



**British Group**  
Inter-Parliamentary Union

# Arms T T Trade Treaty

**OUTCOME DOCUMENT &  
PROCEEDINGS**

INTERNATIONAL PARLIAMENTARY SEMINAR

3–5 November 2014



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## Outcomes of the International Parliamentary Seminar on the Arms Trade Treaty

### **Context of the Seminar**

The British Group Inter-Parliamentary Union (BGIPU) International Parliamentary Seminar on the Arms Trade Treaty (ATT) brought together parliamentarians from 17 national parliaments to contribute to a three-day Conference in the Houses of Parliament, Westminster from 3-5 November 2014.

The programme of the Seminar focused on the role of parliamentarians in all aspects of the Treaty; from promoting ratification and universalisation of the ATT, to monitoring and reporting mechanisms, parliamentary oversight and cooperation with civil society and industry actors.

Through bringing together parliamentarians from around the globe, along with representatives of civil society, including leading arms control experts, the Seminar sought to build upon existing momentum surrounding the Treaty as it approaches entry into force, and aimed to increase the knowledge and understanding at parliamentary level of Arms Trade Treaty issues ahead of the establishment of the first Conference of States Parties.

The BGIPU and those present acknowledged and drew reference from previous parliamentary activity on the ATT, including but not limited to, the Inter-Parliamentary Union, the work of the Parliamentary Forum on Small Arms and Light Weapons, Control Arms, Parliamentarians for Global Action and other stakeholders.

Looking ahead to the First Conference of States Parties expected to be held in Mexico in 2015, the parliamentary participants endorsed the following outcome;

### **OUTCOME DOCUMENT: "PARLIAMENTARY PERSPECTIVES ON THE ARMS TRADE TREATY"**

Over the course of their discussions the Parliamentarians present at the BGIPU Seminar on the Arms Trade Treaty highlighted the following key perspectives;

Participants reaffirmed their strong support for and commitment to an effective ATT, as representatives of citizens across the globe, for those who have seen their lives lost, or irreparably changed by the irresponsible use of arms.

The Arms Trade Treaty came about through the joint effort and commitment of governments, industry, civil society and parliaments and it is through this continued cooperation and effort that the ATT will continue to be a strong, accountable and effective response to the scourge of the irresponsible use of the arms trade moving forward.

- Those present also reaffirmed the parliamentary perspective on the Arms Trade Treaty that upon Entry into force that the Treaty will serve the following purposes;
- It will save lives.
- It will promote sustainable development. It will reduce human suffering by preventing arms being used in serious violations of human rights and international humanitarian law.
- It will help to combat terrorism and crime by steadily reducing the unfettered proliferation of weapons.
- It will protect the legitimate arms trade, allowing states to access and acquire weaponry to lawfully defend themselves, but it will also ensure that this process is not circumvented, abused or exploited.

Delegates also undertook to return to their national parliaments with a resolve to advance the ATT – be it in terms of encouraging national ratification or more effective implementation or through taking concrete action to raise awareness and understanding of the ATT, its provisions and objectives among parliamentary colleagues.

### **The Role of Parliamentarians in Legislating for the ATT**

- In enacting legislation at a national level for the ATT, Parliamentarians are encouraged to bear in mind the object and purpose of the Treaty and ensure that these principles are upheld in all relevant national legislation.
- Parliamentarians are urged to play an active role in encouraging national governments to sign and ratify the ATT; this could be through exercising the right to initiate legislation without government action, encouraging national governments to initiate new legislation and overseeing government implementation.
- Parliamentarians may share experience and best practice with regard to legislating for ATT ratification through sharing model legislation, model provisions or harmonisation guidelines with parliamentary peers nationally and internationally through bilateral exchanges, regional mechanisms or international parliamentary fora such as the IPU.

### **The Role of Parliamentarians in Promoting the Universalisation of the ATT**

- In addition to their role as legislators, Parliamentarians have a key role to play as active advocates of the ATT.
- In States where the ATT has not yet been signed or ratified, parliamentarians may promote and encourage the swift and efficient passage of any necessary national legislation within their national parliament.
- Parliamentarians can also encourage national governments to implement the ATT to the highest possible level, going beyond basic obligations and embracing the ambitious aims of the Treaty.
- Parliamentarians are encouraged to reach out beyond the parliament in order to foster broad understanding and support for the ATT at a national level.
- The Role of Parliamentarians in Promoting Effective Implementation of the ATT

- Parliamentarians have a vital role to play in ensuring the robust application of the ATT going forward through ensuring effective oversight of national governments actions, consistent with the obligations, object and purpose of the ATT with particular emphasis upon the humanitarian goal of reducing human suffering and ensuring the protection of civilians.
- Whilst many parliaments may have different methods of ensuring oversight, the principle of parliamentary consultation or approval with regards to import, export and transfer of conventional arms covered by the ATT is a common one. Parliamentarians should seek to ensure that these consultations are thorough and uphold the commitments of the ATT.
- Parliamentarians also have a crucial role in calling for government decisions with regard to arms transfers to be reassessed where any relevant information comes to light, and should exercise all functions available to them, such as holding hearings or committee sessions, in order to feel satisfied that the obligations of the ATT are being upheld.

### **Parliamentary perspectives on the First Conference of States Parties**

- Parliamentary participants reaffirm their commitment to ensuring the universalisation of the ATT, and will encourage states wherever possible to ratify the ATT without delay and encourage states to maintain their commitment to a universal ATT in the preparations ahead of and during the Conference of States Parties.
- Those present encourage States Parties and all those involved in the preparatory process to remain committed to the object and purposes of the Treaty in any and all decisions made at the first Conference of States Parties
- Aware of the Treaty articles pertaining to the first Conference of States Parties, parliamentarians encourage States Parties to take decisions which will lead to a robust and effective Treaty, supported by a capable Secretariat, effective rules of procedure and financing rules.
- Parliamentarians encourage the Conference of States Parties to take decisions upon how Articles 15 and 16 on international cooperation will work in practice. In particular, the needs of parliaments to legislate and oversee the ATT should be considered in the establishment of cooperative mechanisms.
- The Conference of States Parties should consider how parliaments are provided with the necessary capabilities and resources to contribute to upholding the principles and obligations of the ATT, clarify what funding and resources are available and how parliaments can gain access to these.
- Parliamentarians stand ready to assist States Parties and other stakeholders in this and any further process to strengthen the ATT's effective and full implementation, and would therefore encourage States Parties to include parliamentarians in their national delegations to the Conference of States Parties wherever possible.



# Summary of Seminar Proceedings

## THE JOURNEY OF THE ATT AND LOOKING AHEAD

### Introductory Remarks

**Speaker: The Rt Hon Alistair Burt MP, BGIPU Chair**



I offer you a very warm welcome to the Palace of Westminster and the House of Commons. The British Group Inter-Parliamentary Union which is hosting this Seminar is part of that worldwide family and network of parliamentarians, now comprising 166 different national parliaments, meeting together regularly as a forum for inter-parliamentary diplomacy. We recognise that parliamentarians throughout the world share many common objectives but do not always operate in the easiest of environments, so we share best practice among ourselves,

look after one another and the rights of parliamentarians that may be under threat, and join together in common cause wherever we can.

The subject of the Seminar over the next three days is a perfect example of how that working together can achieve action, because if there is one subject that in the last few years has demonstrated the power of nations working together and individuals working together, it is surely the Arms Trade Treaty. I am delighted, therefore, to open the first session and to take things forward over the next few days.

A key outcome of all our discussions—there must be something we can take home to justify to those who have sent us to these conferences that there has been a sensible purpose—will be the production of a statement entitled “Parliamentary Perspectives on the Arms Trade Treaty” ahead of the first Conference of States Parties, and a draft will be circulated and debated in the final session, on Wednesday 5 November.

I take particular pleasure in chairing this Seminar, as the Chair of BGIPU, but that I was the UK Minister responsible for signing the Arms Trade Treaty on behalf of the United Kingdom last year at the United Nations. I was given that responsibility by Parliament and by our then Foreign Secretary, William Hague, as the culmination of cross-party and cross-parliamentary work. Indeed, the issue had galvanised campaigning groups across the nation, as well as the industry itself, and that led to the signing of the treaty, after much difficulty and hard work, and you will hear a little more about that in the near future. I take particular pride in having done that job, so it is of further special interest to me today that I am able to take the matter one pace further forward here in the United Kingdom in a seminar of this magnitude.

You are all enormously welcome. Some of you have come great distances to be here. You represent states that have a keen interest in promoting the ideals behind



the Arms Trade Treaty, and some of you have direct and recent experience of the pain caused by the illicit use of arms and the great number of arms that already exist around the world. There are stories to tell and people's histories to be recounted, but, above all, we have a common view and a common sense of what we can achieve to make life just that little bit better for those we represent.

**The Need for an Arms Trade Treaty and the UN Process**  
**Speaker: Erkki Tuomioja, Minister of Foreign Affairs, Finland**

The Arms Trade Treaty is the result of nearly 20 years of diplomacy and advocacy. The origins of the ATT date back to 1997, when several Nobel peace prize winners led by the then President of Costa Rica, Óscar Arias, first proposed a code of conduct for the international arms trade. That initiative later led to the adoption of a non-binding UN programme of action on small arms in 2001. The Arms Trade Treaty process started in 2006, when seven countries—Finland, Argentina, Australia, Costa Rica, Japan, Kenya and the United Kingdom—took the initiative and introduced UN resolution 61/89. That resolution instructed the UN Secretary-General to explore the feasibility of a future Arms Trade Treaty. A significant majority—153 states—voted in favour of the resolution, which provided a basis for further work. The seven co-authors of the 2006 resolution—the so-called co-authors group—have been actively promoting the ATT since then.



On the basis of the resolution, in 2007 the UN Secretary-General appointed a group of governmental experts to examine the “feasibility, scope and draft parameters for a comprehensive, legally binding instrument for the import, export, and transfer of conventional arms”. The group’s work paved the way for the treaty negotiations. In 2009 the UN General Assembly adopted resolution 64/48 which called for a treaty negotiation conference to be convened in 2012. The resolution tasked the conference with elaborating a legally binding instrument on the highest possible international standards for the transfer of conventional arms. The resolution also mandated all the treaty negotiations to be conducted on the basis of consensus. Ambassador García Moritán of Argentina chaired three preparatory meetings of the ATT PrepCom. The PrepCom’s work enjoyed the support of all regional groups.

The conference then met for four weeks in July 2012, but no consensus was reached on the draft treaty text. There was some divergence of opinion between the arms-producing and arms-importing countries, but the consensus was basically broken by some states that had been hostile to the ATT from the very beginning. That is why some states even considered moving the ATT process outside the UN framework to safeguard a positive outcome. The conference ending without a conclusion was a personal disappointment for many of us. The story goes that Ambassador García

Moritán did not meet or speak to anyone for hours after concluding the session, but sat alone in a small conference room, such was the magnitude of his disappointment after all his efforts had been—or so it then seemed—in vain.

Nevertheless, the co-authors group remained determined and introduced a new resolution to the UN General Assembly later the same year. The resolution called for the convening of a final ATT Conference in March 2013 with the draft treaty text of 2012 as the basis of the work. The UN General Assembly voted in favour of the resolution with an overwhelming majority, and Ambassador Woolcott of Australia was appointed as the president of the final conference.

The negotiation atmosphere at the final conference was more constructive. A draft treaty text was finalised in less than two weeks. Although the treaty was blocked from consensus approval by three states—Iran, North Korea and Syria—they could not halt the momentum. A large group of countries pushed the treaty forward to the UN General Assembly, where only a majority was needed for its adoption. A large number of delegates from different countries and continents, led by the UK, worked way past midnight to find a way to take the treaty to the General Assembly as soon as possible.

The 2nd of April 2013 was a memorable day, when history was made. It was right after Easter; many of the delegates stayed in New York over the Easter holidays and collected co-sponsorships for the resolution by phoning UN member states and asking their representatives to come and sign the roster. The British and Finnish delegates, among others, were at a hotel lobby to make those calls, and in the end, there was a record number of co-sponsors. The UN General Assembly adopted the ATT with 155 states in favour, three opposed and 22 abstaining. This was a truly remarkable achievement and a clear testimony of the need for a legally binding treaty. After seven years of complex negotiations, we had reached a major milestone.

Like any other international instrument, the Arms Trade Treaty is not perfect, but it certainly is a robust treaty—indeed, the final result was actually better and more far-reaching than looked possible only a few weeks before the final push. The treaty as it stands represents a good compromise. No essential elements were left outside the treaty’s substantial scope. There were differing views on some substantial issues—among them the licensing criteria and the arms scope—that could have hampered the positive outcome. The final treaty text was accepted and adopted, as there was strong political commitment and a will to reach agreement.





It was always the aim that the ATT should be a modern, viable treaty able to take into account the latest developments in arms technology, meaning that we have to be ready to amend and strengthen it. In order to amend the ATT, the Conference of States Parties needs to seek consensus. If consensus cannot be reached, amendments can be adopted by a three-quarters majority vote, which also applies to the provisions on the treaty's arms scope. First amendments can be made only six years after the treaty's entry into force and every three years after that. The question therefore arises of whether the treaty can keep pace with the development of modern arms technology.

The states, the UN Secretariat, and other international organisations owe a great deal to the civil society that was instrumental in starting and participated in the ATT process. The role of various NGOs was essential in keeping the spirit of the ATT alive throughout the years. They were able to keep up the momentum and always pushed us to solve problems and made us work even harder: for example, they went in front of the Foreign Office here in London to assemble a helicopter from parts, to show why parts and components need to be included in the treaty. I would particularly like to thank and congratulate Control Arms, Oxfam, Amnesty International and Saferworld, with whom I have personally had many meetings during the ATT process. In addition, I thank the International Committee of the Red Cross, the Stockholm International Peace Research Institute, the Geneva Forum, the Geneva Academy of International Humanitarian Law and Human Rights, and the Centre for Humanitarian Dialogue for all their valuable work on bringing the ATT into being. Of course, the work of African and Latin American NGOs and smaller NGOs in many countries should not be forgotten.

In the years to come, the NGOs' active role is definitely still needed in supporting the universalisation and implementation of the treaty. The Arms Trade Treaty also bears testimony to the unforeseen and positive results of co-operation between states and civil society. I truly hope that the ATT will serve as a trigger and model for this kind of co-operation in many other important areas where international co-operation is required.

The anticipated impacts of the arms trade treaty are far-reaching. Provided that it is effectively implemented at the national level, the treaty will bring added value and make a real difference to the lives of millions of people who have suffered from the effects of armed conflicts or weapons being in the wrong hands, or from corruption and a lack of transparency in the global arms trade. The ATT prohibits exports of arms and ammunition in violation of UN Security Council arms embargoes. It also prohibits exports of arms and ammunition that could be used against civilians

and in the Commission of serious violations of international law. Furthermore, the ATT requires states to regulate arms brokering and to assess the risk that exports of arms and ammunition could be used in grave violations of international humanitarian law or human rights law.

As a consequence, the ATT can contribute to creating a more secure and stable environment for everyone, everywhere. When implemented effectively, the ATT will reduce violence against millions of civilians in conflict-ridden countries, and make it harder for weapons to be diverted into the illicit trade that fuels terrorism and terrorist acts—Islamic State (ISIL) serving as a recent example

I am particularly pleased that the treaty requires the exporting states to take into account the risk of the arms being used to commit or facilitate serious gender-based violence or serious acts of violence against women and children. That paragraph is truly a historic and ground-breaking international achievement, and we should give credit to Iceland, which collected the names of more than 100 member states to support the inclusion of that provision in the treaty. Ambassador Woolcott was also brave enough to include the paragraph in the draft, despite strong opposition.

Furthermore, the ATT helps to create an environment in which the UN and other international actors can better carry out their work, particularly in humanitarian assistance, peacekeeping and peace-building. The ATT should also have a major effect on development, particularly in the least developed countries where conflicts are major obstacles to development. The ATT helps to create an environment that is conducive to social and economic development, an environment that enables countries to reach their development goals. The ATT also majorly supports the post-2015 agenda for sustainable development that is under negotiation and is to be adopted next September.

The ATT reached 50 ratifications in record time. As I have said, we will witness its entry into force on Christmas Eve 2014, which is only 20 months after the treaty's approval by the General Assembly. Although that is a good achievement, our work is far from over. So far, 122 states have signed and 54 have ratified the treaty. To meet the important requirement of universality, countries big and small—major arms-producing and major arms-importing states alike—should become parties to the ATT. Finland, as one of the co-authors, will continue working for the ATT's universalisation. The ATT is always on the agenda when I meet my colleagues. In those meetings I have heard many excuses for not becoming a party, but none of them has been convincing.

The five permanent members of the Security Council made a joint declaration in favour of the ATT in 2011. Of the P5, the UK and France have set a good example by already ratifying the treaty. The US signed the treaty last autumn and we expect it to abide by the treaty, even if ratification will take some time, knowing the Senate's problems with international treaties. Last week we also received encouraging news from New York, where China voted in favour of an ATT resolution and stated that it is seriously considering signing. Among the P5, only Russia has not committed itself to signing. I will continue reminding and pestering Sergey Lavrov until we have Russia's signature, too. Other big countries such as Brazil and India should drop their hesitation.

I urge all those countries to show leadership and bear responsibility. We owe that to the people who are suffering from the unregulated arms trade.

It is only through effective implementation at the national level that the ATT will make a difference. Some developing states might need technical assistance to be able to meet the requirements of the ATT. The treaty encourages co-operation and assistance between countries. All states in a position to do so should consider countries that are in need of such support. You, parliamentarians, play a very important role in the implementation of the ATT. It is your task and ours to ensure that national legislation and procedures are in line with the treaty, and I wish you all success in that.

### **The Humanitarian Potential of the ATT**

**Speaker: François Bugnion, Vice-President, International Committee of the Red Cross (ICRC)**

Every year, because of the widespread availability and misuse of conventional weapons, hundreds of thousands—maybe millions—of civilians are displaced, injured or killed. In many parts of the world, weapons are so easy to obtain and armed violence unfortunately so prevalent that even after an armed conflict ends, the civilians continue to be confronted with most of the challenges and threats they were confronted with while the conflict was going on. Apart from the threat to the lives and physical security of civilians, armed violence also has a significant socio-economic impact, because of insecurity, damage or destruction of property and productive assets. It has serious and long-lasting effects on the well-being and survival of communities because funds and resources are diverted away from health, education and other social sectors.



This deplorable state of affairs is now being addressed at the international level with the adoption of the Arms Trade Treaty. Indeed, the ATT is really the first international response to the human suffering caused by the widespread availability and misuse of a range of conventional weapons—from small arms and ammunitions to tanks, combat aircraft and warships. The ICRC is pleased to see that the ATT is now a reality, after so many years of campaigning and preparatory discussions.

I talk from the point of view of the Red Cross. As you know, the concern of the ICRC in this respect has been shared by the International Red Cross and Red Crescent Movement. Since 1995, the International Conference of the Red Cross and Red Crescent—which brings together national Red Cross and Red Crescent societies from all over the world and states party to the Geneva Conventions, including the older member states of the international community—has expressed its concern about the



human cost of unregulated availability of weapons.

At the conferences held in 2003, 2007 and 2011, states party to the Geneva Conventions repeatedly recognised the need for effective controls on the availability of arms and ammunitions. More significantly, they proposed that respect for international humanitarian law be recognised as a criterion for the legality of arms transfers in national laws or policies, and in regional

and global norms on arms transfers. Therefore, the ICRC is very satisfied to see that awareness of the human cost of arms availability has led to a global treaty that has set reducing human suffering as one of its core and express objectives, which is reflected throughout the treaty.

The speed with which the ATT reached the 50th ratification required for its entry into force demonstrates broad support for this treaty and the principles and values it embodies. From the ICRC standpoint, the ATT has a solid humanitarian basis. It regulates international transfers of conventional weapons and ammunition, as well as parts and components, with a view to reducing human suffering. By forbidding transfers when there is a defined level of risk that war crimes or serious violations of international human rights law will be committed, the treaty subjects arms transfer decisions to humanitarian considerations and concerns.

The treaty's preamble recognises the humanitarian consequences of the illicit and unregulated trade in conventional arms. It also recognises that civilians account for the vast majority of persons affected by armed conflict and armed violence. In addition, it acknowledges the challenges that victims face and their need for care, rehabilitation and social and economic inclusion.

Moreover, a key principle underpinning the treaty, and explicitly mentioned in the text, is the recognition of each state's duty under the 1949 Geneva Conventions to respect and ensure respect for international humanitarian law. The treaty establishes a similar obligation to respect and ensure respect for human rights. All these acknowledgements support the treaty's express objective of reducing human suffering. In this respect, one of the most commendable advances achieved in the treaty is the absolute prohibition of arms transfers embodied in article 6 and the export assessment requirement embodied in article 7, which link the decision to transfer arms to the likelihood of serious violations of international humanitarian law or international human rights law. The ICRC considers these provisions to be at the heart of the treaty. Interpreted and applied in accordance with the object and purpose of the ATT, the provisions will make a difference to the protection of civilians and other victims of war or other forms of armed violence.

I wish to emphasise three points. First, the ICRC encourages parliamentarians to adopt appropriate and effective national legislation implementing the highest

standards reflected in the ATT and based on its humanitarian objectives. We trust that progressive interpretations and good-faith implementation will ensure that the human cost of arms availability is reduced through stricter controls on arms transfers.

In this respect, the ICRC stands ready to assist states in implementing the treaty by providing guidance to governments and parliamentarians on incorporating the treaty's requirements into national legislation. For instance, the ICRC will facilitate capacity-building efforts through a series of regional seminars that will be organised next year.

Secondly, the ATT suffers from the same inherent limitation as any international agreement or treaty: its impact will depend on the number of states that adhere to it, and ultimately on its universality. Although at this early stage, the ATT does not yet represent a universal standard as many nations have not yet signed or ratified it, it is a clear sign that the international community is not ambivalent about irresponsible arms trade. We at the ICRC are confident that in due time, the ATT will create a global norm on responsible arms transfers, which will generate expectations regarding the behaviour of all states.

You have contacts with fellow parliamentarians in other countries, either within the framework of the Inter-Parliamentary Union, which brings us together today, or in other forums. That gives you ample opportunity to use such contacts to promote the treaty. Today's meeting is a wonderful example of such promotion, and we are especially grateful for this initiative.

Thirdly, the ICRC recognises that for states, joining and fully implementing the ATT has a political and economic cost. But such costs will be largely overridden by the increased protection for civilians that the treaty will achieve. As we are discussing today the journey of the ATT to date and the prospect of a safer world, we must remain lucid about the fact that weapons continue to flow into countries affected by armed conflicts and by some of the most acute crises in the world.

In view of the recent developments in West Africa and the Middle East, the objectives embodied in the treaty have become even more important than was expected when the treaty was drafted. In fact, as Mr. Kofi Annan wrote in a report issued in 2000, "In terms of the carnage they cause, small arms, indeed, could well be described as 'weapons of mass destruction'." There is no doubt that the universal participation in the treaty and its full implementation will contribute to better protection of civilians from the effects of widespread and unregulated arms availability and will therefore reduce the suffering provoked by war.



## NGOs' Contribution to the ATT Process

Speaker: Anna Macdonald, Director, Control Arms



Ten years ago, I stood round the corner from here, in Trafalgar square, with many of my colleagues, to launch the Control Arms campaign, and colleagues and partners in 60 countries around the world did the same. At that time, only three countries in the world—Mali, Cambodia and Costa Rica—publicly supported the idea of an ATT. The rest said that we were idealistic and a little bit crazy. Perhaps that is a lesson for campaigners and advocates: unless governments tell you your ideas are crazy at the beginning, you are not aiming high enough.

We had, and still have, a simple message: the arms trade is out of control and ordinary people are suffering, at the rate of one death every minute; millions more are being forced from their homes, impoverished and abused. We had a vision for a campaign to make governments agree to an Arms Trade Treaty that would give them the responsibility to authorise or deny every arms transfer that would enter or leave their territory, and against strict criteria that put human rights and humanitarian law, not profit, at the heart of the arms trade.

It is a really big achievement to get a treaty, and it has taken a long time to get there. Parliamentarians in many countries around the world have played a key role. There have been many stages in the process. They have involved consultations, groups of government experts and open-ended working groups. Throughout that time, the Control Arms coalition has been campaigning around the world to raise awareness among governments. As you can see, we have engaged in activities on all continents—riding camels in Mali, rowing boats in Cambodia, building planes in London, as you heard, and raising awareness and working with parliamentarians in many countries around the world. We did that until the idea began to get traction. It was introduced at the UN and then progress began. Presenting petitions to demonstrate the will of ordinary people at the UN was an important part of what we brought to the process.

Research underpins everything we have been doing in the Control Arms coalition. The production of reports over the last 10 years has helped to contribute to and shape the debate, first, on making the case for why we needed a treaty, then on the details of what should be in the treaty, and then on communicating those details in clear and simple ways to help members of the public around the world understand the concepts and issues being debated as negotiations progressed.

The use of social media has been a key part of our work, as we have adapted over the years. In fact, the use of Twitter became so prevalent in negotiations that it became a media story in itself as we moved towards the treaty being adopted.

The most powerful call for an Arms Trade Treaty remains the voices of survivors. Survivors have been a key part of the Control Arms campaign, and they continue to be



as we do the crucial work with governments on ratification and implementation. Their voices and their first-hand stories of what armed violence does to communities, lives and families have helped to show that what can sometimes be a dry, technical issue is a real life-and-death situation for many people around the world.

Public figures have also played a part, helping us to expand our message and to reach wider audiences than we perhaps would have as NGOs and governments alone. Getting messages across simply and using concepts to highlight sometimes ridiculous situations, such as when fruit and vegetables face more regulation than deadly machine guns, helped people to understand why the treaty was so urgent.

The prominent voices of senior political figures—on this slide, you can see the President of Liberia, who has been a long-standing supporter of the idea of an Arms Trade Treaty—were also crucial during negotiations, as we worked to move from winning the argument about whether we needed a treaty to what sort of treaty it would be and when it would take effect.

As you have heard, the negotiations involved many people from many countries working late into the night - testament to the commitment of the many diplomats and activists who worked long and hard to get the treaty agreed. Indeed, by the final day of negotiations in 2013, delegates were almost fighting to get into the room. It was an extraordinary scene, because when we launched the campaign only three governments would publicly say they thought it was possible; most thought it wasn't. We ran many seminars in many countries where rooms were half-empty, but, gradually, they started to fill. That transformed the issue into one every government had a view on. Every government wanted to be in the room you can see on the slide, to make sure their voice was heard. That really is testament to the power of tenacity and the power of governments, NGOs and researchers in the UN working together to make what started off as a vision a reality. Those packed negotiation rooms resulted in the treaty and in a huge historic moment—the first time the global arms trade has been brought under control.

Now we move on to the equally—perhaps even more—crucial stage of signature ratification and making sure the treaty works. Governments rushed to sign the treaty. The opening for signature on 3 June 2013 saw over 60 governments signing the treaty, which was a very positive first step. That included some of the world's biggest arms exporters. What is perhaps significant is that one of the governments responsible for blocking progress in the 2012 negotiations turned their view around and was one of those to sign in 2013, also notably recognising the work of civil society. On this slide, we see John Kerry speaking after signing the treaty on behalf of the US.

The next stage was the “Race to 50”, which we launched when the treaty opened for signature. We pushed governments really to put the pressure on and to try to make this one of the quickest treaties to enter



into force. Every day that the treaty is not implemented is another day of lives lost and another day of suffering, and governments really responded to that. As you have heard, the treaty has moved towards entry into force in much less than two years, which is extremely fast for a treaty of this nature, and we are now only weeks away from the moment of actual entry into force.

Governments around the world participated in regional seminars, including one in the Caribbean encouraging others to join the “Race to 50”. Earlier this year, nine governments jointly deposited their instruments of ratification.

We have shown that it is possible to change an idea—a crazy idea—into reality, and now we need to show that it can have impact. The success of the treaty will be judged by the lives it saves, and we look forward to continuing to work with all of you, as parliamentarians, in the next stage as you perform the crucial role of providing oversight of your governments and ensuring that the necessary legislation is enacted, that the assessment of arms transfers takes place, and that this piece of paper, for which we have fought so hard, which has the potential to change lives, really starts to do so.

### **Looking Ahead: Entry into Force and the First Conference of States Parties**

**Speaker: Virginia Gamba, Director and Deputy to the High Representative for Disarmament Affairs, United Nations Office of Disarmament Affairs**



This Seminar could not have been held at a better moment. At the joint deposit ceremony that was held in New York on 25 September, the total number of deposited ratifications of the Arms Trade Treaty crossed the mark of 50, thereby triggering the entry into force of the treaty 90 days later. The ATT will enter into force on 24 December this year, so it is timely and important that the focus now is on the way forward for the ATT.

As you all know, the treaty was adopted by the General Assembly with 154 states voting in favour, which represents approximately 80% of the UN’s membership. Three states voted against, while 23 abstained. As of today, the treaty has been signed by 122 states and ratified by 54. Those figures are important, because if 154 voted in favour but only 122 signed, there is a gap that needs to be covered, and we need to understand why 30 states have not yet taken the decisive step to sign the treaty.

Recently, the Office for Disarmament Affairs sent a letter to those states that voted in favour of the treaty at the General Assembly, but have not signed it yet, encouraging them to do so before its entry into force. As you know, signing the ATT remains possible only until the moment of entry into force; after that, states will still be able to accede to the treaty.

Compared with the rather slow pace for other conventions to reach the

necessary numbers for ratification, the speed with which the ATT will enter into force is in itself a success story. As I said before, it has been signed by 122 states, from all regions. The list of signatories includes major arms exporting countries and many arms importers. The breakdown of signatories per regional group is: the Africa group has 35; the Asia-Pacific group has 16; the eastern European group has 19; the Latin American and Caribbean group has 28; and the western European and others group has 24.

The number of deposits of ratification that the Secretary-General has received stands at 54, meaning that 68 states that have signed the treaty are yet to ratify it. That may be due to the fact that domestic procedures to ratify the treaty are taking some time for some states. In other cases, parliamentarians may not yet have been fully convinced of the utility of the ATT and are not in a position to support its ratification. Be that as it may, and despite the gaps between voting and signature, the ATT will still enter into force in record time.

There is considerable regional unevenness in the number of states that have already deposited their instruments of ratification. The breakdown per region is: the Africa group has six; the Asia-Pacific group has two; the eastern European group has 11; the Latin American and Caribbean group has 15; and the western European and others group has 20. Only those that have deposited their ratification 90 days before the upcoming first Conference of States Parties will be able to participate fully as a state party in that conference.

The United Nations would like to acknowledge the efforts undertaken by states, international and regional organisations and civil society to expedite ratifications and promote early entry into force. Interesting as the figures may be in pointing to the need to continue public outreach—that is sometimes the main issue—to encourage states that have considered the treaty favourably, but have not as yet signed and/or ratified it, the most immediate step after the treaty's entry into force is for states parties to decide on a number of important issues, including laying the foundation and setting the direction of its future implementation. In that context, a meeting took place in Mexico in early September and another preparatory meeting will be held in Berlin over two days from 27 November. Other governments, such as Trinidad and Tobago and Switzerland, have also offered to host additional meetings—informal and formal—as needed during 2015. Such meetings pave the way for the most important event of all: the First Conference of States Parties (CSP1)—which is scheduled to be held sometime between June and September next year. The Mexican government has generously offered to host the Conference.

Decisions to be taken at the CSP1 include on the rules of procedure which, as parliamentarians surely know, are pivotal in regulating and defining



the character of meetings, such as the question of consensus or majority vote when dealing with a decision to be taken. Also on the table in Mexico City will be issues such as the setting up of a treaty secretariat and a trust fund to assist countries with their implementation efforts.

At the most recent of these informal consultations in September, it was decided that Mexico will endeavour to bring a number of working papers to the next round of consultations in Berlin, including a first draft of the rules of procedure, a draft decision on financial rules regarding the ATT process, and a working paper on the future ATT secretariat.

We are calling on those states that have not yet done so to ratify the treaty without delay, so as to enable them to participate fully in the first Conference. To do so, they may wish to ratify the treaty at least 90 days before the start of the CSP1, because that will affect whether they can vote. In addition to those meetings convened—informally and formally—by states, international and regional organisations are organising conferences and seminars, such as this one, to prepare for the implementation of the ATT. As we have seen, research institutions and civil society organisations are also engaged in that pursuit.

To accompany this process, the United Nations has provided assistance for ATT implementation, which is always upon request. The Office for Disarmament Affairs is finalising an ATT implementation toolkit, which consists of a collection of modules that give practical guidance to states on the implementation of the ATT. The first four modules are set to be released later this month at the Berlin informal preparatory consultations.

Our three regional disarmament centres—in Lima, Peru, for Latin America and the Caribbean; in Lomé, Togo, for Africa; and in Kathmandu, Nepal, for Asia and the Pacific—have programmes on awareness-raising and concrete legislative assistance. The regional disarmament centres are also implementing partners in a multi-year European Union ATT assistance package. In September 2014, our Lima centre developed the first training manual on ATT implementation that is tailor-made for the Latin America. The centre also trained the first group of governmental officials and experts in Central America through a regional workshop in Costa Rica in October.

Another programme that we have set up, with a large group of donors, is a competitive trust facility that funds ATT and/or POA-related projects coming from NGOs, academia, regional organisations and UN agencies—namely, the United Nations trust facility supporting co-operation on arms regulation, or UNSCAR. Last year, UNSCAR funded 10 projects in Asia, Latin America and Africa, with two of them being inter-parliamentary projects. This year we have received 57 applications, which are currently undergoing careful screening. The basis of all the projects is the ratification or implementation of the ATT, any aspect of the implementation of the POA, and work on the synergies between the POA and the ATT. Aside from those initiatives, please be assured that the United Nations stands ready to provide whatever assistance the signatories and the state parties to the ATT need during this critical process.

As parliamentarians, you are well placed to bring effective and meaningful

change to your countries, and indeed the world. As representatives of the will of the people, you reflect diverse interests and translate them into national laws. Even more influential is your role in ratifying international treaties, enacting legislation and appropriating funds to implement such treaties.

Members of Parliament also have an all-important role in holding their governments accountable and ensuring that they abide by their international obligations. No one knows better than you that problems arising from the uncontrolled spread of conventional arms directly affect millions of people around the world. The largely unregulated arms trade abets violations of international humanitarian and human rights law, engenders civilian casualties, fuels humanitarian crises and hinders all of us from attaining the millennium development goals.

You know that, in almost all areas of world trade, there are regulations that bind countries to follow agreed conduct, yet there was never a set of global rules governing the arms trade until the ATT. In that context, the Arms Trade Treaty, negotiated within the framework of the United Nations, is a truly historic development. The treaty, which covers a broad range of conventional weapons—from battleships to combat aircraft, and from missiles to small arms and light weapons—and their ammunition, key parts and components, has the potential to have a tangible positive impact on the security of many people around the world. The ATT aims to bring more accountability, transparency and responsibility to the global arms trade by setting common standards to guide states when making arms transfer decisions.

The ATT does not prescribe specific, harmonised procedures that all states would have to follow in processing arms export requests or in making their political decisions regarding the transfer of arms. It does not tell states whether they should engage in weapons manufacturing or trading, or build up their militaries. Nor does it attempt to dictate how countries should regulate arms transfers within their borders. Each state has the sovereign right to decide on such matters in accordance with its national interests and domestic laws.

Under the treaty, importing countries will need to set up effective import control systems, including reliable processes and tools for certifying end users and end use, and many will need considerable international assistance to do so, but the dividends of that investment will be increased peace, security and



stability, resulting in safer communities and a better environment for sustainable social and economic development. While the ATT regulates export and import, it also requires transit and transshipment of items covered by the treaty to be regulated. That will affect states with large territories and/or sizeable transshipment activities.

For all those reasons, the role of parliamentarians worldwide is critical to generate outreach and the impulse for effective, responsible implementation of this first treaty governing the arms trade. Progress towards making the Arms Trade Treaty a globally respected norm will require strong and sustained support and political commitment from all concerned parties. Members of Parliament can and should play a crucial role in allocating budgets and advocating more involvement in this issue from their governments.

The importance of this work lies in the fact that those suffering most from the poorly regulated arms trade and the proliferation of weapons are civilians. We must never forget that.

## THE ROLE OF PARLIAMENTARIANS

### Parliamentary Oversight

**Speaker: Rt Hon. Alistair Burt MP, Chair, BGIPU**

May I begin with a few personal comments about my perception of the issue, and how it relates to how we proceed in future? In 2010, there was a change of government in the United Kingdom. From 1997, there had been a Labour-controlled government, and the Labour party gave tremendous support to the whole concept of the Arms Trade Treaty. Whenever there is a change of government in our democratic societies, there is always a degree of concern about what the new government's priorities will be and what matters may be dropped. With arms control issues, the suspicion was particularly heightened: would a Conservative-led government continue to support the Arms Trade Treaty process, as the Conservative party had professed in opposition that it would do?



I was absolutely delighted to be given the responsibility in the Foreign and Commonwealth Office for taking the matter through. I did all that I could, from the earliest possible stage, to persuade

everyone that the Prime Minister and the Deputy Prime Minister—the Liberal Democrat Nick Clegg—had every intention of honouring the previous commitments to the Arms Trade Treaty, and that we would do our best to deliver.

There were occasions when we were sorely tested. Once or twice, it seemed that those outside could not quite believe that we really meant exactly what we said. However, I am delighted that we were able to deliver, because it was very important to us. The first thing that I would say, as a parliamentarian speaking to other parliamentarians, is that this is not a matter in which party politics in your country can get in the way. This is something that must have wholehearted commitment, whatever part of the political spectrum you may be on. This is something that matters to all those whom we represent.

As for the events of the final push, if none of you have yet watched live television from the United Nations, I recommend it as a procedure to help you to get to sleep! Nevertheless, there are moments of great excitement. I was not in New York on that final day that other participants have described; I was watching at home, thousands of miles away. Via the internet, we were able to watch the voting process on live UN television, and it was extremely exciting. We communicated, we tweeted, and we got in touch with one another. It was a remarkable moment, and I pay tribute not only to those who were there at the time, and the NGOs and Ministers, but to the diplomats who were behind it. It may be invidious to single out any one individual, but Jo Adamson from the Foreign and Commonwealth Office played a remarkable role, as one of a fine group of FCO diplomats who had already done so much to ensure that the process was successful. Her negotiating skills were remarkable.

I want to draw your attention to a third point that I think is important to parliamentarians. I committed a terrible error as a Minister: I wrote some of my own remarks for the final presentation that would take place once we had signed the treaty a few weeks later. Those of you who know about such things will be aware that the diplomats provide a script for Ministers, and the moment you go off script, you can see people looking extremely worried. I thought that, although the script contained a fine recitation of the events that had brought us the Arms Trade Treaty, it lacked something, so I wrote my own script. I have kept it: I have kept my own handwritten notes of something that I wanted to say. It is reprinted in your document, and I am grateful that the IPU wanted to include it in its brochure. I wrote it from the heart, and that is the element that I want to bring to parliamentarians. We are not just dealing with a dry legal document every dot and comma of which will be scrutinised to establish whether it is legal, appropriate or whatever. The end result of everything that we are talking about is emotional, because the subject matter is saving people's lives and preventing illicit arms from damaging people.

I added this to the set text: "I am also proud to sign on behalf of all those people who ever wrote a letter, or signed a card to their MPs and even wondered if it made a difference. I am proud to sign on behalf of all those who joined groups in their town or village, who join NGOs, and those who lead them, who cry with despair at injustice done and wonder whether anything will ever come of their campaigns. And on behalf

of successive UK governments and their incredibly hard-working and committed diplomats and officials, who by their efforts have given just a bit of hope to those committed citizens that they do see the world in a similar way. Finally, I have signed for the innocent caught up in conflict instigated by the wickedness of others. I sign for lives needlessly lost, in the hope that by making it more difficult for illicit arms to cause misery, an extra chance may be allowed for peaceful resolution of conflict, so that the world of my children and granddaughter will be that bit more bearable.”

I hope you do not feel it is inappropriate to make those remarks. I hope that is what makes a difference—that parliamentarians listen to all those who campaign and all those who sign a card or a petition and think, “What good does this do?” I hope that sooner or later somebody somewhere listens, and that by joint and collective efforts we make a difference.

So what can parliamentarians do? Let me give one or two indications of that before turning to my colleagues. First, there is a dynamic in this process which will not change and will not end—the dynamic of knowledge. The Vietnam War changed everything about the way in which the world saw war, because it came into the home of everyone who possessed a television set—they saw it. If you think of what was available in terms of mass communication in the 1960s and ’70s and magnify it 100 or 1,000-fold, you have an idea of the impact of knowledge now. People can see much more, not only of what happens, but of the aftermath of war and conflict. That brings it home.

The growth of NGOs dedicated to these issues, and the fact that they possess knowledge and transfer that knowledge—none of this is going to change. Parliamentarians are going to be part of this process. They will gain an increasing awareness of the issues. This acquisition of knowledge will have two impacts. First, there will be a core of interested MPs in any legislature we care to mention. These are people who will become knowledgeable about matters about which they have been informed. Whatever your processes may be, there will be specialised committees like our Select Committees here. There will be individual opportunities to bring forward legislation to urge greater efforts by national parliaments. There will be the country-specific friendship groups, whatever they are called in different parliaments, which will know something about the areas where, sadly, this is more than just a piece of paper—as the Malian delegation said in their remarks at the UN, it really matters to them.

Secondly, knowledge will be increased and there will be issue-specific groups in parliaments which will seek to make an impact. In the United Kingdom we have specific legislation, arms controls and mechanisms which have become highly specialised. I am very pleased to see that on your programme you will have an opportunity to listen to one of the members of the Arms Export Control Committee, who can tell you what we do. The building up of relevant national legislation and national controls will not be an easy process, but it is not a blame process. Knowledge has to be shared, and parliamentarians who are skilled and experienced in one theatre can apply their knowledge and encourage others. I hope that role will be particularly important.

There is a further element relevant to parliamentarians—that is, the translation

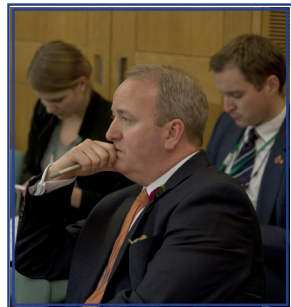


of parliamentarians into members of government. Whatever the system may be, there is a chance for a number of us to move from Parliament, sometimes from Opposition, into government, from the legislature to the Executive. It will be important to remember what it was that motivated us on the Back Benches as parliamentarians, and take that into government with us. There are things we must not lose when we become government members.

In relation to the role of parliamentarians, let me mention briefly the role of those outside parliament and how they influence us here and, I suspect, in other places. First, there is the role of the public. I was genuine when I paid tribute in New York to the role of campaign groups and others. This, again, is a phenomenon which is not necessarily new, but the impact of social media and the spread of knowledge are changing the relationship between government, campaigning and the public. It is very prevalent here.

In the United Kingdom our major political parties face a challenge from smaller parties that we have not seen in a couple of generations. Part of that challenge is fuelled by a sense of knowledge—a criticism—that the established parties are not delivering what the public is looking for. That challenge will not go away, and the challenge from individual campaigning groups will be stronger. They do not always get it right, but they have to be listened to. The role of the public in interacting with parliamentarians will become still more important. Whatever the dynamic in individual countries, I cannot see anything other than growing public knowledge and stronger public campaigning. That will increase the need for transparency and accountability for those in government, and parliamentarians will play a crucial role in that interface.

There is a role for parliamentarians to connect with industry. The process is not one-sided: people are supplied with weapons, but there are also people who export them believing that they are playing a part in holding the balance of power in places where people, states and institutions might otherwise be overrun. This is a complex process, and the arms industry is highly difficult and much debated, but it has a role to play. I do not think that the Arms Trade Treaty would have been passed or supported without its engagement. The legitimate parts of the industry wanted to make sure that efforts to make their work more ethical were not undermined by others. Reaching out to the industry will remain part of the parliamentary process. Parliamentarians need to



do what they can to make sure that national legislation best impedes those who wish to subvert the law.

Above all, it is important to continue to communicate with each other. The ratification process in different areas will be aided and encouraged by parliamentarians taking the message to friends and others, and nothing works better than peer-to-peer contact. It is one thing for the public to tell us what to do; it is another for governments to tell us what to do. When Members of Parliament share common problems and ask how they can help, we make the greatest contribution.

### **Parliamentary Promotion of Signature, Ratification and Implementation**

**Speaker: Hon. Naveed Qamar, Parliament of Pakistan, and Convenor, Peace and Democracy Programme, Parliamentarians for Global Action**



Fellow parliamentarians, members of civil society, ladies and gentlemen, this is a very good forum and a good time for us to get together to assess where we are and where we are going on the Arms Trade Treaty. There is a lot to be said for what has happened so far with a treaty that was put into place and signed by 122 or 125 countries in barely a year and a half to two years, that has been ratified by more than 50 countries, and that will come into effect in a few weeks' time. It is time to congratulate who those responsible for bringing things to such a point.

However, we must sit down and look at the treaty from a different perspective. What good is all this effort if it is not internalised and adopted by each of us? As Members of Parliament, we represent the populations of our countries. We are the ones who must now look at the treaty now and decide whether to accept it. Of course we are all in different positions. Some have not even signed the treaty; some have signed it, but have not ratified it; and some have signed and ratified it, but have not implemented it, or have not implemented it in its entirety.

How do we start? I am not saying that this is universal, but many of us have not yet viewed the treaty as a solution to the problems that we face in our own countries. In many of our countries we have conflicts, in many of our countries we have terrorism, and in many of our countries we see people—innocent people—dying unnecessarily. This is something that we should have thought of ourselves. Why are these people dying, and how can we stop it?

If we look at the issue myopically, we will say that governments, law and order agencies, the military or the police should be responsible, but we need to step back and look at it from a completely different perspective. What power has that individual or that organisation, perhaps a terrorist organisation, over us, or over the population—the helpless population? The only fact is that the individuals or organisations concerned have huge arms caches which they have somehow acquired because, unfortunately,

the world has taken too long to figure out a way of stopping the flow of arms. They may be stolen arms, as someone said earlier, but, at some point, measures could have been taken to stop that stealing. These arms came from some factory in some country in the world, and that country's insufficient regulation has caused them to end up in the wrong hands.

This may involve state actors or non-state actors but, if those arms are to be used to kill individuals who have absolutely no role in any conflict but are merely bystanders, it is time that we all started seeing this as our problem, rather than the problem of a treaty that has come from New York to which we must adhere, or persuade others to adhere to. The example of Mali was given earlier, but aren't we all Malis, in one way or another? Aren't we all responsible, in some ways, for not taking enough steps to protect those people by globally at least reducing, if not stopping, the flow of illegal arms all over the world? Yes, we are responsible, and it is time that we resolved to play our part, no matter how small it is. We parliamentarians have a responsibility to the people of our own individual countries, and we must therefore take the steps that are required.

Let us first educate ourselves. What does the treaty stand for, and what does it not stand for? There is a lot of confusion around. Many people are afraid that this treaty might make their country weaker, or that the arms industry, large or small, in their country might come to a standstill. In some ways this is one of the most innocent treaties that the world has signed. Perhaps that is one of the disadvantages of the treaty. The fact that those who drafted the treaty made it as non-controversial as possible means that people do not talk about it. Neither the international media nor our own domestic media talk about it, and we therefore know very little about it.

I am not advocating that we should make the treaty controversial—it should stay non-controversial—but we should make it useful. After we have acquired more knowledge about it from other international organisations that can play a part in educating Members of Parliament, our role is to disseminate this knowledge among our fellow parliamentarians. Once there is a critical mass among Members of Parliament, it is only a matter of time and a matter of using the means available to us in our own parliaments—tabling motions and questions, raising the issue in parliamentary committees, and making sure that we get the Executive to come and set out their position and explain why they have not yet moved forward.

Let me take my own country as an example. In every UN vote, Pakistan has voted yes. Every time there is talk of support for ATT, the official position is, "We support it," yet have we signed it? No. That hesitancy reflects the gap between what we believe in and what we do, and that gap needs to be narrowed. That will come about only through opinion leaders in the various countries. There may be lobbies with different views, and then there are the arms manufacturers. In some cases,



that is a very small industry, but arms manufacturers may feel that someday the treaty might get in their way. That is not the case. The treaty only regulates the import and export of arms and ensures that that takes place in a legitimate manner. We need to explain all that. We as Members of Parliament may at some point have been part of the Executive. Some of us may be Ministers and hold important positions. Why do we not bring about that last push?

Let us step back and say that we have not, as yet, created that awareness, so what do we do? Is it not our responsibility to raise this issue enough so that the media brings it up and it becomes something that is debated? We can then hear both viewpoints. If any parliamentarian anywhere in the world starts talking, the media will print what they say, except for a small number of democracies, which have a very controlled media. Most countries will broadcast what we are saying, and people will listen, and then tie in whatever is going on with their day-to-day life, which might be miserable. They will see how these things can be regulated, and how the world has come around to ensuring that there is support and that they are not alone—that they are not the only country in the world facing this problem. There are global solutions to universal problems. Let us not be frightened to learn that.

I, as a member of Parliamentarians for Global Action, got to know about this treaty through BGIPU. Only then did I see that this was a solution to my problem. Yes, these global organisations, especially parliamentary organisations, have a big role to play. When we tie in with them, we are committing ourselves to keeping an open heart and an open mind to learning about these things. That helps us to feel that we are not alone.

Ladies and gentlemen, let me throw the challenge to you. Let us make sure that when we return home from London we commit ourselves to at least one step. We can do that in parliament, through tabling a question or a motion or, for those countries that have signed and ratified, through a private Member's Bill. If that is not possible, we can always talk to the media and say: I went to London to talk about the Arms Trade Treaty, and I have come back more knowledgeable. I think that a lot of our own problems can be resolved if we look at them globally. That is all we are asking. We are the leaders in society and we must take the lead in this case.

### **Lomé, London and Lima: Sharing Knowledge and Experience among Parliamentarians**

**Speaker: Christer Winbäck, Vice-President, Parliamentary Forum on Small Arms and Light Weapons**

I have been working with the Parliamentary Forum on Small Arms and Light Weapons for many years. The Forum is a unique global network consisting of more than 200 parliamentarians from 70 countries, principally in Africa, Latin America, Europe and, now, the Middle East. It attracts politicians from all political factions, left, right and centre. It



provides a space for parliamentarians to debate, join forces, and contribute to the advancement of the small arms and armed violence reduction agenda. For 12 years it has contributed to strengthening the legislative framework for small arms control, to improved parliamentarians' understanding of small arms violence, and to the development of best practice in the reduction and prevention of such violence.

The Forum works by enabling parliamentarians to act at national, regional and international levels. We provide parliamentarians and their staff with expertise, technical support and capacity development, as well as a platform for dialogue and exchange. During its more than 12 years of existence, the Forum has contributed to a decrease in the violence associated with the widespread availability of small arms, through various projects and initiatives, including international treaties and conventions, increasing parliamentary involvement in the work for the Arms Trade Treaty, and the United Nations programme of action on illicit small arms. We have observed and participated in many UN conferences. For the last couple of years, I have visited New York twice a year for that purpose. I shall tell you more about my work in the Swedish Parliament tomorrow.

The ATT is a major achievement that offers parliamentarians worldwide a tool for improving international standards and praxis to cope with the negative effects of arms transfers. Members of the Forum have diverse backgrounds and various political convictions, but they all experience the problems caused by the wide availability of arms and their misuse. While those problems may sometimes differ in national and regional contexts, parliamentarians can learn from measures implemented in other countries and share best practice. The Forum has long experience of inter-regional co-operation between parliamentarians in Africa, Latin America and the Caribbean, and it will use this platform to foster south-south co-operation in which parliamentarians support each other.

In May we held a larger inter-regional seminar in Lomé, Togo, in which 30 MPs from Africa, Latin America and the Caribbean participated, and in April next year we shall hold a similar event in Lima, Peru. A couple of weeks ago we hosted a side event at the Inter-Parliamentary Union, together with the Cluster Munition Coalition. Many interested parliamentarians took part in it. We are also supporting our members who wish to take action at national level. Members in Benin, Burkina Faso, Chile, Democratic Republic of the Congo, Liberia, Malawi, Peru, Sierra Leone, Uganda and Zimbabwe are currently engaging in national activities and briefings. Several members have tabled questions in parliament, and have requested assistance in drafting letters.

We are organising exchanges for Portuguese-speaking states and for small island developing states whose territorial waters can easily be used for illicit shipments, and which can thus become unwilling violators of the treaty. Our activities will help them to develop proper legislation and partnerships with larger players. When you go back and investigate the situation in your home parliaments, you can call on the Forum for more support. We are very eager to help.

We are very pleased that the British Group decided to hold this year's Seminar on this important topic, and we are very pleased with the excellent co-operation of the

BGIPU. As I have said, tomorrow I will speak for longer to explain how we have worked on these issues in Sweden, and tell you more about the help that I, as a Swedish parliamentarian, have had from the Parliamentary Forum. I will be glad to answer any questions.





## PROMOTING COMMON UNDERSTANDING OF THE ATT

### Wording and Nuance within the Treaty

**Speaker: Namdi Payne, Second Secretary and Legal Adviser, Australian Permanent Mission to the UN in Geneva**



The treaty negotiations, as you can imagine, were a complex process. What I want to do in my presentation is outline for you the spectrum of interests that, in support of the president, we had to navigate through in order to produce a balanced text for an effective treaty. This meant that the text of the treaty needed to be as meaningful as possible, while keeping the range of stakeholders “in the tent” to uphold the

legitimacy of the process. Crucial to this sense of legitimacy was the “consensus rule”, which guided the negotiations process. Throughout the final conference, a consensus outcome remained the goal. While this was not ultimately achieved, the final conference showed what was possible when delegations engaged in a consensus-governed process and were determined to strive for a negotiated consensus outcome.

States approached the negotiations from a wide range of perspectives. Exporting states saw the treaty as a framework to allow their defence industries to participate more transparently in the legitimate international arms trade. They recognised the value of industries operating internationally under an agreed set of standards. Exporting states, along with transit and transshipment states, wanted to ensure that any new regulatory burdens were not excessive. Importing states wanted a treaty that brought greater clarity to their ability to choose a defence mix in pursuit of their legitimate right to self-defence. There were also states affected by armed violence and instability, which were exacerbated as a result of the illicit arms trade. Those states saw the practical benefit to their national security through a strong and well implemented



treaty. On the other hand, some states were sceptical or unconvinced that the treaty would not impinge on their national security interests. Other states had long supported the achievement of strong universal humanitarian outcomes from the treaty. Finally, regional organisations were key stakeholders in the process, given the range of existing instruments related to transfer controls and arms transfers at regional levels.

The final conference started with the draft text of 26 July 2012, from the first diplomatic conference. That was key so that we did not lose ground on what had been achieved in the first conference, which was chaired by Ambassador Moritán of Argentina. That understanding was built into the mandate to convene the final conference. The text of 26 July included carefully nuanced language arising from the negotiation process to that date. In the end, the first conference in 2012 was unable to reach an outcome as some delegations said they needed more time to consider the text. By the final conference in 2013, all delegations were well prepared and understood intimately how the 26 July text affected their national interests.

Those of us steering the negotiating process had to take a step back and look at the push and pull of a broad range of interests. In an open and transparent manner, we had to find an overall balance to the various compromises needed to hold the treaty together and reach a consensus. In addition to the discussions in plenary during the final conference, facilitators were appointed by the president to conduct informal discussions on key aspects of the text, which was a useful process in confirming where a likely consensus would be. Some of those discussions led to a significant reshaping of the text as well as adding important new elements to it. However, some discussions indicated that there would be little further development of a particular issue without reaching a blockage. That is why it is important to remember the context in which we were negotiating the text. There is a reason why the treaty uses certain language, including what some refer to as “constructive ambiguity”. Sometimes, that even meant that a strategically placed comma in the provision on reporting was crucial to balancing calls for reporting to be made publicly available, and concerns about national security interests.

Given the perspective that I had in the president’s team, it would not be appropriate for me to comment on individual countries and their approach to the treaty negotiations. I will not advocate any particular interpretation of the provisions or how they should be applied by states parties. Such a discussion will receive attention at the future Conferences of States Parties of the treaty.

Today, it is helpful briefly to outline the competing interests that were at play at the time in some important areas. First, settling the scope of conventional weapons to which the treaty would apply was not a straightforward exercise. The inclusion of the seven categories covered and defined by the UN register of conventional arms in the treaty was not so contentious, but the inclusion of the register’s optional category of small arms and light weapons was not always guaranteed. None the less, there was a significant push by states during the negotiations; for the treaty to be at all meaningful, it had to include small arms and light weapons, which are the main cause of civilian casualties and deaths from armed violence. On the other hand, some states

did not want a list of specific conventional arms, but wanted the treaty to cover “all conventional arms” more generally. Those states argued that if there had to be a list, the scope of the treaty should be seen as “a floor, not a ceiling”.

There was a strong push by states—particularly from Africa—to include ammunition, parts and components in the scope of the treaty; that was a highly contentious issue during the negotiations. For some other states, the feasibility of reporting on transfers of ammunition, parts and components and whether that might impinge on their national security interests was a serious concern.

In addition to those different interests, what was understood as the “international trade” and referred to as “transfer” throughout the treaty was debated during the 2012 and 2013 conferences. Some states argued that it would include loans, leases and gifts, but other states strenuously argued that it did not. With all those different interests in mind, articles 2, 3 and 4 had to be carefully crafted in order to be as progressive as some states wanted, while staying within the diverse range of perspectives on what the treaty could or should cover.

The core provisions of the treaty—articles 6 and 7—were also carefully negotiated. I note that the language of article 6(3), on the prohibition of transfers which would be used in the Commission of certain violations of international humanitarian law, had changed quite significantly from the 26 July version to the final text that was adopted. Some states argued that, to have any practical effect, the provision as drafted on 26 July should not have been so narrowly focused on whether a state party intended a transfer to violate international humanitarian law (IHL), because it would be too easy for a state to deny such intention. Other states argued that, as a strict prohibition with no room for state discretion, the test under article 6(3) needed to be precisely worded. When negotiating that provision, it was also important to recognise that if the concern to be addressed was more the risk of the conventional arms being used to commit or facilitate serious violations of IHL would be captured under the export assessment in article 7 and not by the prohibitions provision. The negotiations on both those articles were closely linked.

Under article 7, if the transfer is not prohibited, the state party is required to undertake a risk assessment prior to authorisation of



an export. Given the potential of article 7 to influence and change the export trade, it was an intensely negotiated provision. For some states, there needed to be recognition in article 7 that some arms transfers could be legitimately authorised and contribute to peace and security. On the other hand, there was a strong push



that the risks of negative consequences arising from the export needed to be taken seriously in the risk assessment process for this Treaty to make a difference.

Article 7 sets out what states parties need to do when conducting an export assessment. Some states viewed export assessments as an exercise in weighing up the various factors enumerated in the article. In the end, if a state party determines that there is an overriding risk of any of the negative consequences, the export shall not be authorised. Some states wanted a different term—one that would provide for a level of risk, such as substantial risk. However, the proponents of the term “overriding risk” argued that terms such as “substantial risk” related to a different exercise from the concept of weighing up the various factors. What “overriding risk” means in practice will doubtless receive much attention at future conferences of states parties. However, it was there from the beginning in the 26 July text, and was a key outcome at the final conference. In that conference, it remained a meaningful and useful term to hold together the consensus nature of the negotiations.

In some other provisions of the Treaty, there are references to each state party acting in a way “pursuant to its national laws”. The negotiations showed that states had varying national practices and legal systems. It was important for some states that the Treaty reflected the different types of legal systems while establishing common frameworks for national control systems.

The Treaty outlines what states must do, or are otherwise encouraged to do. Some provisions had to stop short of imposing mandatory obligations on states because some states had national laws that would affect what it could do. For example, some states have laws concerning national security interests that safeguard the information on their defence capabilities that can be made publicly available. For some other provisions, some states, particularly importing, transit and transshipment states, wanted to limit unfair burdens on their bureaucracies. That made it very difficult to build a consensus on making certain provisions obligatory.

None the less, the few Treaty provisions that include the language “pursuant

to its national laws” clearly indicate better or best practice. Best practice will be key in influencing, over time, states parties’ implementation of those provisions. Thus, given the negotiating positions of states from different regions, interests and perspectives, no delegation left the final conference with everything they wanted, but in our view no one walked away empty-handed.

Throughout the final conference, the president prepared three draft texts that were progressively stronger than the previous. He presented them with the goal of broadening the supportive constituency and bringing everyone along. The final text could not be open for further discussion out of respect for the compromises already made and the political will shown by the broadest range of delegations throughout the course of the negotiations.

It was Ambassador Woolcott’s view, as President, that the text could not have been any stronger while still holding the disparate interests in the room together. That is not to gloss over the events on the final evening of the conference, when the president ruled that, because of the objections of Iran, the Democratic People’s Republic of Korea and Syria, there was not a consensus at the conference for the adoption of the text. However, we had an off-ramp built into the UN General Assembly resolution that established the final conference, which enabled the final text to be taken by states to the General Assembly legitimately. That proved to be the last resort to facilitate the adoption of the text. None the less, it was the willingness of states to stay the course with the UN system that helped to guarantee the broadest possible constituency of states for the Treaty. The fact that we currently have 122 signatories, with 54 ratified states, is evidence of that broad constituency.

In conclusion, the Treaty must be applied globally to be effective. If it is to make a real difference in reducing the illicit trade or diversion of conventional arms, it cannot ultimately be a Treaty of like-minded parties only. For the Treaty’s universalisation, its signature, ratification and accession must be promoted widely. In doing so, it is important to respect the compromises reached during the negotiations. The negotiating history of the Treaty is important to understanding why the text is the way it is and the considerable progress that had been achieved after years of negotiations.

In the Treaty’s early few years after its entry into force, states parties should not be looking to unpick or renegotiate the careful language found in the Treaty. We must give the Treaty time to grow. I am confident that, over time, with its implementation by a growing number of states parties, common understanding about the Treaty and best practice with respect to its application at a national level will develop.

### **The Humanitarian Dimension of the Treaty**

**Speaker: Dr. Gilles Giacca, Legal Adviser, Arms Unit, Legal Division, International Committee of the Red Cross (ICRC)**

I am going to discuss articles 6 and 7. They are what we at the ICRC consider to be the heart of the Treaty; basically, its *raison d’être*. Article 6 refers to the transfer prohibitions, and article 7 to the export criteria and the assessment.

First, I emphasise the purposes of the ATT and, more specifically, the humanitarian purposes. There are different references to that in the preamble, such as “Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms” and “Recognizing also the challenges faced by the victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion.”

In the light of the preamble and article 1, which state the object and purpose, we have a fair idea of what the Treaty is about; more specifically, the purpose of “Reducing human suffering.” It is within this context that we encourage states to read and interpret the Treaty. Of course, this approach is not new. All states are party to the Geneva Conventions and, to a certain extent, the Arms Trade Treaty underlines some elements that are referred to in those conventions and that are found under international humanitarian law in recognition that each state has an obligation to respect and ensure respect for international humanitarian law. Over the years, the ICRC always took the view that common article 1—the obligation to respect and ensure respect of the Geneva Conventions—entails obligations of the high-contracting parties. First, there is a negative obligation to refrain from encouraging, assisting or aiding another high-contracting party to violate international humanitarian law and, of course, a positive obligation to take whatever appropriate steps are available to end such violations.

Article 6 refers to strict prohibitions, and I shall focus on each of its paragraphs. The first refers to obligations on the measures adopted by the UN Security Council, acting under chapter 7 of the UN Charter and, in particular, the arms embargo. In the different regional instruments, there is a clear reference to the UN Security Council measure adopted under chapter 7. To a certain extent, there is a renvoi to the UN Security Council, and the legal bases are found in articles 25 and 41 of the UN charter.

Here we have two distinct legal regimes, with on the one side the peace and security regime of the UN Charter and, on the other side, the Arms Trade Treaty regime. To certain extent, they are mutually reinforcing. By implementing the Arms Trade Treaty, the states will also implement and enforce their obligations under the UN charter.

Article 6(2) says: “A State Party shall not authorise any transfer... if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer



of, or illicit trafficking in, conventional arms.” We can refer to different instruments within that provision: the anti-personnel mine ban convention; the 2008 convention on cluster munitions; protocol 2 to the 1980 CCW; and the protocol against the illicit manufacturing of, and trafficking in, firearms, their parts and components, supplementing the convention against transnational organised crime. That does not necessarily clearly prohibit trafficking as such, but it criminalises it, so there is a clear reference to those instruments.

We need to go a step further and ask what other instruments are included. When one refers to instruments to which states are party, clearly the UN Charter is one of them. Yesterday there were a few questions in relation to non-state actors. If one interprets the UN Charter, clearly it is not lawful under international law to transfer weapons to non-state actors in a country without that country’s consent: that would be in breach of UN Charter article 2(1), the respect for state sovereignty, and article 2(4), which set out the principle of non-interference in a state’s internal affairs.

The ICRC does not enter into such debates; we engage with both state and non-state actors and we treat all parties to conflicts on the same footing. But it is important to underline that article 6(2) of the Arms Trade Treaty deals indirectly with the question of transfer to non-state actors. This point should be emphasised.

Of course, one could refer to international humanitarian law treaties. As all members are party to the Geneva Conventions, article 6(2) would refer to the international humanitarian law treaties and, as such, as I mentioned before in respect to common article 1—the obligation to respect and ensure respect—states will need to take into account their obligation under humanitarian law and, perhaps, also regional and international human rights treaties. The principle of the ATT refers to respecting and true respect for international humanitarian law, and respecting and ensuring respect for human rights in accordance with the United Nations charter and the universal declaration of human rights, so it is important to refer to that inclusion in article 6(2).

Now let us move quickly to article 6(3), which states: “A State Party shall not authorize any transfer... if it has knowledge at the time of authorization that the arms or items would be used in the Commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.” First, let us understand what “knowledge” means. When a state performs an assessment, we can think about a strict interpretation: what is the actual knowledge of a state that an arms transfer is likely to be used to commit war crimes



and international crime? But at the same time, during the negotiation, states did not include the notion of “for the purpose of” or “intent”, as such, and referred more generally to the notion of “knowledge” that is found in other international treaties. We would prefer a broad interpretation of what “knowledge” means—knows or should have known—which is described as “constructive knowledge” and is an awareness that a circumstance exists and that potential consequences will occur in the ordinary course of events. So this sort of assessment needs to be inferred from facts on the basis of each state party looking for the relevant information to perform a proper assessment of the likelihood of this transfer.

More specifically, I would like to refer briefly to what was said before article 6(3) was debated. This is the result of a consensus, in the sense that not necessarily all the war crimes are included. We already have the grave breaches of the Geneva Convention that apply only in international armed conflict. We have “attacks directed against civilian objects or civilians protected as such”—so it is direct attacks against civilians but does not include indiscriminate attack. It does not include violation of the proportionality in attacks. So it is very limited at that level. Or, it is other war crimes as defined by international agreements to which the state is a party. So the relevance of this provision will depend to a certain extent on the international agreement to which the transferring state is a party. Obviously, it would also include protocol 1 if states are party to that instrument; article 8 of the ICC Statute, applicable in international armed conflict and non-international armed conflict; and The Hague Convention of 1907, which refers to certain rules dealing with the conduct of hostilities.

A question was asked about what “other war crimes as defined” means. Some states would take the view that “as defined” would mean “as criminalised”, so common article 3, which is applicable in non-international armed conflict, would not be included. However, if one takes a literal meaning and looks at common article 3 in the Geneva Convention, we all agree that wilful killing or torture is a war crime. Therefore, we would strongly recommend interpreting it as “as defined by international agreements”, not “as criminalised”. In common article 3, an offence of their prohibition, as such, is not stated but we will take the view that the war crimes are, none the less, defined in those instruments. The ICRC thinks that we should take a broad approach and include “all war crimes for the purpose of arms transfer”.

To sum up, I have discussed interpreting “knowledge” as constructive knowledge; referring to the definitions of genocide in the ICC Statute, as even for states that are not party to the ICC Statute, it is useful to refer to it at least to have a definition of what we mean by “crimes against humanity” and “genocide”, to which it refers; general references to “war crimes” or “serious violations of IHL”; or mentioning more specifically serious violations of article 3 and additional protocol II within the legislation. It would be important not to distinguish between war crimes, but to take war crimes and protection of IHL as a whole.

I move on to article 7, which is about the export assessment. When a transfer is not prohibited under article 6, each state party will be required to see whether there is a potential that the arms could be used to “commit or facilitate”—which as you can

see is broader than article 6—“a serious violation of international human rights law” or “international humanitarian law” among other consequences. “Serious violations of international humanitarian law” means that, to a certain extent, if we find a gap under article 6(3), you can be assured that “serious violations of international humanitarian law” is broad enough to include all types of violation. At the same time, it entails state responsibility and criminal individual responsibility.

The ATT is a preventive tool. We are here to prevent violation of IHL and human rights, but not necessarily to predict future war crimes; that is an important nuance to bear in mind when reading and interpreting the provision. Violations of IHL are serious if they endanger protected persons, civilians, prisoners of war, or the wounded and sick. They are serious if they endanger objects—civilian objects or infrastructure—and if they breach important universal values, such as recruiting children under 15 years old. It is important to take into consideration a number of factors when performing that assessment. This is more to do with the practical guidance that the ICRC would like to discuss.

First, one needs to look at the record of respect for IHL and human rights of the recipient state. What mechanisms are in place? What are the formal commitments to respect IHL and human rights? What is the level of ratification, implementation and co-operation with international bodies? One needs also to look at the legal and administrative structure of the state and its capacity—for example, whether it has an adequate level of stockpile management. So that gives you another view of the type of risk indicators one could refer to.

In 2007, the ICRC published a practical guide, “Arms transfer decisions: Applying international humanitarian law criteria”. We are currently revising that instrument, and we will also include human rights law criteria that will provide the relevant information on how to perform a risk assessment.

### **Achieving the Highest Level of Interpretation**

**Speaker: Anna Macdonald, Director, Control Arms**

As has been highlighted, the Treaty is not perfect. A key part of our role between the 2012 negotiations, which produced the first draft text of the Treaty, the 2013 negotiations, which secured the final text, and, following that, the adoption at the General Assembly, was to focus on improving the content of the Treaty by ensuring that the text was as strong as possible. I would like to go through five key areas in the Treaty where we believe that states can ensure it is implemented in an effective way. I will then move on to three key aspects that parliamentarians have a specific role in.

First, in terms of the general implementation of the Treaty, I talked yesterday about how the ATT is a normative treaty; we have heard many states refer to this in statements about Treaty implementation, and we have also heard the UN describe the Treaty in this manner. As such, it is state practice that is going to be critical to how well this instrument is applied and to the impact it has. The question that we are asked most often by journalists or anybody examining the Treaty is, will it make any



difference? It is all very well that you have this piece of paper that you have all worked for so long on, but is it actually going to make any difference? It is a good question because unless it makes a difference, it will remain a piece of paper, and what is its purpose if not to actually reduce human suffering?

State practice and the accumulation of normative practice by states, particularly in the first few years following entry into force, are going to be crucial in how well we see this Treaty being implemented and whether it really does make a difference to trying to reduce levels of armed violence and conflict around the world. We feel optimistic about the potential for that, particularly given that the first 50 in our first 54 states that have ratified the Treaty are among those states that most want to see this Treaty implemented effectively; they are among the most progressive states and among a range of states from across all regions. There is a lot of pressure on the first 54, and we are sure it will be more than that and that numbers will rise as we move towards the first Conference of States Parties. However, in this first year, there is a lot of pressure on this first group of states to really ensure that the way you implement the Treaty is as described in its first articles and to the highest international standards.

Linked to that, ways in which states can do that include using interpretive statements. We have seen that done already by a number of states. The Swiss, for example, have given a strong interpretive statement when depositing their instrument, which clearly articulates how they see the various provisions of the Treaty and how they understand provisions within a treaty, such as the reference in article 7 to overriding risk, which Gilles described. New Zealand has similarly provided a strong statement and gone further in its production of a model law, which is designed to be of particular benefit to states within the Pacific region, many of which are smaller island states with less capacity for developing new legislation. The model law—I think there are copies of it available in the room—is a positive development because it provides very clear guidance to states on how they can develop the necessary legislation within their own countries and apply the Treaty. Again, it includes interpretation, such as the understanding of overriding risk as meaning a substantial risk, a very high likelihood that something is going to occur. Actions like that by states that have already ratified the Treaty are very welcome and will help to build up the body of normative practice, which we believe is a key way in which the Treaty will be effective.

Moving on to specific articles within the Treaty, just to touch on a couple of areas where there is some ambiguity and states therefore have the opportunity to aim for the highest possible standards, if



we look at the scope of the Treaty, as has already been described, this was a hard fought over area. Many states simply wanted the Treaty to include all conventional arms, ammunition and their parts and components—indeed, that is something we in the Control Arms coalition strongly advocated. What we have in the listing of the seven categories of the UN register is a compromise, which means there are some exclusions. At the time, we questioned why the Treaty would cover battle tanks and not simply tanks and why some types of weapon were excluded and not others, but it is still quite broad in its scope.

The inclusion of ammunition and parts and components, which many governments, particularly from Africa, negotiated very strongly for, is welcome and crucial to the Treaty having the potential to be effective. As you will notice in the text, Governments are encouraged to develop the widest possible national control list—indeed, many governments, such as those in Europe and West Africa, already have national control lists that are broader than the specific scope described in the ATT. Of course we encourage those states, in their development of legislation, to have the broadest possible definition of scope. All states, in ratifying the Treaty, can do that to ensure that there are no loopholes and there are types of weapon that could be exempt from the provision of the Treaty.

The scope section of the Treaty also covers the type of transfer as well as the type of weapon. Again there is some ambiguity as to what is meant by the type of transfer that is covered. The Treaty provides some definition, referring to the fact that the activities of the international trade comprise export, import, and transit shipment and brokering, referred to collectively as transfer. Within that we would therefore see that all types of those activities are covered, whether they be remunerated or non-remunerated activities. So for example, we would see gifting, whereby weapons are sometimes given to states as part of a broader trade deal or simply as part of a bilateral arrangement, as being included under this definition and would encourage states to be specific about that when they are implementing the Treaty themselves.

The fourth area is the heart of the Treaty, which Gilles described in great detail—articles 6 and 7. I will not repeat the details that he went into, but merely say that we very much agree with that from the Control Arms coalition. These are the essential elements of the Treaty: the decisions that states make and the application of article 6 and 7 will be the real test of how effective the Treaty is. We would certainly echo the understanding of overriding risk as being a major risk—substantial risk—and would encourage states, as New Zealand and Pacific Island states have done, to be clear about that understanding in their application. It is through this that we will see decisions made on arms transfers being effective.

A very positive aspect of article 7, just to refer to it briefly, is that in the list of the risk factors that are presented, article 7(1)(b) refers to the transfers that could be used—not would be used; it is if there is a risk they could be used. That is important because it gives a very broad range for states to be able to assess the risk. It is also extremely important that in article 7(3), looking at the consequences of the risk assessment, states “shall not authorize the export” if the risk factors described above

are considered to be substantial, referred to in the text as “overriding”. That “shall not” phrase was negotiated for very hard over weeks—in fact one could argue it was for years building up to the negotiations. That is the heart of it. When states make their risk assessment they will say, “Does this list of risk factors apply? If the answer is yes then you shall not authorise a transfer. You shall deny that transfer.” That element is crucial to how effective implementation will be.

Lastly, on article 7, the reference in 7(4) to also considering taking into account the risk of arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children, we see as a very important inclusion. Gender-based violence and violence against women and children would already be included under human rights and therefore applicable in article 6’s prohibitions and article 7’s risk assessment, but we see it as a positive and innovative development of the Treaty that it specifically focuses on gender-based violence. This is the first Treaty in international law to specifically reference gender-based violence within its criteria provisions and as such is ground breaking. A lot of attention has been put on to these criteria subsequently. Just in the past month in the UN General Assembly First Committee, many states have spoken about the importance of this specific criterion as being a contribution to reducing gender-based violence around the world. Again, we see the application of this as being an important way that states can push for the highest possible standards.

The fifth area where states can ensure positive implementation is on the provisions on diversion—another area that was highly contentious in negotiations, but a very important area and one which comes down to answering the fundamental question of whether the Treaty will make any difference. Many states, as do we, talk a lot about the problem of the illicit arms trade and the large number of illicit weapons that are flooding the world. The overwhelming majority of illicit arms start off in the licit trade, and it is the diversion risk—this huge grey area—which we hope the ATT will make a major contribution to reducing through effective regulation of the licit trade. The diversion element of the Treaty text is an important area where states can push to ensure that that really has impact.

The potential in the language is that the risk of diversion can be interpreted as applying only to the export of weapons only as far as the point of delivery. It is important that states, in their implementation of this element of the Treaty, are clear that diversion applies post-delivery as well; it is important to consider not just end user, but end use when applying diversion criteria. Given



how much we want to see the Treaty make a positive contribution to reducing the illicit arms trade, this is the element of the Treaty can really make a difference.

Last, but not least, it will be really important that states ensure effective reporting with as much transparency as possible. We frequently hear states' positive views that this is a humanitarian Treaty that can really make a difference. During the last month in the UN First Committee's debate on conventional weapons, 48 states spoke referencing the ATT. The majority of those spoke about its positive achievement and its impact to make a humanitarian difference. However, to do that it needs to stop problematic arms transfers that are currently fuelling all the problems that states allude to, so those states must show how they are using the Treaty effectively to bring the arms trade under control. That means encouraging states to report on how they are applying the Treaty and also to be as transparent as possible in giving examples of where they believe they have been able to use the instrument effectively to prevent a problematic arms transfer. The reporting language in the Treaty is important to that; the provisions on general information sharing are another element of the text that states can use to encourage as much transparency and sharing of experience as possible.

We in civil society will continue to contribute to this area. We will be working on the production of an ATT monitor, similar to those for other treaties that you might be familiar with. We have a land mine monitor and a cluster munitions monitor and we hope that the annual ATT monitor will be a useful and constructive contribution to the annual Conference of States Parties, where we will help to provide an assessment of how well the Treaty is being implemented and highlight areas for policy development and problematic examples that states might want to focus on in particular.

There are three things that parliamentarians can do to ensure that all of that happens. The first is getting the right legislation. I have spoken about the model legislation that is available and there are many other guides being produced by a variety of different organisations on how to develop and provide the right legislation for the Treaty. We encourage all ratifying states to ensure that they have adequate legislation in place and all signatories to be moving towards that so that they can ratify the Treaty soon.

The second is to provide strong interpretive statements and strong political will as parliamentarians. With the adoption of treaties there is a risk, in particular because so much work and effort goes into them, that everyone at the end is so exhausted that they think, "We've done it now. We've got that in the bag. We can now move on to something else." We need you, as parliamentarians, to keep this high on the political agenda and to ensure that your governments are actually implementing it. Otherwise, it will quickly move down and not be an area that is scrutinised as much.

Thirdly, we move on to the final and very important area: the scrutiny and accountability role that parliamentarians have to play, which will be crucial in ensuring effective implementation. In the UK, we have something called the Committees on Arms Export Controls, of which Sir Malcolm is part, along with many other parliamentarians from all parties. That is one mechanism that the UK government has for ensuring some

accountability and scrutiny of its practice. Government Ministers are questioned by the Committees on specific arms transfers and examples, and on specific policy decisions. Both NGOs and industry give evidence to and are questioned by the Committees. Such a system is one type of collective attempt to ensure that government practice is scrutinised and continually pushed to be improved.

Other Parliaments around the world have similar, or slightly different, systems for trying to ensure the same type of scrutiny and accountability. We encourage you all to play a very active role in that process over the next few years as we try to ensure that the Treaty is implemented to the highest possible standards.

## DIFFERING PARLIAMENTARY APPROACHES TO ARMS CONTROL MECHANISMS

### UK Case Study

**Speaker: Mike Gapes MP, Member, Committees on Arms Export Controls, House of Commons**



The current arms export oversight mechanism in the UK represents a single structure drawn together from four separate parliamentary Committees being brought together for this purpose. We have here a system of Select Committees that goes back to 1979. They shadow each government department. But in 1997, the then Foreign Secretary, Robin Cook—this was during the last Labour Government—decided to bring in various changes, one being much greater openness about a number of issues. First, there was an annual report to Parliament about human rights issues around the world; secondly, there was much greater reporting of arms exports by the government.

The Committees in the House of Commons then decided that they had to have a mechanism collectively to look at how the arms export regime was established and was working, and in 1999 we established what we called the “quad”, because there were four Committees. They have gone under different names. There was the Committee dealing with business and industry, which is now called the Business, Innovation and Skills Committee; the Defence Committee; the Foreign Affairs Committee; and the International Development Committee. Rather than having each of those four Committees trying to scrutinise arms export issues, it was thought sensible, to avoid omission or duplication, to establish a special grouping of their members. Now, we are called the CAEC—not with the traditional spelling of “cake”—the Committees on Arms Export Controls.

Approximately 20 members attend the meetings. There is no limit on the number who can attend, from each of our Select Committees, but we have a designated group of four names per Committee, to ensure we have a quorum. Procedurally, things have been difficult for us; we are still working them out. When we produce a report we

must have unanimity and agreement between all four component Committees, so the process can be time-consuming. Also, we sometimes have quorum-related problems with getting agreement; but we have managed it.

Procedurally it has been quite difficult; it is a learning process, because we are not a specific, dedicated Committee to deal with arms export controls, but a grouping of four separate Committees that must come together. However, that means that when we produce a report it has considerable impact, because it reflects the views and wishes of not one but four parliamentary Committees.

Each year, the Committee sees its task as scrutinising the government's policy and performance on arms export controls and issues related to arms control generally. Last year, we broke considerable new ground when we published a huge, three-volume report of about 1,000 pages, in which, for the first time, we went through all the 27 countries listed by the Foreign and Commonwealth Office in its annual human rights report as being of the greatest human rights concern worldwide. Then we asked the government to list all extant British government-approved arms export licences to each of those countries.

The 27 countries on that list were: Afghanistan, Belarus, Myanmar or Burma, China, Colombia, Cuba, the Democratic People's Republic of Korea, Democratic Republic of the Congo, Eritrea, Fiji, Iran, Iraq, Israel and the Occupied Palestinian Territories, Libya, Pakistan, Russia, Saudi Arabia, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Turkmenistan, Uzbekistan, Vietnam, Yemen and Zimbabwe. There was a massive amount of information that we had not previously discovered.

The extant licences totalled more than 3,000. Many of them went back several years and were in the open licence category: in other words, they had been issued at some time in the past and could continue for a period of time. They totalled in value an estimated £12 billion. That does not mean that £12 billion of goods had necessarily been exported; rather, that was the total estimated value of those licences. It is a huge sum.

We published a volume listing all those licences, which I have not brought along with me, because it is a huge document; but we also put that information on our website and made it publicly available. We also asked for the same information for other countries that were not on the human rights report list but were countries of concern to us. We asked for information about Argentina, Bahrain and Egypt, and last year about Madagascar and Tunisia, and we also published that information.

This year, we have done a similar exercise in the report published in July; the government's response to that report was only published in October. We have asked about the 28 countries on the human rights list of countries of concern and five other countries, but this time those five countries included Ukraine. Last year, we also broke new ground in our report on scrutiny of government policies by asking for assessment of all the international arms control and non-proliferation agreements to which the British government had signed. We asked for their policy on the export of drones—unmanned aerial vehicles—and drone components and technology, a new military and civil development used in policing and other matters.

We asked for arms exports that were stated to be for counter-piracy operations. We discovered that large quantities of small arms were being transported to private security companies on vessels that were to be based in countries such as Sri Lanka. We were concerned about the quantities being exported and whether they might be transferred on somewhere else. We asked generally about the effectiveness and management of export controls related to private military and security companies. In general, arms control regimes relate to states, but an increasing number of international security organisations operate that are non-state actors. They are perfectly legal, but military equipment of one kind or another can be transferred to them, and scrutiny of that is needed.

Then there is the issue of the gifting of military materiel by the UK government. For example, at this moment, the British Government is leaving Afghanistan. It will leave behind large quantities of equipment of one kind or another for the Afghan forces. In recent months, so-called non-lethal equipment has been gifted to the Syrian opposition, the Free Syrian Army. The UK Government has also gifted military equipment to a number of Governments, including Jordan and Lebanon. We as a Committee asked for that information. In fact, it is now standard practice for Government Departments—normally, the Foreign and Commonwealth Office—to inform the relevant Committees when such a proposal is to be made, and we are able to comment on, query or even object to such proposals.

We also asked about the relationship of the UK aerospace and defence industries to the United States International Traffic in Arms Regulations, or ITAR. A few years ago, it was proposed that ITAR should be waived for certain British companies. For many years, we pressed for greater transparency about arms exports. We have not got everything we need, but we have gone a very long way. The fact that we produced a massive tome with listings of all the arms export contracts going back many years—the open licences, the single licences, who the company would be in certain cases, which country and the estimated value—has been of great benefit in terms of transparency.

As a Committee, we have continued to express concerns about the role of international arms brokers, and we have thought that it was necessary to try to bring in measures to regulate them. We have been concerned also that British legal jurisdiction has not applied to people who were brokering arms overseas. If they had carried out that activity in the UK, it might have been a criminal activity, but it was not deemed to be subject to criminal law in the UK because it was carried out in another country.



One of the positive results of the implementation of the Arms Trade Treaty, which the British Government was very keen on and which we were an early signatory to, is that there has been a significant extension of extra-territorial jurisdiction over UK persons engaged in arms brokering anywhere in the world. A number of additional categories of weaponry have come within the ambit of that control. That does not go as far as our Committee wanted, because we think that there should be a generalised approach with regard to arms brokering. Nevertheless, we have gone some way.

We also pressured the Government very strongly to publish a register of arms brokers. The Government accepted that they should at least review the issue, although we do not have such a register yet. The Committee's report that was published in July this year, which is not very long, deals with a huge number of other issues. I have not got time to go into all of them, but it touches on issues like bribery and concerns about the trade exhibitions. There is a huge annual defence exhibition, normally in the London Docklands, to which manufacturers and companies from all around the world come. We have been concerned, as a Committee, that our rules against, for example, certain types of handcuffs and other equipment being advertised or sold were not being followed. We were concerned that restrictions were not being properly applied in terms of the catalogues that were available and the checks that were carried out.

We also looked at some other areas that the Government has been involved in, including the review of cancelled arms export licences. One of the consequences of the Arab Spring, so-called, in 2011 was that the British Government retrospectively cancelled a number of arms export licences to countries where it had previously been pushing very hard to sell arms. That raised wider questions. It is like closing the door after the horse has bolted. We sold the weaponry to Gaddafi's Libya, and Gaddafi was overthrown. The weaponry was then dispersed throughout the whole of the Sahel region and North Africa, and it has ended up in Syria, Mali or wherever. It is all very well to cancel the licences after the event, but that does not get you the weaponry back securely and out of the hands of whichever group has got it.

That raises wider issues about how rigorous we should be in the enforcement of the criteria—both the EU criteria we have signed up to and our national law. We have had an ongoing debate with the Government during the last year, whereby we have interpreted changes of wording by Ministers in the coalition Government as an attempt to water down the strict provisions of the guidance issued in 2000 about not exporting arms to countries where they might be used either for internal oppression or external aggression. We believe that there has been a shift in wording. Ministers say that that is not in any way significant whatsoever—they say that policy has not changed—but the





wording has changed. So we have called before us in succession the Secretary of State for Business, the Foreign Secretary and the Defence Secretary to explain to us what guidance should be given as to whether a contract should be granted.

In a debate last Thursday in Westminster Hall, the second Chamber of the House of Commons, the Chairman of the Committees on Arms Export Controls and a number of my colleagues systematically and strongly criticised the fact that the Government appears to have attempted to weaken the wording, to make it easier to promote arms export. However, at the same time, we suspect that—in practice—it has not done so because of the furore and the dangers that we have highlighted.

Nevertheless, we remain extremely vigilant. The UK has one of the toughest arms control regimes in the world. The British Parliament should be proud of the fact that we have tried to strengthen that regime, and we are very vigilant to ensure that there is no move away, no backsliding and no attempt to undermine it.

In this country, we clearly also have a huge defence industry, and many of our defence manufacturers quite rightly wish to export to countries that do not have domestic arms industries but have a right to self-defence. There is always a dilemma: where do we strike the balance, between exporting to a country that has a right to defend itself, and at the same time having safeguards to ensure that when you export to country A, the equipment does not end up with country B or country C, or with some non-state actor using it for purposes that it was not intended to be used for?

We tried to get a handle on this issue in various ways. As part of a parliamentary process, we cannot instruct the relevant Government Departments; we are publicising, questioning and making recommendations. That is the role of scrutiny Committees in our Parliament. However, there have been changes in Government policy because of the work of the Committees. Also, there is clearly a tension within Government between four Departments: the Business Department has an agenda to maximise exports; the Foreign Office is concerned about instability in the world and possible human rights abuses; the Department for International Development does not wish countries to spend money on military hardware when they could be spending it on water, education and health; and the Ministry of Defence does not want weaponry to get into the hands of people who are not regarded as our allies and partners in international security.

So there are different agendas and they all have to be reconciled collectively in Government, but also our Committee works very hard to ensure that there is full parliamentary accountability and scrutiny. In general, all the information that we gather and the evidence sessions that we hold we try to make public on the website. From time to time, however, we have not had co-operation from Government Ministers. In our most recent report, we document an argument with the Business Secretary, who refused to allow us information about the names of some companies involved in the chemical industry when we had suspicions about what might have been exported to Syria in the past. We had to have a meeting with those companies in private. We were not happy, but we decided that it was better to at least have the opportunity to meet them rather than not.

In general, we get good co-operation from Government Departments, but they do not always agree with what we recommend or implement what we say they should. It is an ongoing struggle and we are certainly in a much better position in this country in terms of scrutiny and accountability on arms export controls than we were 20 or 30 years ago.

### Sweden Case Study

#### Speaker: Christer Winbäck, Vice-President, Parliamentary Forum on Small Arms and Light Weapons

The value of Swedish exports of military equipment delivered over the course of 2013 was close to \$2 billion. The largest individual recipients of Swedish military equipment were Thailand, the US, Saudi Arabia and India. Exports to Thailand were mainly final deliveries of Gripen fighter aircraft, while the USA received mainly ammunition and naval subsystems. Exports to India were dominated by follow-on deliveries related to previously exported army equipment, mainly ammunition, but also supplementary orders of replacement parts and components. Exports to Saudi Arabia largely consisted of continued deliveries of the Erieye airborne surveillance system. The year 2013 was not an exceptional one, and Sweden is normally just below or among the 10 largest arms exporters in the world. However, Sweden has fewer than 10 million inhabitants and, per capita, along with Israel, we are by far the largest arms exporters in the world, which might come as a surprise to some of you.

The foundations of the Swedish defence industry's expansion to its present size and level of expertise were laid during the Cold War. Sweden's policy of neutrality, as it took shape following the Second World War, required strong armed forces, which in turn required a strong national defence industry to ensure supply in times of crisis.

The ambition was maximum independence from foreign suppliers, and the defence industry became an important part of Swedish security policy. To be able to develop larger weapons systems at reasonable cost, it was necessary to allow the arms industry to export to ensure that the research and development costs were shared by more customers than the Swedish Government.

The expansion of the Swedish defence industry ran in parallel to the development of a forward-looking policy on human rights, poverty eradication and international law, expressed both in our foreign policy and the policy for development co-operation. The policy clarified the obvious dilemmas and risks associated with arms exports and stated that such exports must



be strictly regulated to be coherent with other policy areas. The solution in Sweden was to have a principle ban on arms exports. Exceptions to that ban can be applied only to countries that are not at war or at risk of getting into a war. They cannot be applied to countries that are seriously violating human rights. It was also clearly stated that the export policy should never rest on reasons of economy and employment; licences can be granted based only on Sweden's interest in relation to security policy.

In 1984, proposing greater transparency and consultation on matters relating to exports of military equipment, the Swedish Parliament decided to establish an advisory board concerned with such exports. The Government reorganised that board into the Export Control Council (ECC) in connection with the establishment of the licence-issuing authority, the Inspection for Strategic Products (ISP), in 1996. All parliamentary parties are represented on the ECC, which is chaired by the Director-General of the ISP. The Director-General is responsible for selecting those cases that will be subject to consultation with the ECC. Consultation often takes place before a company is informed of an advance notification. In addition, the Director-General has to consult the Council before the ISP submits an application to the Government for assessment under the Military Equipment Act or the Dual-use Items and Technical Assistance Control Act.

At ECC meetings, the Ministry for Foreign Affairs presents assessments of the relevant purchasing countries and the Ministry of Defence provides assessments of the defence policy aspects of the applications. The Director-General may also summon other experts. One task of the council is to interpret the guidelines and the EU common position on arms exports in specific cases in order to provide further guidance to the ISP.

The members have unrestricted access to the documentation for all export licence application proceedings. The Director-General reports all export licence decisions continuously, as well as reporting advance decisions that have been ruled on but not previously reported to the ECC, and applications decided on in accordance with guideline practice.

All in all, the system ensures parliamentary insight into the application of the export control regulations. The intention of the Swedish system, which is unique in international terms, in that representatives of the political parties can discuss potential export transactions in advance, is to build a broad consensus on export control policy and to promote continuity in the conduct of that policy. Unlike what happens in many other countries, the ECC deals with cases at an early stage, before a specific transaction comes up. As it would harm the exporting companies commercially if their plans were made known before they had concluded a deal, the ECC's discussions are not made public. Apart from that, the assessments of individual countries are normally subject to confidentiality in relation to foreign affairs.

In this confidentiality lies the weakness in the Swedish system. As the individual members of the ECC are not allowed to discuss such matters with anyone—colleagues in relevant parliamentary committees, party or group leaders or experts—they end up with a large responsibility, integrity need and policy burden on their shoulders.

After the end of the Cold War, the issue of independence from foreign

suppliers became less sensitive and the Swedish defence industry got more involved in international co-operation. As civilian-military collaboration increases and new technologies are made available for military applications, both IT companies and companies focused on high technology in other areas are joining the defence sector. The earlier desire to be self-sufficient in military equipment for the Swedish armed forces has been replaced by a growing need to co-operate with like-minded countries and neighbours.

The interests of Swedish security policy, as defined by the Government, lie in safeguarding long-term continuous co-operation with traditional partner countries. That mutual co-operation is based on both exports and imports of military equipment. There has always been a civil society critique against large Swedish arms exports, specifically when arms have found their way to countries that violate human rights. During the Cold War, the critique came primarily from the peace movement; but in recent years, as arms exports have continued to grow despite the end of the strict security policy needs of the Cold War, there is a much broader critique from civil society.

During the Arab Spring in particular, we realised that Swedish arms exports to some regimes had contributed to maintaining undemocratic governance, and concerns were raised in relation to tighter legislation and implementation. The use of Swedish arms against democratic protesters highlighted the dilemma clearly. As a result, the parliamentary Committee on Foreign Affairs expressed its opinion that the Government would have to come back to Parliament with a proposal for new military equipment legislation aimed at tightening controls on exports to non-democratic states.

In 2012, the Government decided to appoint a parliamentary committee to review relevant export controls. The committee, consisting of representatives of all eight political parties, is tasked with conducting an inquiry into future Swedish export controls on military equipment, and the surrounding regulatory framework. The main purpose of the inquiry is to submit proposals for new military equipment legislation with the aim of tightening controls on exports.

The terms of reference are based on the principles underpinning Swedish foreign, defence and security policy and Sweden's international undertakings on export controls and human rights. The Committee will, for example, examine future Swedish export controls; propose the factors that should be taken into consideration to establish whether a country is a democracy, and which should form the basis for assessing applications for licences to export military equipment; examine how the controls on the export of military equipment to non-democratic countries will be tightened; examine what should be considered in the future as follow-on deliveries, and the rules that should apply to those, in view of the overarching purpose of the inquiry; scrutinise and chart export control systems in other partner countries such as the Nordic countries, the Netherlands, Germany, the United Kingdom and the USA—in particular their controls on the export of military equipment to non-democratic countries; and examine the consequences of tightening controls on the exporting of military equipment.

The Committee is due to report on its remit by 15 December 2014. The report will clearly influence future Swedish legislation, and so will the Arms Trade Treaty, which we have been hearing a lot about these days. Sweden is among the first 50 countries to ratify the Treaty, which, as you know, will come into force at Christmas. Such a change of practice will have a major impact in arms-producing countries that do not work within farther-reaching national or regional rules or codes of conduct. However, Sweden and other European countries that have been working within the common position of the EU will also benefit from the ATT.

According to the ATT, states parties are prohibited from exporting items that could be used in genocide, crimes against humanity, and grave breaches of the Geneva Conventions or attacks directed against civilians. However, when issuing licenses, states parties are also obliged to assess the potential that the export of arms will: contribute to or undermine peace and security; facilitate serious violations of international humanitarian law or human rights law; facilitate an offence related to terrorism or transnational organised crime; mitigate risk in relation to confidence-building measures; or facilitate serious acts of gender-based violence, or violence against women and children. That is more far-reaching than most national legislation and regional frameworks, including the Swedish legislation and the EU common position, and will be a very helpful tool for parliamentary oversight of arms transfers.

One immediate consequence of the Arab Spring was increased interest among parliamentarians at looking more closely at how to improve parliamentary oversight of arms transfer. In several countries, parliamentarians have looked for mechanisms to improve oversight and find a practice that takes more seriously the concerns expressed in the ATT. The Swedish Parliament is considering adding criteria on democracy. My wish is for Sweden also to improve its parliamentary transparency, which would increase quality in the process.

From the Parliamentary Forum, we have initiated an improved dialogue between European parliamentarians better to share good practice and to contribute to improved European harmonisation.

### **Group Discussion Breakout Session 1: Achieving a broad understanding of the wider impact of arms controls and the regulatory environment**

**Speaker: Dr. Paul Holtom, Head, Peace, Reconciliation and Security Team, Centre for Peace and Social Relations, University of Coventry**

The break-out group focused on achieving a broad understanding of the wider impact of arms controls and their regulatory environment. In reporting back, I will draw out some of the key challenges and solutions identified by the group for reaching signature



and ratification of the ATT from a parliamentary perspective. We began by considering whether it was a worthwhile endeavour for some of the countries around the table to have oversight of arms exports and to produce a 1,000-page report, but when we found that most of the countries around the table were small-scale producers, or mainly dealing with the import, transit or trans-shipment of arms, we switched our attention to the obstacles to states signing and/or ratifying the ATT.

The first was the issue of the ATT's relevance to national security and security dynamics. Terrorism, occupation and organised crime were raised as issues of pressing concern. The second was the regional dynamic: the degree of scepticism among states in a region about instruments such as the ATT, and the extent to which the region was insecure or unstable. Conversely, it was felt that if a region was stable but there were transnational security challenges, the ATT offered an opportunity as an international instrument to support chances for co-operation and assistance, and for exploring measures to address diversion and illicit trade that had the end result of human suffering.

The key obstacle was getting the ATT on the list of priorities for parliaments and Executives. It was felt that if an Executive supported the initiative, it would represent strong political will, meaning that there was a good chance of success in signing and ratifying. Some members said that more clarity about what co-operation and assistance would be available for states parties could encourage states to sign and ratify.



At the same time, broadly for parliamentary oversight but also for the ATT, issues of legacies of secrecy on defence-related issues were brought up. In particular, it was flagged up that defence-related issues are often cast as above parliamentary scrutiny. It was

noted that there are efforts in some countries around the table to overcome that, but it still remains a barrier in others.

Some members of the group expressed concerns about the implications of the ATT for arms acquisitions and asked where the Treaty was going. They wondered about the prospects for amendments, additions and changing norms, and whether some states with pressing security concerns would still be able to access weapons. That was particularly highlighted by states in unstable or conflict-affected regions.

A point was also raised about what the key international and regional states and actors were doing and how that influenced the dynamics in many of the countries represented in our working group. What is the US doing and what is Russia doing? We also heard it said that what the big players in a region do has an impact and influence on smaller states. On the future trajectory of the ATT, delegates also wondered whether it will be very different in five, 10 or 15 years. What are we signing up to?

One of the key points made about solutions was that it is critical to raise

awareness and to have public discussions about the ATT. Particularly for practitioners, but also for parliamentarians, it is important to tailor the particular advantages of the Arms Trade Treaty to different states. While there are broad advantages to the ATT, one of the first points that many people raised was, “What are the benefits for my state of joining the ATT?” It is critical that those advantages are tailored.

We heard about techniques that could be used to help states thinking about what they needed to do to get on board with the Treaty. We heard references to designing model laws specifically for states that are not major exporters in recognition that such states can benefit from the ATT. There were calls to look at the synergies among the programme of action on small arms and light weapons, other related arms control instruments and the Arms Trade Treaty. Is it possible to introduce some kind of compendium or bumper law whereby you not just have the ATT, but look at how it interacts with other instruments? That was also raised with regard to reporting on arms transfers, which some states do with the UN register of conventional arms or at a national level. We could explore ways of ensuring that there is not too much of an increased burden while pushing the envelope on enhanced transparency. Finally, we had calls for domesticating the ATT to make it relevant and a living instrument for any particular country.

### **Group Discussion Breakout Session 2: Parliamentary role and perspectives on risk assessments of arms export decisions**

**Speaker: Dr. Silvia Cattaneo, Co-ordinator, the Geneva Forum**



The second break-out group focused on the role of parliaments in overseeing and monitoring exports approved by relevant related Governments—specifically, the instances covered under article 7(7) of the Treaty. That refers to situations in which an authorisation has already been given, but where, in the meantime, the circumstances have changed to the effect that they might lead to a reassessment and possibly the revocation of the licence.

We drew a lot of discussion from one example provided by a delegate drawing on his own parliament, where a sub-Committee of the Parliament, which meets in closed session, is none the less able to give an assessment and an opinion from the time that the Government have authorised an arms transfer to the moment in which the transfer should physically take place. That is a fairly rare circumstance in which parliament can have an input before the weapons are physically moved. In the majority of cases, parliament have exposed oversight powers, particularly when it comes to the possibility to debate and ask questions on reports that Governments present to their parliaments, usually on an

annual basis. As you might understand, that was an example that drew a lot of interest and raised a lot of questions, together with the example of our Swedish colleague here, Christer Winbäch. He explained that in detail in the previous session, so I will not go into it. Those two catalysed a good part of the discussion in the group.

The thing that was particularly interesting is that even though the discussions in those sub-Committees are closed and there are particular commitments of parliamentarians who are part of those discussions not to disclose the content, they can be taken up in one form or another in more public parliamentary debates. It is potentially a very effective tool for overseeing export decisions.

The majority of parliamentarians in the group acknowledge that they have more of an indirect role in overseeing arms export policies of their Government. That includes the debate and questions around the budget that the parliament has to approve, although it was also noted that when it comes to defence budgets, it often happens that you have only one line and not much broken down into items, so the information you can get from that is quite relative.

It was also clear that there is an important role for informal dialogue, promoted by individual parliamentarians or groups of parliamentarians. Again, when that is not institutionalised it really comes down to the particular interests of one or more individuals to focus attention on those issues. It was also noted that the possibility for the parliament to have a say or monitor arms export also depends on the maturity of the democratic environment. It was underlined by several participants that in quite a few countries, security and defence issues are exclusive domains of the executive power, so the information that would be needed by parliamentarians to assess and analyse the export decisions is not even available. That is something that needs to be taken into account.

What I found interesting was that while a few participants spoke of a national constitutional, or at least structural, limitation, another spoke of a cultural limitation. They noted that there is a taboo that should be deconstructed in how Governments and Executives have exclusive access to this kind of information and these debates. While it was acknowledged that there are limits to what parliaments can do in how specific export control decisions are taken, it was also noted that the flow of information to parliaments is fundamental because, for starters, they are the ones who have to ratify the Arms Trade Treaty and it will not be politically effective to present them with a text without the background and context in which ratification should take place.

Parliament will also have to pass the laws necessary to implement the ATT, so this flow of information is, in any case, fundamental. There was a call for transparency at both the domestic and international level. On the surface, information is being conveyed from the Executive to the parliament, but that is only on the surface. When you have 900 pages of reports with data that does not cross-reference so you cannot understand who gets what for what value, that information is really not that useful.

From the international point of view, unfortunately many instances were noted in which export has been denied in one country but then authorised by another. This is one of the common techniques which is also used by illicit trafficking agents: they go



to the jurisdictions that are notorious in being where controls are either more relaxed or less effectively implemented. However, it often is a problem of lack of information exchange. One question that we have not explored in this context is: what role could parliaments have in this exchange of information besides the exchange that should be carried out by enforcement agencies, customs and borders and police agencies?

There is another element that we do not pay enough attention to. We have focused a lot on exports but there is a question of imports. For a lot of countries, including those represented in our break-out rooms, this represents not a bigger problem, but a more frequent instance. It would be worth exploring a bit further what the role of parliaments could be in the case of importing weapons as well as exporting them, besides what we mentioned before about having a say on the approval of the budget.

Finally, article 7(7) of the ATT specifically underlines that parliamentarians have a responsibility to bring up cases and information if available in instances in which the context has changed such that a transfer that was previously authorised should be interrupted.

**Parliamentary Role in Reporting and Monitoring of the Treaty**  
**Speaker: Dr. Sibylle Bauer, Director, Dual-use and Arms Trade Control Programme, Stockholm International Peace Research Institute**

Something outstanding here is that it is not only the Opposition that poses critical questions to the Government, but also representatives from the governing party. I am German and there is a different tradition in my parliament. The very critical questions come from the Opposition, but rarely from representatives of the governing parties. Members here live up to an interesting model. The other aspect, which was mentioned by Mike Gapes, is that because there was a specialised Committee set up in 1999, some expertise has developed, an institutional memory, including the dedication of resources by having a specific Clerk working on the issues. That is not available in most other parliaments with which I am familiar; there are no dedicated staff that follow and analyse the issues. I commend the system that was built here and has been developed over the past 15 years or so.



I have identified a few different aspects of the role of parliament that were subjects of discussion at this Seminar. The first is Treaty ratification and the context of the ratification of the Arms Trade Treaty. The Treaty may require the adaptation of some laws—perhaps looking at whether amendments may be required and so on—and the introduction of new laws. Parliament will play a crucial role in that respect.

In that context, a feasible amendment is a legal change that would require or



make it mandatory for Government to report on arms imports, exports and transfers, as is provided for by the Treaty. The reason for that is that in some countries some of the information that should be provided in the context of the Treaty may be considered a state secret, or there may not be a tradition of the Ministry of Defence holding that information sharing it. Putting that into law in the context of the ATT revisions may create a legal basis that would make it easier and routine to share that information. The German parliament did that more than 20 years ago, when the UN Register on Conventional Arms was set up, to ensure that it was legal in Germany for the Government to provide that information to the UN. They inserted a small additional paragraph in the War Weapons Control Act. It was an easy step to take but it still created a very clear legal basis for the German Government to provide that report to the UN. It is an interesting model that could be followed in other countries.

I do not know whether other countries have provided that in their law but some other parliaments, which were a bit fed up about not getting sufficient information from their Governments, at some point adopted laws requiring the Governments to provide very specific information on arms exports. For example, the Spanish parliament did that a few years ago. They adopted a new law on arms export and said that the Government had to report in these intervals; the report had to contain that type of information—it is quite detailed. In Belgium there were provisions that specified some of the type of information that has to go into the annual reports. There is quite a lot of scope for parliament to demand information and through existing legal powers to put that into the legal provisions.

There are two other roles that I have identified regarding the role of parliament. One concerns resources—always a tricky question. There is always a lot of competition for spending money in the budget. Because parliament has budgetary powers and enforcing the Treaty will take some resources, it is important that parliament is aware of the importance of the Treaty and keeps that in mind when the budget is allocated. To give one example, Customs always has a budget line but it needs resources to implement licensing decisions and to prevent illicit trafficking at the border and so on. I work a lot with Customs officers and sometimes they tell me that their bosses do not think that preventing arms trafficking is the top priority; it is more about revenue collection and so on. If parliament was aware of the importance of the role of Customs, and emphasised it, not just in the budget allocations, but in the political priority that is given to it, the Customs officers who have to do the very difficult job might have an easier job because that role was recognised. Often, something like the Arms Trade Treaty takes place at the very top political level, but those who implement the provisions are the ones at the working level, standing at the border and so on. It is important that the policy level is linked to the specifics of the implementation and the enforcement of the Treaty.

Last, but certainly not least, there is the important role of parliaments in monitoring the implementation of the Treaty. We have had some discussions about the constructive ambiguities that are in the Treaty and about language that could be interpreted in different ways. There I see a strong role for parliament to ask how

the Government interpret the provisions of the Treaty and how they are applied in practice. On the question of resources, information is a key resource that needs to be available, and the kind of information depends on the questions you ask.

Regarding the information that is available for parliamentarians, part of the good news, in my view, is that the information that is available on arms issues has increased over the last years and decades. You can see that to different extents in different regions, but to give an example from Europe, which is the region that I have worked on a lot, in 1985 Sweden was the only Government that provided a public report to parliament on arms exports. Today it has become the norm: almost all European Governments provide reports on arms exports to the public or their parliaments. So there has been a big shift over the last 15 years or so. I still remember the discussions in the late '90s. When many Governments were asked to provide certain data, they said, "That is not possible. That is secret," or, "Nobody does that. No Government provides that information." Over time, they learned that many Governments do provide that information, and now the perception of transparency norms and what should be considered secret has changed enormously. So it has been interesting to see the shift over the years, which I find encouraging.

Regarding resources, there is also a lot of information available for non-governmental organisations from civil society that can serve as tools for parliamentarians. We have referred to model laws, and I would also like to mention the work of my institute, the Stockholm International Peace Research Institute, for which I credit the Swedish parliament, because it was set up as an initiative of the Swedish parliament in 1966. The Swedish parliament made a big contribution by making information on arms exports available not only to the Swedish public, but internationally. The institute was not set up only for the Swedish public and parliament, but with a much broader vision in mind. I wanted to credit the Swedish parliament for that initiative as we have a former Member of it here.

Also important in terms of resources is that other parliaments may hold information that is relevant for you. We started the discussion in the working group. For some countries, they are exports; for other countries, they are imports, so a parliamentary Committee may discuss the same transactions, such as procurement, in their Defence Committee, whereas another country's Committee might scrutinise exports. If you have close links and co-operation, it might be interesting to exchange that information. In many transactions, many countries are involved, and what has struck me over the years is that Governments have built a lot more co-operation mechanisms to exchange information about arms exports than parliamentarians have. In the EU and also internationally, Government officials now routinely exchange information, and I think parliamentarians do not always use that possibility to the full extent. If you put all the pieces of the puzzle together, you could build a much better picture of what is going on.

Also important in terms of resources, especially linked to the Arms Trade Treaty, is the other policy areas. Many parts of the Treaty are linked to international human rights law, humanitarian law, and specific regions. In your parliament you will surely

have Committees that specifically deal with those aspects, and they may have a lot of resources, information and expertise available. So cross-links in parliaments would be highly beneficial as well.

I have said much about resources, but I also want to point out that it is important for parliamentarians to request information. I have seen over the years in a number of parliaments that the parliamentarians who insisted on getting information—sometimes it took a lot of persistence—got a lot more information over the years, and that was not only the case in the UK parliament. I have seen it in the Spanish, Dutch and Swedish parliaments and in many others. I can say more about that later if there is time.

There was an interesting case recently in Germany. Three Members of Parliament took the German Government to the Constitutional Court to complain about the limited amount of information that they get on arms exports. Two weeks ago the Constitutional Court ruled on what kind of information should be provided and when it could be provided. A 40-page ruling goes through all the different aspects of what could be a national security concern and what should not be. Such discussions are very relevant. Often, if you ask for information or decisions, the outcomes can be interesting.

Someone asked what actually constitutes useful information and transparency; we could have a lot of detailed discussion on that if we had the time. You can use different characteristics that testify to the quality and usefulness of the information. One key characteristic is timeliness: if parliament receives information about transactions that happened years ago, that is of course not as relevant to the current discussion as information that is provided very soon after transactions have taken place, or even in advance of the decision. It also depends very much on the level of detail. If you want to assess the exact impact of a transfer on international humanitarian law or on human rights and all you know is that €10,000-worth of equipment was transferred to a country without knowing what type of equipment it was, that type of information is quite useless. You need quite a lot of information on the quantity, the type of weapon that was exported or imported, and so on and so forth. The disaggregation and level of detail provided is important for enhancing transparency.

One point that was raised by my colleague in the working group was the fact that some Governments present a lot of information—for example, the Italian Government produced a 1,000-page report—but it takes a lot of time and expertise to distil relevant information from that. Sometimes, it is not the amount of information that increases transparency, but how relevant it is and how well disaggregated and analysed it is, as well as how easily accessible it is to those who want to make use of it.

In conclusion, one big lesson that I have learned about the role of parliament in scrutinising arms trade issues is that it is not necessarily the amount of information that translates into an increased role for parliament; many other factors come into play. Often, the individual interest of parliamentarians is important: you must have someone who takes an interest in the subject and pushes it forward. Very few parliaments have taken steps to institutionalise the process so that a specialised body scrutinises the

questions and it is no longer up to an individual taking the initiative. Coming back to a key issue of the session, it is often a question of resources. If an individual Member without secretarial support or institutional memory is trying to scrutinise certain questions alone, that is much more difficult than when a support structure has been built up to facilitate the scrutiny of arms trade issues, with resources and expertise available, along with, perhaps, a committee structure.

There are a number of questions for parliaments to decide, not only on what kind of information to ask for, but on what procedures and mechanisms to establish so that if information is to be saved, it can be analysed in an appropriate manner and used to scrutinise Government. With that, I will leave any further discussion to the question and answer session.

## **INTERACTION AND CO-OPERATION BETWEEN PARLIAMENTS AND CIVIL SOCIETY**

### **The Role of Civil Society**

**Speaker: Elizabeth Kirkham, Small Arms and Transfer Controls Adviser, Saferworld**



The origins of the ATT lie in the campaign during the 1990s for an international code of conduct on the arms trade which was championed by Dr. Óscar Arias, former President of Costa Rica, and supported by an international group of NGOs. Having convened a Commission of Nobel Laureates in support of the cause, Dr. Arias' tireless efforts and those of his own Foundation were crucial building blocks along the way towards the agreement of what we now call the Arms Trade Treaty.

By the end of the 1990s the success of the landmines campaign, among others, led to the growing belief that the focus of our campaign should shift from the pursuit of a politically binding code of conduct towards the development of a legally binding treaty. We were convinced that this treaty should clearly articulate the paramount importance of safeguarding human rights and upholding international humanitarian law. We enlisted the help of a group of international lawyers in order to develop a draft framework convention, which eventually came to be known as the Arms Trade Treaty. We set about building a coalition of the willing among parliamentarians and Governments, with Costa Rica, Kenya, Finland, Cambodia and Mali among the first to declare their support. When the UK Government announced in 2005 that they would

seek agreement on an ATT through the United Nations, the campaign took a massive step forward.

From the inception of the UN ATT process with the first General Assembly resolution in 2006 to its conclusion in 2013, civil society organisations, working under the umbrella of the Control Arms coalition, were extremely active at national, regional and international levels, as well as at the UN itself. As we heard previously, NGOs all round the world undertook a wide range of activities in order to raise the profile of the ATT. Many of these activities involved enlisting the vocal support of influential actors such as faith leaders, celebrities and parliamentarians.

NGOs also organised a range of regional and international meetings on a variety of ATT issues that helped to provide space within which stakeholders could engage in informal discussion, facilitating the development of ideas and proposals that would feed into the UN negotiations. My own organisation, Saferworld, contributed to this effort and organised six international seminars over an 18-month period during which a range of ATT implementation issues were discussed.

As regards civil society engagement with states during the ATT negotiations, the Control Arms coalition assembled a team of NGO policy experts with a wide range of expertise, from survivors groups to international legal experts. This team worked day and night to provide the coalition's substantive contribution to the Treaty negotiations. Detailed civil society positions on key issues of broad scope, criteria rooted in international law and robust implementation provisions were already well established. These had been developed and discussed over a number of years and articulated through a wide range of publications by specialist NGOs and by the Control Arms coalition. The challenge was to ensure that, during the negotiations, we brought this knowledge and expertise to bear in a timely and constructive way in order to help move the discussions in a positive direction.

Throughout the negotiations, then, the Control Arms policy team analysed the various chairs' papers and draft Treaty texts, generating proposals which were shared with the coalition membership. Our colleagues would then take these proposals into their discussions with delegations from all regions on the floor of the conference room. Needless to say, we shared the disappointment and frustration of many states when the July 2012 negotiations ended in failure. However, we were convinced that success was within reach and supported states in the drafting and passing of a General Assembly resolution that would enable a second and final diplomatic conference to be held during March 2013.

As was noted yesterday, we were especially convinced that the resolution should allow for a plan B enabling the ATT to be taken forward via the General Assembly if, and as it turned out, when, consensus could not be reached. During the period between the two diplomatic conferences we also organised two international meetings which looked into a number of the problems that had been identified with the draft Treaty text from July 2012, and we explored ways forward for the March 2013 negotiations. We also produced a number of reports which encapsulated these discussions and set out our objectives for the final diplomatic conference.

As we heard yesterday, the negotiations that took place during both diplomatic conferences were often complex, with many competing perspectives and interests at play. Although there were many areas of contention, the headline controversies included whether the term “overriding” set the bar for the export risk assessment too high, whether defence co-operation agreements should be exempt from the Treaty’s provisions, and whether ammunition, parts and components should be included in the Treaty. Control Arms members strongly supported the inclusion of ammunition in the Treaty and helped to secure support from nearly 70 delegations for a joint statement on ammunition at the 2013 conference.

This strategy of cross-regional coalition building was used on a number of occasions during the negotiations, with strong support also generated for the issues of development and gender-based violence. We were also successful in helping to encourage broad expression of the will of the majority of states that wanted to see a robust Treaty. For example, in response to the disappointingly weak second draft text issued on 22 March 2013, we worked to build support for a joint statement calling for a concerted effort towards a much stronger final text. This statement was read by Ghana, with support from over 100 states. We firmly believe that this helped move the discussions towards a positive conclusion.

NGOs also worked behind the scenes, presenting our ideas and proposals to states and regional groupings. Some colleagues were accepted on to Government delegations and so could contribute to the discussions within their own delegations and with others in the same region. NGOs also provided support to smaller delegations from developing countries by sharing our analysis of various draft Treaty articles.

One other way in which the NGO community was able to help was in the provision of legal assistance and advice. Established with the help of the Control Arms secretariat, the ATT legal response network—or ATT Legal, as it is known—served as a free resource for UN delegates, Government officials and non-governmental organisations during the Treaty negotiations. In particular, ATT Legal sought to provide assistance to those delegations and organisations which could not bring or consult their own counsel during the negotiations process. ATT Legal is continuing its work and is available to provide support to Governments in their ratification and implementation of the Treaty.

Following the adoption of the ATT on 2 April 2013, civil society organisations have continued to work with all stakeholders in order to promote signature, ratification and implementation of the ATT and, as in the run-up to the Treaty negotiations, this work has involved a wide range of activities at national, regional and international level. My own organisation, Saferworld, is working with Government and civil society partners to develop common understandings around Treaty implementation and to assist states in identifying their specific assistance needs. Control Arms is developing an ATT monitor that will scrutinise national implementation of the Treaty and help in the ongoing process of holding Governments to account for their arms transfer policies and practices.

Achieving entry into force of the ATT on 24 December will be a great moment



in history. However, we in civil society know that we are only at the beginning of the journey towards the establishment of an effective regime that will help to prevent violent conflict and build safer lives and livelihoods across the world. We look forward very much to continuing our work with Governments, parliamentarians and all other stakeholders in order to make this shared vision a reality.

**Parliamentary Liaison with Civil Society**  
**Speaker: Hon. Paul Nji Tumasang, Cameroon**

I am lucky enough to be a member of the Cameroon National Commission on Human Rights and Freedoms. I will talk about what the Commission does to control arms imports and about arms proliferation, which increases the activities of bandits and cross-border criminality.

The members of the Commission include representatives of non-governmental organisations, which are sometimes called civil society organisations. One of the strongest members of the Commission deals with the problems of arms control. They try to lobby Commission members who are parliamentarians—there are four of us who are parliamentarians, four members of the National Assembly and two Senators—to ensure that the Government in all their activities take into consideration the problems related to arms control, arms trade and the proliferation of small arms and light weapons. They also lobby Parliament through their members to try to talk to arms manufacturers. We believe that there can be no arms importation without arms manufacture and exportation. It is only the Government, through Parliament, who have access to all the big manufacturers that flood our countries with arms. That is the link between the Non-Governmental Organisations (NGOs) and the Civil Society Organisations (CSOs); the Government and the National Commission for Human Rights and Freedoms.

What we have done is to encourage the youth in Cameroon—we are very happy with this—as they are in the vanguard for resolving the problems related to arms proliferation, especially now that our region is very volatile. There are armed conflicts throughout Cameroon, Nigeria, Chad and the Central African Republic. The ease with which these terrorist groups or these groups of insurgents have access to arms is very troubling. We have encouraged our youth and lobbied the Members of Parliament to make the Government take the problem seriously.



The NGOs are often directly linked to the population, and parliamentarians, who are representatives of the people, are also very much linked to the masses. So the NGOs, who live within the population, and the parliamentarians, who lobby the same population for votes every five years, are in a good position to work together. We encourage that work between the CSOs and the MPs.

The biggest problem is with those who proliferate the arms; they are not from the locality. It is almost as if they are above the law. It is only the NGOs and the parliamentarians who live with the people who can puncture their activities. Capacity building is a problem in this regard. The NGOs need to be given more information and more training to be able to interact with the people who are causing this type of trouble within their society.

The resources to carry out such activities are generally very limited. The NGOs lobby parliamentarians to see whether their needs can be considered when budgets are under discussion. The problem is if they get Government assistance, they will then come under the control of Government. We need to strike a middle position. The NGOs require Government assistance, but they are working to control Government's action in this activity. It would be difficult for them to control somebody who finances them, but we try as hard as possible within Parliament to strike the middle position.

We believe that as long as the youth are interested—and they are the leaders of tomorrow—they will master the activity as they grow into adulthood and become Members of Parliament themselves or set up more civil society organisations to tackle the problems.

### **ATT Model Law**

**Speaker: Sarah Parker, Senior Researcher, Small Arms Survey**

I shall speak to you about a tool that has been developed by the Small Arms Survey, with the support of the New Zealand Government, to help states to implement the ATT. It is called “Arms Trade Treaty: Model Law”. I will address the general background to the development of this tool, the process, the format, and what we hope it will contribute. The New Zealand Government wanted to help, specifically, Pacific states—of which there are 14—with their efforts to implement and ratify the Treaty. We are talking about 14 small island developing states, none of which



manufactures weapons for export, although some have minor exports of re-exported weapons. They do not even import very much in the way of weapons. However, they do face considerable challenges in terms of transit. They have vast territorial waters, and there are a great many commercial and other shipping routes in their territories.

The idea was to help those states to interpret and implement the Arms Trade Treaty in their national legislation to facilitate ratification. They had fairly limited capacity in that they did not have many experts—most of their Government and customs officials have to cover many portfolios—so the idea was to give them some additional external support.

The process was to interpret the provisions that lend themselves to legislation, because not every provision or obligation in the Arms Trade Treaty can be translated into national law. Provisions that can be translated into national law include, as the contents page shows, those on export, import, transit and transshipment, brokers and brokering and record keeping.

We also included interpretation because, as we know, the Treaty contains definitions of practically nothing, except the term “transfer”. In the draft law, we provided examples of definitions from other instruments, best practice guidelines and so on. We consulted a group of experts present at the ATT negotiations from states that helped to draft the various provisions to ensure that we understood the interpretation and requirements of the obligations.

We held a regional consultation with all the Pacific states, essentially to get their buy-in: to get them to own the model law and to ensure that it met their needs and answered their questions. That gave us an opportunity to get some consensus on how they wanted to interpret certain elements in the Treaty. Yesterday, Anna Macdonald mentioned that such things as state practice and national legislation will increasingly build up a body of jurisprudence that determines how states interpret the Treaty.

In the context of the model law, a concrete example was the issue of “overriding risk”, which we have heard a lot about over the past couple of days. During the negotiations, all the Pacific states supported using the term “substantial risk” instead. When drafting the model law, they were happy to use “substantial risk”, so the term “overriding risk” is not in it.

Once we had concluded the regional consultations, including with the Pacific Islands Forum, which is the regional organisation, we finalised and settled the model law. It has since been adopted by the Pacific Islands Forum Secretariat as its document, and it is therefore the guide for Pacific states.

As anyone who has looked through the model law will have seen, the draft provisions or regulations are fairly straightforward. In addition, there is a commentary: extensive footnotes give guidance on how we interpreted the provisions, why we drafted them as we did and so on. We tried to make clear in the commentary which provisions are mandatory and which are optional. Some say, “States shall do x or y.” Others are to encourage certain practices: “States may do this or that.” States can therefore take a progressive approach and adopt all the model provisions—a very progressive interpretation of the ATT—or they can do the minimum. That would

obviously not be optimal, but it is up to them, because this is about what states have the capacity to implement.

That is a basic overview of the process of creating the model law and of its format. It took much longer than we thought to get it right. Because of all the constructive ambiguities in the ATT, which we have heard so much about, interpreting its provisions and translating them into national law poses quite a few problems. I am sure that many of you will find that when you do the same exercise.

I turn to what the model law will achieve or has already achieved. We were consulted by the Government of Liberia, and we helped them to draft legislation that included many of the provisions. The Government of Jamaica have used it to fast-track its ratification through their parliamentary processes. Even though they have not yet adopted the legislation, they could demonstrate that the process would be fairly straightforward, because a tool already existed that could answer many of their questions.

We have had expressions of interest from the Caribbean region for the development of something similar. It is a similar situation there: several island states do not have land borders with other states; they have a lot of transit; and they do not do much exporting or importing. There are therefore many synergies with the Pacific states.

We have also heard that the Economic Community of West African States and other African regional organisations are interested in developing model laws that are appropriate for their region. I imagine such laws will include much more extensive provisions on transit, for example. There is a lot of land transit in Africa, but that does not take place in the Pacific.

As proud as I am of the document, I must remind you that it is not a one-size-fits-all model. It forms a very good basis for states all over the world to interpret the Treaty, but because of the focus on island states and their transit problems, it is not necessarily going to resolve the issues of individual countries. It is a good starting point, however, and I hope that it will help parliamentarians and others to think through how the ATT can be implemented in national legislation.

## **DEFENCE INDUSTRY (SELF-REGULATION AND ACCOUNTABILITY)**

### **UK Defence Industry Perspective**

**Speaker: Paul Everitt, Chief Executive, ADS Group**

The UK defence industry is the largest exporter of defence equipment and services in Europe, and it is second only to the US globally. It generates annual revenues of around £22 billion for the UK economy and sustains thousands of high-value jobs. In 2013, the industry generated close to £10 billion of exports, 83% of which were in the air domain. I guess that background gives you some sense that we are very much engaged in export activities and understand the need to control and regulate them.

Inevitably, the UK Government is the UK defence industry's biggest customer,

along with our own armed forces. We supply a wide range of equipment and services to the UK Government and armed forces. If we were trying to give a sense of where our focus lies, the big kit we are focused on is around combat and training aircraft, helicopters, complex weapons and the advanced systems that support and protect them.



The UK industry regards its role as supplying the equipment and capability to help deter aggression, to protect our own citizens and armed forces, and, where required, to accurately degrade and destroy the capability of hostile forces.

I am proud that the UK defence industry has played a positive and constructive role in the development of the Arms Trade Treaty. We have worked with the UK Government and, indeed, many EU member states to provide detailed input and to drive the process forward. Indeed, alongside industry representatives from around Europe, we were represented at all the preparatory negotiating conferences in the United Nations.

There may be some doubters among you in the audience who find our industry's enthusiasm for the Arms Trade Treaty a bit surprising, but I think our interest is genuine and soundly based. We are an international business and subject to significant regulation in the various markets in which we operate. The creation of a set of common international standards and a more harmonised approval process offers us greater certainty and clarity in operating in international marketplaces. That means we can better standardise our own processes and more effectively manage them.

Perhaps more importantly, the Treaty helps to put in place a framework for companies to better manage the risk to, and avoid undermining, the reputation of their own business. We see corporate responsibility—conducting business in an ethical and responsible way—as a fundamental part of a successful business strategy. Common standards and practices help us to ensure we are operating appropriately in all markets. UK industry sees good practice and high standards in all aspects of our work as a route to competitive advantage.

I should also mention that we understand the dangers and the damage that uncontrolled and chaotic arms transfers can give rise to. We are convinced that the Treaty is the right way for society and industry to address and manage those issues far better.

The preamble to the Arms Trade Treaty explicitly recognises the voluntary and active role of industry in raising awareness of the object and purpose of the Treaty and in supporting its implementation. We are clear that we wish to continue to be active participants, including through representation at the first Conference of States

Parties next year, widening the base of support for the Treaty and sharing best practice with our industrial and governmental partners. This is, after all, a trade treaty, and the insight and experience of international businesses offer tangible benefits.

We are an industry with extended supply chains, often multinational in nature, and our Government customers are also fulfilling regulatory responsibilities. We believe we are able to assist them in identifying best practice—for instance, in the designation of competent national authorities and the establishment of effective and transparent national control systems. Sharing our experience of working with the good, and occasionally not so good, regulatory regimes will, I hope, help to promote higher standards.

The UK Government and industry are committed to the successful implementation of the Arms Trade Treaty. We have made important progress, but there remains much we have to do.

Finally, it is important to recognise that the establishment of an effective control regime does not mean that everyone will always agree with the decisions individual countries take, but it will provide greater transparency and the ability for civil society and, indeed, international Governments to hold decision makers to account. For me, that is a very important thing.

## **Effective Implementation**

**Speaker: Dr. Paul Holtom, University of Coventry**

I will briefly offer some personal thoughts on how industry can contribute to the effective implementation of the Arms Trade Treaty, but I also want to raise some potential concerns and to talk about how parliamentarians can play a role in guaranteeing the accountability and oversight of industry.

The preamble of the ATT recognises the role that industry can play in raising awareness of the object and purpose of the Treaty and in supporting implementation. He also mentioned how industry, especially in the UK and across Europe, has been a key advocate for the Treaty and continues to play a role in supporting universalisation by engaging with its customers and trying to overcome scepticism and concerns in industry and Ministries of Defence around the world.



In terms of implementation, it is evident that industry will play a critical role in ensuring that the Treaty achieves its objects and purpose. Certainly, in Europe and North America, there is already emphasis on industry as a front line against the illicit trade and illicit transfers. Companies maintain and develop internal compliance programmes that help them to ensure that they adhere and comply with national laws. It is often said that industry knows the market, knows its products and knows its customers. Therefore, it is very well placed,

if not best placed, to conduct a risk assessment in line with article 7 of the Treaty even before it makes a formal application to the relevant authorities in the countries in which it operates. In addition, if it has a good, effective internal compliance programme, it keeps records of its dealings. That is critical information not just for itself and its risk assessments, but also for governance.

Relations between responsible industry and Government are critical for ensuring this flow of information. In particular, industry's records on deliveries under contracts and licences represent essential information for states to be able to fulfil the reporting requirements of the Arms Trade Treaty. Some European states already include in their legislation obligations for industry to report on their conventional arms transfers on the deliveries that they make. Therefore, in accordance with article 13 of the Arms Trade Treaty, where states are required annually to provide information on authorisations or deliveries of conventional arms imports and exports, we could consider putting in national laws an obligation for companies to report on their activities and utilise that information for the national reports to the ATT Secretariat.

There are different ways in which this can be done, and there is certainly a lot of experience in Europe and America, but probably in other parts of the world, too, on national legislation that has such provisions. I can therefore understand to some degree the fact that one of the words in the title is “self-regulation”. Industry certainly will be expected to ensure it complies with ATT obligations if located in an ATT state party, but for me the key issue remains continuing oversight and monitoring of industry activities to ensure responsible and accountable arms trade. Of course, it is states, not industry, that are the states parties and will be held to account primarily in the Conference of States Parties.

I will now highlight a couple of concerns. First, if one looks through the history of the industry and the arms trade, self-regulation has a chequered past. There are companies that certainly operate responsibly, as we know, but sometimes there are companies that see the big risky deal and believe it is worth it. Although, as Paul mentioned, many industries have a corporate social responsibility, they also pursue profit. In some cases, companies will look at the significant rewards that can be achieved by bending or evading rules and also operating in a realm of national security and secrecy. Scrupulous companies can and do make risk assessments themselves that some of these risky deals are worth it. Perhaps they believe there is a low risk of being caught or that the penalties—the slap on the wrist—are such that it is worth taking the risk and making that deal. So, as Government, civil society and parliamentarians, we need to be vigilant and ensure that we have decent enforcement mechanisms at national level: penalties, sanctions, oversight and inspections.



In terms of how industry could potentially undermine or evade the ATT's object and purpose, scope for me is an obvious area of concern. Companies could seek to evade or circumvent the Treaty by supplying kits, technology, concluding licence production arrangements or overseas production and arguing that this is simply not covered by the ATT. It is therefore important that we ensure at a national level that legislation makes it clear that such loopholes do not exist. We need to close these gaps.

Secondly, arms can be made by companies which argue that they are beyond the scope of the ATT or national controls. In my experience at Stockholm International Peace Research Institute (SIPRI) we know of producers that produce arms and argue that they are not contained within the scope of particular instruments. The cluster munitions convention was a very good example of this, where we had companies lobbying us to say their products were not covered by the cluster munitions convention and explaining that they should not be bound by those provisions.

We therefore need industry to work with Government to support control lists and their development. They have the technical knowledge. They know their products. We should encourage them, through Paul and other industry organisations, to seek to conduct outreach and promote good practice and controls that are in line with, and do not undermine, the purpose and object of the ATT.

My final point relates to corruption. It is not covered by the ATT, but certainly some NGOs pushed for its consideration during the negotiations and preparations. It is critical for Government oversight to play a key role in avoiding and preventing corruption in the arms trade. We are now in a period where a lot of corruption cases are coming to light and arms companies are corrupting politics and governance across the world, not just in Africa, Asia, Latin America, but also here in Europe. Therefore we should be working towards taking some of the arms trade out of the shadows and parliament having more oversight not just of exports but of procurement and imports to ensure greater transparency. Parliamentary Committees can meet in public, or in private closed sessions to consider security matters and to provide a critical overview and assessment of particular deals and procurement plans. That is critical to try to

prevent the waste of taxpayer money that we often see in some of these large arms deals, especially in countries with limited resources. Perhaps we could look to ways in which parliamentarians, Government, industry and civil society can work together to change the existing culture in the trade. That goes beyond the ATT but it is a requirement for





us to work to combat bribery and corruption seriously using a variety of measures and mechanisms that are complementary to the Arms Trade Treaty. In conclusion, the industry is an important and critical actor for an effective ATT but I do not believe it should be self-regulating entirely yet.

### **Preparations for the Conference of States Parties in Mexico**

**Speakers: Ambassador Alejandro Estivill, Deputy Head of Mission, Embassy of Mexico in the UK, and Senator Laura Rojas Hernandez, Parliament of Mexico**

**Ambassador Alejandro Estivill:** As a diplomat I am proud to be here and to hear it recognised that Mexico has been cheering and supporting this process, and I am proud to be joined by Senator Rojas. Our presence here represents how executive and legislative power can really work together in an important process that must involve input from everyone. In this very special case, which is so important for Mexico and the whole international community, it is appropriate that the two powers—executive and legislative—are working together. The results of this meeting are therefore particularly valuable.



I am here on behalf of Jorge Lomónaco, our head of mission in Geneva. He has tried to create the most comprehensive and inclusive process for the first Conference of the States parties. As you know, Mexico subscribed to the Treaty on the day it was opened for signature—3 June 2013—and ratified it on 25 September 2013. On the same day, Mexico issued a provisional statement on the application of articles 6 and 7 of the Treaty. During the negotiation process, Mexico agreed about the need to adopt a robust treaty that met high international standards. It is important that the process evolves, and it is not going to end here—it will go on in a direction that sticks exactly to what is been written in the document that you have given us, with the main objective of saving lives. The Treaty is relevant to Mexico, given the weapons situation in our country, but we think it will be relevant for every country. The Treaty will enter into force on 24 December 2014, following its ratification by 50 states. The current count stands at 54 ratifications.

Mexico feels that the Seminar is important to promote the universalisation of the ATT. Parliamentarians can play an active role in the adoption of legislative measures to ensure that the Treaty is implemented effectively. Mexico has formally set out that it will host the first Conference of States Parties to the Arms Trade Treaty following its

entry into force and in accordance with article 17.

My colleague, Ambassador Lomónaco, will be at the next consultation in Berlin on 27 and 28 November. Of course, what you have decided here will be in his hands. The report on the process of the first Conference of States Parties has already been circulated among the states that have ratified and signed the Treaty at our missions in Geneva and New York, so there is a lot of compatibility with this document and the one that Mexico, in the hands of Ambassador Lomónaco, is writing.

In accordance with article 17 of the ATT, during the first Conference of States Parties, we will have taken decisions on the very important subject of its rules and procedures. I can elaborate on the discussions that have taken place. The general view is that some difficult decisions need to be taken, but in general terms the states parties are in agreement, and everything is on the table to be discussed next month.

The second element that will be decided at the conference will be the financial rules and funding for any subsidiary bodies and a secretariat. The size of, and venue for, the secretariat will be discussed. The document that we will receive will be relevant to all those discussions about the exact objectives of the ATT.

We are aware that some of the decisions to be discussed will be complex, but the general perspective is that we will advance very well. We will have consultation meetings—formal and informal—during the next month up until when the Conference takes place.

Because the time available to prepare for the Conference is limited, it was agreed to hold rounds of informal consultations to guide the preparatory process. In September 2014, Mexico conducted the first consultation in an open, transparent and—I underline this—very inclusive manner, taking into account in particular those states and members of civil society that have been actively promoting the ATT. Our idea is to hear from everyone, because together they can help us to foster the Treaty and to achieve the results that we are looking for.

A provisional agenda—it is very provisional at the moment—on disarmament activities during the rest of the year and 2015 was presented to the participants, with the purpose of identifying the most suitable dates as part of the ongoing process towards the Conference. At this moment—this is not fixed—we are thinking about summer 2015 or perhaps the second semester of the year. The next round will be held in Berlin, Germany on 27 and 28 November, where relevant issues such as the date of the Conference, the permanent secretariat and whether there is need for two or more preparatory meetings will be discussed.

I assure you and Mr. Burt that I am so happy to receive this Seminar document that all the delegates have helped to bring together. I will convey it to Ambassador Lomónaco, the head of the Conference of States Parties, for appropriate consideration.

February could be considered as a probable date for a third preparatory meeting, if needed, following the one in Germany. That would imply that a decision to choose a host for that meeting would be made in Germany. As for the final consultation before the CSP, the Government of Switzerland generously offered to host a meeting, perhaps in April. Finally, the Conference will be hosted in Mexico in summer 2015, or perhaps a

little later.

The document that we are receiving will really foster the process. It will help the will that Mexico has been promoting for a while, which puts us in a good position. I give you my full appreciation for what I have heard over these three days, and in particular in this discussion about some of the elements of the document. There is great consensus about its content and the will



of the parliamentarians joined here in support of the process. Senator Rojas will say something about this, but let me tell you that, in this case, the executive and legislative powers of Mexico are really working together.

**Senator Laura Rojas Hernandez:** Let me first thank the British parliament, particularly Mr. Alistair Burt, for such an enlightening and interesting Seminar. I thank Ambassador Estivill for joining us. The aim of the Seminar is remarkable; parliamentarians need to engage in fruitful dialogues dealing precisely with an important responsibility directly linked to the forthcoming entry into force, next month, of the Arms Trade Treaty. ATT establishes the standards to regulate international arms trade that, without a substantial effort made by parliaments to harmonise our respective legal frameworks on the international trade of arms and ammunition, regrettably will be reduced to a letter of good wishes.

Every day, millions of people suffer from the consequences of the irresponsible arms trade. Therefore, it is hard to imagine another field of action as meaningful and important as this, in which parliamentarians of the world should be working together. Indeed, creating the capacity to implement the ATT fully is not an easy task; quite the contrary, is probably one of the most difficult tasks we can face in an inter-parliamentary context.

Mexico will host the first Conference of States Parties of the ATT. In that capacity, the Mexican Government has been working closely with the states that, as of today, had ratified the Treaty in the full implementation of it, and will work with the signatory states—and with civil society and experts—to assist them in the process of adoption. On the other hand, from the Senate and the Congress, we have been promoting among our colleague parliamentarians from many countries the Treaty's ratification. We are committed to the promotion of a broader inter-parliamentary reflection on how we can develop the best national legislation that can make the Treaty a reality. That reflection has to be made arm in arm with experts and civil society organisations. Their help will be welcome for the preparations of the parliamentary meeting that we



will host next year.

The rapid pace of ATT ratification attests to the will of so many Governments to respond to the challenge; parliaments need to ensure that the Treaty's entry into force will take place in the context of vigorous action to ensure its swift and effective

implementation through a comprehensive process of harmonisation. In the absence of a supranational body, all states will require a national system for the control of international transfers of conventional arms that includes laws, regulations, administrative procedures, and capacities enabling licensing and authorisation provisions, and enforcement mechanisms that are increasingly consistent with the ATT mechanisms. That is the main reason why we believe that a parliamentary conference on the margins of the Conference of States Parties is not only desirable, but essential.

Although it is true that the United Nations has been engaged in assistance with ATT implementation, parliamentarians play a decisive role, namely in the struggle to curb the proliferation of small arms and in adopting laws setting limits and establishing regulations for producing, processing and trading them. As the flow of arms takes place through borders, the fight against their damaging effects and the implementation of relevant international commitments in national legislation should be co-ordinated across borders as well. Moreover, in the process of designing what some experts believe should be an implementation framework, the involvement of parliamentarians seems crucial.

There are a number of issues at stake and evidently the Treaty lays out only a basic framework for implementation, but key decisions can be taken only after it enters into force. First, we should emphasise the need to assess whether our national systems of arms imports, exports and transfers should be reviewed in the light of the ATT commitments. Indeed, that might require important legislative reforms and eventually the need to share best practice on the subject. In the process of identifying gaps in existing national arms transfer control frameworks, parliamentary involvement should be encouraged.

Secondly, one of the most important articles of the Treaty entails a risk assessment process regarding the risk of diversion to commit genocide, serious breaches of international humanitarian law, gender-based violence or violence against children, among other things. The subjectivity inherent in those assessments has been pointed out as a potential weakness so states should tackle that when translating this general obligation into concise national legislation.

Thirdly, states parties are obliged to submit initial reports on the implementation of the Treaty, detailing their transfer control systems and annual reports on their arms exports and imports. Furthermore, under article 13, each party is obliged to provide

the Secretariat with the national laws, national control lists and other regulation and administrative measures implementing the Treaty. That will be an exceedingly important tool for evaluating where we are in the process of full implementation and, consequently, what kind of legislative measures we need to work on. National reports, according to the Stockholm International Peace Research Institute, will be important for helping the ATT to achieve its goal of promoting transparency and responsible action by state parties in the international trade in conventional arms. For parliaments they will be an ideal source of information to be shared and eventually to inspire some legislative action.



Finally, parliaments must use all available tools, including committees, to monitor national implementation of ATT commitments, scrutinising legislation, budgets and progress reports that they can share afterwards during international meetings like this one. In that regard, the Mexican Congress will convene a parliamentary meeting on the margins of 1CSP, which will be particularly oriented towards an agenda of commitments, actions and proposals that parliamentarians can carry out to make an important contribution to the effective implementation of the ATT and towards eventually fostering ideas and actions beyond the ATT itself.

In sum, we face lots of issues in the preparatory process for the first Conference of States Parties to the Arms Trade Treaty. During the discussions, it is clear that parliamentarians need to participate in drawing up the road map for its entry into force, actively joining the campaigns in favour of its universalisation and ratification by all signatories, but also working on the harmonisation of such important commitments as I have mentioned, and on an agenda beyond the ATT. Thank you for your attention; we will be happy to host you in Mexico next year.

## CLOSING REMARKS

BGIPU Chair, Rt Hon Alistair Burt MP: This brings our three days to a conclusion. It is enormously encouraging that we have just heard from Senator Rojas that Mexico takes the position of parliamentarians so seriously that she, and Mexico, are already working on having parliamentarians there as part of the process and structure that will be involved, recognising the importance of what we do. That is an enormous encouragement to us all and to the respective governments and parliaments that have sent you all here. It is highly significant.

I think it is highly likely that a number of the people here will become the repositories of real knowledge of how to take parliamentary processes forward. Others will add to that group with their own expertise, but, collectively, we will find

ourselves in a position—just as those who originally set out on the route to an Arms Trade Treaty all those many years ago—of collecting the expertise, persuading others who may doubt that things can be achieved and realised, and building that up into a rather unstoppable force in delivering the objectives of the ATT and the wishes that we all have.

I am very proud that the BGIPU has been able to put on this Seminar, but it would not have been a success without your active participation. For that I am very appreciative. Once again, a very warm thanks to all of you. Some of you have come a great many miles for this and it is deeply appreciated by the British Group of the IPU, so thank you all very much for coming, and a special thank you to all those who have spoken over the past few days and contributed their expertise to the Seminar.

To those who have not taken part but have been observers, bearing in mind the roles played by many here in the years leading up to the ATT—representatives of civil society, NGOs and the like—we owe you all a great debt of thanks. We know that you will stay very engaged with the process and will be watching both states and parliamentarians extremely carefully to ensure that the objectives are delivered. We accept that obligation and thank you very much.

This is also an appropriate moment to recognise that not all the delegates who wanted to come are present. I note particularly Burkina Faso, whose absence and empty chair reminds us all of the perils that parliamentarians can experience in different places. Whatever the circumstances, there are always hurdles to be overcome. We wish you all very safe passage back to your own states and continuing good health, and we hope that you will continue your active participation in the affairs of your country.

### ACKNOWLEDGEMENTS

In closing, the BGIPU Chair, Rt Hon Alistair Burt MP, also acknowledged the hard work of the interpreters and Hansard Reporters and commended the overall management of the Seminar by the BGIPU Secretariat, particularly noting the contribution of Stef Kenyon who was departing BGIPU shortly. The Chair also recognised the specific individual contributions of Theresa Dybeck of the Parliamentary Forum on Small Arms and Light Weapons and Anna Macdonald, Director of Control Arms, who had both provided invaluable assistance to Seminar preparations and were instrumental in the success of the Seminar.

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