



Comments on the Arms Trade Treaty (ATT) Questionnaire issued by Department of Disarmament & International Security Affairs (D&ISA), Ministry of External Affairs

Formation of Indian Civil Society Experts Group¹ on Arms Trade Treaty

We are happy to share the 'Indian Civil Society Experts Groups on Arms Trade Treaty' reply on a set of questionnaires that were circulated by the Department of Disarmament & International Security Affairs (DISA) of the Ministry of External Affairs on 18 January 2010 to get the feedback of departments of Ministry of Defence (MoD) and other related departments on Arms Trade Treaty.

Control Arms Foundation of India together with several other organisations formed an 'Indian Civil Society Experts Groups on Arms Trade Treaty' pursuant to the unanimous decision taken at the resolution of the Conference titled 'Towards an Arms Trade Treaty by 2012' organised by CAFI on 16th and 17 February 2010 in New Delhi.

As per our knowledge, the questionnaire contained the following questions:

1. Impact of ATT on India 's defence procurement
2. Impact of ATT on India 's internal security
3. How can ATT ensure that arms are not diverted from legal to illicit sources?
4. What should constitute parameters of an ATT which is beneficial to national's strategies?

Indian Civil Society Experts Group Reply on Arms Trade Treaty

Global Principles for the Arms Trade Treaty (ATT) suggest that States should not authorize transfer of arms or ammunition where there is a risk of the following norms²:

¹ Following are the members of the India Civil Society Expert Group on Arms Trade Treaty : Mr Ravinder Pal Singh, Security Analyst, former project leader SIPRI; Ms Binalakshmi Nepram, Control Arms Foundation of India; Mr Baban Prakash, Advocate; Ms Sonal Marwah, Small Arms Survey, Mr Colonel (retd) Hariharan, Retired Military Officer of Indian Army; Mr Rajagopalan PV of Ekta Parishad; Dr (Ms) Neelavalli, Director, Initiative for Women Development and Dr (Mr) Swaran Singh, Professor, Disarmament, Jawaharlal Nehru University

- A. Breach of the UN Charter and customary law rules relating to the use of force;
- B. Serious violations of international human rights law;
- C. Serious violations of international humanitarian law;
- D. Used to commit acts of genocide or crimes against humanity.
- E. Facilitate terrorist attacks;
- F. Facilitate a pattern of gender-based violence, violent crime or be used for the commission of organised crime;
- G. Adversely affect regional security or stability, or contribute to the excessive and destabilising accumulation of arms;
- H. Seriously impair poverty reduction or socio-economic development;
- I. Involve corrupt practices.
- J. Contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non-proliferation, small arms, arms control, and disarmament to which States involved in the transfer are a party.

Other than the criteria of arms acquisitions impairing socio-economic development, all other objectives are measurable and meet the broader aims of Arms Trade Treaty (ATT). The poverty reduction criteria could be neglected since many other factors could be cited as causes for poverty, while well-equipped state security agencies could contribute to socio-economic stable security for development.³

The Arms trade Treaty (ATT) should aim to reduce the human costs of arms trade by ensuring that end-users and end-use of all conventional arms and ammunition are carried out in a responsible way; and that weapons do not fuel conflict or used for serious violations of human rights. It requires arms exporting states not to authorize arms transfers if there is a substantial risk of violations of international human rights law or international humanitarian law, corruption, or a risk of diversion of arms to Non State Actors (NSA).

Impact of ATT on India's Defence Procurement

The ATT is unlikely to make any significant effect on Indian defence procurement. However, arms transfers from India to countries like Sri Lanka, Myanmar, and to any other country involved in acts of suspected or actual human rights violations could come under international scrutiny. As issues of violations of human rights and humanitarian laws at the international level often become pawns in diplomatic trade offs between nations, arms transfers under such circumstances could become questionable under the Arms Trade Treaty (ATT).⁴ However, the treaty would not only limits Indian actions but, on the other hand, it could also prevent India's rivals from using the arms trade to extend

² *Compilation of Global Principles for Arms Transfers*, available at <http://www.controlarms.org/en/arms-trade-treaty/golden-rules-for-an-arms-trade-treaty>

³ Mr. Ravinder Pal Singh, security analyst, former project leader SIPRI.

⁴ Mr. Ravinder Pal Singh, security analyst, former project leader SIPRI; Colonel Hariharan, Retired Intelligence Military Officer of Indian Army.

their military influence in South Asia.⁵ For example, in July 2005, India and a number of other countries suspended military supplies to Nepal in protest at the king's takeover, and China and other countries moved to provide alternative supplies.

Every State has an inherent right to self-defense under Article 51⁶ of the UN Charter, which includes right to import, produce and retain legitimate arms for its self-defence and security needs, subject to the existing responsibilities of States under international law, including the Charter. The principles of ATT provides for establishment of common control on international transfer of arms and ammunition. Arms transfers and procurements that fulfil the legitimate security needs of national governments are clearly exempted from the ATT's prohibitions.⁷

India can negotiate on the operative mechanism by which such control would be established and monitored without affecting its legitimate self-defence and security requirements. Further, India can negotiate in the formation of such mechanism by which it would be possible to arrive at conclusion as to whether the export or import of arms and ammunition by a particular country would contribute to instability and conflict in other countries and regions or to illicit trafficking in arms and ammunition.⁸

Among the primary Indian security concerns are the risk of diversion of arms to non-state actors by domestic production capacities of states, as well as international arms transfers. As this risk is not being addressed by the ATT, India should urgently engage this concern with the international community. And if India fails to engage ATT, then it has all the likelihood of being passed without having Indian concerns on board.⁹

2. Impact of ATT on India's internal security.

Illicit trafficking in arms and ammunition is one of greatest threat of India's internal security. ATT would be helpful in formation of universal set of obligations or common standard in identification of all arms and ammunition produced in and transferred by the states. ATT can ensure the maintenance of database of all international transfer of conventional arms. Such database should include subsequent transfers whether internationally or domestically, data relating to destruction or loss of any arms and ammunition. The information so maintained under ATT can be used by the India in investigating the cases of illegal trafficking.¹⁰

⁵ Binalakshmi Nepram, Secretary General, Control Arms Foundation of India.

⁶ Article 51 of the UN Charter: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

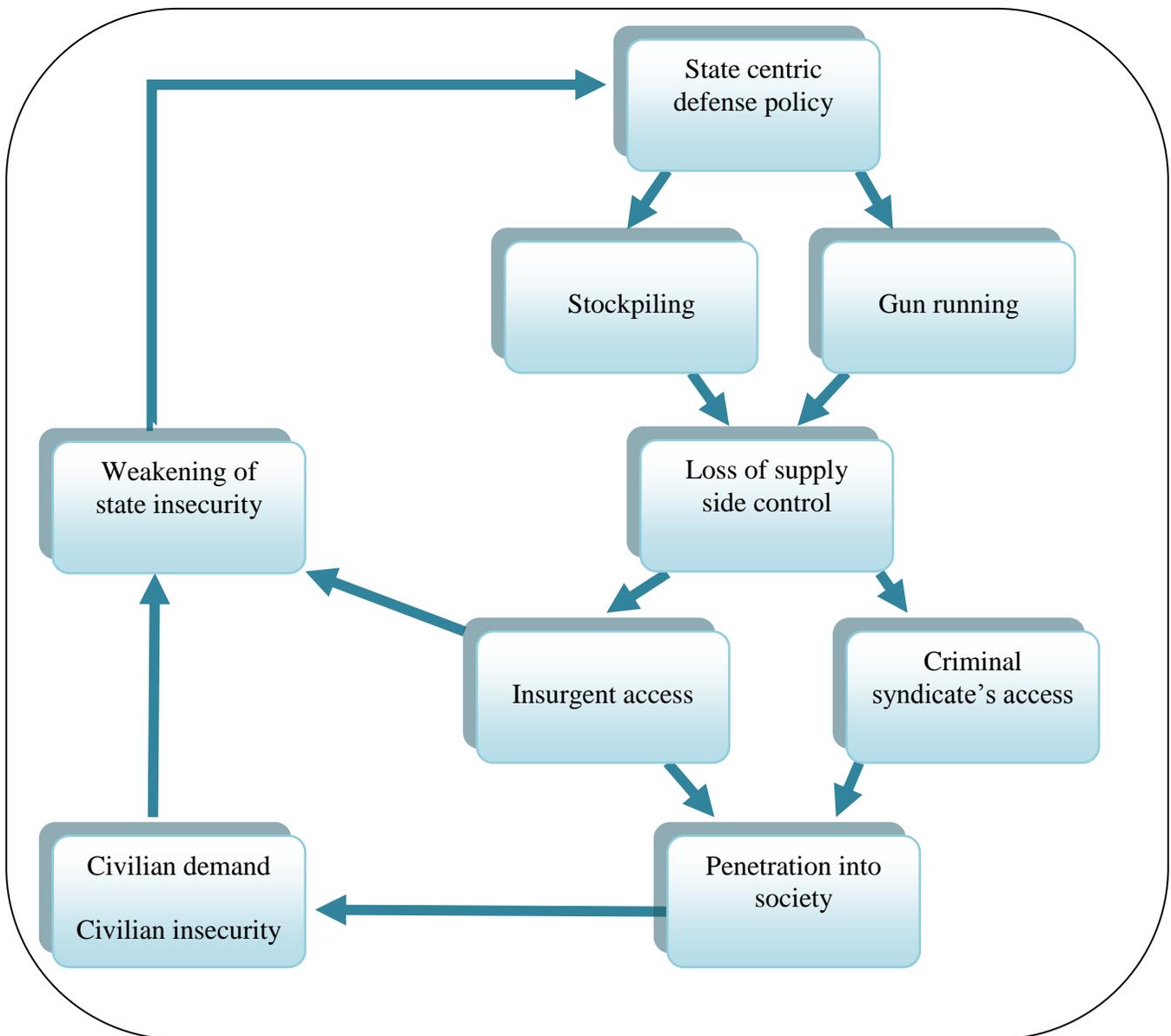
⁷ *Compilation of Global Principles for Arms Transfers*, available at <http://www.controlarms.org/en/arms-trade-treaty/golden-rules-for-an-arms-trade-treaty>

⁸ Mr Baban Prakash, Advocate.

⁹ Mr. Ravinder Pal Singh, security analyst, former project leader SIPRI

¹⁰ Mr Baban Prakash, Advocate.

In the case of South Asia, where there is increased gun running, in some cases with covert government involvement, the clauses of the ATT would ensure increased transparency and accountability. This would be of immense benefit for India, since it has been a victim of irresponsible arms transfers from its neighbouring countries on multiple occasions, the presence of an ATT would keep a check on such transfers. Conversely, this would also keep a check on India's own exports to different locations such as to Sudan, or other border transfers, hence a way to keep a check on the Indian government exports.¹¹ This would ensure both imports and exports, government authorized arms transfers are not committed to violate international human rights and humanitarian laws, in India internally and externally.



¹¹ Sonal Marwah, Small Arms Survey

arms transport, this would prevent arms from falling into the wrong hands and immoral practices. Contemporary security threats fuelled by proliferating arms affect state and human security. India's state centric defense policy follows a minimalist/ reductionist approach, which thus far has not resulted in maintaining India's internal security threats, and with the opportunity to join the league of the countries joining the ATT and prescribing to norm of responsible transfers that the ATT code encourages, India has only to benefit in aiding to guarantee its state territorial security and civilian public security.¹²

India has over two million men under arms, which include its armed forces, central paramilitary forces and in the armed police forces of its 28 states. These organizations have varying standards of stockpile management, security training and safety of weapons held by them. ATT's requirements of greater accountability would standardize procedures of Indian inventory control and stockpile management to make it a professional system, which is verifiable and prevents leakages or losses. A report informs that nearly 13000 service pattern weapons are in the hands of NSA in India. Surely such a large number of weapons cannot have come from across the borders.¹³

India should engage the ATT drafting process to reduce the risk of arms transfer diversion from the stated end-user to armed NSA to be included in the final treaty. ATT also does not address actions taken by states to mop up and prevent proliferation of SALW that are being produced domestically by NSA. India should join the debate on addressing this weakness of reducing diversion of arms and ammunition into the illegal market.¹⁴

3. How can ATT ensure that arms are not diverted from legal to illicit sources?

As per the principles of ATT, all States with jurisdiction over any part of the transfer (including import, export, transit, trans shipment and brokering) of arms or ammunition has an obligation not to authorize such transfer if it is likely that the arms or ammunition will be diverted from their intended legal recipient or re-exported contrary to the aims of these Principles.

Adequate mechanism should be evolved/ formulated by the states keeping in view of systematic improvement and international law in this respect by which states can prevent diversion of arms or ammunition from legal to illegal sources. The first step in this regard may be taken by forming a monitoring body. Such a body having adequate representation of all the member states should be constituted under the ATT to monitor and review the compliance of ATT. The Monitoring body should also supervise the maintenance of database and reporting of information by the legal recipient on all aspects of arms and ammunitions and their further transfers. A database of all lost/misplaced, stolen, seized and destroyed weapons etc. must be maintained by each state and should also be shared with Monitoring Body who accordingly provides relevant information to

¹² Sonal Marwah, Small Arms Survey

¹³ Ravinder Pal Singh, security analyst, former project leader SIPRI.

¹⁴ Ravinder Pal Singh, security analyst, former project leader SIPRI.

the affected state investigating the cases of illicit transfer in its jurisdiction.¹⁵ The State's investigating agencies investigating the cases of illicit trafficking should be provided with all resources and assistance in order to trace the origin of such weapon, its legal recipient, frequency of such illegal transfers, area affected by such illegal transfers etc. An international agency may be created in line of Interpol who may be vested with responsibility of assisting affected states in investigating in all matter relating to illegal arms transfers.¹⁶

Secondly, ATT could reduce the risk of diversion by requiring exporting states to implement the standardized post-manufacture markings, procedures for tracing and inventory verification. Post-manufacture marking should include: original manufacturer marks, import marking, marking of state-owned weapons, marking of weapons transferred to civilian use and markings of unique identity of weapons indicating the year, batch number and serial numbers.¹⁷

Even though marking per se cannot prevent the diversion of SALW to the black market, but it is an important measure to help in tracing channels of illegal small arms/firearms. If ATT has a verifiable process for identifying the last country which legally imported the seized firearm, potential for illicit diversion of firearms will be reduced. The proposed ATT could outline indicators for states to reduce the risk of diversion, such as accountability of stockpile management, procedures for marking and tracing, end-use verification, and current practice by end-users (e.g. history of diversion of this type of weapon, whether loss of stockpiles is reported, recorded and investigated etc). These measures would help India in identifying clandestine arms finding their way.¹⁸

Enforcement of the Arms Act, which is undergoing a process of updating, particularly with physical verification of licensed weapons particularly in private armouries regularly are other measures that would help break the linkage between illicit arms trade and licensed weapons market. Similarly standardization of procedure for greater accountability and verification of periodic disposal of unserviceable and obsolete weapons and ammunition by security forces and other state forces handling large stocks of weapons is a must.¹⁹

India should also maintain a central registry of weapons accessible to verification by state security agencies. Similarly, law enforcement agencies should maintain list of illicit arms manufacturers, arms factories unearthed, traders in and carriers of illicit arms and criminals arrested and convicted for offences in arms trade. Police agencies will have to be suitably educated periodically and imparted adequate knowledge on trends in

¹⁵ Baban Prakash, Advocate.

¹⁶ Baban Prakash, Advocate.

¹⁷ Ravinder Pal Singh, security analyst, former project leader SIPRI.

¹⁸ Ravinder Pal Singh, security analyst, former project leader SIPRI.

¹⁹ Colonel Hariharan, Retired Military Officer of Indian Army

international arms trade and assessments if any of such arms finding their way into India.²⁰

What should constitute the parameters of ATT which are beneficial to national strategies?

(i) ATT should have accountable processes for stockpile management. To maintain the needs of sovereignty, ATT should make arms transfers holdings and losses in the military sector open to verification by the country's elected civilian governments and parliaments. This would require an annual report on national inventory of small arms and light weapons and stricter punishments for losses due to theft.²¹

(ii) ATT should help states to identify and implement national processes to eliminate and prevent operation of illegal arms production on their territories. It should help in mopping up surplus weapons in illegal market. It should enable international community to help in improving compliance norms that are weak in some states by taking up capacity building initiatives or by withholding arms acquisitions requests.²²

(iii) An ATT should create a legal framework for review of international arms transfers to facilitate the identification of illicit transfers and prosecution of those who fuel the illicit trade. States that fail to check diversion of arms due to lack of capacity, lack of domestic laws or lack of concern, must be compelled to collate and exchange information on diversion risks in their region.²³

(iv) ATT must also include clear requirements for arms exporting states to refuse arms transfers if there is potential for the diversion of arms transfers to prevent arms reaching unauthorised end-users from the recipient's domestic production.²⁴

(v) An effective ATT should move towards an international agreement to prevent transfers of arms to unauthorised end-users. Unlike some countries which have tolerance for armed militias outside their government's control, India strictly opposes transfers of arms to Non State Actor (NSA), an effective ATT should be the means of achieving such goals. Furthermore, international arms transfers should not be authorized by states party to ATT in cases of serious concerns about the capacity of the recipient to safeguard against losses, and diversion of weapons to unauthorised users or uses.²⁵

(vi) ATT should address the concerns of any concerned state regarding regional instability which would be caused due to any transfer of conventional arms.²⁶

²⁰ Colonel Hariharan, Retired Military Officer of Indian Army

²¹ Ravinder Pal Singh, security analyst, former project leader SIPRI.

²² Ravinder Pal Singh, security analyst, former project leader SIPRI.

²³ Ravinder Pal Singh, security analyst, former project leader SIPRI.

²⁴ Ravinder Pal Singh, security analyst, former project leader SIPRI.

²⁵ Ravinder Pal Singh, security analyst, former project leader SIPRI.

²⁶ Baban Prakash, Advocate.

(vii) ATT should provide dispute resolution mechanism to deal with any dispute arises in relation to transfer of conventional arms.²⁷

(viii) ATT should ensure that arms must not be used by or in any State in committing gross violations of international human rights or international humanitarian law or committing crime against humanity.²⁸

(ix) ATT should also ensure that any allegation of gross violations of international human rights or international humanitarian law or committing crime against humanity alleged by any concerned State or *suo motto* by Monitoring body (that should be formed under the ATT) should be thoroughly and promptly investigated by an independent investigating agency of the state. ATT should also prohibit any transfer of conventional arms until the investigation is completed and action taken report is submitted to the Monitoring Body constituted under ATT to the satisfaction of such Monitoring Body.²⁹

Conclusion:

Overall India stands to gain more by ATT as it is more a user than manufacturer and trader of arms. However, India will have to strive for introduction of fool proof measures for ensuring transparency, accountability and identification of transfers by manufacturers without which the Treaty would not succeed. For its effectiveness internally structural and operational procedures for ensuring similar procedures and enactments will have to be introduced. At the same time law enforcement agencies will have to improve enforcement, investigation, and prosecution of illegal arms traders locally.

The export licensing authority should assess risk of leakages/diversion; measures for effective strong stockpile and inventory controls.

Just as Interpol tracks and arrests international criminals, illegal weapons must be tracked and intercepted by national authorities acting in concert with international intelligence community. ATT should enable an accountability process which should have the following features³⁰:

- i) It should be validated through a legally binding instrument which is ratified by all participating states;
- ii) It should have powers of verification that balance sovereignty and international security and accountability;
- iii) It should have provisions for national parliamentary select committees to scrutinize their government's stockpile management and compliance measures;
- iv) ATT should have a secretariat that monitors compliance failures; and
- v) The performance of ATT and state parties must be reviewed every five years.

²⁷ Baban Prakash, Advocate.

²⁸ Baban Prakash, Advocate.

²⁹ Baban Prakash, Advocate.

³⁰ Ravinder Pal Singh, security analyst, former project leader SIPRI.

It is important that India joins the ATT debate so that it can have its security concerns considered in the drafting process. As the ATT has been already accepted by 153 countries, the treaty can come into force without India joining the same, and without its concerns being addressed.

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