

1 August 2012

Original: English

United Nations Conference on the Arms Trade Treaty

New York, 2-27 July 2012

Draft of the Arms Trade Treaty

Submitted by the President of the Conference

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling that the Charter of the United Nations promotes the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent, combat and eradicate the illicit trade of conventional arms and to prevent their diversion to the illicit market and for unauthorized end use,

Recognizing the legitimate political, security, economic and commercial rights and interests of States in the international trade of conventional arms,

Reaffirming the sovereign right and responsibility of any State to regulate and control transfers of conventional arms that take place exclusively within its territory, pursuant to its own legal or constitutional systems,

Recognizing that development, human rights and peace and security, which are three pillars of the United Nations, are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission guidelines on international arms transfers adopted by the General Assembly,

Noting the contribution made by the 2001 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime,

Recognizing the security, social, economic and humanitarian consequences of the illicit trade in and unregulated trade of conventional arms,



Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Bearing in mind that women and children are particularly affected in situations of conflict and armed violence,

Emphasizing that nothing in this Treaty prevents States from exercising their right to adopt additional and more rigorous measures consistent with the purpose of this Treaty,

Taking note of the legitimate trade and use of certain conventional arms, inter alia, for recreational, cultural, historical and sporting activities and lawful ownership where such ownership and use are permitted and protected by law,

Recognizing the active role that non-governmental organizations and civil society can play in furthering the object and purpose of this Treaty, and

Acknowledging that regulation of the international trade in conventional arms should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Principles

Guided by the purposes and principles of the Charter of the United Nations, States Parties, in promoting the object and purpose of this Treaty and implementing its provisions, shall act in accordance with the following principles:

1. The inherent right of all States to individual or collective self-defence;
2. The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered;
3. To refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;
4. Non-intervention in matters which are essentially within the domestic jurisdiction of any State;
5. The duty to respect and ensure respect for international humanitarian law and to respect and ensure human rights;
6. The responsibility of all States, in accordance with their respective international obligations, to effectively regulate and control international transfers of conventional arms, as well as the primary responsibility of all States in establishing and implementing their respective national export control systems;
7. States Parties should respect the legitimate interests of States to acquire conventional weapons for legitimate self-defence and peacekeeping operations and to produce, export, import and transfer conventional arms; and
8. The necessity to implement this Treaty consistently and effectively and in a universal, objective and non-discriminatory manner.

Have agreed as follows:

Article 1

Goals and objectives

The goals and objectives of the Treaty are:

(a) For States Parties to establish the highest possible common standards for regulating or improving the regulation of the international trade in conventional arms; and

(b) To prevent, combat and eradicate the illicit trade in conventional arms and their diversion to the illicit market or for unauthorized end use;

In order to:

(c) Contribute to international and regional peace, security and stability;

(d) Prevent the international trade in conventional arms from contributing to human suffering; and

(e) Promote cooperation, transparency and responsibility of States Parties in the trade in conventional arms, thus building confidence among States Parties.

Article 2

Scope

A. Covered items

1. This Treaty shall apply to all conventional arms within the following categories, at a minimum:

- (a) Battle tanks;
- (b) Armoured combat vehicles;
- (c) Large-calibre artillery systems;
- (d) Combat aircraft;
- (e) Attack helicopters;
- (f) Warships;
- (g) Missiles and missile launchers; and
- (h) Small arms and light weapons.

2. Each State Party shall establish or update, as appropriate, and maintain a national control list that shall include the items that fall within paragraph 1 of this article, as defined on a national basis and, at a minimum, based on relevant United Nations instruments. Each State Party shall publish its control list to the extent permitted by national law.

B. Covered activities

3. This Treaty shall apply to those activities of the international trade in conventional arms set out in articles 5, 6, 7, 8 and 9, hereafter referred to as “transfer”, for the conventional arms covered under the scope of this Treaty.

4. This Treaty shall not apply to the international movement of conventional arms by a State Party or its agents for its armed forces or law enforcement authorities operating outside its national territories, provided the conventional arms remain under the State Party's ownership.

Article 3

Prohibited transfers

1. A State Party shall not authorize any transfer of conventional arms if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

2. A State Party shall not authorize any transfer of conventional arms within the scope of this Treaty if the transfer would violate its relevant international obligations, under international agreements to which it is a Party, in particular those relating to the international transfer of, or illicit trafficking in, conventional arms.

3. A State Party shall not authorize a transfer of conventional arms within the scope of this Treaty for the purpose of facilitating the commission of genocide, crimes against humanity, war crimes constituting grave breaches of the Geneva Conventions of 1949, or serious violations of common article 3 of the Geneva Conventions of 1949.

Article 4

National assessment

1. In considering whether to authorize an export of conventional arms within the scope of this Treaty, each State Party shall assess whether the proposed export would contribute to or undermine peace and security.

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

(a) Be used to commit or facilitate a serious violation of international humanitarian law;

(b) Be used to commit or facilitate a serious violation of international human rights law; or

(c) Be used to commit or facilitate an act constituting an offence under international conventions and protocols relating to terrorism to which the transferring State is a Party.

3. In making the assessment, the exporting State Party shall apply the criteria set out in paragraph 2 of this article consistently, and in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State.

4. In assessing the criteria set out in paragraph 2 of this article, the exporting State Party may also take into consideration the establishment of risk mitigation measures, including confidence-building measures and jointly developed programmes by the exporting and importing States.

5. If, after conducting the assessment called for in paragraphs 1 and 2 of this article, and after considering the mitigation measures provided for in paragraph 4 of this article, the State Party finds that there is an overriding risk of any of the consequences under paragraph 2 of this article, the State Party shall not authorize the export.

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

- (a) Being diverted to the illicit market or for unauthorized end use;
- (b) Being used to commit or facilitate gender-based violence or violence against children;
- (c) Being used for transnational organized crime;
- (d) Becoming subject to corrupt practices; or
- (e) Adversely impacting the development of the importing State.

Article 5

General implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, in accordance with the goals and objectives of this Treaty.

2. The implementation of this Treaty shall not prejudice obligations undertaken with regard to other instruments. This Treaty shall not be cited as grounds for voiding contractual obligations under defence cooperation agreements concluded by States Parties to this Treaty.

3. Each State Party shall take all appropriate legislative and administrative measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the international transfer of conventional arms.

4. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. A State Party shall notify the secretariat, established under article 12, of its national point(s) of contact and keep the information updated.

5. States Parties involved in an international transfer of conventional arms shall, in a manner consistent with this Treaty, take appropriate measures to prevent diversion to the illicit market or for unauthorized end use.

6. If a diversion is detected, the State or States Parties that made the detection may notify the State or States Parties that could be affected by such diversion, to the extent permitted in their national laws, in particular those States Parties that are involved in the transfer or may be affected, without delay.

Article 6

Export

1. Each exporting State Party shall conduct national assessments, as detailed in paragraphs 1, 2, 3, 4 and 5 of article 4 and taking into account the considerations as detailed in paragraph 6 of article 4, whether to authorize the export of conventional arms under the scope of this Treaty under its jurisdiction. Each State Party shall apply articles 3 and 4, taking into account all relevant information.

2. Each State Party shall take measures to ensure that all authorizations for the export of conventional arms under the scope of this Treaty are detailed and issued prior to the export. Appropriate information about the export in question shall, upon request, be made available to the importing, transit and trans-shipment States Parties, in accordance with national laws.

3. If, after an authorization has been granted, a State Party becomes aware of new relevant information that causes it to reassess that there is an overriding risk of any of the consequences of paragraphs 1, 2, 3, 4 and 5 of article 4, the State Party may suspend or revoke the authorization.

4. Each State Party shall establish and maintain a national control system to regulate the export of ammunition for conventional arms under the scope of this Treaty, and shall apply article 3, and paragraphs 1, 2, 3, 4 and 5 of article 4 prior to authorizing any export of ammunition.

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

Article 7

Import

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, in accordance with its national laws, to the exporting State Party to assist the exporting State Party in its national assessment.

2. Each importing State Party shall put in place adequate measures that will allow them to regulate, where necessary, imports of conventional arms under the scope of this Treaty. Each importing State Party shall also adopt appropriate measures to prevent the diversion of imported conventional arms under the scope of this Treaty to the illicit market or for unauthorized end use.

3. Each importing State Party may request information from the exporting State Party concerning any pending authorizations where the importing State Party is the country of final destination.

Article 8 Brokering

Each State Party shall take the appropriate measures, within its national laws, to regulate brokering taking place under its jurisdiction for conventional arms under the scope of this Treaty. Such controls may require brokers to register or obtain written authorization before engaging in brokering transactions.

Article 9 Transit and trans-shipment

1. Each State Party shall adopt appropriate legislative, administrative or other measures to regulate, where necessary and feasible, conventional arms covered by this Treaty that transit or trans-ship through its territory.

2. Importing and exporting States Parties shall cooperate and exchange information, where feasible and upon request, to transit and trans-shipment States Parties, in order to mitigate the risk of diversion.

Article 10 Reporting and recordkeeping

1. Each State Party shall maintain national records, in accordance with its national laws and regulations, of the export authorizations or actual exports of the conventional arms under the scope of this Treaty and, where feasible, details of those conventional arms transferred to their territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.

2. Such records may contain, inter alia, quantity, value, model/type, authorized international transfers of conventional arms under the scope of this Treaty, conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s) and end users, as appropriate. Records shall be kept for a minimum of ten years, or longer if required by other international obligations applicable to the State Party.

3. Each State Party may report to the secretariat, when appropriate, any actions taken to address the diversion of conventional arms to the illicit market or for unauthorized end use.

4. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, provide an initial report to the secretariat of relevant activities undertaken in order to implement this Treaty, including national laws, regulations and administrative measures. States Parties shall report on any new activities undertaken in order to implement this Treaty, when appropriate. Reports shall be made available and distributed to States Parties by the secretariat.

5. Each State Party shall submit annually to the secretariat by 1 July a report for the preceding calendar year concerning the authorization or actual transfer of conventional arms under the scope of this Treaty. Reports shall be made available and distributed to States Parties by the secretariat. The report submitted to the secretariat may contain the same information submitted by the State Party to

relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 11

Enforcement

Each State Party shall adopt appropriate national measures and policies as may be necessary to enforce national laws and regulations and implement the provisions of this Treaty.

Article 12

Secretariat

1. This Treaty hereby establishes a secretariat to assist States Parties in the effective implementation of this Treaty.

2. The secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the secretariat can effectively undertake the responsibilities described in paragraph 3 of this article.

3. The secretariat shall be responsible to States Parties. Within a minimized structure, the secretariat shall undertake the following responsibilities:

(a) Receive, make available and distribute the reports as mandated in this Treaty;

(b) Maintain and distribute regularly to States Parties the list of national points of contact;

(c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;

(d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and

(e) Perform other duties as mandated by this Treaty.

Article 13

International cooperation

1. States Parties shall cooperate, as appropriate, to enhance the implementation of this Treaty, consistent with their respective security interests and national laws.

2. Each State Party is encouraged to facilitate international cooperation, including the exchange of information on matters of mutual interest regarding the implementation and application of this Treaty in accordance with its respective security interests and national legal system.

3. Each State Party is encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.

4. Each State Party may cooperate, as appropriate, in order to enforce the provisions of this Treaty, including sharing information regarding illicit activities and actors to assist national enforcement and to counter, prevent and combat diversion to the illicit market or for unauthorized end use, in accordance with national laws. States Parties may also exchange experience and information on lessons learned in relation to any aspect of this Treaty, to assist national implementation.

Article 14

International assistance

1. In implementing this Treaty, each State Party may seek, inter alia, legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Each State Party in a position to do so shall, upon request, provide such assistance.

2. Each State Party may request, offer or receive assistance, inter alia, through the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.

3. States Parties may also contribute resources to a voluntary trust fund to assist requesting States Parties requiring such assistance to implement the Treaty. The voluntary trust fund shall be administered by the secretariat under the supervision of States Parties.

Article 15

Signature, ratification, acceptance, approval or accession

1. This Treaty shall be open for signature at United Nations Headquarters in New York by all States and shall remain open for signature until its entry into force.

2. This Treaty is subject to ratification, acceptance or approval by each signatory State.

3. This Treaty shall be open for accession by any State that has not signed the Treaty.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 16

Entry into force

1. This Treaty shall enter into force ninety days following the date of the deposit of the sixty-fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, the Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 17

Provisional application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally articles 3 and 4 of this Treaty pending its entry into force for that State.

Article 18

Duration and withdrawal

1. This Treaty shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notice of such withdrawal to the depositary, which shall notify all other States Parties. The instrument of withdrawal shall include an explanation of the reasons motivating this withdrawal. The instrument of withdrawal shall take effect ninety days after the receipt of the instrument of withdrawal by the depositary, unless the instrument of withdrawal specifies a later date.

3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a party to the Treaty, including any financial obligations that may have accrued.

Article 19

Reservations

1. Each State Party may formulate reservations, unless the reservation is incompatible with the object and purpose of this Treaty.

2. Reservations may be withdrawn at any time.

Article 20

Amendments

1. At any time after the entry into force of this Treaty, a State Party may propose an amendment to this Treaty.

2. Any proposed amendment shall be submitted in writing to the secretariat, which shall then circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties. The amendment shall be considered at the next Conference of States Parties if a majority of States Parties notify the secretariat that they support further consideration of the proposal, no later than 120 days after its circulation by the secretariat.

3. Any amendment to this Treaty shall be adopted by consensus of those States Parties present at the Conference of States Parties. The depositary shall communicate any adopted amendment to all States Parties.

4. A proposed amendment adopted in accordance with paragraph 3 of this article shall enter into force for all States Parties to the Treaty, upon deposit with the depositary of the instruments of acceptance by a majority of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 21

Conference of States Parties

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

2. The Conference of States Parties shall:

(a) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;

(b) Consider amendments to this Treaty;

(c) Consider and decide the tasks and budget of the secretariat;

(d) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of the Treaty; and

(e) Perform any other function consistent with this Treaty.

3. If circumstances merit, an exceptional meeting of States Parties may be convened if required and resources allow.

Article 22

Dispute settlement

1. States Parties shall consult and cooperate to settle any dispute that may arise between them with regard to the interpretation or application of this Treaty.

2. States Parties shall settle any dispute between them concerning the interpretation or application of this Treaty through negotiations, mediation, conciliation or other peaceful means of the Parties' mutual choice.

3. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the implementation of this Treaty.

Article 23
Relations with States not party to this Treaty

States Parties shall apply articles 3 and 4 to all exports of conventional arms within the scope of this Treaty to States not party to this Treaty.

Article 24
Relationship with other instruments

States Parties shall have the right to enter into agreements in relation to the international trade in conventional arms, provided that those agreements are compatible with their obligations under this Treaty and do not undermine the object and purpose of this Treaty.

Article 25
Authentic texts and depositary

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
