time of the licence application.¹² In the text of the Draft Treaty, ammunition is addressed under Article 6, which establishes rules for exports of conventional arms. In this way, however, ammunition is exempt from the reporting obligation, from Art. 4.6 – which lists a number of criteria, including the risk of improper end-use –

and from requirements for regulating the import, transit or brokering of ammunition (see also commentary for Art. 6).

Furthermore, the lack of a definition of the word ‘ammunition’ is potentially confusing. In the English language, two different terms are used for the word ammunition, namely: ‘munition’ and ‘ammunition’. The Draft Text of the ATT uses the notion of ammunition. However, it is not clear whether, alongside cartridges, it also includes other explosives such as bombs and grenades. ‘Munitions’ generally includes military arms and ammunition as well as bombs and grenades. ‘Ammunition’ is often understood as a sub-category of munitions, but is also used to describe munitions and other explosives such as bombs and grenades. Lacking international agreement about the use of the term ‘ammunition’, it is important that the Treaty includes a definition.¹³

A similar compromise has been worked out for components. Components are also not included under the scope, but are indeed mentioned under Art. 6. There as well, the inclusion of sensitive components in the scope (Art. 2.A) provides added value because the wording in Art. 6 is informal, and only finished systems fall strictly under the provisions of the Treaty.

Furthermore, the categories are not considered as generic categories. It would be beneficial for the Treaty to include in its scope not only finished systems, but also the parts and components and technology required to manufacture, adapt or repair the listed items. Various States, including the US, support this view.¹⁴

3.2.2 Activities

The Treaty imposes separate rules for exports, imports, brokering and transit. Different control measures apply according to the nature of the activity. Export is more strictly regulated than import, brokering or transit. The overarching term for all transactions is ‘transfer’. Export, import, brokering or transit are not specifically defined in the Draft Treaty.

There is however uncertainty about the term ‘transfer’. It is not clear whether, alongside commercial trade, the Treaty also includes non-commercial trade such as gifts, assistance or loans. The text of the Treaty will have to clear up this uncertainty. International transfers from States Parties to an army or law enforcement troops – given that conventional arms remain the property of the State Party – are excluded from the ATT (Art. 2.B.4). Furthermore, it would benefit the clarity of the Treaty to describe that ‘transfer’ includes exports, imports, transit and brokering with State-to-State as well as State-to-private trade, commercial trade, loans and gifts.¹⁵

3.3 Assessment criteria

One of the most important elements of the ATT are the assessment criteria. According to which standards shall trade in conventional arms be tested globally? In the discussion about the criteria, it is clear that there is a shared basis, mainly founded on existing international treaties, but the weight accorded them differs among UN Member States. The Draft Treaty of the ATT defines a graduated system of assessment criteria in order to enable a compromise.

Article 3 presents the criteria to which the greatest weight is given. It concerns violations of international treaties which are particularly important in light of armed conflicts and arms trade. States Parties to the ATT shall not authorize any transfer (imports, exports, brokering or transit) if:

1. the transfer would violate measures adopted under Chapter VIIⁱ of the Charter of the United Nations, in particular concerning arms embargoes.
2. the transfer would violate its relevant international obligations, namely international agreements to which it is a Partyⁱⁱ, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
3. the transfer shall be used for the purpose of facilitating the commission of genocide, crimes against humanity, or war crimes constituting grave breaches of the Geneva Conventions (this article concerns internal armed conflicts).ⁱⁱⁱ

Article 4 received the title 'National Assessment Criteria'. This title is inspired by the concern of states, including Russia, to safeguard national competency to assess licence applications. The title emphasizes that national states are entitled to take these criteria into consideration for licence applications.

It is important to stress that the criteria from Article 4 only apply to the assessment of export licences and do not apply to imports, transit or brokering. When assessing licence applications for exports, States Parties shall assess whether:

1. the export would contribute to or undermine peace and security (Art. 4.1)
2. the export could be used to commit or facilitate a serious violation of international humanitarian law (IHL); to commit or facilitate a serious violation of international human rights law (IHR); or to commit or facilitate an act constituting an offence under international conventions and protocols relating to terrorism (Art. 4.2).

When there is a risk of violations of Art. 4.2 (humanitarian law, human rights or terrorism), the exporting State can take additional measures – so-called 'risk mitigation measures' – in consultation with the importing State in order to mitigate the risk (Art. 4.4).

When the risk of one (or more) of the stipulations from Art. 4.2 are 'overriding' – despite the potential to take additional measures and in compliance with Art. 4.1 – the export shall not be authorized (Art. 4.5).

ⁱ Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression.

ⁱⁱ Certain Member States and NGOs advocate removing the subordinate clause, "in particular international agreements to which a state which is party to the treaty has committed itself". This subordinate clause has as a result that all obligations which arise from customary law are not included under international obligations, even though customary law commits all States.

ⁱⁱⁱ Particularly for this third stipulation, criticism has been raised that the English description, "*for the purpose of facilitating the commission of genocide, crimes against humanity...*" is formulated too strictly. As an alternative, softer wording such as, "*if the transfer would amount to aid or assistance in the commission of genocide, ...*" has been put forward.

There was much debate about this consequence (denial of the licence) during the negotiations. Not all UN Member States are keen on subjecting their national assessment to international agreements; various States would prefer a less stringent formulation of international standards as assessment criteria. In contrast to Art. 3, a denial does not automatically result from a violation of Art. 4.2. Firstly, considerations from Art. 4.1 can shift the balance to a positive assessment; for instance, because it is judged that the export shall contribute to peace and security. Secondly, measures can be taken to reduce the risk. Thirdly, there is a substantial margin for States Parties to deem the risk overriding or not. A better word for overriding would be 'substantial'. However, the burden of proof for an estimation of a *risk of violations* in Article 4 is not as heavy as the burden of proof for violations from Article 3.

In addition to humanitarian law, human rights and terrorism, a number of other criteria have been brought forward for which there was less agreement among UN Member States. These criteria were grouped in the Draft Treaty under Article 4.6. The article provides that States shall consider taking measures in order to avoid that arms:

1. would be diverted to the illicit market or for unauthorized end use
2. would be used to commit or facilitate gender-based violence or violence against children
3. would be used for transnational organized crime
4. would become subject to corrupt practices
5. would adversely impact the development of the importing State.

The Draft Treaty thus proposes that States Parties (possibly in consultation with other States involved) take appropriate measures when they assess a licence application for exports in order to avoid that these criteria are violated. However, these criteria do not serve as assessment criteria to grant or deny a licence. In view of the divergent positions of States with regard to the criteria, less weight is assigned to it.

There was no consensus concerning the inclusion of serious violations of human rights under Article 3.3. In contrast to the European Common Position, in the framework of the UN there was in fact agreement about violations of the IHL as ground for denial under Art. 3, but not about violations of human rights under Art. 3. According to the current text of the Draft Treaty, the difference is not very substantial, considering that Art. 4 is a risk assessment, and here as well a denial is the outcome if this risk cannot be avoided. Nevertheless, it is important to retain human rights violations as a ground for denial for arms trade (not only for exports, but also for transit, imports and brokering).

A subsequent focal point concerns the weight given to the diversion criterion in Art. 4.6. While the text of the Draft Treaty repeatedly puts forward preventing illicit arms trade, diversion to illicit markets and unauthorized end use as important elements, this criterion is only addressed as an additional measure under 4.6 and is not considered as an assessment criterion. These criteria must be taken into consideration, but according to the text they constitute no ground for denial of a licence application. It seems crucial to estimate the risk of diversion during the assessment of licence applications, and to deny the licence when the risk is too high. Considering that the same

can be said for the other criteria, it would be desirable to opt to revalue all criteria under 4.6 to the status of the criteria under 4.2. A revaluation for the criteria concerning diversion (Art. 4.6.a) seems to be the minimum.

3.4 General implementation

Article 5 concerns implementation of the Treaty. It concerns measures which shall be taken to implement the Treaty: the exchange of information, indicating competent services, or the objective, non-discriminating way in which the Treaty must be implemented. Two stipulations refer to the importance of control of end use. Article 5.5 establishes that Member States shall take appropriate measures to prevent diversion to illicit markets or unauthorized use (Art. 5.5). The added value of this stipulation (which actually restates Art. 4.6) is that this article not only concerns exports, but also imports, transit and brokering. When a case of diversion is detected, the States Parties can inform other States which are potentially affected or involved in the transfer (to the extent that this is in accordance with their national law) (Art. 5.6).

Aside from the particular location of the article in the Draft Treaty, one stipulation in particular causes concern. Art. 5.2 states that the implementation of the Treaty should not affect commitments undertaken in other instruments. The Treaty shall not be invoked as grounds for declaring invalid the contractual obligations for defence entered into by States Parties in the framework of cooperation programmes. The way in which this article is formulated undermines the effect of the ATT. The stipulation from Art. 5.2 possibly intends to provide a transitional measure in order to be able to observe existing contractual obligations. Firstly, one must wonder whether this article is necessary. In principle, States Parties should keep to the agreements adopted in the Treaty. If it is deemed necessary to introduce a transitional stipulation, the article should be reformulated so that it is clear that it concerns existing contracts, and it should have a time limit. Without this specification, perpetual or future contracts, including obligations which arise from any other instrument, would fundamentally undermine the effect of the Treaty. There are calls to either remove the article from the Draft Treaty, or to adjust the wording.

3.5 Export

Articles 6-9 focus on which requirements can be placed on export, import, brokering and transit. Article 6 contains the conditions which are placed upon exports of conventional arms; these are the most far-reaching. It is clear that the Draft Treaty most strongly emphasizes control of exports.

For exports, States Parties shall take into account all the stipulations from Articles 3 and 4 during their national assessment. Exports of conventional arms which fall under the scope of the Treaty (Art. 2) shall be subject to a licence obligation. Licences can be suspended and revoked.

As stated earlier, ammunition does not form part of the scope of the Draft Treaty. As an attempt at compromise, the word 'ammunition', however, is included in this article. Art. 6.4 establishes

that each State Party shall establish or maintain a control system to regulate the export of ammunition for conventional arms. Art. 3 and Art. 4 paragraphs 1 through 5 are taken into consideration for the assessment of licence applications for ammunition. In this way, ammunition is not subject to a reporting obligation, to Art. 4.6 or to obligations to regulate imports, transit or brokering in ammunition. On the other hand, States are obliged to control exports of ammunition.

The Draft Treaty (Art. 6.5) addresses components in a similar way. States Parties shall introduce a control system for the export of components to the extent they deem necessary. To this end, Article 3 and Article 4, paragraph 1-5, shall also apply to the control of components, so that components also escape the same stipulations as ammunition. The text pursues a compromise between feasibility and effectiveness, whereby there is plenty of space left for Member States to determine which components they control.

The way in which ammunition and components are included in the Draft Treaty is an attempt to also regulate these categories in the ATT, and at the same time to respond to States which do not wish to adopt ammunition and components under the scope of the ATT. Ideally, ammunition, components and technology will be included under the scope (Art. 2) of the entire Treaty.

3.6 Import, brokering, transit

Articles 7, 8 and 9 regulate respectively import, brokering and transit. The articles are fairly vague and rather non-committal. Article 7 on import emphasizes the importance of the exchange of information between the importing and exporting State. Furthermore, it states that the importing State shall take appropriate measures to regulate import where necessary, and also that the State shall take measures to prevent the diversion of imported arms.

Article 8 obliges States to regulate brokering in conventional arms, without going into further detail. Control of transit is the least compulsory. Article 9 establishes that each State Party shall take appropriate measures to regulate transit where necessary and feasible. Exchange of information shall take place where feasible and upon request, with a view to preventing diversion.

From the negotiations about the Treaty, it appeared that detailed provisions about import, brokering and transit would be difficult to achieve. The emphasis in the Draft Treaty rests clearly upon export, in the second instance on import, and only then on brokering and transit. The capacity of UN Member States to control these forms of trade varies widely. The criteria from Article 3 equally apply to these transfers; the criteria from Article 4 do not. However, it is positive that import, transit and brokering are included in the Treaty, even if in a rather non-committal form. States Parties are committed to also take measures to control these trade transactions. Further development can eventually take shape in subsequent conferences (see Art. 21).

3.7 Reporting

Article 10 establishes obligations for recordkeeping and reporting. Each State Party maintains records in accordance with national legislation concerning export licences or actual export data (real exports) of conventional arms which fall under the scope of the ATT (excluding ammunition and components). If feasible, details on import and transit are also maintained (Art. 10.1). The records are saved for ten years. Article 10.2 also determines the type of data such records can contain, although it is not formulated as obligatory. Each State Party shall submit a report annually to the Secretariat (see Art. 12). The data shall be distributed among the States Parties. Further, Art. 10.3 and 10.4 specify that States shall also report about activities undertaken in order to implement the Treaty, with separate mention of any actions taken to address the diversion of conventional arms to the illicit market or for unauthorized end use.

The article does not mention public reporting. Transparency with regard to arms trade is nonetheless important in order, as a parliamentary and civil society, to supervise and to be able to hold governments accountable. It is desirable to write public transparency into the article so that the ATT does not miss the chance to increase transparency about global exports of conventional arms.

3.8 Implementation

Articles 11-14 contain a number of provisions which are to guide implementation of the Treaty. Article 11 very briefly establishes that States Parties shall adopt appropriate national measures in order to implement the Treaty, including measures to enforce these national laws and regulations. There is no explicit reference to the obligation to impose clear penalties for violations which challenge the objectives of the Treaty. Penalties are necessary to make a control systems effective. It is desirable to include this explicitly in the article.

The Draft Treaty provides for the establishment of a secretariat to assist States Parties in the effective implementation of the Treaty. The secretariat is responsible for, inter alia, receiving and distributing the report and facilitating the assistance to States Parties (Art. 12). Art. 13 encourages cooperation among States, central to which is the exchange of information. Art. 14 provides for voluntary capacity-building among States Parties.

3.9 Final provisions

Art. 15 to 25 contain the final provisions. They concern provisions about signing and accession to the Treaty (Art. 15), its entry into force (Art. 16 and 17), the unlimited duration of the Treaty and the right of States Parties to withdraw from the Treaty (Art. 18), and the possibility to formulate reservations, as long as they are not incompatible with the objectives of the Treaty (Art. 19).

Art. 20 describes the procedure for making amendments to the Treaty. The procedure for approving amendments is strict. In contrast to other Treaties (such as with the Firearms Protocol,

the Chemical Weapons Convention or the Non-Proliferation Treaty), amendments can only be made by consensus. It is more common to approve the amendments by (two-thirds) majority, whereby the amendments usually enter into force for the States Parties which have signed it. Given that the Treaty is not concretely developed on various issues, it seems useful to relax the procedure for amending in order to enable further adaptations in future.

Art. 21 establishes that a conference of States Parties shall be convened to facilitate the functioning of the Treaty, to evaluate and to consider any amendments. A procedure is also provided for disputes between States Parties with regard to the interpretation and application of the Treaty (Art. 22). Art. 23 establishes that Art. 3 and 4 shall apply to all exports of conventional arms to within the scope of the Treaty to States not party to the Treaty. This provision is redundant because it is obvious, and it would be better if it was removed. Finally, Article 24 establishes that States Parties have the right to enter into agreements with regard to international trade, provided that these agreements are compatible with their obligations under this Treaty and do not undermine the objective of this Treaty. In view of this provision, we recommend removing Art. 5.2 or revisiting its formulation.

The Treaty does not provide the opportunity for regional organizations for (economic) integration to enter into the Treaty. There was no agreement during negotiations about adding the so-called R(E)IO clause. The European Union insisted on this clause. In this way, the EU could enter into the Treaty, just as the EU entered into the Firearms Protocol. This means that the EU has the right to vote on affairs that fall under EU jurisdiction. The vote of the EU stands in for the vote of its 27 Member States and vice-versa. Given that some Treaty provisions touch upon exclusive EU competences, and the EU aspires to act as a single actor at international forums, the RIO Clause was defended by EU Member States at the negotiations in July 2012. However, this possibility was not adopted in the Draft Treaty.

4 Advice

In view of the negotiations in New York of 18-28 March 2013 concerning a global Arms Trade Treaty, the Flemish Peace Institute advises the Federal and Regional Governments of Belgium, as well as other actors involved in the negotiations, to address the following focal points during the negotiations:

- 1) With regard to the scope of the Treaty:
 - a. To include, at a minimum, ammunition, and ideally also components and technology under Art. 2.A, which defines the scope of the Treaty.
 - b. Not to limit the concept of 'transfer' to commercial activities, but to define it broadly so that non-commercial transfers, such as gifts, are also included.
 - c. To include an article which presents definitions that clarify the scope of concepts such as 'transfers' or 'ammunition'.
- 2) With regard to the assessment criteria:
 - a. Continue to insist on the importance of serious and continuing violations of human rights by including it in Art. 3 (Prohibited transfers).
 - b. Upgrade the criteria for diversion and unauthorized end-use (Art. 4.6.a) to Art. 4.2, so that estimating the risk of unauthorized end-use can be used as a powerful assessment criterion which serves as the basis to deny a licence.
 - c. Replace the notion of 'overriding risk' in Art. 4.5 with 'substantial risk', considering that this affords greater clarity. An application should be denied if these risks are substantial, independent of other considerations.
- 3) With regard to interaction between the ATT Treaty and existing legal instruments:
 - a. Insist on the removal or at least reformulation of Art. 5.2
 - b. Insist on the removal of Art. 23 from the Draft Treaty (relationships with non-States Parties).
- 4) With regard to transparency:
 - a. Argue for a reference to public transparency regarding national reports concerning exports of conventional arms as described in Art. 10.

In conclusion, the Flemish Peace Institute refers to the importance of continued follow-up of the Treaty. The process of ratification, the possibilities for amending as well as refining the Treaty in users' guides, follow-up conferences and the functioning of the Secretariat must ensure a progressive strengthening of any Treaty, so that the instrument can gain force and can make an actual difference with regard to preventing destabilizing transfers of conventional arms in future.

End notes

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- ¹ Nobel Peace Laureates' International Code of Conduct On Arms Transits, May 1997.
- ² Hendrickx, M. (2012), Written request to Mr. Kris Peeters, Minister-President of the Flemish Government about the UN conference on arms trade – position, Flemish Parliament, question no. 100 of 22 November 2012 and accompanying answer to the question.
- ³ Cooperation Agreement of 8 March 1994 between the Federal Government, the Communities and Regions on the detailed procedures for concluding mixed treaties.
- ⁴ Hendrickx, M. (2012). Written question to Mr. Kris Peeters, Minister-President of the Flemish Government on the UN Conference on the Arms Trade Treaty – position, Flemish Parliament, question no. 100 of 22 November 2012 and accompanying answer to the question.
- ⁵ Hendrickx, M. (2012). Written question to Mr. Kris Peeters, Minister-President of the Flemish Government on the UN Conference on the Arms Trade Treaty – position, Flemish Parliament, question no. 100 of 22 November 2012 and accompanying answer to the question.
- ⁶ Belgian Chamber of Representatives, Resolution concerning a strong international arms treaty, text adopted in the plenary meeting, Doc. 1794/005, 9 February 2012.
- ⁷ Brems, E. (2012) Written question and answer Bulletin no. B083. Negotiations on the Arms Trade Treaty, and Brems, E. Written question and answer no. 0112, sitting period 53.
- ⁸ Ibid, p.12.
- ⁹ UNODA (2009), *Assessing the United Nations Register of Conventional Arms*, New York: UNODA Occasional Papers, no. 16, April 2009, p 1.
- ¹⁰ US Department of State, Position of the United States in the upcoming Arms Trade Treaty Conference.
<http://www.state.gov/t/isn/rls/rm/188002.htm>
- ¹¹ Arms Control Association, New ATT plan advances, Kimball D.G. http://www.armscontrol.org/act/2012_11/New-ATT-Plan-Advances Arms Control Today, November 2012.
<http://www.state.gov/documents/organization/148527.pdf>
<http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/monitor/ATTMonitor5.7.pdf>
<http://www.acronym.org.uk/blog/att-conf-2012/simple-logic-in-short-supply-att-negotiations>
- ¹² Acheson, R. (2012), *Editorial: 12 billion reasons to include ammunition in the ATT*, Reaching critical will, Arms Trade Treaty Monitor, 12 July 2012.
- ¹³ For more information about definitions of ammunition in international forums, see *Ammunition and the ATT: options for and implications of its inclusion*, consulted on 4 March 2013 at <http://www.unidir.org/pdf/activities/pdf18-act537.pdf>.
- ¹⁴ U.S. Department of state, diplomacy in action, *Arms Trade Treaty fact sheet*, consulted on 4 March 2013 at <http://www.state.gov/t/isn/armstradetreaty/>
- ¹⁵ See also, U.S. Department of State, Diplomacy in Action, *Arms Trade Treaty fact sheet*, consulted on 4 March 2013 at <http://www.state.gov/t/isn/armstradetreaty/>.

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