

* Talk to Peter
→ Value on ~~one~~ ^{co-ordinated approach for} ~~submission~~ ^{on} arms treaties

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~~IN CONFIDENCE~~

Arms Trade Treaty (ATT)

- ATT

Proposed Steps for further Developing Australia's Negotiating Position DFAT, 12 August 2010

Australian Objectives

Australia's goal is to negotiate a legally-binding, international Arms Trade Treaty (ATT) that

- Enhances Australia's security and the security of allies and regional partners
- Contributes to reducing the global humanitarian cost of conventional arms conflicts
- Facilitates responsible arms trade

by raising barriers to illicit arms trafficking through an international framework that codifies global best practice for the responsible import, export and transfer of conventional arms based on agreed common standards and criteria

Australian position

Following the first round of UN-mandated ATT Preparatory Committee (PrepCom) meetings (New York, 12-23 July) the next session (New York, 28 February-4 March 2011) will move into more technical and detailed negotiations, hence there is a need to agree on a comprehensive Australian position.

In view of the short timeframe before the next PrepCom session, we propose the following timetable:

- Identified lead agencies draft position papers on the 13 subject areas identified below -for inter-agency clearance by 21 September → copy of all papers to go out.
- Based on these agreed position papers DFAT would prepare a paper highlighting key areas requiring decision: draft for clearance by 12 October.
- seek agreement by Ministers by 5 November. → early December →

Once ministerial approval is obtained lead drafting agencies would prepare briefing for the Prepcom in the form of talking points (as basis for the delegation's interventions) and background for clearance by 1 December. → end Jan.

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The following list of subject areas for policy elaboration is based on the PrepCom Chair's draft ATT elements paper (Attachment A), and draws on the three facilitator reports on scope (arms and activities), parameters (conditions governing arms transfers) and implementation (Attachments B, C & D, respectively).

Proposed lead agency for each subject area is highlighted (**bold, underlined text**).

The policy papers should be structured as follows:

- a) analysis of the issues expected to arise
- b) Australia's preferred outcomes
- c) Outcomes which would be unacceptable (red-lines)

Length will vary according to the range of issues involved but we envisage in the range of one to five pages maximum.

1. Preamble/Principles: AGD (OIL), DFAT

See Chair's Draft Paper; note possible link to #3 below.

2. Definitions: Defence, AGD (Firearms Unit, Customs, AFP)

PrepCom discussions suggested drawing on existing international definitions of activities, such as those found in the Amended Protocol II of the Convention on Certain Conventional Weapons:

- physical movement of an item to/from national territory
- transfer of title to or control over the covered items

Reference was also made to the 2007 UN brokering report (A/62/163) which, inter alia, defines a broker in small arms and light weapons as: "*a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.*"

Australia recognises the need for commonly agreed definitions especially relating to the scope of the ATT (types of arms and activities), and Defence is currently reviewing Australian terminology including where we may differ from, for example, the UN, EU, and others.

3. Goals and Objectives: DFAT, AGD (OIL)

See Chair's Draft Paper

4. General Obligations and Rights: DFAT, AGD (OIL)

The obligations of the ATT are the specific requirements placed on States Parties in relation to the defined arms and activities (scope) of the ATT.

5. Scope: Defence, AGD (Firearms Unit), Customs

A. Types of arms and related items (possibly in Annex to treaty)

Australia accepts, at a minimum, that the ATT should include the seven categories of arms listed in the UN Conventional Arms Register (UNCAR), as well as small arms and light weapons (SALW), and ammunition (7+1+1).

We should also develop our position on:

- inclusion of all calibers of ammunition;
- widening the UNCAR categories of weapons to include combat support capability such as military training equipment, protective personnel equipment, military electronics, fire control/range finder/optical/guidance control equipment; and

- inclusion of parts, components, and related technologies with the exception of dual-use categories of electronics, information security, telecommunications and sensors and lasers.

B. Types of activities

Australia accepts that the ATT should address import, export, re-export, transit, transshipment and brokering.

We should also develop our position on:

- inclusion of temporary re-export; artisanal manufacturer; technology transfer; manufacture under licence; leases; loans; gifts, technical assistance; promotion; research; financing and training; and
- inclusion of defence services (including manufacture, repair and training) which the US and EU strongly support.

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6. Parameters: DFAT, AGD (OIL), Defence

Conditions governing arms transfers

Australia accepts that the ATT would prescribe criteria which: reflects existing international law obligations (eg the UN Charter, UNSC sanctions and other international law instruments relating to arms transfers), require a consideration of the risk of diversion to unauthorized end-users or uses, and require consideration of the potential adverse impact of a transfer on internal, regional and international stability, peace and security.

Additionally, and considering the large schisms that remain between a broad cross-regional group of countries, we should also develop our position on:

- parameters that go beyond states' existing arms transfer obligations, such as those relating to human rights, international humanitarian law, sustainable economic and social development, armed violence, corruption and security needs of the receiving State; and
- methodology for assessing criteria, including automatic denial when certain criteria are applicable.

7. Implementation and Application: AGD (OIL), Defence, AGD (Firearms Unit), Customs

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responsibility to satisfy themselves that the import regulations of the receiving States have been met. Australia also accepts that the ATT should include agreed minimum levels of information which States must include on end-use and end-user certification in order to facilitate enforcement.

We should also develop our position on:

- national legislation, institutions and controls, including record-keeping for import, export and transfer of conventional arms and other related items
- licensing procedures
- end-user certificates/end-use assurances
- authorisations and denials
- enforcement
- criminalisation of violations by individuals/entities
 - export control violations
 - brokering offences
 - corruption
 - money laundering

8. International implementation: DFAT

- Possibly covering secretariat and monitoring functions

9. Transparency: Defence, AGD (Firearms Unit), Customs

- Reporting
- Information-sharing
- Record-keeping
- Consultation

10. Compliance: ~~AGD (OIL)~~, Defence, AGD (Firearms Unit), Customs, DFAT

- Monitoring and verification
- Denials
- Settlement of Disputes
 - Consultation and Mediation

11. International Cooperation, Assistance and capacity-building: AUSAID, AGD (OIL), Defence

- Mutual legal assistance
- Technical assistance and capacity-building
- Cooperation between States, including regions and sub-regions
- National Points of Contact
- Victim Assistance

AGD

AFP

12. Follow-up Process and Implementation Support Mechanism: DFAT, AGD (OIL)

- Costs and administrative Tasks
- Meeting of States Parties
- Review Conferences

13. Final Provisions: DFAT, AGD (OIL), AGD (Firearms Unit), Customs, Defence

- Review process
- Amendments
- Reservations
- Signature, Ratification or Accession
- Entry into force
- Withdrawal and denunciation
- Depository and Authentic Texts
- Duration
- Relationship with non-State Parties
- Relations between this convention and other agreements
 - UN Conventional Arms Register
 - UN PoA
 - International Tracing Instrument
 - UN Transnational Organised Crime Convention Firearms Protocol
 - Other international regimes.

~~ARMS TRADE TREATY PREPARATORY COMMITTEE~~

AUSTRALIAN POSITION

November 2010

Australia originally outlined its position on the Arms Trade Treaty (ATT) in a submission to the United Nations Secretary-General dated 18 April 2007. The submission informed Australia's drafting of annual UN resolutions on the ATT, discussions with CSOs/NGOs, participation in two UN-mandated ATT working groups – the Group of Government Experts (2008) and the Open-Ended Working Group (2009) – and our ATT outreach especially to countries in the Asia Pacific.

2. Since then, the United Nations General Assembly resolved (Resolution 64/48, 2 December 2009) to hold a four-week Final Negotiating Conference on the ATT in July 2012 and to establish a Preparatory Committee that would meet in 2010 and 2011 to make recommendations to the Conference on the elements required for an effective and legally-binding Treaty.

3. The first sessions of the Preparatory Committee in New York, 12-23 July 2010, outlined a skeletal framework and content for the ATT. Agencies (DFAT, Defence, Attorney-General's, Customs and Border Protection Service, AFP and AusAID) have developed the Australian position to take account of issues canvassed at the Committee's July sessions, in preparation for future Committee meetings (New York, 28 February-4 March and 11-15 July 2011).

Impact on National Security Interests

4. Australia's commitment to the ATT process is driven by important national and global security considerations, particularly by the desire to develop an international instrument that will help deter and prevent the destabilising impact on security and development of the illicit transfer of arms to states, including in our own region.

§ 33 a(iii) § 47 E (d) .

Implementation Obligations

7. It is likely that the ATT will require States Parties to establish a framework for the authorisation of arms transfers. Australia has already established such a framework. However, to the extent that the ATT requires States to regulate transfers of arms that are not currently included in Australia's system, Australia will be required to take measures to implement the Treaty. In addition, to the extent that the ATT imposes reporting obligations beyond those currently undertaken by Australia, Australia will be required to undertake additional reporting obligations.

~~s 33 a (iii) s 47E (d)~~

Preamble, Goals and Objectives

9. Australia's approach to the content of a *Preamble* and/or provisions regarding *Goals and Objectives* is to ensure that the language is consistent with Australia's security, trade and humanitarian priorities and interests.

General Obligations

10. The ATT is likely to set out *General Obligations* on States, leaving the details of implementation to be decided at the national level.

s 33 a (iii) s 47E (d)

Scope and Definitions

s 33 a (iii) s 47E (d)

13. Australia already controls the import and export of arms, equipment and ammunition that the ATT is expected to cover.

s 33 a (iii) s 47E (d)

Parameters

15. The term *parameters* refers to the criteria used by States when deciding whether to authorise an arms transfer.

16. Australia will continue to support clear, simple and consistent criteria that are capable of objective and transparent application

s 33 a (iii), s 47E (d)

Transparency and Reporting

17. Australia accepts the importance of transparency to the effective functioning of the ATT.

s 33 a (iii), s 47E (d)

International Cooperation, Assistance and Capacity-Building

19. The ATT will present implementation challenges for many countries, including in the Pacific region.
provision of in: § 33 a (iii) § 47 E (d)

§ 33 a (iii) § 47 E (d)

Enforcement, Compliance and Treaty Mechanisms

§ 33 a (iii), § 47 E (d)

21. Australia will continue to give consideration to proposals for mechanisms to ensure the proper functioning of the ATT.

§ 33 a (iii) § 47 E (d)

**Chairman's Draft Paper
22 July 2010**

Elements

1. Preamble/ Principles
2. Definitions
3. Goals and Objectives
4. General obligations and Rights
5. Scope
 - a. Type of conventional arms and other related items
 - b. Type of activities/transactions
 - c. Exclusions
6. Common standards/criteria for the import, export and transfer of conventional arms and other related items within the scope of the ATT
 - Criteria for the assessment of export-license applications and authorisations
7. Implementation and Application
 - a. National legislation, institutions and controls, including record-keeping for import, export and transfer of conventional arms and other related items
 - b. Licencing procedures
 - c. End-user certificates/end-use assurances
 - d. Authorisations and Denials
 - e. Enforcement
 - f. Criminalisation of Violations by individuals/entities
 1. Export Control Violations
 2. Brokering Offences
 3. Corruption
 4. Money laundering
8. International Implementation
9. Transparency
 - a. Reporting
 - b. Information Sharing
 - c. Record-keeping
 - d. Consultation
10. Compliance
 - a. Monitoring and Verification
 - b. Denials
 - c. Settlement of Disputes
 - i. Consultation and Mediation
11. International Cooperation, Assistance and Capacity Building
 - a. Mutual legal assistance
 - b. Technical assistance and capacity-building
 - c. Cooperation between States, including regions and sub-regions
 - d. National Points of Contact
 - e. Victim Assistance
12. Follow up Processes and Implementation Support Mechanism
 - a. Costs and Administrative Tasks
 - b. Meeting of States Parties
 - c. Review Conferences

13. Final Provisions

- a. Review Processes
- b. Amendments
- c. Reservations
- d. Signature, Ratification or Accession
- e. Entry into Force
- f. Withdrawal and Denunciation
- g. Depository and Authentic Texts
- h. Duration
- i. Relationship with non-State Parties
- j. Relationship between this convention and other agreements
 - i. United Nations Register for Conventional Arms
 - ii. Programme of Action the Illicit Trade in Small Arms and Light Weapons in all its Aspects
 - iii. International Tracing Instrument
 - iv. United Nations Transnational Organised Crime Convention Firearms Protocol
 - v. Other international regimes

14. Annex

- a. List of conventional arms and other related items

Principles

1. *Guided by the purposes and principles enshrined in the Charter of the United Nations, and reaffirming its respect for and commitment to international law;*
2. *Recognising that disarmament, non-proliferation and arms control, are essential for the maintenance of international peace and security;*
3. *Recognising the absence of commonly agreed international standards for the transfer of conventional arms and their diversion to the illicit market are contributory factors to armed conflict, serious violations of international human rights law and international humanitarian law, the displacement of people, transnational organized crime, terrorism and the illicit trade in narcotics, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development;*
4. *Recognising also the adverse effects caused by the unregulated and illicit arms trade, including human suffering resulting armed violence thereby exacerbating gender inequality, contributing to the use of child soldiers, undermining justice and weakening education and public health systems, particularly for vulnerable populations and thus the need for victim assistance to provide adequate rehabilitation and care;*
5. *Reaffirming the inherent right of all States to individual or collective self-defence in accordance with Article 51 of the United Nations Charter;*
6. *Reiterating the general prohibition against the use of force and threat of use of force and the principles of the peaceful settlement of disputes and non-interference in the internal affairs of States, as embodied by Article 2 of the United Nations Charter;*

7. *Recalling* the commitment to the principles of political independence, sovereign equality and territorial integrity of all States, and acknowledging that peace and security, development and human rights are the foundations for collective security;
8. *Reaffirming* also the right of all States to territorial integrity and political independence;
9. *Recalling* the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognizing the rights of peoples to take legitimate action in accordance with the Charter of the United Nations;
10. *Acknowledging* the right of all States to manufacture, develop, acquire, import, export, transfer and retain conventional arms and related items and capabilities for self-defence and security needs and in order to participate in peace support and humanitarian operations. This right does not create any obligation for States to do so and such rights must be exercised in accordance with international law;
11. *Recognising* that the control and regulation of the import, export and transfer of conventional arms and related items is done without prejudice to the priorities accorded to nuclear disarmament and weapons of mass destruction;
12. *Recognising* the sovereign right of States to determine any regulation of internal transfers of arms and national ownership exclusively within their territory, including through national constitutional protections on private ownership.
13. *Recalling* the obligations of all States to comply with United Nations Security Council decisions, including arms embargoes and sanctions,
14. *Reaffirming* their rights and obligations under international law, including international human rights law and international humanitarian law;
15. *Mindful* of the need to prevent the destabilising effects of excessive and uncontrolled conventional arms stockpiles and to prevent the diversion of conventional arms from the legal into the illicit market;
16. *Reaffirming* the need to prevent, combat and eradicate the irresponsible and illicit trade of conventional arms and related items,
17. *Recognising* that existing national, regional and subregional best practices on the import, export, and transfer of conventional arms can play an important role in furthering the goals and objectives of an Arms Trade Treaty;
18. *Emphasising* that the Arms Trade Treaty should enhance transparency and accountability in the conventional arms trade;

19. *Recognising* the legitimate political, security, economic and commercial interests of States in the import, export and transfer of conventional arms and related items;
20. *Recognising* the responsibility of all States to effectively regulate and control the import, export and transfer of conventional arms and related items;
21. *Recognising* the importance of the universal application of the Arms Trade Treaty and promoting its universal adherence;
22. *Recognising* that States may adopt more restrictive measures than those provided in the Arms Trade Treaty;

Goals and Objectives

An Arms Trade Treaty will:

1. Establish the highest possible common international standards for the import, export and transfer of conventional arms;
2. Prevent, combat, and eradicate the illicit transfer, production, and brokering of conventional arms;
3. Prevent international transfers of conventional arms that contribute to or facilitate: human suffering, serious violations of international human rights law and international humanitarian law, violations of UN sanctions and arms embargoes and other international obligations, armed conflict, the displacement of people, organized crime, terrorist acts and thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development;
4. Contribute to international and regional peace, security and stability;
5. Promote transparency and accountability in import, export, and transfers of conventional arms;
6. Create controls to prevent the diversion of conventional arms from legal markets and uses to illicit markets and unauthorised uses and users, including organized crime and terrorists.
7. Promote the goals and objectives of the UN Charter;

Facilitator's Summary for Scope

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Excellencies,
Distinguished delegates,
Colleagues,

Discussions on the issue of "scope" were held in two informal sessions during this Preparatory Committee, on 15 and 20 July, respectively. In my capacity as facilitator or Friend of the Chair, it is my pleasure to present to you today an overview of the views expressed and the items discussed by delegations on the potential scope for an Arms Trade Treaty (ATT). For the duration of these two sessions, I was particularly encouraged by the constructive atmosphere and the spirit of cooperation among delegations. I was also impressed with the rich, open, animated and frank discussion which allowed us to look into a broad range of relevant subjects and to identify areas for further consideration.

While addressing issues relating to scope, States also recognized the inherent interdependence between the three issues of scope, criteria and standards and implementation and application which would pervade the agreement. The discussion focused on two main aspects of a potential scope for an ATT – the arms and related items and the types of transactions and activities. States also articulated a number of general considerations which included the following elements:

1. The need for clear definitions of arms and related items and the transactions and activities was emphasized. Some States expressed the view that definitions should remain broad and of general nature, such as to accommodate future changes in technology and methods of warfare. Others expressed a preference for more detailed definitions. Furthermore, reference was made in this context to already existing definitions of arms and related items and transactions and activities in other international Treaties and instruments, including the amended Protocol II of the Convention on Certain Conventional Weapons, the Firearms Protocol, the International Tracing Instrument and the report of the on illicit brokering. While States frequently referred to the categories of the United Nations Register on Conventional Arms in the context of definitions, it was also noted that the categories of the Register may need further consideration.
2. A majority of States expressed the view that the scope of the ATT should remain adaptable and should be able to accommodate regular reviews and updates of the scope in light of future technological developments and changing methods of warfare. In this context it was proposed that an annex to the treaty containing relevant arms and related items, transactions and activities would allow flexibility in adapting the future technological developments.

3. During the debate on arms and related items, a large number of States supported the inclusion of the seven categories of the UN Register of Conventional Arms. Despite the fact that many States also voiced support for the inclusion of small arms and light weapons (SALW) in the scope of a Treaty (the so-called 7+1 configuration), concern was expressed by other States regarding the inclusion of this weapons category. Equally, States engaged in a discussion concerning the inclusion of ammunition. Although many States expressed support for coverage of ammunition, some articulated a preference for non-inclusion of ammunition in the Treaty. Some States, furthermore, supported coverage of a very broad range of conventional arms and related items, including the seven categories of the UN Register of Conventional Arms, small arms and light weapons (SALW), ammunition and related items and technology. Discussion also centered on a number of other categories, including sporting and hunting rifles for recreational purposes and antique weapons and dual-use items.

Mr. Chairman,
Dear colleagues,

It is necessary to provide you with as comprehensive and as accurate a reflection of our discussion as possible. Therefore I will now outline the full and detailed list of the arms and related items, and transactions and activities which was the center of attention.

With regard to arms and related items, States advanced that the United Nations Register of Conventional Arms was a useful basis to start and frame discussions on the scope of the instrument.

Arms and related items

States often referred to the categories under the *UN Register* as the 7 categories to be considered for an ATT. For purposes of clarity, these categories were defined in accordance with the UN Register's general definitions:

I. Battle tanks

Tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high-level of self-protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre.

II. Armoured combat vehicles

Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either: (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 12.5 millimetres calibre or a missile launcher.

III. Large-calibre artillery systems

Guns, howitzers, artillery pieces, combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above.

IV. Combat aircraft

Fixed-wing or variable-geometry wing aircraft designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defence or reconnaissance missions. The term "combat aircraft" does not include primary trainer aircraft, unless designed, equipped or modified as described above.

V. Attack helicopters

Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions.

VI. Warships

Vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or above, and those with a standard displacement of less than 500 metric tons, equipped for launching missiles with a range of at least 25 kilometres or torpedoes with similar range.

VII. Missiles and missile launchers

(a) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. For the purpose of the Register, this sub-category includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.

(b) Man-Portable Air-Defence Systems (MANPADS).

Views were also advanced that because the UN Register does not include certain major types of weapons and weapons systems, it may be necessary to adopt a scope that contains broadened UN Register category definitions. This would allow the ATT to include:

Under Category II:

- Armoured Combat Vehicles with organic technical means for observation, reconnaissance, target indication, and designed to perform reconnaissance missions, or
- Armoured Combat Vehicles with integral organic technical means for command of troops, or
- Armoured Combat Vehicles with integral organic electronic and technical means designed for electronic warfare

- Armored bridge-launching vehicles

Under Category III:

- Gun-carriers specifically designed for towing artillery
- Direct fire artillery pieces such as anti-tank guns

Under Category IV:

- Primary trainer aircraft
- Military aircraft which are designed, equipped or modified to perform command of troops, and refueling or airdrop missions
- Other military aircraft unless an armed version of the platform exists
- Unmanned Aerial Vehicles

Under Category V:

- Military helicopters which are designed, equipped or modified to perform target acquisition (including anti-submarine warfare), communications, command of troops, or mine laying missions

Under Category VI:

- Vessel or submarines armed and equipped for military use with a standard displacement of below 500 metric tons unless they are equipped for launching missiles with a range of at least 25 km or torpedoes with a similar range

Under Category VII:

- Ground-to-air missiles other than MANPADS
- Anti-tank guided missiles or other missiles with a range less than 25 kilometers

Broadened UN Register categories

As indicated earlier in my intervention, some States proposed to consider expanding the categories of the Register. These expanded categories could contain the following conventional arms designed or modified for military use:

- Tanks
- Vehicles and armoured vehicles (including reconnaissance / electronic warfare / control of troops / troop transport etc)
- Artillery systems (75mm+)
- Aircraft – fixed wings and variable geometry wings (manned/unmanned including reconnaissance / electronic warfare / refueling / troop transport)
- Helicopters – rotary wings (manned/unmanned including troop transport)
- Naval surface vessels and submarines (manned/unmanned)

- Missiles and Missile Launchers, guided and unguided, including torpedoes

States also considered *Other Conventional Arms* that might be included in an ATT:

- Small arms and light weapons (the so-called 7+1 configuration)
- Conventional arms and equipment used in law enforcement and internal security operations
- Combat support equipment, including military training equipment, protective personnel equipment, military electronics, fire control/range finder/optical/guidance control equipment.

In keeping with the comprehensive nature of the discussions on the subject, States also discussed *Related Items* that could be covered by an ATT:

- Parts and components for covered arms and items
- Technology to manufacture, modify repair covered arms and items
- Defense services to develop, manufacture, or repair covered arms and items
- Ammunition and munitions for included arms and systems (known as 7+1+1)
- Explosives, specifically designed or modified for military purposes and clearly defined
- Other military systems, specifically designed or modified for military use, including: electronics, computers, telecommunications, information security, sensors and lasers, transportation and training devices
- Dual-use items

States also engaged in debate as to what Transactions/Activities could be considered within the scope of an ATT. In this regard, the following transactions/activities were identified:

- Import
- Export
- Re-export
- Temporary re-export
- Transshipment
- Transit
- Transfer
- Brokering
- Artisanal manufacture
- Technology transfer
- Manufacture under foreign license
- Leases
- Loans
- Gifts
- Technical assistance
- Promotion
- Research

- Financing
- Training

It was also emphasized that there was a need to have definitions for the transactions and activities covered by an ATT. Consequently, a range of definitions were suggested, including drawing on existing international definitions of activities, such as those found in the Amended Protocol II of the Convention on Certain Conventional Weapons:

- Physical movement of an item to/from national territory
- Transfer of title to or control over the covered items

Reference was also made to the 2007 United Nations brokering report (A/62/163), which, inter alia, defines a broker in small arms and light weapons as: *"a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise."*

With regard to matters which should not be included in the ATT, some States were of the view that there should be a section on scope covering categories not within the ambit of the treaty, i.e. a section on "Exceptions". In this context, the following terms of types of weapons and types of activities/transactions were mentioned:

- o internal transfers
- o National ownership and regulation of weapons
- o Sporting and hunting rifles for recreational purposes
- o Antique weapons

Conclusion

We have had a very comprehensive, and may I say – robust – discussion about the potential scope of a future ATT. During the intersessional period, I would like to give you some additional homework. I would like you to engage in further discussions and consultations about the potential scope of an ATT with all relevant stakeholders in your respective capitals. You should also extend such dialogue to States within your regions, and with others that share your view, or have contrary opinions. Such discussions have the potential to narrow our positions and make our views and perspectives more specific and focused. If the assignments produce some results, when we return to our deliberations in February, we would be able identify the areas of convergence which exist among us and examine those issues that require further work.

FACILITATOR'S SUMMARY ON PARAMETERS

22 July 2010

Excellencies and distinguished delegates

The informal discussions on parameters have been substantive and productive. I have been grateful for the constructive approach taken by delegations. The following observations are not intended, in any way, to interpret the precise meaning of the various proposals made or prejudge the level of support that they have attracted but rather to provide a general overview of discussions. It will be open, of course, to delegations to add to and develop these proposals in the future.

General Points

The linkage between the different elements of the treaty, including the three broad themes we have discussed this week, namely scope, parameters and implementation, was evident through our discussions. As was the need to carefully consider the broader principles, goals and objectives of an Arms Trade Treaty.

A number of key points were highlighted during our discussions including:

- the need for objective and non-discriminatory criteria;
- implementation of the parameters as a state responsibility and the potential for higher national standards; and
- transparency, consistency and predictability in the application of the parameters.

States also took the opportunity of the informal sessions to express their views on the methodology that could be utilised by States in applying the criteria. As a first step, an assessment of the proposed transfer would be necessary. In this regard, a number of issues were discussed.

- Whether criteria must be taken into account when deciding whether to authorise an arms transfer and/or whether transfers should be denied where certain criteria are applicable.
- Some criteria will require an assessment of the risk of an adverse impact as a result of the potential transfer including the degree of that risk and the extent of its impact. In this regard, proposals on the applicable level of risk included references to a "substantial risk" or a "clear risk". States noted that the level of risk would closely relate to the parameter in question.
- Varying suggestions were made as to the standard of consideration that could be given to criteria, including a "thorough and meaningful assessment", "serious consideration" and "take into account".

- On information which could inform decisions, proposals included "relevant information", use of objective sources or "discernable patterns of violations" by the relevant actors in a transaction.
- Whether reasons for denial should be provided.
- Whether guidelines could assist States in interpreting and applying the agreed criteria consistently with each other, with a possibility that such guidelines could be included as an annex to the Treaty, or developed after the Treaty's entry into force.

Specific Parameters

Several specific criteria for inclusion in the Arms Trade Treaty were suggested by States. These warrant further consideration and development and can be considered under the following broad categories. This is not intended to interpret the precise meaning of proposals or prejudge the level of support that these criteria have attracted or will attract in future.

- Consideration of whether the arms transfer is consistent with a State's international legal obligations, including obligations such as those under the United Nations Charter, Security Council resolutions, including sanctions and arms embargoes, other legally binding international and regional instruments to which the State is a party, and customary international law.
- Consideration of the potential consequences of an arms transfer, such as a potential adverse impact on internal, regional and international stability, peace and security, the potential to provoke or exacerbate existing tensions or conflict and the potential contribution of the arms transfer to a destabilising accumulation of arms.
- Consideration of the potential risk of diversion of the arms, including diversion to illicit markets, unintended uses or unauthorised end-users or non-State actors as well as re-export.
- Consideration of the potential use of the transferred arms to commit breaches of international humanitarian law and human rights, noting that these principles are being considered in other fora. Discussion also focussed on whether and how such breaches could be assessed, for example, where they are 'serious and systematic'.
- Consideration of the consistency of the proposed arms transfer with existing, non-legally binding arms transfer instruments, including both regional instruments and instruments under the auspices of the United Nations.
- Consideration of the potential illegal use of the transferred arms, including in the commission of crimes against humanity, war crimes, genocide, ethnic cleansing, aggression, terrorist acts, organised crime, violent crime, gender-based crime, and drug trafficking.
- Consideration of criteria relating to the receiving State, including the potential adverse impact on that State's disarmament, non-proliferation and other international obligations, sustainable economic and social development, the potential contribution to

the displacement of people, the defence and security needs of the receiving State (keeping in mind the principle of the least diversion for armaments of human and economic resources, and considering levels of stockpiles and stockpile management), the ability for the receiving State to employ the transferred arms in accordance with their intended end use, and whether the receiving State has authorised the import.

- . Consideration of criteria related to transparency, such as the ability to control the movement of arms from manufacture to use to destruction.
- . Consideration of other issues such as the proliferation record and other patterns of behaviour of the actors involved, the risk of corruption associated with the transfer, and the potential for transit of the arms through or to zones of conflict.

I would like to thank States for their considered approach to these discussions which should provide a strong foundation for our continued work.

FACILITATOR'S SUMMARY ON IMPLEMENTATION AND APPLICATION

22 July 2010

General:

The Preparatory Committee dedicated two informal sessions held on 19th and 21st of July 2010 to discuss issues related to the implementation and application of an ATT. Discussions on issues related to implementation acknowledged the substantive linkage between implementation of an ATT and its "Scope", "Parameters", "Principles" and "Goals and Objectives". For a robust Treaty to come about, all such elements had to be - eventually - coherently interrelated both conceptually and practically.

The discussions touched on a wide range of topics and progress was made in identifying key issues which require further detailed examination taking into account discussions on other related elements of an ATT.

This summary does not attempt to reflect areas of agreement nor those where divergence of views exist, but rather provide an impartial and somewhat structured account of all key issues which delegations have brought forward to the discussion so far. These include the following issues:

I. Concept of an ATT:

While the importance of avoiding simultaneous and overlapping discussions on different variants of ATT models was highlighted, along with a preference to gear discussions towards shaping a single collectively agreed model, expressed views ranged between a preference of a Treaty model which should be implemented solely at the national discretion of its members, on a case by case basis, and a Treaty model which should impose national obligations but rely at the same time on an international secretarial body to assist in its implementation, enforcement, verification and/or monitoring and application. Mechanisms such as national legislation, transparency and international cooperation and assistance were seen as central to implementation.

II. National Obligations:

Under the discussion on national obligations, various views were expressed regarding the following principles:

- ATT should not lower national or regional standards on arms transfers.
- States have a sovereign right to manufacture arms and to authorize or deny their transfer to other States.
- The agreed parameters under an ATT were to represent the basis against which a transfer is authorized or denied.
- ATT should equally take into account concerns of importers and exporters.
- ATT implementation should rely on clear, predictable and unambiguous parameters facilitating the highest possible degree of uniformity of implementation in an objective manner.

- Application of the potential parameters of an ATT should be enacted in cases of grave violations of the parameters and where such violations are confirmed by relevant United Nations bodies.
- Assessing the risk of diversion in the context of an ATT should target substantial risks of diversion and be based on significant and credible evidence of such risks.
- ATT should be centered around criteria promoting the respect of IHRL and IHL.
- ATT should include an arms control aspect to its implementation.
- ATT implementation should take into consideration the capacity of States.

Under the discussion on national obligations, various views were expressed regarding the following practical measures:

- Identify primary (and possibly secondary) national obligations to be imposed by an ATT.
- National legislative and administrative measures to control exports, imports, transits, etc.
- National provisions to prohibit, prosecute and penalize participation in illicit arms trade.
- Criminalize violations on a national level.
- Possible timeframe for the establishment and development of legislative and administrative procedures.
- Establishment of national authorities responsible for controlling and licensing arms transfers in accordance with national legislation under an ATT.
- Establishment of national focal points.
- Creation of entity to address domestic offences.
- End-user and end-use certification.
- End-use and end-user checks on national and/or international level.
- Record keeping, marking and tracing of weapons and reporting on these activities.
- Tracing of diverted weapons in order to determine loopholes and increase accountability.
- Possible obligation to report transfer decisions to a UN or other dedicated international database (to possibly include transfers and/or denials).
- Registration for importers and exporters.
- Possible control lists.

III. Transparency Measures:

Various views were expressed regarding the following issues:

- Reporting, information sharing and information exchange:
 - Possible submission of national reports on an annual basis.
 - Develop reporting templates/ Standardized reporting forms.
 - Build on existing reporting mechanisms including UN Arms Register (without prejudice to discussions on scope or parameters).
 - Agree on level of detail, nature and extent of information required for reporting.
 - Possible reports on national production and trade stocks.
 - Reporting procedures to take into account national administrative capacities.
 - Develop means to scrutinize accuracy and completeness of reporting.
 - Consider regional/region-based reporting.

- Careful consideration of confidentiality of sensitive information associated with reporting.

- Consultation and Clarification.

- Dispute Settlement.

- Record-keeping.

IV. International Mechanisms and other Measures:

Various views were expressed regarding the following issues:

- An Implementation Support Secretariat either as part of the United Nations System, possibly in connection with ODA or the UN Register on Conventional Arms, or an independent international body. Cost of establishment and operation of the Secretariat would be covered by States Parties.
- A consultation and clarification mechanism, with a possible dispute settlement procedure and follow-up set of measures to address cases of (non-)compliance.
- Meetings of States Parties.
- Monitoring and Verification mechanism.
- Review Processes.
- Possible establishment of a fund to finance victim assistance and other activities associated with the promotion of the purpose of the Treaty.
- International cooperation and assistance:
 - Allow requests for assistance to be initiated by potential recipient.
 - Provide for assistance in implementation.
 - Provide for Victim Assistance.
 - Explore possible nature and mechanism for assistance (Legislative/Legal, Administrative, Technical or Financial...etc.).
 - Exchange experiences in legislation related to an ATT and in its practical implementation.
 - On technical assistance, it can include assistance in implementation of a licensing system, training, technology transfer, industrial cooperation, stockpile management, etc.).
 - Determine loopholes and increase accountability.
- Consider penalties/sanctions associated with non-compliance (would require the identification of what represents a violation).
- Dispute settlement: (Regarding an accusation of a breach of ATT obligations, challenge to a decision to approve or refuse a particular transfer, or a challenge to the adequacy of a State's implementation of an ATT).

V. Discussions on added value/Incentives for Universality:

Various views were expressed regarding the following issues:

- Trust in a robust, transparent and fair Treaty.
- Transparency as a confidence building measure.
- Establishment of fair, high standards for the import, export and transfer of arms.
- Access to cooperation and assistance programmes.
- Preventing diversion of arms from legitimate to illicit market.
- International cooperation and assistance.
- Victim Assistance.

VI. Other Issues:

Various views were expressed regarding the following issues:

- Verification, Compliance and possible Sanctions against non-compliance.
- Entry into Force [qualitative vs. quantitative].
- ATT as an "ISO" standard for international arms transfers/possibly promoting industrial cooperation among its members (also related to the added value of an ATT).
- Relationships with non-State parties.

The Way Forward:

1. Discussions on issues related to implementation and application at this stage took into account the complexity of the issues under consideration, and led to advancing the ability of the Preparatory Committee in continuing to examine such issues in a more structured manner.
2. A more structured discussion on the key themes brought about in the discussions will be required in the future in order to broaden the area where convergence of views can occur in the consideration of an ATT. A general agreement on the structure of future discussions and a more in depth examination of key elements under consideration will naturally facilitate this effort.
3. The next step will also require an attempt to be made by the Preparatory Committee to narrow down the number of elements under consideration in view of the eventual identification of their relevance to a collective perception on the implementation and application framework of an ATT, taking into account progress made on other related elements under consideration.

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UN38725H

Title: Arms Trade Treaty (ATT) Preparatory Committee (PrepCom)
Meeting: Week One
MRN: UN38725H 16/07/2010 07:20:24 PM EDT
To: Canberra
Cc: s.47E
s.33

From: UN New York
From File:
References: UN38565H, CE67482H, UN38688H, GU26943H
The cable has the following attachment/s -
100716_Chair_Draft principles.pdf
100716_Chair_Draft elements.pdf
Response: Routine, Information Only

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Summary

The first UN Arms Trade Treaty (ATT) Preparatory Committee (PrepCom) meeting has moved swiftly to consider substantive elements of a prospective ATT. It has considered a skeletal treaty framework and its underlying principles.

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After four years of consideration, formal negotiations on a UN conventional Arms Trade Treaty (ATT) commenced in New York on 12 July with a combined first and second session of the ATT Preparatory Committee (PrepCom), under the chairmanship of Ambassador Moritan of Argentina. Further PrepComs are scheduled for 2011 (28 February-4 March and 11-15 July) with another planned in 2012, prior to a final negotiating conference in mid-2012.

2. Australia's delegation led by Ambassador Quinlan (HOM, UNNY) comprises officers from DFAT (ISD, UNNY and Geneva UN), Attorney-General's (also representing Customs and AFP) and Defence. Two NGO representatives are also on the delegation.

Australia's role, PrepCom Working Procedures and Conference Bureau

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These sessions commenced on 15 July and will continue into week two. Each Friend of the Chair will have two sessions of meeting time to hear detailed exchanges. Australia and France were chosen to be WEOG members of the PrepCom Bureau. HOM accepted the Friend of the Chair role (limited to this session) at Moritan's request.

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4. In addition to making plenary interventions, Australia delivered a statement to the PrepCom on behalf of Pacific Island Countries. Texts of Australia's PrepCom interventions are posted on the UNNY mission website. We encouraged participants to take account of the capacity constraints of small States as we work through the design and implementation of an ATT, particularly in relation to UN reporting requirements. Several Caribbean delegations commended Australia's initiative in providing funding support for an ATT policy roundtable for CARICOM member states (Port of Spain, 5-6 July).

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6. We raised in plenary the question of exemptions for defence operations and training exercises

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State of negotiations

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10.

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Role of P5

11.

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NGOs

12. The PrepCom adopted without objection a proposal from the Chair to allow NGO participation in all but closed sessions of the PrepCom. The Chair also provided for up to a half day session of the PrepCom devoted to NGO presentations.

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13. Looking ahead, Moritan envisages finalising the Friends of the Chair discussions on

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text ends

Sent by:	Sarah Dezoeten
Prepared by:	Delegation
Approved by:	
Topics:	INTERNATIONAL SECURITY/Arms Control, UN & COMMONWEALTH/UN Discussions

Canberra distribution

To: DFAT ILD AS-IOB

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To s-33
cc
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14/07/2010 03:57 PM
bcc
Subject Fw: UNSC and ATT [SEC=CONFIDENTIAL AUSTEO]

History: This message has been forwarded.

regards

Allan

09/07/2010 05:12 PM

To
cc

Subject UNSC and ATT [SEC=CONFIDENTIAL AUSTEO]

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Caroline

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To
cc

[SEC=IN-CONFIDENCE:CABINET]

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~~CABINET-IN-CONFIDENCE~~



Australian Government
Department of Foreign Affairs and Trade

Secretary

Telephone: 02 6261 2472
Facsimile: 02 6273 2081

File Number:

July 2010

Dr Ian Watt AO
Secretary

Air Chief Marshall Houston ADC, AFC
Chief of the Defence Force

Department of Defence
Russell Offices
CANBERRA ACT 2600

~~Thank you for your letter of 25 June on the proposed Arms Trade Treaty (ATT).~~
I agree that Australia's negotiating position should be determined by Ministers

S33 547

S33 547

As you point out, the ATT has been in prospect for some years and Australia has lent strong support to the development of a legally binding agreement that would apply to the trade in conventional arms, including as co-author of the originating and subsequent UN ATT resolutions.

S33 547

~~CABINET-IN-CONFIDENCE~~

S33 . s47

That said, the negotiation of a robust and effective Arms Trade Treaty that helps ensure conventional arms are used for their intended, legitimate purposes, and that adds substance to existing international efforts to stem the illicit trade in arms, is a longstanding foreign policy priority for Australia.

The first ATT Preparatory Committee meeting begins next week in New York. At this stage, we have no draft text to consider but expect the broad outline of a treaty to emerge over the next few weeks. S33 s47

Yours sincerely

Dennis Richardson

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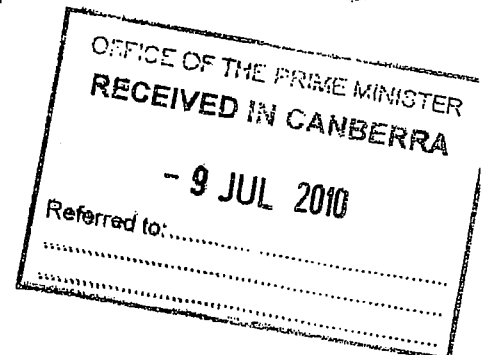


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C10/51892

**Senator the Hon John Faulkner
Minister for Defence**

The Hon Stephen Smith MP
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600



Dear Minister

S. Smith

I write concerning the proposed Arms Trade Treaty (ATT) and to seek your agreement to develop a whole-of-government position for the negotiations.

The proposed ATT is aimed at addressing the irresponsible and illicit transfer of conventional arms and components, transfers to terrorists and the destabilising accumulation of arms. I understand the draft treaty text and definitions have not yet been developed; however, States will propose specific treaty text at the international meeting on 12 - 23 July 2010 to discuss the ATT.

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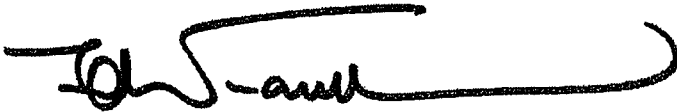
s.33

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~~SECRET AUSTEO~~

I have copied this letter to our NSC colleagues and the Minister for Home Affairs.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Faulkner', with a long horizontal flourish extending to the right.

JOHN FAULKNER

06 JUL 2010