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**DRAFT WORKING PAPER PRESENTED BY THE PRESIDENT OF THE NINTH CONFERENCE OF STATES PARTIES TO THE ARMS TRADE TREATY (ATT)**

**THE ROLE OF INDUSTRY IN RESPONSIBLE INTERNATIONAL TRANSFERS OF CONVENTIONAL ARMS**

*Considerations for next steps within the framework of the Arms Trade Treaty*

**INTRODUCTION**

The Arms Trade Treaty (ATT) preamble recognizes that industry, alongside civil society and relevant international organizations, can play an active role in raising awareness of the object and purpose of the ATT and supporting its implementation. United Nations General Assembly resolution 77/62 of December 2022 called for a strengthening of cooperation between ATT States Parties, signatory states, civil society, and industry to share effective practices, challenges, and opportunities for ensuring that the private sector can support a responsible international arms trade and the effective implementation of the ATT.<sup>1</sup> Therefore, the ninth conference of states parties to the ATT (CSP9) represents an opportune moment for ATT key stakeholders to examine options to enhance the role of industry in responsible international transfers of conventional arms, as the ATT celebrates the 10<sup>th</sup> anniversary of its adoption.

**BACKGROUND**

It is the responsibility of States Parties to implement the Arms Trade Treaty (ATT). Yet, different types of industry and private sector entities play an important role in ensuring the treaty's effectiveness and universality. Arms manufacturers and export and import companies, as well as brokers, freight forwarders, logistics and transportation providers, banks and financial service providers, and insurance providers are obliged to comply with national laws, regulations, processes, and procedures that States put in place to regulate the export, import, transit, transshipment and brokering of conventional arms in order to fulfil their ATT obligations. Therefore, the participation of industry representatives in ATT processes is important for the treaty's success.

The ATT should facilitate greater convergence of national arms transfer legislation and regulatory approaches around the world. This could enable industry and private sector entities to achieve compliance across many national jurisdictions in the course of their activities in an increasingly globalized trade. Such convergence can help to decrease the risk of non-compliance and the expense of undertaking activities to satisfy different national requirements for compliance. Further, it could help to close loopholes exploited by unscrupulous brokers looking to evade controls to supply entities subject to arms embargoes or engaged in other activities that are either prohibited under Article 6 of the Treaty or which undermine international peace and security and thus contribute to human suffering.

The ATT indicates the key elements for a national control system and criteria for States Parties to apply when making arms transfer decisions. The prohibitions and export criteria elaborated in the ATT indicate

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<sup>1</sup> United Nations General Assembly, Resolution 77/62 The Arms Trade Treaty, Adopted on 7 December 2022, A/RES/77/62, 14 December 2022, paragraph 15.

activities that constitute “irresponsible arms transfers”. National decisions to authorise or deny transfers of conventional arms are based on assessments that utilize these internationally agreed upon standards. Therefore, the Treaty should provide greater predictability in the arms transfer process and eliminate inconsistent application of rules and regulations. When the ATT is effectively implemented and adhered to, it can reduce reputational risk for industry and private sector entities involved in the international arms trade – not just the producers of conventional arms, but also those involved in financing, insurance, and the transportation of arms in the course of an international transfer. Therefore, the ATT framework provides guidance to companies involved in different aspects of the international arms trade on what constitutes responsible behaviour, complementing other guidance developed at the multilateral, regional, and national levels in this sphere.<sup>2</sup> Therefore, the ATT complements other efforts to establish robust corporate responsibility practices with regards to the international arms trade, helping to limit or mitigate reputational risks from some of the potential negative consequences of engaging in the international arms trade.

The ATT establishes common understandings amongst the various actors in the arms transfer supply chain. Many of the most active entities along the supply chain operate in ATT State Party jurisdictions. These entities appreciate situations in which States operate according to the same basic principles to ensure that the legitimate delivery conventional arms is not delayed due to differences in understandings of ATT obligations across the global supply chain. The ATT was not established to undermine the legitimate trade in conventional arms nor create undue additional costs or burdens for legal transactions.

While national governments establish legislation and regulations, industry and private sector entities need to take measures throughout the transfer chain to ensure that arms transfers are conducted responsibly and securely, and in accordance with national laws and regulations, as well as regional and international norms and standards. Industry and private sector entities are responsible for the security and safety of transfers of conventional arms and for making sure that their activities do not contribute towards or facilitate the delivery or diversion of conventional arms to situations that are prohibited under the ATT or which undermine international peace and security. To that end, robust corporate due diligence, record-keeping, and information-sharing are just some of the areas in which industry and private sector entities need to take action to ensure the security and integrity of an international arms transfer.<sup>3</sup>

## RE-ENGAGING INDUSTRY

During the ATT negotiations, industry representatives shared input on the practical, everyday activities that facilitate the legitimate trade in conventional arms, as well as identifying ways in which a multilateral instrument could help to provide guidance to States on how to close loopholes and ensure a more responsible and transparent arms trade. Voices from industry and private sector entities have been less frequently heard in recent CSP meeting cycles compared to during the treaty negotiations. The Republic of Korea’s Presidency of CSP9 takes this situation as its starting point for its thematic presidency priority and asks:

- What are the potential benefits for industry and private sector entities to engage with the ATT?
- Which factors enabled the active engagement of the industry and private sector entities during

<sup>2</sup> United Nations Working Group on Business and Human Rights, “Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights”, Information note, United Nations Human Rights Special Procedures, 30 August 2022, <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>.

<sup>3</sup> UNIDIR, Conflict Armament Research, Stimson Center, The Arms Trade Treaty: Assessing its Impact on Countering Diversion (Geneva: UNIDIR, 2022), <https://www.unidir.org/publication/arms-trade-treaty-assessing-its-impact-countering-diversion>; Conflict Armament Research, Red Flags and Choke Points: Procurement Networks behind Islamic State Improvised Weapon Programmes, (London: CAR, 2020), <https://www.conflictarm.com/reports/procurement-networks-behind-islamic-state-improvised-weapon-programmes/>.

the ATT negotiations?

Preliminary answers to these questions were revealed during a brainstorming workshop on 26 January 2023 involving 50 participants from States Parties, industry, researchers and civil society, which was co-organized by the Presidency with the United Nations Institute for Disarmament Research, the Stimson Center and Conflict Armaments Research.<sup>4</sup> The brainstorming workshop provided responses to these two questions. First, industry and private sector entities engaged during the negotiation towards the ATT to ensure that the treaty would not prevent or undermine legal and legitimate international arms trade activities. Second, these entities expected the treaty to provide greater predictability in decision-making at the national level, benefiting their activities. Third, they hoped that the treaty would help to level the playing field by setting international standards to be respected by all “players” in the international arms trade.

In summary, the brainstorming workshop indicated that industry and private sector entities could re-engage with the ATT process if it provides them with guidance and information that can support efforts to help to prevent their activities contributing towards or facilitating the delivery or diversion of conventional arms in contravention of treaty provisions outlined in Articles 6, 7, and 11. This engagement should not only ensure responsible international transfers of conventional arms, but also support efforts to identify transactions that are irresponsible and undermine the object and purpose of the treaty. Furthermore, there is merit in encouraging States Parties and signatories to share their experience and effective practices for information sharing and outreach to industry and private sector entities involved in the international arms trade, as well as ensuring their compliance with national transfer controls and measures to implement the ATT.

It is also evident that CSP meetings would benefit from contributions on developments in the field of conventional arms, as outlined under ATT Article 17, from industry and private sector entities, alongside contributions from States Parties, signatories, observer states, international and regional organizations, and civil society. During CSP8, industry and private sector entities shared information on developments in marking and counter-diversion efforts that could support effective ATT implementation. In future CSP meetings, contributions could be provided of relevance for countering diversion regarding corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion as stipulated in Para 5 of Article 11.

## **CONSIDERATIONS FOR CSP9 RECOMMENDATIONS**

The ROK presidency of CSP9 is confident that finding appropriate platforms for enhancing engagement between industry and private sector entities with other key ATT stakeholders can be mutually beneficial and support efforts to achieve the effective implementation of the ATT. The following considerations are presented to ATT States Parties for inclusion in the final report of ATT CSP9 as “Recommendations”.

### **1. Raising Awareness**

1. Each CSP President, in cooperation with the Secretariat, is encouraged to include industry outreach activities.
2. The ATT Secretariat is encouraged to engage industry and share industry-relevant information on the ATT and developments, using the website and other appropriate measures.
3. States Parties are encouraged, where appropriate and on a strictly voluntary basis, to share their experiences and practices of effective measures including written guidance materials relating to

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<sup>4</sup> UNIDIR, Conflict Armament Research, Stimson Center, The Role of Industry in Responsible International Transfers of Conventional Arms (Geneva: UNIDIR, 2023), <https://unidir.org/publication/role-industry-responsible-international-transfers-conventional-arms>.

national efforts to ensure industry awareness and compliance with national transfer control systems, as well as efforts to prevent and eradicate illicit trade and diversion, through means such as: Initial Reports and updates to their Initial Reports; statements during relevant working group sessions, preparatory committee meetings, side events, or the Conference of States Parties; and the information exchange platform on the ATT website.

4. States Parties are also encouraged to invite representatives of industry and private sector entities engaged in the international arms trade to share information that may support effective treaty implementation as well as developments in the field of conventional arms and conventional arms trade during CSP working group sessions, preparatory committee meetings, and side events.

States Parties, signatory and observer states are encouraged to consider including representatives of industry in their delegations as appropriate.

## **2. Sharing practices and policies**

5. States Parties are encouraged to develop, as a living document to be reviewed and updated regularly, as appropriate, a list of possible reference documents to be considered by States Parties for ensuring industry compliance with national control systems to implement the ATT and conduct responsible international transfers of conventional arms. Such documents could also contain possible reference documents that provide guidance and support to industry efforts to conduct risk assessments in compliance with ATT Articles 6, 7(1), 7(4), and 11(2).

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