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India's Security Interests and the Arms Trade Treaty

The international arms trade has thus far thrived without globally accepted rules or regulations. The lack of a regulated framework has contributed to the survival and steady growth of the arms industry, which is now witnessing the entry of new players. After years of discussions, this situation could soon change. The conclusion of international negotiations aimed at an arms trade treaty (ATT) are scheduled for March 2013 in New York. India, like many other nations, has specific interests and concerns regarding the ATT. These emerge from the complex security environment within and beyond its borders. The extent to which these legitimate interests and concerns are addressed in the ATT will determine India's support on voting day.

Introduction

International trade is largely governed by globally accepted rules. However, the trade of arms has flourished without such universal guidelines. Starting in 2006, the United Nations (UN) began working towards an Arms Trade Treaty (ATT) to regulate the global trade of arms. After years of negotiation and debate about the need for such a treaty and the procedural issues involved in its drafting, a conference was held in July 2012 to decide on the ATT's actual content. However, the conference failed to produce a treaty because participants could not arrive at a consensus within the stipulated time period. An additional conference was scheduled for March 2013.

The July 2012 conference failed on multiple levels. First, major players had vastly differing positions. Second, there were also disagreements on what the supplier and recipient nations should expect from the treaty. India, the world's largest arms importer, had its share of concerns.

This Paper will briefly trace the evolution of the ATT and examine India's views and concerns by analysing government statements at the July 2012 conference and earlier preparatory meetings. New Delhi's ATT stance is shaped primarily by the security environment, both within and outside India's borders. Checking access to arms by non-state actors, safeguarding India's right to procure and manufacture weapons for self-defence and maintaining strategic autonomy remain at the core of India's ATT stance.

The international arms trade rose steadily during the Cold War. A decline was witnessed following its conclusion. However, this was short-lived, and the trade boomed again. Global arms sales from 2005-2009 were 22 percent higher than the period from 2000-2004. The US, Russia, Germany, France and the UK are responsible for 76 percent of exports.¹ According to the Stockholm International Peace Research Institute (SIPRI), the major arms producing nations managed to continue arms sales unabated, despite the 2008 global financial crisis.² This fact alone indicates the industry's enduring resilience.

According to SIPRI's Paul Holtom and Mark Bromley:

“Financial resources—from domestic budgets or foreign military assistance—are not the only factor that influences arms acquisitions. Perceived internal or external threats to national security, the need to replace or upgrade military inventories, demonstrations of international status, development of domestic

arms industries via licensed production and offsets, the desire to strengthen ties with suppliers, and the influence of the military play important roles in the arms acquisition process.”³

The argument rings true for India. Due to perceived internal and external threats, the top 10 arms importers in 2011 included new entrants—such as Morocco, UAE, Turkey and Vietnam.⁴ Morocco, the UAE and Turkey justified increased arms imports by pointing to the 'Arab Spring' and ongoing tensions in Libya, Egypt and Syria. Vietnam, which is currently embroiled in a dispute with China over territorial sovereignty in the South China Sea, has stepped up efforts to strengthen its military might fearing aggressive behaviour from Beijing.

Today, new players have entered the global arms market, with countries like India increasing their demand. China, for its part, wants to strengthen its domestic arms industry. China has been a top five arms exporter since 2010, holding down the 4th position. In 2011, China sold arms worth US\$ 1.356 billion. Despite the entry of new players, arms exports are still dominated by a select few. However, import leaders have varied over the years. India currently leads with imported arms totalling US\$ 3.5 billion in 2011.⁵ Increased demand will likely to continue as many defence budgets are set to rise in the future.

Regulating the Arms Trade

Attempts to regulate the international arms trade can be traced back to late 19th century. The Brussels Convention of 1890 sought arms trade regulation to end slavery and ensure stability of European assets in Africa. Subsequently, the second Hague Conference of 1907 restricted neutral

states from selling arms to belligerents but preserved the rights of private suppliers to sell arms to any interested party.⁶

After World War I, the 'Convention for the Control of the Trade in Arms and Ammunition' was agreed upon in September 1919 by the League of Nations. The objective was to address the existence of and threat posed by large arms caches left over from the war in various parts of the world. Arms export licensing, annual reporting, verification and supervision, and embargoes on certain regions (parts of Africa and Middle East) were major elements of the convention. Despite being signed by many states, the convention was ratified by only a few, as many felt that the provisions would restrict their ability to buy or sell weapons. It was also argued that the clauses prohibiting the sale of arms to non-signatories were not in the interests of the arms industry, thus leading to resistance from exporting countries.⁷

At a May 1925 conference in Geneva, the reworked draft was modified and presented as an 'Arms Traffic Convention' intended to supervise international trade of arms and ammunition. The amendments allowed exports to non-signatories and eased out the licensing clauses, favouring the exporters. However, the convention was never ratified, as some importing states still felt that certain clauses restricted them from trading arms and infringed on their sovereignty.⁸

During the Cold War, the superpowers used arms transfers to strengthen allies and influence a range of conflicts in the developing world.⁹ For instance, US exports constituted 66 percent of Israel's annual arms imports from 1949-1988; while 86 percent of Iran's annual arms imports were from the US until the 1979 Islamic Revolution. The USSR supplied weapons to Egypt, Syria and Iraq, meeting a majority of their arms

needs.¹⁰ During the Cold War, the United States and its allies attempted to regulate arms by preventing the transfer of weapons to adversaries. The US established the 'Coordinating Committee for Multilateral Export Control' in 1947, which restricted arms supplies by the US and allies to the Eastern bloc. The Soviet Union, on the other hand, restricted transfers from Warsaw Pact signatories.

In the aftermath of the 1973 Arab-Israeli War, a coalition of diverse peace advocacy groups in the UK founded the Campaign Against Arms Trade (CAAT) in 1974. The campaign endeavours to end international arms transfers, believing that large-scale military procurement and arms exports reinforce a militaristic approach to resolving international problems.¹¹ Recognising the impact of arms transfers on escalating conflicts, the UN included international arms transfers as a subcategory of post-1988 disarmament resolutions. The impact of arms transfers on amplifying regional conflicts, derailing social and economic development and increasing illicit and/or covert arms transfer of arms, were highlighted in the 1988 UN resolution on 'General and Complete Disarmament'.¹² Most attempts to curtail arms transfers to the conflict-ridden Third World failed primarily due to lacking “political consensus for control within and among supplier and recipient governments.”¹³

Towards the end of the Cold War, international discourse began focusing on the adverse impact of the arms trade on conflict escalation, particularly after the 1991 Gulf War. Iraq's invasion of Kuwait and the use of weapons imported from all five permanent (P5) UN Security Council members once again turned all eyes towards the regulation of the arms trade.¹⁴ As per the Guidelines for Conventional Arms Transfer agreed upon by the P5, arms transfers were to be made to “meet needs for legitimate self-defence.” The P5 also agreed to refrain from conducting

arms transfers that would aggravate conflicts, increase instability and promote terrorism.¹⁵ However, the discussions failed to produce a formal document due to disagreement between the US and China over the issue of US arms sales to Taiwan.¹⁶

The UN Register of Conventional Arms (UNROCA) was established in 1991 by UN General Assembly resolution 46/361 for reporting information regarding international transfers of battle tanks, armoured combat vehicles, large-calibre artillery, combat aircraft, attack helicopters, warships, and missiles and missile launchers. The lack of a consultation procedure is seen as the major drawback of this mechanism. Small Arms and Light Weapons (SALW) were later included in addition to the other categories for optional reporting. The effectiveness of UNROCA can be questioned, as the number of states submitting reports has been erratic. In 2007 only 37 percent of UN member states had submitted reports to the UNROCA.¹⁷

With increase in civil wars and intra-state conflicts at the end of the Cold War (in part fuelled by the flow of SALW), attention shifted towards checking the illicit trade of weapons. The UN adopted the 'Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects' (UN PoA) in 2001. It outlined the following measures:

“(a) creating legislation, regulations and administrative procedures to control the production and transfer of SALW; (b) criminalising the illegal manufacture, possession, stockpiling and trade of SALW; (c) marking of SALW; (d) improving the tracing of SALW; (e) seizing and collecting illegally possessed SALW; (f)

destroying surplus SALW; and (g) implementing effective disarmament, demobilization and reintegration programmes.”¹⁸

Voluntary mechanisms, like those coming under the Wassenaar Arrangement, were created for regulating the trade of SALW. The 'Wasseenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies' was established “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, thus preventing destabilising accumulations.”¹⁹ The Arrangement is not legally binding and has 41 member states (as of 2012).

Despite the existence of various mechanisms to regulate arms transfers, the illicit trade continues as many countries are not signatories to any existing mechanisms. Additionally, as new actors have emerged, there is a lack of legally binding mechanisms, and different degrees of mechanism implementation.²⁰

Towards the Arms Trade Treaty

The ATT initiative was started in 1995 by a group of Nobel laureates who drafted the 1997 Nobel Peace Laureates International Code of Conduct on Arms Transfer.²¹ The effort was given a further impetus by European NGO movements, which highlighted the impact of arms trade on development and human rights. Studies conducted by international organisations, such as Oxfam, have noted that development is adversely affected in conflict zones due to poor regulation of arms transfers to these regions and diversion of resources from poverty reduction activities.²² At the same time, the role played by the arms industry in

pushing treaty discussions is also important. In fact, Paul Holtom and Mark Bromley argue that “efforts to improve controls on international arms transfers have primarily been driven and directed by suppliers in North America and Europe. Motivations have included protecting national industries by preventing the spread of technologies and limiting potential adversaries' access to key technologies.”²³

NGO initiatives gained traction in 2004 when the UK first supported the need for a legally binding ATT. The EU followed in 2005. In 2006, Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the UK circulated a draft resolution “Towards an Arms Trade Treaty” at the UN General Assembly (UNGA). Resolution 61/89 was later adopted by the UNGA with the support of more than 150 states. Crucially, the US voted against the resolution and India abstained. The Bush administration's decision to vote against the treaty was largely linked to the “war on terror.” Post 9/11, the US increased military aid to many countries, some which had unsatisfactory records on human rights and democracy. If the ATT had been implemented, it may have restricted US 'war on terror' efforts.²⁴ India, being a major importer of weapons, saw the ATT as another measure which could potentially obstruct Indian efforts to meet its own security needs.

UNGA resolution 61/89 asked member states to submit views on the feasibility, scope and draft parameters for a legally binding mechanism to regulate the international arms trade.²⁵ A Group of Governmental Experts (GGE) was set up to discuss the nature, scope and content of the ATT. The GGE concluded,

“There were different motivations for conventional arms production and acquisition, and that the weapons being traded on

the illicit market most often started out as legally traded weapons. In the light of the complexity of the issues inherent to the conventional arms transfers, the Group concluded that further consideration of those issues was required and that such efforts should be carried out, on a step-by-step basis, in an open and transparent manner, within the framework of the United Nations.”²⁶

Moving forward, the UNGA adopted a second resolution in 2008 “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms.” Once again, the US voted against the resolution. The measure established an open ended working group to examine elements on which “consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms.”²⁷

A third resolution was passed in 2009, which scheduled a diplomatic conference in July 2012 to negotiate the actual content of the ATT. The new Obama Administration supported the resolution, improving the chances of a successful outcome. UNGA Resolution 64/48 called on nations “to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.” It also categorically mentioned that the conference had to be undertaken “on the basis of consensus, to achieve a strong and robust treaty.”²⁸

Five preparatory committee meetings to discuss and make recommendations about potential ATT elements were held from 2010 to 2012.²⁹ These meetings aimed “to decide on all relevant procedural matters, including the composition of the Bureau, the draft agenda and the submission of documents” for the July 2012 conference.³⁰ During the

conference, the chairman's non-paper³¹ was accepted as a background document. The non-paper outlined ATT objectives, scope, criteria and implementation procedures after considering the views of different states. Despite circulating two drafts during the conference in order to accommodate different views, consensus could not be achieved and the international community failed to produce an ATT.

The blame for failure was put mainly on the US. In an election year, the Administration faced immense pressure from domestic groups, such as the National Rifle Association, which saw the ATT as infringing on 2nd Amendment rights. The UNGA adopted another resolution in December 2012, which decided to hold a “final UN conference on the ATT” from March 18 to 28, 2013. The last ATT draft, circulated on 26 July 2012, will serve as the basis for further work during the 2013 conference. Most importantly, the text of the treaty will be adopted by consensus, implying that even one participating state can stop adoption.

India's Security Imperatives

According to India's Ministry of Defence, “The emergence of ideology linked terrorism, the spread of small arms and light weapons(SALW), the proliferation of WMD (Weapons of Mass Destruction) and globalisation of its economy are some of the factors which link India's security directly with the extended neighbourhood.”³² Owing to disputed territory, India has faced four large-scale and one limited war with its neighbours since Independence. These disputes remain unsettled, despite numerous attempts to broker peace. The possibility of another Kargil-type war remains ever-present. At the same time, memories of the 1962 Sino-Indian War, increasing Chinese economic and military might and unsettled territorial disputes provide reason enough to modernise India's

armed force. The “all weather friendship” between China and Pakistan; China's support to Pakistan in the nuclear, conventional and high-tech weapons arena; and Beijing's support to Islamabad in international fora has instilled the fear of a two-front war from the north and west in the minds of Indian military planners.

Also, India's geographical position in the IOR offers opportunities and challenges. Eighty percent of the international oil trade passes through regional Sea Lines of Communication (SLOCs), along with most of India's trade. As Asian and African economies rise, reliance on these SLOCs will increase substantially, offering immense opportunities for India. On the other hand, the security of SLOCs will remain a concern because the IOR is prone to threats from piracy and natural disasters.

Consequently, New Delhi desires to build stronger military and security forces. India's defence budget increased by 17 percent in 2012, reaching US\$38 billion. India spends nearly 40 percent of its defence budget on capital acquisitions. Due to the lack of an efficient domestic military industrial base capable of producing technologically advanced systems and equipment, India must rely on imports to meet many of its military needs.

Currently, India imports nearly 70 percent of its defence requirements, making it the world's largest arms importer.³³ India realises the importance of strengthening its domestic military industrial complex and emphasises joint-development and transfer of technology when signing defence acquisition deals. The statistics provided in Table 1 reflect this reality. According to SIPRI, Indian arms imports increased by around 170 percent from 2006 to 2011. This trend is likely to continue in the near

future. According to some estimates, India is likely to import arms and equipment worth US\$ 50 billion in 2012-2016.³⁴

Table 1: Arms Exports to India from 2006 to 2011 as per SIPRI Trend Indicator Values (TIVs) expressed in US\$ million at constant (1990) prices.

Year	TIV US\$ Million
2006	1329
2007	2213
2008	1804
2009	2200
2010	2851
2011	3582

Internally, India has suffered from various forms of armed violence since independence. The 1980s militancy in Punjab, 1990s armed insurgencies and terrorism in Jammu and Kashmir and India's north-eastern states, and recent left-wing extremism are merely some of the challenges India continues to deal with. SALW supplied by external actors have enabled these movements to inflict violence on security forces and Indian citizens. In Jammu and Kashmir and the north-east, “The security forces have, since 1990, seized approximately 46,000 weapons of all types, whose markings clearly indicated that these were brought into India through illicit channels from outside the country.”³⁵ Almost 24,000 civilians and 9,178 security personnel were killed in terrorist/extremism related incidents between 1994 and 2012.³⁶

Naxalism or left-wing extremism is often categorised as the biggest security challenge India faces. According to former Home Minister P. Chidambaram, “The most violent movement in India is not terrorism or insurgency but Left-wing extremism. While 26 people were killed in terrorist violence and 46 in insurgency (27 in Jammu & Kashmir) in 2011, 297 people were killed in Naxal violence. That is ten times of those killed

in terror incidents.”³⁷ The Naxalites follow a “philosophy of armed struggle to overthrow the Indian State”³⁸ and have expanded their activities to more than nine states. From 2006 to 2011, Naxal violence was responsible for nearly 4000 deaths.³⁹

Reports about Naxalites using tribals as human shields indicated another disturbing trend. Conducting operations under such circumstances may result in collateral damage.⁴⁰ Since Naxals thrive on sympathy from local villagers, unintended killings by the security forces delegitimize the state. Moreover, Naxalites attack economic targets such as pipelines, power transmission lines, telephone exchanges, and school buildings—stunting regional development. From 2007-2011, Naxalites targeted 205 school buildings.⁴¹

These groups have received foreign made weapons, ammunition and assistance, enabling them to wage war against India. Some of these weapons were manufactured in China and the US and were smuggled into India through porous borders in the north-east. Indian Home Secretary G.K. Pillai stated in 2011 that though the Maoists were not getting direct support from China, they were being assisted by Chinese smugglers in acquiring small arms.⁴² Arms are also supplied to insurgents and left-wing extremists through India's north-eastern borders with Myanmar and Bangladesh. In fact, the intelligence agencies believe that Maoists and north-east insurgents now assist each other with training and capacity building, amplifying concerns for India.⁴³

These incidents clearly indicate the extent to which India's internal security challenges are amplified by the uncontrolled and unaccounted for flow of weapons, particularly SALWs, from beyond India's borders.

India's approach to the ATT

India has always been a vocal supporter of disarmament in various international fora. India voiced concerns about unregulated arms trade in 1959, when it urged the UN to check the unrestricted growth of arms and the existence of large arms caches.⁴⁴ As part of the Non-Aligned Movement, India helped craft various statements issued on general and complete disarmament. Clarifying its stand, India stated at the first ATT preparatory committee meeting in 2010 that it “fully supports measures that would contribute to international peace, security and development. India has always exercised the highest degree of responsibility in conventional arms transfers.”⁴⁵

The need to import arms and technology to defend against internal and external threats, grow its domestic arms industry and to modernise the armed forces form the foundation of India's ATT stance. India has asserted that the final ATT should be acceptable to all stakeholders and flexible enough to co-exist with national legislation many countries have established to regulate the arms trade. India seeks strong clauses restricting access to SALW by non-state actors and terrorist groups. India believes that the legitimate right of states to transfer weapons for UN peacekeeping missions should not be hindered by the ATT. Ammunition and technology transfers should remain outside the scope of the treaty. Overall, India has sought a better balance between the rights and obligations of importers and exporters.

India has argued that the ATT should be universally acceptable and adopted only through consensus. If major stakeholders in the arms trade, both importers and exporters, do not sign the treaty, then the whole treaty will be defeated. Consequently, India has stated, “Given the complexities

of issues involved in the treaty and the need to bring on board all stakeholders it is important that we proceed in a manner that promotes the prospects of a treaty that is practical and implementable and is able to attract universal adherence.”⁴⁶ International NGOs—citing the direct and indirect relationships between increasing the arms trade, human rights abuses and lacking Third World development—have argued for a speedy conclusion to ATT negotiations. India also believes artificial deadlines should not set when drafting a treaty “legally binding and of an unlimited duration.” Only under these circumstances, will a “balanced and implementable outcome” be achieved.⁴⁷

Given the impact of small arms on India's security, New Delhi seeks to address the issue of illicit SALW transfers through the ATT. At the conclusion of the July 2012 conference, India's representatives noted, “[India] has been actively engaged in the process of negotiation of this treaty, with a view to working towards a positive outcome in the shape of a clear and comprehensive treaty that would achieve the objective of checking and eradicating the flow of illicit arms, and in particular to halt the supply of weapons to terrorists.”⁴⁸ Even during various gatherings held prior to the July diplomatic conference (such as the GGE, Open-ended Working Group and Preparatory Committee meetings), India voiced concerns over illicit SALW trafficking. “India's security interests have been affected by illicit and irresponsible transfers, especially of small arms, light weapons and explosives... We have therefore maintained that the priority must be combating and eliminating the illicit trade in such arms,” said India's Ambassador to the UN in July 2010.⁴⁹

New Delhi believes the ATT, in its current form, does not address these issues adequately. India remains unsatisfied with the current clauses pertaining to illicit arms transfers to non-state actors and terrorists.

Overall, India wants a sharper reference or “insertion of more specific language on terrorism” in the ATT, especially in the preamble. Article 3 of the draft ATT, which details the prohibited transfers, fails to clearly restrict arms transfers to terrorists and non-state actors.

India also feels Article 4 Para 2 (c), which deals with National Assessment, could be misinterpreted.⁵⁰ Article 4 Para 2 (C) of the draft ATT states, “Prior to authorization and pursuant to its national control system, the State Party shall assess whether the proposed export of conventional arms could be used to commit or facilitate an act constituting an offense under international conventions and protocols relating to terrorism to which the transferring State is a Party.” This could imply “that transfers that facilitate terrorist acts could be authorized if the receiving state is not a party to terrorism conventions and protocols.”⁵¹

India also thinks references made to development, crimes against women and children and corruption (falling under Article 4 Para 6 of the draft ATT) should be removed. It wants the clause dropped because it is “not directly relevant to the goals and objectives” of the treaty.⁵²

India wants only the UNROCA 7+1 category covered in the ATT. Including additional items could complicate the implementation of the treaty. Currently, the treaty covers the UNROCA list under its ambit. The list includes: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and SALW. However, it says ATT would apply to these categories 'at a minimum'. India has stated that inclusion of this phrase would expand the ATT's scope. The intention in inserting the phrase was “to address the problem of future evolution of conventional arms systems as elaborated in national lists [UNROCA list].”⁵³

The Scope section (Article 2) also lists the kind of arms transfers and movements not covered by the treaty. Though the treaty would not be applicable to international movement of conventional weapons by a State meant for its own armed forces or law enforcement authorities operating beyond its borders, ATT does not explicitly mention transfers of UN Peacekeeping operations. As of 2011, Indian forces were present under the UN flag in more than nine countries including, conflict ridden regions. It is essential that arms movement remains unrestricted in order for India to carry out UN missions in conflict-ridden areas. Subsequently, India wants an explicit 'transfers exception' for UN peacekeeping operations in the ATT.

New Delhi has sought the exclusion of parts, components, ammunition and technology transfer from the draft ATT. Currently, the clauses calling for state parties to establish national control systems for ammunition, parts and components are “onerous and ambiguous.” Inclusion of these items would complicate the implementation process, as it would “involve complex commercial, legal (including pre-existing international legal obligations) and intellectual property issues.”⁵⁴ While signing defence related deals, India seeks technology transfers and joint development of equipment. Although New Delhi understands that technology transfer depends on the bilateral relations of participating parties, it does not want the ATT to become an excuse for denying technology to India.

India has stated that information sharing and reporting done by “transit and transshipment states should be subject to mutual agreement between the exporting and importing state parties.”⁵⁵

India has, over a period of time, established a number of laws and institutions to check illegal arms proliferation. These include The

Explosive Substances Act, 1908; The Arms Act, 1959; The Atomic Energy Act 1962; The Customs Act, 1962; The Arms Rules 1962; The Narcotic Drugs and Psychotropic Substances Act, 1985; The Environment Protection Act, 1986; and The Foreign Trade (Development and Regulation) Act, 1992. According to inputs supplied in accordance with UNGA Resolution 58/42 on 'National Legislation on Transfer of Arms', these laws “form the legal basis of India's system of export controls.”⁵⁶ Due to the existence of these laws, India believes that any new international mechanism should be flexible enough to be implemented while recognising domestic circumstances. There should be leeway to allow revision and amendment of existing domestic laws. India also strongly supports the view that the ATT “should not apply retrospectively or affect pre-existing agreements in any manner.”⁵⁷

The draft ATT contains several clauses on rights and obligations of importers and exporters that seem to tilt the balance towards exporters. India's discomfort with such clauses is evident from statements made during ATT discussions and UN drafting. For instance, Article 6 Para 3 says that deals can be called off after authorisation, if the exporting state party feels that the transferred arms could be used for activities impeding peace and security, violating human rights law, and running afoul of other criteria mentioned in the Article 4 of the draft ATT. India feels that “the insertion of Article 6 Para 3 [is] particularly unacceptable.”⁵⁸ It has argued that the deals and contracts signed by parties in accordance with ATT and other national and international laws do not create a loophole but rather enhance “the confidence of states in the treaty and its implementation and restores some balance in the obligations of exporting and importing states.”⁵⁹

India is currently the world's largest importer of arms, a position it will likely retain in the future. It does not want the ATT to become an instrument used to restrict India from acquiring arms needed for national security. Conforming to its strategic autonomy goals, India has argued that Article 51 of the UN Charter (guaranteeing a right of self defence) should be sacrosanct. This means the ATT should not restrict nations from acquiring “means for self-defence, including through the development, manufacture, acquisition and import of arms.”⁶⁰

India believes end-use matters should be dependent on the “mutual agreement between the exporting and importing state parties.”⁶¹ The clauses suggesting risk management measures, including confidence-building measures and jointly developed programmes, should emphasise 'jointly agreed' programmes by importing and exporting states. This conforms to India's demand for a balance between the rights and obligations of importers and exporters.

Conclusion

In March 2013, nations will try to overcome differences and agree on an ATT to regulate the billion-dollar arms trade. Differences are often shaped by larger geopolitical realities. The US position will be a critical factor in determining the fate of final ATT talks. The US government, blamed for the inconclusive conference in July 2012, has supported further work on the treaty. The December 2012 Newtown, Connecticut school shooting has increased pressure on the Obama administration to review domestic gun control laws. The incident could also provide necessary domestic support for the ATT. However, the role played by the US arms lobby may limit Washington's movement. The Obama

Administration will face tough resistance if the ATT is brought to the Senate for ratification.⁶²

Other major players, such as China, have voiced arguments similar to India. China believes the ATT should be adopted by consensus, not limiting the right of states to conduct legal arms transfers. It strongly believes that the ATT should not in any way be used as a political tool. As arms trade is closely linked to national security, China does not want stringent transparency mechanisms in the treaty.⁶³ For Russia, the illegal trafficking of black market arms is the primary concern. Moscow also wants ATT adoption by consensus, so it retains flexibility enough for states to implement it according to their specific situations.⁶⁴

Adoption by consensus means just one country can stall its passage. While nations that do not want to curb illicit transfer of arms may derail the process, if major stakeholders are not on board, then the treaty will, in any case, be of little use. New Delhi is unlikely to support an ATT providing terrorists and other non-state actors continued access to SALW.

India, as an emerging power with legitimate security concerns in its neighbourhood, seeks a treaty that will not pose a hurdle to its legitimate defence needs. China's military rise, Beijing's support to Pakistan and India's increasing role as a security guarantor in the Indian Ocean region compel New Delhi to foster a strong military capable of defending interests beyond its borders.

India, as in previous meetings, will likely contribute positively to hammer out a meaningful ATT during March 2013 negotiations. If the ATT is effective, balanced and fair to all stakeholders, it will receive India's support. However, New Delhi is unlikely to support any attempts to limit

its arms acquisition or restrict attempts to use purchased weapons to meet security needs. As long as New Delhi remains satisfied that the ATT will permit it to maintain strategic autonomy and not undermine legitimate security interests, India will support the ATT.

1. Paul Holtom and Mark Bromley, “The International Arms Trade: Difficult to Define, Measure, and Control,” *Arms Control Today*, July / August 2010, available at <http://www.armscontrol.org/print/4306>.
2. “Business as usual for top arms producers despite slowdown in arms sales, says SIPRI,” SIPRI Website, February 27, 2012, available at <http://www.sipri.org/media/pressreleases/27-feb-2012-Business-as-usual-for-top-arms-producers>.
3. Paul Holtom and Mark Bromley, “The International Arms Trade: Difficult to Define, Measure, and Control,” *Arms Control Today*, July / August 2010, available at <http://www.armscontrol.org/print/4306>.
4. Morocco moved up to 4th position in 2011 from 54th in 2010, UAE moved up to 5th position in 2011 from 14th in 2010, Turkey moved up to 9th position in 2011 from 18th in 2010 and Vietnam moved up to the 10th position in 2011 from 34th in 2010, according to the SIPRI Arms Transfers Database.
5. Arms Transfers Database, SIPRI
6. David R. Stone, *Imperialism and Sovereignty: The League of Nations' Drive to Control the Global Arms Trade*, *Journal of Contemporary History*, JSTOR, available at <http://www.jstor.org/stable/pdfplus/261204.pdf?acceptTC=true>.
7. Sarah Parker, “Implications of States' Views on an Arms Trade Treaty,” United Nations Institute For Disarmament Research, January 2008 and League of Nations Convention For The Control Of The Trade In Arms And Ammunition, And Protocol, JSTOR.
8. Sarah Parker, “Implications of States' Views on an Arms Trade Treaty,” United Nations Institute For Disarmament Research, January 2008
9. Shrikant B. Paranjpe. 1983. “Russia in Asia: The Brezhnev Plan For Collective Security,” *The Indian Political Science Review*, Vol. XVIII, No. 1, January: 50, cited in Mark C. Anderson and Dr. Jack E. Vincent, “Predicting Arms Transfers During the Cold War,” *Martin Journal of Peace and Conflict Research*, University of Idaho, 2002.
10. SIPRI Database, cited in David Kinsella, “Arms Transfers and Third World Rivalries during the Cold War,” *American Journal of Political Science*, Vol. 38, No. 3 (August 1994), pp. 557-581, via JSTOR, available at <http://www.jstor.org/stable/2111597>.
11. Campaign Against Arms Trade, available at <http://www.rightlivelihood.org/caat.html>.
12. UN General Assembly Resolution 43/75, December 1988.

13. Nicole Ball, "Third World arms control: a Third World responsibility," *Arms Transfers Limitations and Third World Security*, Oxford University Press, pp. 45-57.
14. Edward J. Laurance, "1991 Arms Trade Control Efforts and Their Echoes," *Arms Control Today*, July/August 2011, available at .
15. For details see, *Guidelines on Conventional Arms Transfers*, Communiqué by the Security Council P-5 to the Conference on Disarmament, available at <http://www.un.org/disarmament/convarms/ATTPrepCom/Background.html> .
16. Sarah Parker, "Implications of States' Views on an Arms Trade Treaty," United Nations Institute For Disarmament Research, January 2008.
17. Paul Holtom and Mark Bromley, "Implementing an Arms Trade Treaty: Lessons on Reporting and Monitoring from Existing Mechanisms," SIPRI Policy Paper, July 28, 2011, available at <http://books.sipri.org/files/PP/SIPRIPP28.pdf>.
18. Ibid.
19. For details see Wassenaar Arrangement available at <http://www.wassenaar.org/introduction/index.html>.
20. Sarah Parker, "Implications of States' Views on an Arms Trade Treaty," United Nations Institute For Disarmament Research, January 2008
21. Control Arms Foundation of India, *India United Nations Arms Trade Treaty Work 2006-2012*, available at <http://www.cafi-online.org/UN-Booklet-6YearsOfATTwork.pdf>.
22. Oxfam, *Armed Robbery: How the Poorly Regulated Arms Trade is Paralysing Development*, June 2012, available at <http://www.oxfam.org/sites/www.oxfam.org/files/tb-development-arms-trade-treaty-130612-en.pdf>.
23. <http://www.armscontrol.org/print/4306>
24. Scott Stedjan, "Arms Trade Treaty: Let the U.S. Opt Out for Now," *Foreign Policy in Focus*, November 20, 2006, available at http://www.fpif.org/articles/arms_trade_treaty_let_the_us_opt_out_for_now.
25. UN General Assembly Resolution 61/89, December 2006.
26. Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, August 2008.
27. UN General Assembly Resolution 63/240, December 2008.
28. UN General Assembly Resolution 64/48, January 12, 2010.
29. The Fifth Preparatory Committee meeting was decided by a decision of the UN First Committee in 2011.

30. UN General Assembly Resolution 64/48, January 12, 2010.
31. The non-paper was prepared by the Chairman of the preparatory committee, intended as a summary of the range of contributions by States in the substantive preparatory committee meetings.
32. Annual Report 2011-2012, Ministry of Defence, Government of India, available at <http://mod.nic.in/reports/welcome.html>.
33. Making Investments in the Defence Sector, Price Waterhouse Cooper, March 2012, available at <http://www.pwc.in/assets/pdfs/industries/paper-on-the-indian-defence-sector-march-2012.pdf>.
34. Centre for Analysis of World Arms Trade Estimates, cited in "Russia to supply \$7.7 billion worth of arms to India," Russia & India Report, January 25, 2012, available at http://indr.us.in/articles/2012/01/25/russia_to_supply_77_billion_worth_of_arms_to_india_14608.html.
35. Integrated National report on the implementation of International Instrument to Enable States to Identify and Trace, In a Timely and Reliable Manner Illicit Small Arms and Light Weapons in all its aspects And The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New Delhi, March 31, 2008.
36. "India Fatalities: 1994-2012," South Asia Terrorism Portal, available at <http://www.satp.org/satporgtp/countries/india/database/indiafatalities.htm>.
37. "Naxalism is a bigger challenge than terrorism: Chidambaram," The Times of India, September 14, 2011 available at http://articles.timesofindia.indiatimes.com/2011-09-14/india/30153889_1_naxalism-bigger-challenge-home-minister.
38. Naxal Management Division, Ministry of Home Affairs, Government of India, available at http://mha.nic.in/uniquepage.asp?Id_Pk=540.
39. Statistics of Naxal Violence (2007 to 2011), Ministry of Home Affairs, Government of India, available at http://mha.nic.in/pdfs/nm_stat_nv-161012.pdf.
40. "Naxals may have used tribals as human shield in Chhattisgarh op," Rediff News, July 02, 2012, available at <http://www.rediff.com/news/special/naxals-may-have-used-tribals-as-human-shield-in-chhattisgarh-op-special/20120702.htm>.
41. Statistics of Naxal Violence (2007 to 2011), Ministry of Home Affairs, Government of India, available at http://mha.nic.in/pdfs/nm_stat_nv-161012.pdf.
42. Meetu Jain, "Maoists helped by Chinese Arms Smugglers," IBN Live, November 09, 2009, available at <http://ibnlive.in.com/news/maoists-helped-by-chinese-arms-smugglers/104824-3.html>.
43. Anupam Dasgupta, In the battle for survival, "Naxals reach out to the northeast, Myanmar, Nepal and even China," The Week, November 21, 2012, available at

- <http://week.manoramaonline.com/cgi-bin/MMOnline.dll/portal/ep/theWeekContent.do?programId=10350679&contentId=12856479>.
44. Binalakshmi Nepram (ed.), *India and the Arms Trade Treaty: Making Disarmament Meaningful to People's Lives*, (India Research Press, New Delhi), 2009.
 45. Statement by PR/Ambassador of India to the CD at the First Preparatory Committee on the ATT, New York, July 12, 2010.
 46. Statement by Ambassador Sujata Mehta, PR to the Conference on Disarmament, Geneva at the closing Plenary of the Diplomatic Conference on the Arms Trade Treaty, New York, July 27, 2012.
 47. Ibid
 48. Ibid
 49. Statement by PR/Ambassador of India to the CD at the First Preparatory Committee on the ATT, New York, July 12, 2010, available at <http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/2010-07-12/12072010-India-E.PDF>, cited in Rahul Prakash, "The Arms Trade Treaty: An Indian Perspective," ORF Issue Brief, No. 39, July 2012.
 50. Article 4 Para 2 (C) of the draft on ATT states that "Prior to authorization and pursuant to its national control system, the State Party shall assess whether the proposed export of conventional arms could: be used to commit or facilitate an act constituting an offense under international conventions and protocols relating to terrorism to which the transferring State is a Party."
 51. Statement by Ambassador Sujata Mehta, PR to the Conference on Disarmament, Geneva at the closing Plenary of the Diplomatic Conference on the Arms Trade Treaty, New York, July 27, 2012.
 52. Ibid
 53. Ibid
 54. "Compilation of views on the elements of an arms trade treaty," Background document prepared by the Secretariat for the UN Conference on the Arms Trade Treaty, New York, July 2-27, 2012.
 55. Ibid
 56. "Inputs pursuant to UNGA Resolution 58/42 on 'National legislation on transfer of arms, military equipment and dual-use goods and technology,'" available at <http://www.un.org/disarmament/convarms/NLDU/docs/NLDU/India2004.pdf>.
 57. "Compilation of views on the elements of an arms trade treaty," Background document prepared by the Secretariat for the UN Conference on the Arms Trade Treaty, New York, July 2-27, 2012.
 58. Statement by Ambassador Sujata Mehta, PR to the Conference on Disarmament, Geneva at the closing Plenary of the Diplomatic Conference on the Arms Trade Treaty, New York, July 27, 2012.

59. Ibid
60. "Compilation of views on the elements of an arms trade treaty," Background document prepared by the Secretariat for the UN Conference on the Arms Trade Treaty, New York, July 2-27, 2012.
61. Statement by Ambassador Sujata Mehta, PR to the Conference on Disarmament, Geneva at the closing Plenary of the Diplomatic Conference on the Arms Trade Treaty, New York, July 27, 2012.
62. Louis Charbonneau, "National Rifle Association Vows to Fight Arms Trade Treaty at UN," Reuters, December 28, 2012, available at <http://www.reuters.com/article/2012/12/28/us-arms-treaty-nra-idUSBRE8BR03420121228>.
63. Statement by the Chinese Delegation at the General debate of United Nations Conference on the Arms Trade Treaty, available at http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706_China_E.pdf.
64. Statement by the Delegation of the Russian Federation at the 2010 United Nations Conference on Arms Trade Treaty, available at http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706_Russia_E.pdf.

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