

# THE EUROPEAN UNION'S INVOLVEMENT IN NEGOTIATING AN ARMS TRADE TREATY

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## I. INTRODUCTION

The international trade in conventional arms has lacked proper and coherent regulation. Since arms often find their way through the weakest links in a global system, a common approach to control trade in conventional arms is perceived to be necessary by all member states of the United Nations. Uncontrolled and illegal trade in arms has fuelled conflict, undermined security and increased humanitarian suffering on a large scale. In 2009 the UN General Assembly adopted Resolution 64/48 in which UN member states decided to convene a UN conference on an arms trade treaty (ATT) to meet for four weeks in 2012 'to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms'.<sup>1</sup> Negotiations in July 2012 were not the milestone that many had hoped for. After years of advocacy for a worldwide ATT and four intensive weeks of diplomatic bargaining, what was to be the final negotiation round did not result in an agreement to which all 193 countries of the UN could commit. Several UN member states, including the United States, demanded extra time to agree on a draft text. On 7 November 2012, the First Committee of the UN General Assembly decided to convene a final UN conference to conclude an ATT in March 2013.<sup>2</sup> In the UN resolution that was adopted in November 2012, it was agreed that negotiations would proceed from 18 to 28 March 2013 according to the same rules of procedure of the negotiations in July 2012. The draft text of the ATT submitted by the president of

## SUMMARY

In July 2012 the United Nations convened a conference to negotiate a legally binding arms trade treaty (ATT) to regulate trade in conventional arms at the highest possible common international standards. Arms export controls can only be effective if implemented at the global level, in a coherent and consistent manner.

The European Union (EU) strongly supports the development of a global ATT. The EU coordinated internally to streamline national positions and converge diverging approaches on the content of the ATT. Furthermore, it pleaded for an inclusive process and put this into practice by organizing outreach seminars for all UN member states. However, during the negotiations in July 2012 the EU encountered difficulties in streamlining national policies and fulfilling its ambitious role to act as a global actor.

Striking the right balance between effective national diplomacy and EU consistency during the negotiations proved to be challenging. Although UN member states did not reach an agreement in July, the EU has a crucial role to play in future negotiations, which will continue in March 2013.

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<sup>1</sup> UN General Assembly Resolution 64/48, 12 Jan. 2010.

<sup>2</sup> United Nations, General Assembly, Item 94 b A/C.1/67/L.11, 7 Nov. 2012. 157 UN member states voted in favour, 18 states abstained and none voted against the resolution.

the conference in July is to be the basis for the final negotiations in March 2013.

The European Union (EU) has been supportive to the development of an ATT since 2005. This paper focuses on the role of the EU in the preparation of the ATT and during the negotiating conference in July 2012. It discusses the role of the EU in UN settings and evaluates its role in the ATT negotiations itself.

The EU export control regime proved to be a sound base to build up a common EU policy regarding the ATT. However, the difficulty of finding consensus was not only encountered in the UN ATT negotiations but also at the EU level. Internal coordination was needed to maintain coherence between EU member states and between the EU's Common Commercial Policy and its Common Foreign and Security Policy (CFSP). Divergence emerged on thematic issues such as whether or not to include civilian firearms and how to control different trade activities (such as import, transit and brokering) but also on more tactical issues such as the rules of procedure (the consensus rule) or different views on the role of the EU in UN negotiations. Furthermore, both best practices and lessons learned from the EU regime fed the development of an ATT in outreach seminars to contribute to an inclusive process. Despite its support for the development of an ATT and its ambitions to act as a unified force on the international scene, the EU encountered some difficulties and disappointments too, such as the failure to include the possibility for regional integration organizations to become a party to the ATT or the difficulty in striking the right balance between effective national diplomacy and EU consistency.

This paper describes the ATT process leading up to the July 2012 negotiations and focuses on how the EU was involved. It assesses the outreach activities of the EU in support of the ATT, its negotiating mandate and its performance during the negotiations. Following the 2007 Lisbon Treaty, the EU's willingness to strengthen its influence at the global level increased. The ATT is a rewarding case study to assess the unity within the EU when negotiating at the global level in a policy field in which EU harmonization is already advanced. Overall, the paper argues that, despite diverging views and its contested role within the UN, the EU did have a role to play and acted as a unified actor to the outside world.

## II. TOWARDS AN ARMS TRADE TREATY

Poorly regulated trade in conventional arms and ammunition fuels conflict, poverty and human rights abuses all over the world. Even though the arms trade and attempts to control it have a long history and could be dated back to the 12th century, so far there are no global conventions prohibiting or regulating trade in what is called 'conventional arms' other than firearms under the UN Firearms Protocol.<sup>3</sup> Unlike trade in chemical, biological and nuclear weapons, trade in conventional weapons is not regulated in a comprehensive treaty at the international (global) level.

The current principles of the ATT are based on the Nobel Peace Laureates' International Code of Conduct on Arms Transfers of 1997. The Code of Conduct was directed at all arms-selling states, was comprehensive in scope and proposed far-reaching preconditions to arms exports. Implementing and monitoring measures were included in the scheme. Based on this Code of Conduct, a Draft Framework Convention on International Arms Transfers was first circulated at the 2001 UN Small Arms and Light Weapons (SALW) Conference. The document called for a universal, legally binding agreement governing arms transfers.<sup>4</sup> In October 2003, Amnesty International, Oxfam and the International Action Network on Small Arms (IANSA) launched the Control Arms campaign, a worldwide platform of non-governmental organizations (NGOs) advocating the adoption of a strong ATT. Control Arms provided both NGOs, governments and the broader public with information, and lobby documents and conducted campaigns to gain public support for the ATT.

On 6 December 2006, the UN General Assembly adopted Resolution 61/89 entitled 'Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms'. This resolution was initiated by the United Kingdom and was co-authored with six countries: Australia, Argentina, Costa Rica,

<sup>3</sup> Brehm, M., 'Conventional arms transfers in the light of humanitarian and human rights law', Master's thesis, University Centre for International Humanitarian Law, Geneva, Feb. 2005, <[http://www.geneva-academy.ch/docs/memoires/memoire\\_brehm.pdf](http://www.geneva-academy.ch/docs/memoires/memoire_brehm.pdf)>.

<sup>4</sup> See Holtom, P. and Wezeman, S. T., 'Towards an arms trade treaty?', *SIPRI Yearbook 2007: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2007).

Finland, Kenya and Japan.<sup>5</sup> 153 UN member states voted in favour of the resolution, 10 abstained and the USA voted against. In this resolution, the General Assembly requested countries to submit their views on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument on the import, export and transfer of conventional arms. The UN Secretary-General reported on the 94 answers from UN member states. All 27 EU member states and the EU itself submitted their positions. All voiced their support for an ATT.<sup>6</sup> The resolution also requested the Secretary-General to establish a group of governmental experts (GGE) to examine the features of an ATT. The GGE met in three sessions during 2008 and presented its conclusions during the 63th General Assembly.

Flowing from the exchange of views and the work of the GGE, the General Assembly adopted a second resolution on an ATT (Resolution 63/240) in 2008. The GGE consisting of 28 members recommended that further consideration was required and that efforts should be carried out on a step-by-step basis in an open and transparent manner within the framework of the UN. The UN General Assembly therefore decided in the resolution to establish an open ended working group (OEWG)—open to all states—to further consider the elements in the report. A total of six sessions of this group were planned.

Compared to the GGE, the OEWG broadened participation in the ATT process by making its proceedings public and opening them to all UN member states. Observer states, intergovernmental organizations and NGOs with consultative status with the Economic and Social Council were also invited to participate. The OEWG met in March and July 2009, and both sessions entailed the delivery of statements by member states and other participants regarding the goals, objectives, scope, principles, draft parameters and other aspects of a potential ATT.<sup>7</sup>

In Resolution 64/48 of December 2009, the General Assembly called on states to implement on a national basis the recommendations of the report of the GGE.

<sup>5</sup> British Foreign and Commonwealth Office, 'Arms trade treaty', <<http://www.fco.gov.uk/en/global-issues/arms-control/arms-trade-treaty/>>.

<sup>6</sup> United Nations, General Assembly, 'Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms', Report of the Secretary-General, A/62/278 Parts I and II, 17 Aug. 2007, <<http://www.un.org/disarmament/ATT/documents/>>.

<sup>7</sup> Kytömäki, E., *Promoting Discussion on Arms Trade Treaty*, EU-UNIDIR project final report (UNIDIR: Geneva, 2010).

Furthermore, the General Assembly decided in the resolution to convene a UN conference on the ATT to meet for four weeks in July 2012 to elaborate 'a legally binding instrument on the highest possible common international standards for the transfer of conventional arms'. Importantly, under the US administration of President Barack Obama, the USA changed its position and—after voting against the ATT in 2006 and 2008—supported the process. This support was conditional on future negotiations being conducted on the basis of consensus to reach an agreement.

In order to prepare for the 2012 ATT Conference, the General Assembly decided in Resolution 64/48 to transform the remaining four sessions of the OEWG in 2010 and 2011 into meetings of a Preparatory Committee (PrepCom). According to the resolution, the PrepCom is tasked to make recommendations to the UN Conference on an ATT on the elements that would be needed to be included in a future treaty. The committee is required to take into consideration the conclusions of the GGE and OEWG reports as well as the views formally expressed by states. The PrepCom also decides on procedural matters such as the draft agenda and the chair of the meetings.<sup>8</sup> As the PrepComs progressed, the chair circulated 'non-papers'; these had the form of draft treaties with proposals for elements to be included in an ATT. At the final PrepCom, there was, however, no agreement to make this the formal basis of the negotiations.

### III. THE EU AND THE ARMS TRADE TREATY

#### In support of the development of an arms trade treaty

The UK and Finland were the first EU member states to voice support for the ATT. Together with their five co-authors (Australia, Argentina, Costa Rica, Kenya and Japan), they took the initiative to table the initial UN resolution on the ATT in 2006. In 2005, the Council of the EU expressed for the first time its support for an ATT. In its Council conclusions, the Council

acknowledged the growing support, in all parts of the world, for an international treaty to establish common standards for the global trade in conventional arms and, to ensure its success, encouraged all states, regional organisations

<sup>8</sup> Kytömäki (note 7).

and multilateral institutions to join the growing international consensus for action in this area.<sup>9</sup>

The Council agreed that the UN was the only forum that could deliver a truly universal instrument and expressed its commitment for the EU to play an active role in this process.

Since 2005, support for the ATT process has been repeated in several Council conclusions. Council conclusions calling for a legally binding ATT were adopted on 11 December 2006 and 18 June 2007. In its conclusions of 10 December 2007, the Council underlined the importance of the GGE. Seven EU member states were invited to participate in GGE deliberations. The Council stated that the EU should support the process by opening up the debate to include states that do not form part of the GGE as well as actors such as civil society and industry.

The EU had itself developed a common policy on arms export controls as part of its CFSP since the beginning of the 1990s. The 1998 EU Code of Conduct on Arms Exports (CoC) is the outcome of a far-reaching cooperation between EU member states on export controls of conventional weapons in terms of assessment criteria and transparency mechanisms. The CoC's 8 criteria served as guidelines for the evaluation of applications for export licences, and its 12 operative provisions specified how to implement the code. In terms of scope, the CoC built on the common lists of military items that were agreed in the Wassenaar Arrangement.<sup>10</sup> In December 2008, 10 years after its adoption, the Council of the EU reviewed the code and adopted an amended text as a Common Position, which is a legally binding instrument.<sup>11</sup>

<sup>9</sup> Council of the European Union, 2678th Council Meeting General Affairs and External Relations General Affairs, Luxembourg, Press release, 3 Oct. 2005, <[http://europa.eu/rapid/press-release\\_PRES-05-241\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-05-241_en.htm?locale=en)>.

<sup>10</sup> The Wassenaar Arrangement (WA) was established in 1996 in order to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. Apart from Cyprus, all EU member states participate in the WA.

<sup>11</sup> The text of the Common Position resembles the text of the Code of Conduct. The most important changes relate to the scope of application and the inclusion of international humanitarian law in the assessment criteria. The Common Position no longer only applies to exports, but also to transit, brokering, overseas production and intangible technology transfer. Criterion 2 of the Common Position now calls for a denial of export licences if there is a clear risk that the military equipment or technology to be exported might be used in the commission of serious violations of international humanitarian law. See Bromley, M., 'The review of the EU Common Position on arms exports:

In the early stage of UN discussions on the ATT, the EU presented its own export control regime as a useful example of a multilateral export control regime. While explicitly acknowledging the large number of existing relevant mechanisms at international, regional and subregional levels, the EU refers to the CoC in terms of scope, parameters and the sharing of information on approved and denied licences as relevant input for the GGE. In its Council conclusion of 10 December 2007, the EU pronounced that 'the EU's experience with its own export control system demonstrates the feasibility of agreeing on an instrument without depriving states of their national prerogatives to license or deny exports. It proves the viability of multilateral export control.'<sup>12</sup> Otherwise, the EU control regime also demonstrates the limits of multilateral controls that are implemented on a national basis. Both dimensions—best practices and lessons learned—can provide valuable insights for drafting an ATT.

#### **The EU's internal coordination on the CFSP**

The EU's policy on export controls for trade in conventional arms in general and on the ATT more specifically forms part of its CFSP. Already in 2005, the Council established a sub-group to discuss the ATT with officials of the Working Party on Global Disarmament and Arms Controls (CODUN) and the Working Party on Conventional Arms Exports (COARM).<sup>13</sup> The CODUN–COARM Council working group on the ATT consists of representatives of member states. The secretariat of the Council decided to invite both working groups to give member states the chance to delegate experts who are familiar with disarmament on a UN level (CODUN) and experts in the field of arms export controls who form part of COARM. The COARM–CODUN ATT working group served as a forum to discuss statements and positions of the EU on the ATT in preparation of the negotiations and during the PrepComs. Draft Council decisions and conclusions are usually prepared in the working group and submitted to the General Affairs Council. Since the Treaty of Lisbon entered into force in December

prospects for strengthened controls', Non-Proliferation Paper no. 7, Jan. 2012.

<sup>12</sup> Council of the European Union, 'Council Conclusion on a legally binding international arms trade treaty', 2839th General Affairs Council meeting, Brussels, 10 Dec. 2007.

<sup>13</sup> Council of the European Union, Eight Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, *Official Journal of the European Union*, C251, 16 Oct. 2006, p. 1.

2009, COARM and CODUN are no longer chaired by the rotating Presidency of the EU, but by officials in the European External Action Service (EEAS).

The work of the COARM–CODUN working group speeded up considerably in 2010 with the start of the PrepCom meetings in July 2010. The COARM–CODUN working group on the ATT devoted most of its time to drafting an EU non-paper on the ATT. The non-paper is not an official document and is not available in the public domain. In it, potential provisions of a treaty text were discussed. The level of detail of these discussions went far beyond what has been discussed at the UN negotiations in July 2012. Although part of the discussions may turn out to be redundant, the EU non-paper created convergence, fuelled the EU positions that were taken in the PrepComs and formed a basis for the EEAS to position itself in the negotiations.<sup>14</sup>

Given the EU Common Position on arms exports, the existence of a User's Guide to help member states in the implementation of the Common Position, the regular discussions in COARM, and the daily cooperation among licensing officers in the member states, discussions on EU positions regarding an ATT could benefit from a common ground among EU member states and a strong support for an effective ATT. In the run-up to the negotiations, there was broad agreement to support the broadest possible scope, to include strong criteria and to emphasize respect for human rights and humanitarian law in the goals and objectives. Member states did, however, take different approaches on specific items such as civilian firearms (sports and hunting weapons), with, among others, Italy wanting special language to exclude these weapons from the scope of the treaty and other member states not. Divergence also occurred on whether and how to include activities other than exports, such as import, brokering or transit and trans-shipment.<sup>15</sup> National practices on controlling transit and trans-shipment, for example, diverge considerably among EU member states. It seems that member states did make an effort to keep language out of the ATT that would contradict their national policy. During the negotiations in July 2012, common ground among EU member states was further challenged by strategic choices and compromises to be made in order to find

compromises with UN member states worldwide (see below).

At the Council meeting on foreign affairs on 25 June 2012 in Luxembourg, the Council adopted a conclusion in support of the ATT. The Council conclusion mentions the scope of an ATT that is supported by the EU—both in terms of equipment to be covered and activities to be controlled—and the need for strong parameters with special emphasis on the need to prevent arms transfers that would violate human rights law or international humanitarian law. The Council stressed that the implementation of the ATT should be a national responsibility, but that effective transparency provisions would be foreseen and that assistance to facilitate the implementation should be provided.<sup>16</sup>

Although there is nothing unusual about the content of the Council conclusion, the fact that the Council adopted only a conclusion and not a Council decision on CFSP issues in relation to the ATT is revealing. The EEAS had prepared a draft Council decision to be adopted by the Council on ATT issues that relate to the CFSP, but there was no agreement among EU member states to adopt it. A Council decision would have bound EU member states in the negotiations, while Council conclusions have no binding effect.

Especially smaller member states perceived this as a missed opportunity. Their voice in UN negotiations is strongly amplified by acting in unity at the EU level.<sup>17</sup> This is less the case for larger member states. Their political leeway in the UN negotiations would be constrained by an EU Council decision.

### **The Lisbon Treaty and its influence on the EU negotiating position**

With the adoption of the Lisbon Treaty, the EU strengthened the emphasis on the EU's role at a global level. A High Representative for Foreign and Security Policy was appointed, a new EEAS has been established, and a single legal personality for the EU was adopted, which should strengthen its negotiating power, making the EU more visible and effective in international forums. Several articles in the Treaty of the European Union (TEU) and the Treaty of the

<sup>14</sup> Representatives of Germany and Belgium, Communication with author, 4 Oct. 2012 and 7 Sep. 2012.

<sup>15</sup> Representatives of the United Kingdom, Germany and Belgium, Communication with author, 4 Oct. 2012 and 7 Sep. 2012.

<sup>16</sup> Council of the European Union, 3179th Council meeting foreign affairs, 11688/12, 25 June 2012, <[http://europa.eu/rapid/press-release\\_PRES-12-282\\_en.htm?locale=en](http://europa.eu/rapid/press-release_PRES-12-282_en.htm?locale=en)>.

<sup>17</sup> Representative of Belgium, Communication with author, 7 Sep. 2012.

Functioning of the European Union (TFEU) are devoted to the representation of the EU in multilateral forums and are relevant in discussing the EU's performance in the ATT negotiations.

Being part of both the CFSP and the EU's trade policy, negotiations on an ATT to control trade in conventional arms is an interesting case to assess unity and consistency in the EU's external action. The new status of the EU has helped the EEAS in negotiating an ATT but the negotiations have also revealed some weaknesses and shortcomings in implementing the Lisbon Treaty's ambitions in practice.

The language of the TEU and the TFEU is quite voluntary. According to Article 21 of the TEU

The Union shall seek to develop relations and build partnerships with third countries, and international regional or global organisations . . . It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations

and

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.

Although the intergovernmental nature of decision making in the area of CFSP has not changed, Article 24 of the TEU emphasizes that loyalty and solidarity is expected from member states.

The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

Member states are required to coordinate their actions on the international scene when there is a general European interest, and determine a common approach. Quite strongly, Article 32 of the TEU prescribes that 'Before undertaking any action on the international scene or entering into any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council'.

Member states also ought to uphold the EU's positions in such forums (Article 34, TEU). Specifically relevant to the UN, member states which are also members of the UN Security Council should coordinate and keep the other member states and the High Representative fully informed. In the execution of their functions they ought to defend the positions and the interests of the EU, however 'without prejudice to their responsibilities under the provisions of the United Nations Charter' (Article 34, TEU).

Some authors point out that beyond the rhetoric of the EU treaties, a lot is still lacking in order to meet these high expectations. The EU's internal structural contradictions are still preventing it from setting up a truly common foreign policy. The Lisbon Treaty has had some implications in terms of increased coherence and improved visibility, including within the UN. However, it has been argued that it leaves unsolved most of the key dilemmas between federal and intergovernmental strategies and between effectiveness and member states' control. This ambiguity will continue to hamper the capacity of the EU to concentrate authority and power in its foreign policy. 'The lesson is that, although there is functional pressure towards regionalism around the world, the first condition for the formation of "a world of regions" is still the willingness of sovereign states to genuinely embark in integration'.<sup>18</sup> The EU's failure to adopt a Council decision on CFSP issues for negotiating the ATT at the UN conference is a case in point.

### **The EU's Common Commercial Policy**

The ATT affects not only the EU's CFSP but also its commercial policy. The European Commission became involved in determining EU positions on the ATT only quite late in the process. The EU's supportive policy

<sup>18</sup> Van Langenhove, L. and Marchesi, D., 'The Lisbon Treaty and the emergence of third generation region integration', Jean Monnet/Robert Schuman Paper Series, vol. 8, no. 9, June 2008, p. 17.

for the ATT has developed as part of its CFSP. Since 2009, however, EU policy on arms export controls is no longer solely developed within the CFSP, but also forms part of the EU's industrial and trade policy. With the adoption of Directive 2009/43/EC on simplifying terms and conditions of transfers of defence-related products within the EU, EU member states decided to entrust competences on intra-EU trade to the EU level.<sup>19</sup> All EU member states submitted themselves to a common licensing system that governs trade in military equipment between member states. Although trade in military equipment remains subject to a licence obligation and member states remain responsible to issue those licences, a common EU system of general and global licences instead of individual licensing aims to liberalize arms trade within the EU. This is intended to reduce the administrative burden on the defence industry and secure security of supply between EU member states. The Commission has been a key player in this process, aiming to strengthen the competitiveness of the European defence industry.

Directive 2009/43/EC is important for the ATT in two ways. First, trade in conventional arms now forms part of EU law. If an ATT were to be adopted, EU member states must make sure that the treaty would not infringe on EU legislation. EU member states learned, for example, that they should be careful about insisting on case-by-case licensing in the wording of an ATT while they do not use individual licensing themselves for trade among EU member states. The ATT should therefore allow for global and general licensing in order to be consistent with the EU *acquis*. Second, there is the issue of external representation of the EU for matters that fall under the exclusive competence of the EU. The EU is competent to conclude agreements at the international level for matters that fall under its exclusive competences. The ATT cuts across this division and touches on both exclusive EU competences and the CFSP. With a view to negotiating an ATT, the Commission and the member states therefore needed to agree on the course of the negotiations. To address these issues, the Commission drafted guidelines for EU member states to defend at the ATT.

In accordance with Article 218 of the TFEU—which lays down the procedure for negotiating

<sup>19</sup> Directive 2009/43/EC of the European Parliament and the Council of May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, *Official Journal of the European Union*, L146, 10 June 2009.

and concluding agreements between the EU and third countries—the European Commission sent a proposal for authorizing the member states in the UN Conference on the ATT in July 2012 on matters coming under the exclusive competence of the EU to the Council.<sup>20</sup> The Commission declared it was necessary to exceptionally authorize the member states to negotiate the ATT on those matters falling under the EU's exclusive competence. The decision does not affect those elements of the ATT that may fall under the EU's competence under the CFSP.

The Council adopted the proposal and agreed that member states shall coordinate with the support of representatives of the Commission and of the EEAS, who shall also assist in the negotiations as appropriate (Article 1). In Article 2 it was agreed that the negotiations shall be carried out in accordance with the negotiating directives set out in an annex. The annex lists all relevant EU legislation that member states should take into account while negotiating the ATT. The proposal mentions not only the Intra-Community Transfer Directive, but also Directive 91/477/EC on firearms, arms acquisition and possession, Directive 93/15/EC on explosives for civil use and Regulation 258/2012 on Article 10 of the Firearms Protocol. Last but not least, the Commission requested that the ATT contain provisions enabling the EU to become a party to the treaty. This requirement proved to be difficult to achieve (see section V).<sup>21</sup>

#### IV. AN ASSESSMENT OF EU OUTREACH ACTIVITIES TO PROMOTE THE ARMS TRADE TREATY

Acknowledging that not only internal coordination but also outreach activities are needed in the ATT process, the EU emphasized that inclusiveness in the process leading to an ATT is crucial. With a view to strengthening the involvement and engagement of all UN member states, the EU has sought to raise support for the ATT through several of its policy instruments such as bilateral meetings between the EU and strategic partners such as Russia and the USA, by integrating sessions on the ATT in existing EU outreach projects in neighbouring countries in South

<sup>20</sup> European Commission, Proposal for a Council Decision authorising the Member States to negotiate in the United Nations Conference on the Arms Trade Treaty (New York, 2–27 July 2012) on those matters coming under the exclusive competence of the Union, COM (2012) 241 final, Brussels, 23 May 2012.

<sup>21</sup> European Commission (note 20).

Eastern Europe, North Africa and Eastern Europe, or by its member states' support for NGO activities in this regard. The EU also developed an outreach policy project specifically focused on outreach activities in support of an ATT. In 2009 the Council adopted Council Decision 2009/42/CFSP which resulted in the organization of regional outreach seminars by the UN Institute for Disarmament Research (UNIDIR). On the eve of the PrepCom negotiations, the EU decided to redouble its efforts with Council Decision 2010/336/CFSP, adopted on 14 June 2010.<sup>22</sup> This section assesses these outreach projects in more detail.

### **EU-UNIDIR outreach activities in support of the arms trade treaty**

Since 2009, the EU has been particularly active in promoting the ATT process vis-à-vis third countries. Council Decision 2009/42/CFSP 'on support for EU activities in order to promote among third countries the process leading towards an Arms Trade Treaty, in the framework of the European Security Strategy' resulted in the organization of six regional seminars covering virtually all UN member states. The objectives of EU outreach activities as defined in Council Decision 2009/42/CFSP are to:

- (a) increase awareness by national and regional actors, United Nations Member States, civil society and industry, of the current international discussions around an Arms Trade Treaty;
- (b) reinforce the purpose of the United Nations Secretary-General's Group of Governmental Experts (GGE) on an Arms Trade Treaty and strengthen the United Nations as the only forum that can deliver a truly universal instrument;
- (c) contribute to the better involvement of all United Nations Member States and regional organisations in the Arms Trade Treaty process;
- (d) encourage the exchange of views between States which are part of the GGE and those which are not part of it;
- (e) foster debate among United Nations Member States, particularly among those which are not part of the GGE;

<sup>22</sup> Annalisa Gianella at the Launch of the EU-UNIDIR project, Supporting the Arms Trade Treaty negotiations through regional discussions and expertise sharing, summary report, New York, 15 July 2010.

- (f) promote an exchange of views among United Nations Member States, regional organisations, civil society and industry;
- (g) identify possible elements, the scope and the implications of an Arms Trade Treaty; and
- (h) share these debates and views with the whole international community.<sup>23</sup>

In order to maintain the momentum and to further strengthen international support, the EU decided to redouble its efforts in 2010 with the adoption of Council Decision 2010/336/CFSP consisting of seven new regional workshops where the political and technical aspects of the ATT were discussed. Along the lines of the UN ATT process, the project objectives were slightly different and perhaps more focused than those of 2009.

The project aims to achieve:

- (a) support for the preparatory process leading up to the UN Conference on the ATT process, including through:
  - (i) increasing awareness, knowledge and understanding of the ATT process among UN Member States, civil society and industry representatives;
  - (ii) promotion of inclusive, active and effective participation of as many UN Member State as possible in the Preparatory Committee to be held in 2010-2011;
  - (iii) identification and formulation of concrete proposals on the content of an ATT, including the most comprehensive scope, parameters and implications;
  - (iv) promotion among third countries of the highest possible standards for the ATT, also on the basis of regional experiences and instruments;
  - (v) support the preparation of the 2012 Conference by reinforcing the negotiation capacities of participants.
- (b) support to third countries in their efforts to establish, improve and implement, as appropriate, export and transfer control systems, including through:

<sup>23</sup> Council Decision 2009/42/CFSP of 19 January 2009 on support for EU activities in order to promote among third countries the process leading towards an arms trade treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L17, 22 Jan. 2009, Article 1.



- (i) assistance in the establishment and enforcement of licensing systems;
- (ii) assistance in improving compliance with and enforcement of national controls implementing a future ATT, including border controls, and monitoring on arms exports and transfers;
- (iii) support for the development of national and regional reports on arms exports and imports in order to promote transparency and accountability of arms trade;
- (iv) support further transparency and accountability of arms trade through participation in the UN Register of Conventional Arms (UN ROCA);
- (v) assistance to national efforts to mark and trace small arms and light weapons (SALW).<sup>24</sup>

The technical implementation of the project was carried out by UNIDIR. To achieve these objectives, UNIDIR organized launch events, regional seminars, launch and concluding seminars, and side events. The EU provided €836 260 from its general budget in 2009 and raised the budget to €1 520 000 in 2010.<sup>25</sup> UNIDIR organized six regional seminars in the first project and seven in the second. Seminars in the first project took place over two days, during which a general overview of the ATT process was given, discussions on the scope and implications of an ATT took place, and ideas for input in the ATT process were gathered.

Following evaluation of the first project, the seminars of the second project were extended to three days to facilitate both political and technical discussions. The three-day seminars consisted of two parts: the first focused on national views on the ATT with up-to-date information on the negotiations process and the gathering of input for the PrepComs; the second part focused more on technical challenges in the implementation of export controls and capacity building and allowed for case studies in which officials were taken through fictitious licensing cases. Representatives from ministries of defence, foreign affairs and interior participated in the discussions

<sup>24</sup> Council Decision 2010/336/CFSP of 14 June 2010 on EU activities in support for the Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L152, 18 June 2010.

<sup>25</sup> Council Decision 2009/42/CFSP of 19 January 2009 on support for EU activities in order to promote among third countries the process leading towards an Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L17, 22 Jan. 2009.

along with international experts on export controls, high-level representatives from the UN, the EU and other regional organizations, and from civil society and industry.<sup>26</sup>

The first project explicitly mentioned that UNIDIR would cooperate with the UN Office for Disarmament Affairs (UNODA), Stockholm International Peace Research Institute (SIPRI) and the Fondation pour la recherche stratégique (FRS) and also where appropriate regional organizations, NGOs and industry. SIPRI, for example, was entrusted with writing background briefings on each of the regions covered by the 2009 project.<sup>27</sup> This cooperation was no longer explicitly mentioned in the 2010 project, but it did foresee a research component that was not present in 2009. UNIDIR commissioned 12 research papers that focused on specific aspects of the ATT, such as scope or parameters. UNIDIR proposed a short-list of relevant institutes or individual experts to the High Representative of the EU, who selected them. UNIDIR disseminated these papers and also drafted reports of all seminars, which largely formed the basis of this assessment.<sup>28</sup> Only 7 of 12 papers are currently available on the UNIDIR website.

According to the final report that UNIDIR drafted at the end of the first project, discussions in the regional seminars confirmed that states around the world see the unregulated trade in conventional arms as a problem that needs to be addressed. Numerous participants stressed the inadequacy of regional instruments in a globalized world, and called for a universal ATT that would be balanced in its approach and based on globally accepted parameters. In addition, the seminars revealed a number of shared positions and recommendations for the ATT process.

Discussions revealed that the majority of governments advocate a comprehensive treaty that would cover several categories of conventional weapon and a range of activities including at the

<sup>26</sup> Two participants from each targeted state were invited to participate: one participant representing diplomatic personnel responsible for national policies vis-à-vis an ATT, including national delegates participating in the ATT PrepCom; and one from agencies working in export controls, customs or law enforcement as they relate to an ATT.

<sup>27</sup> These background papers can be found at <[http://books.sipri.org/product\\_info?c\\_product\\_id=376](http://books.sipri.org/product_info?c_product_id=376)>. UNIDIR disseminates other background papers at <[http://unidir.org/bdd/fiche-activite.php?ref\\_activite=431](http://unidir.org/bdd/fiche-activite.php?ref_activite=431)>.

<sup>28</sup> Documents can be found at <[http://unidir.org/bdd/fiche-activite.php?ref\\_activite=537](http://unidir.org/bdd/fiche-activite.php?ref_activite=537)>.

minimum export, import and transit. While in the seminars many argued that an ATT should cover all conventional weapons and their ammunition, it became clear that SALW as a specific category presents difficult challenges in many regions and demands special attention. Transparency was mentioned as a fundamental principle for implementing an ATT. Many participants also stressed the need to include a mechanism for technical capacity building and assistance in a future treaty. There was a general call to draw lessons from existing regional arrangements to see how they have been implemented, and on regional-level consultations. It was noted that responsibilities should be placed equally on both exporters and importers of weapons, and that the ATT process must continue to be inclusive and seek consensus.<sup>29</sup>

Based on anonymous feedback that UNIDIR collected from the participants in each regional seminar, it appears that the EU–UNIDIR seminars improved knowledge of the ATT initiative substantially. Participants noted that the seminar helped them sustain their governments' active and substantive participation in the process towards the July 2012 negotiations. Moreover, the projects were perceived to be particularly valuable in bringing together officials and experts from regions that might not have met otherwise. During the second project, another comment that was repeatedly made was that there was too little time left before the negotiations would start. Looking at the reports of the regional seminars, it is indeed striking how many of the comments made in the regional seminars were also put forward at the UN negotiations later in New York. Concerns about an ATT that were expressed in the regional seminars still remained by July 2012, such as the fear of Arab states that the ATT would become 'unbalanced' and that double standards would be used in the implementation of the treaty.

Looking at the objectives of the outreach projects, it is clear that the UNIDIR outreach seminars were successful in reaching out to almost all UN member states. The project was deemed successful when it comes to strengthening participation and reaching people, including those who were not involved in the PrepCom meetings; the downside being that the right people were not always involved, with low-level attendance by major players such as China. Sometimes participating states sent diplomats from

local embassies, rather than experts in export controls. Nevertheless, discussion on the ATT strengthened the knowledge of and involvement in the ATT, strengthened networks and was perceived to be valuable at the technical level. The Chair of the ATT negotiations—Ambassador Roberto Moritán from Argentina—attended several regional seminars. At the UNIDIR side event during the negotiations in New York, Moritán declared the EU–UNIDIR project to be a much welcomed initiative, with the informal discussions helping the chair to understand the complexity of the issue.

In general, the ATT process benefited from the regional seminars: the closer to the July negotiations, the more their need was felt. The project succeeded in pointing out a number of key findings with regard to the scope, the criteria and the implementation of an ATT and in summarizing converging and diverging positions. The project was maybe less successful in finding new proposals or new elements that could resolve diverging regional positions. Another point for concern was the impression of some participating states that the EU shaped the agenda. During the first project, the EU Common Position on arms exports was often used in seminars, which may feed the idea that the EU is promoting its own Common Position rather than an ATT. After the evaluation of the first project, the EU adapted its seminar model. The second round of seminars was more targeted at the technical and political aspects of an ATT. Although few regions were sensitive to this, it is a delicate balance to support such a process without being perceived as a model to be followed, and without acting as a conceited normative power.

## V. THE JULY 2012 NEGOTIATING CONFERENCE

### **The formal role of the EU as a negotiator in the UN**

The European Community has had observer status at the UN since 1974, like many other regional organizations such as the Africa, Caribbean and Pacific group of states or the Council of Europe. Organizations with observer status have limited authority to intervene in debates and have no voting power. The role that the EU played during the negotiations of the ATT is related to the relations between the EU and the UN more generally. After the implementation of the Lisbon Treaty and the merging of the European Community with the EU, the High Representative asked the UN to

<sup>29</sup> Kytömäki (note 7), p. 95.

enhance the Community's observer status by granting EU speaking rights at the UN General Assembly.<sup>30</sup>

Since the Treaty of Lisbon's entry into force on 1 December 2009, the European Commission Delegation and EU Council Liaison Office have merged into the EU Delegation, under the authority of the High Representative for Foreign Affairs and Security Policy, Catherine Ashton, who is also Vice-President of the Commission. Ashton is assisted by the EEAS, whose staff comes from the relevant departments of the European Commission and the General Secretariat of the Council and from the diplomatic services of EU member states.

The UN General Assembly Resolution 65/276, adopted on 3 May 2011, upgraded the status of the EU's participation in the UN. This resolution allows EU representatives to present EU common positions to the UN General Assembly. In addition, EU representatives obtained the right to make interventions during sessions and can also be invited to participate in the general debate of the General Assembly. The new status also permits EU communications relating to the sessions and work of the General Assembly to be circulated directly as documents of the Assembly. EU representatives also have the right to present proposals and amendments agreed by EU member states and to exercise the right of reply. However, they are not able to challenge decisions of the Assembly's presiding officer and have no right to vote or put forward candidates. The resolution states that the modalities of participation also apply within the General Assembly's 'committees and working groups, in international meetings and conferences convened under the auspices of the Assembly and in United Nations conferences'. Therefore, it also applied during the UN Conference on the ATT.

Some proponents of a strengthened position of the EU at the UN were rather disappointed with the content and the language of Resolution 65/276. This resolution was preceded by a draft resolution, A/64/L67, that was more clear in language but was rejected by several UN member states and other regional organizations. The politically central goal set by the EU in trying to obtain enhanced observer status at the UN General Assembly was to improve its leverage and visibility as a global actor. This was in line with the letter and spirit of the Lisbon Treaty, which foresees

<sup>30</sup> Miller, V., 'The European Union at the United Nations', British House of Commons Standard Note SN 5975, 20 May 2011.

a stronger external representation. The participation rights won remain less than what is foreseen under the Lisbon Treaty for the EU to truly behave as a global actor within the UN. Some argue that, contrary to the letter and the spirit of the Lisbon Treaty, the EU has willingly conditioned its capacity to voice its views in the UN General Assembly (even on issues touching on its own exclusive competences) to the 'agreement by the member states of the European Union'. Critics voice their concern that in practical terms the EU has only gained the right to present its views at the UN General Assembly before its own nameplate. It is procedurally handicapped and still relies on its member states to promote its agenda there.<sup>31</sup>

Despite these criticisms and its restricted formal role, it should be acknowledged that the EU did play an active role in the ATT negotiations in July 2012 by conferring on a daily basis among EU member states in order to converge national strategies, and in reaching out to find consensus with other UN member states and in consultations with the president of the conference.

### **Main challenges in the UN arms trade treaty negotiations of July 2012**

The negotiations in New York had a difficult start.<sup>32</sup> Discussions on the status of Palestine within the UN delayed the negotiations for two days. Although the discussions in the first weeks showed that there was a broad acceptance by UN member states of the need for a treaty to regulate trade in conventional arms, they remained divided on the treaty's objectives: the scope and the criteria to which arms trade should be assessed. Although the EU was well prepared for the negotiations with the EU's non-paper to which member states agreed in the COARM-CODUN working group on the ATT, different approaches on specific issues emerged during the discussions and national negotiation strategies sometimes deviated from a strategy that is needed to uphold a coherent EU position.

Much of the debate in drafting the objectives of the treaty focused on whether the treaty should be seen as

<sup>31</sup> Wouters, J., Odermatt, J. and Ramopoulos, T., 'The status of the European Union at the United Nations after the General Assembly Resolution of 3 May 2011', *Global Governance Opinions*, July 2011.

<sup>32</sup> On the ATT negotiations see Bromley, M. Cooper, N. and Holtom, P., 'The UN arms trade treaty: arms export controls, the human security agenda and the lessons of history', *International Affairs*, vol. 88, no. 5 (2012).

an instrument to fight the illicit arms trade, or rather an instrument to regulate legal trade. However, this is also perceived as a false division by others since there is no contradiction in strengthening the legal framework and fighting the illegal arms trade. The deeper division between member states may lie in the emphasis of some member states on including concepts of human security in the language of the treaty while others are more focused on retaining the primacy of state sovereignty.<sup>33</sup>

More contentious, however, was discussions on the scope of the treaty in defining what items should be covered under 'conventional arms'. EU member states pleaded for a wide scope in their views to the Secretary-General in preparation of the conference and during the conference itself. Most of them emphasized the need for a comprehensive scope, to include not only a wide range of conventional arms, but also SALW, munitions, and components and technology specifically designed for military use. Some member states and the EU itself referred in the early stage to the EU list of military goods as a means of assisting with the development of clear definitions.<sup>34</sup> There was, however, disagreement between EU member states with regard to sports and hunting weapons. Italy would have liked to see these explicitly excluded from the ATT, while other member states did not.<sup>35</sup>

Although the non-papers of the chair proposed a rather broad scope, covering not only military items but also their components, ammunition and technology involved, there was no common ground for a comprehensive description. Agreement was found to include the seven categories of the UN Register of Conventional Arms (UNROCA).<sup>36</sup> Sceptical states such as China and India agreed to include SALW as an additional category, but the USA remained opposed to the inclusion of ammunition. Ammunition was a breaking point for the USA, which argued that exports of ammunition are too difficult to monitor under an

ATT. In particular, criteria on the risk on divergence are too difficult to apply to ammunitions, which would make it impossible to export ammunition to many parts of the world. Including ammunition in the text of the treaty was deemed to be unrealistic. Possibly, there was also some influence from the US gun lobby, which could misrepresent the issue in the run-up to the US presidential elections. The inclusion of ammunition in the scope of the treaty was, however, also essential to many African and all European states, backed by NGOs that argued that weapons without ammunition 'are just sticks'. In the final draft treaty laid down at the end of the conference, an attempt to find a solution that would meet US concerns was found in referring to national export controls to regulate ammunition, parts and components they would like to see included.<sup>37</sup>

Discussions on criteria to assess licence applications for arms controls also encountered several difficulties. First and foremost, there was disagreement between countries on the place of respect for human rights. China was particularly sensitive to the issue and did not agree that human rights and international humanitarian law should be placed above any other branches of international law. For many other states—including all European ones—human security concerns were at the heart of the treaty and should be central in the assessment of licences. More discussions arose on whether or not to include other criteria touching on social and economic development, gender, corruption and organized crime; a number of states principally objected to the inclusion of criteria under which economic development policies would be judged by exporting states. The EU member states strongly supported including all these criteria. Some member states emphasized additional criteria, including Belgium, which pleaded for the inclusion of child soldiers in the criteria; other member states, however, did not follow this lead. Another important discussion focused on the consequences of these criteria. If the criteria were not met, should this lead to a prohibition on the export? Or would the nature of the criteria be defined differently, rather as concerns that exporting countries should take into account? Also on this issue, the EU took the maximum position and advocated that a licence should be denied when the assessment criteria are not met. Russia, the USA and others, however, were opposed to language that would place tight restrictions

<sup>33</sup> Bromley, Cooper and Holtom (note 32).

<sup>34</sup> Parker, S., 'Analysis of states' view on an arms trade treaty', UNIDIR, Oct. 2007, <<http://www.unidir.org/pdf/activites/pdf2-act349.pdf>>; and United Nations, General Assembly, 'Compilation of views on the elements of an arms trade treaty', Background document prepared by the Secretariat, A/CONF.217/2, 10 May 2012.

<sup>35</sup> See the position of Italy in United Nations, General Assembly, 'Proposed arms trade treaty must prohibit weapon transfers where risk exists will be used to perpetrate sexual violence against women, conference told', Press release, DC/3366, <<http://www.un.org/News/Press/docs/2012/dc3366.doc.htm>>.

<sup>36</sup> These are battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missile and missile launchers.

<sup>37</sup> United Nations, General Assembly, 'Draft of the arms trade treaty', A/CONF.217/CRP.1, 26 July 2012.

on arms export licence decision making. In the draft treaty text of 26 July 2012, the criteria were therefore no longer called assessment criteria, but appeared under the title 'national assessment'. The USA also argued that next to negative criteria that defined cases in which arms exports should be prevented, there should be positive criteria that could justify an export (such as economic interests or missions executed as part of foreign policies), even when other criteria were not met. In order to try to meet US concerns on criteria, a proposal to include 'mitigation measures' was adopted in the draft treaty. These are confidence-building measures agreed between the exporting and importing states in order to reduce risks of misuse. An exporter (or exporting country) could require, for example, specific commitments by the importer to be included in the contract on the use of conventional weapons. This may reduce the risks associated with a certain export. The final draft stipulates that state parties shall not authorize the export when—also after considering mitigation measures—there is an overriding risk of serious violations of human rights law, humanitarian law or international law concerning terrorism (to which the transferring state is a state party). Furthermore, the transfer of conventional arms is prohibited when an arms embargo would be breached or when international obligations relevant to trafficking would be violated. Other criteria are formulated in less coercive language. Controls on import, brokering, transit and trans-shipment are included in the draft in quite general wording. The draft treaty requires reporting on export authorizations or actual exports; these reports would be distributed to other state parties but not made public. Where feasible, reporting on other transfers (import, transit, brokering) that fall under the scope of the treaty will be included too. Measures to enforce the treaty will be adopted at a national level. The draft proposes to establish a secretariat to help state parties with the implementation of the treaty.

Several dividing lines were at play during the discussions, which provoked interesting dynamics. One group of states is those that rely on arms imports for their military needs and are concerned about the effects of an ATT on their ability to source weapons abroad. Many of these—such as Iran, Venezuela, Egypt, Indonesia, India, Pakistan and others—had previously been or were currently subject to supplier restrictions. In different ways, these states sought to water down export assessment criteria, to make them more

objective in their view or to include guarantees that items would be delivered. India was most successful in this regard: it successfully pushed for the inclusion of language on 'existing contracts' being fulfilled and not affected by the treaty. A second group were the 'victim countries', most visibly African states that pleaded loudly for a strong ATT that would take humanitarian considerations seriously, would include ammunition and would prohibit exports to non-state parties. In contrast, the five permanent members of the UN Security Council issued a statement in 2011 in which they supported a treaty that would be 'simple, short and easy to implement'.<sup>38</sup>

The EU encountered some challenges of its own during the negotiations. Representatives of the EEAS, the Delegation of the EU at the UN, the European Commission and the Council (representatives of the member states) consulted frequently. In line with the proposal of Council Decision COM (2012) 241, the concern of the Commission was to make sure that the language of the treaty would not infringe the EU *acquis*. Together with the EEAS, the Commission analysed the proposals of the text and supported member states in defining their positions. The EEAS, on its part, coordinated consultations with member states in order to agree on EU common positions during the negotiations, which require consensus. It is the role of the EEAS to ensure visibility and to play a role on behalf of the EU at the global level during the UN negotiations. After years of preparatory meetings within the Council and common EU statements in the PrepComs, the EU should have been able to act as a unified actor, especially given that there is agreement—in general terms—on what should be (ideally) adopted in the treaty.

On a tactical level however, other dynamics are at play. The fact that the Council could not agree on a Council decision adopting guidelines for negotiating the ATT on matters related to the CFSP already indicated that some EU members preferred their national leeway, rather than forming an EU bloc. This is not particular to the ATT process but relates to the diplomatic position and political strength of individual member states in relation to the EU and the UN. If member states had adopted a Council decision, they would have been obliged to follow the decision in the

<sup>38</sup> P5 Statement at the 3th Preparatory Committee on the Arms Trade Treaty, 12 July 2012, <<http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom3/2011-July-12/2011-July-12-Joint-P5-E.pdf>>.

negotiations. A degree of flexibility is indeed needed in UN negotiations, when the rules of the game define that consensus must be sought among 193 members on a sensitive issue such as arms trade. Although the TEU (articles 32 and 34) emphasizes the sense of solidarity and trust among member states, even when it comes to exchange of information between member states that are on the Security Council and those that are not, not all member states acted as ‘agents of Europe’. It is a difficult balance, however, to act as a unified EU actor and keep consistency in the positions of EU member states while at the same time striving for a global compromise to which preferably all (and certainly the most importing and exporting countries) could commit. The EU encountered difficulties in streamlining national concerns during the UN negotiations. Overall, however, the EU managed to bring forward strong positions in the UN debate. It regularly expressed its support and raised its concerns with regard to the proposed texts. The EU defended, for example, its position that the consequences of the assessment of licence applications against criteria should be clear, and that corruption and sustainable development should be adopted. The visibility of the EU was also strengthened by the EU member states that consistently expressed their support for the EU positions in their own interventions.

The EU did not succeed, however, to include language on regional integration organizations in the draft of the ATT that would allow relevant regional and international organizations to become party to the ATT, as is the case for the UN Firearms Protocol. At the end of the negotiations China declared that, although it considered the draft as a good basis, it would not accept the demand by the EU, the East African Community (EAC) and the Economic Community of West African States (ECOWAS) that regional economic integration organizations be allowed to accede a treaty.<sup>39</sup> ‘Don’t underestimate China’s political will’ the delegate

<sup>39</sup> This so-called REIO clause enables regional economic integration organizations (REIOs) to participate in the UN system. A REIO is defined as ‘an organisation constituted by sovereign states of a given region to which its member states have transferred competence in respect of matters governed by conventions or its protocols and which has been duly authorised in accordance with its internal procedures to sign, ratify, accept approve or accede to it’. See Bazu, S. and Schunz, S., ‘Pathways for interdisciplinary analysis: legal and political dimensions of the European Union’s position in global multilateral governance’, Working Paper no. 11, Leuven Centre for Global Governance Studies, Feb. 2008, <<http://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP125e.pdf>>.

warned, ‘there is no room for flexibility on this issue unless the EU would lift its arms embargo on China by the end of the day’.<sup>40</sup> Towards the end of the negotiations, high politics prevailed and demands were bluntly put at the table.

## VI. CONCLUSIONS

The EU’s impact on developing a worldwide arms trade treaty has been tangible and positive. In the run-up to the negotiations, senior experts involved in the ATT process from the beginning have praised the EU and stressed the importance of the EU’s outreach activities and importance in the development of an ATT. The EU is still seen as a bridge builder and presumed to be strong in finding consensus among diverging positions. The EU–UNIDIR outreach activities were welcomed by the UN and all participants. The EU learned to be careful, not to promote its own Common Position on arms exports in the ATT outreach sessions. It is a delicate balance to support a process without creating the perception of pushing a pre-established model for the outcome of that process. The ATT negotiations further revealed that—despite the ambitious language in the Lisbon Treaty—the EU as an actor in UN negotiations should not be taken for granted. However, unity among member states is a prerequisite for gaining credibility and becoming successful as a negotiating power in a UN context. Despite the fact that there were relatively few disagreements with regard to content, when it came to strategy, the necessary agreement among all member states was lacking. Larger EU member states, in particular, valued their national leeway to negotiate a UN treaty and also valued their ability to engage in close negotiation with other permanent members of the UN Security Council. Nevertheless, the EEAS, the Commission and the member states consulted regularly to define common positions on treaty proposals, sometimes successfully, sometimes not. To the outside world, the EU was a visible actor, involved in consultations and negotiations, and presenting its views whenever agreement was found. The presence of the EU was also echoed by its member states, which stressed their support for EU positions in their interventions. Equally important, several EU member states played a crucial

<sup>40</sup> Bolton, M., ‘Finding beauty in the ugly end to the arms trade treaty conference: the discursive victory’, *Global Policy*, 29 July 2012, <<http://www.globalpolicyjournal.com/blog/29/07/2012/finding-beauty-ugly-end-arms-trade-treaty-conference-discursive-victory>>.

individual role in the negotiations. Looking to the EU from a UN perspective, strong national contributions in negotiating the ATT strengthen the role of the EU as a whole. Another delicate balance thus occurred during the negotiations, between adhering to a common EU position and deviating from it for the cause of reaching compromises with the outside world.

The negotiations in July did not lead to an ATT. At the end of the negotiations, the USA blocked an agreement by declaring that it needed more time to reach a consensus. Russia, North Korea, Cuba and Venezuela supported this position. As an outcome of the negotiations in July, Ambassador Moritàn presented a draft text of an ATT that reflected the result of the negotiations to the UN General Assembly. The First Committee of the Assembly adopted a resolution (A/C.1/67/L.11) on 7 November 2012 and decided to continue negotiations in March 2013 with a view to concluding an ATT. The consensus rule remains in place, and the document that is presented by Moritàn will be the basis for future work on the ATT. It is important that the vast majority of UN member states (including the USA and China) support the proceedings of the negotiations and that the negotiations are scheduled for March 2013, so that the momentum to conclude an agreement is not lost.

The EU, on its part, has prepared a Council decision in which it proposes to pursue its outreach activities by organizing a seminar for UN member states with a view to concluding the negotiations in March 2013 successfully. If an ATT is concluded in March, it is the ambition of the EU to focus on its successful implementation. In the meantime, the meetings of the COARM–CODUN working group on the ATT will proceed. The EU now has the time to evaluate the July 2012 negotiations and to determine a further strategy. It is important to prioritize those issues that the EU will strive for in the coming negotiations and to list the issues on which it is willing to compromise. As such, the EU will maintain and possibly strengthen internal cohesion while reaching out to the outside world in order to find a compromise for concluding an effective global ATT.

## ABBREVIATIONS

ATT	Arms trade treaty
CFSP	Common Foreign and Security Policy
COARM	Working Party on Conventional Arms Exports
CoC	Code of Conduct on Arms Exports
CODUN	Working Party on Global Disarmament and Arms Controls
EEAS	European External Action Service
EU	European Union
GGE	Group of governmental experts
OEWG	Open ended working group
PrepCom	Preparatory Committee
SALW	Small arms and light weapons
TEU	Treaty of the European Union
TFEU	Treaty of the Functioning of the European Union
UNIDIR	United Nations Institute for Disarmament Research

## A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

## STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

## MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



## FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



## PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfk.de>



## INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



## STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

<http://www.sipri.org/>