

Conventional Arms Control in the Post-Cold War Era and the Successful Campaign for an Arms Trade Treaty

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Abstract

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The United Nations General Assembly adopted the Arms Trade Treaty on 2 April 2013, the first ever legally-binding instrument to regulate the global trade in conventional arms. Conventional arms are responsible for fuelling and sustaining conflicts that result in countless casualties in different parts of the world. Remarkably, the effects of these deadly weapons started to attract global attention only after the end of the Cold War, and before the ATT the trade in these weapons was largely unregulated at the global level. This study explores the two major international relations theory of realism and liberalism to explain the phenomenon of the arms trade, the anarchic nature of the international system and why states build up their military capabilities, while delving deeper into neoliberal institutionalism, an upgraded version of the liberal paradigm, to look at the prospects of cooperation and the role that international institutions play in facilitating the cooperation. This thesis also traces the developments made in the field of conventional arms control since the end of the Cold War, while attempting to find the links between each development in the form of arms control agreements at the regional or global levels. The constructivist theory of norm building traces and links these developments that paved the way for a normative change in contemporary arms control. It then goes on to explore how the campaign for an ATT was initiated and how the ATT was achieved through the formal process at the United Nations.

The findings of this study support the neoliberal institutionalist propositions with regard to cooperation and the role of international institutions, in that international institutions have a significant influence in shaping state behaviour and facilitating international cooperation. The study also finds that the Security Dilemma, a major part of realism, hinders the establishment of a global treaty as certain elements such as the inclusion of ammunition in all aspects was compromised, making the ATT a potentially weak treaty. Despite the traditional disagreements between the realist and liberal schools of thought, the study gives perspective to the compatibility between these two realms and finds that despite the divergences, both realist and liberalist propositions can be observed from the same phenomenon, albeit neoliberal institutionalism providing a better understanding of the process due to its emphasis on institutions. The major international institutions consisted of civil society groups who were the key actors behind the campaigns for conventional arms control since the mid-to-late nineties, successfully exercising bottom-up power to reach their objectives.

Key words: arms control, arms trade, arms trade treaty, arms transfers, conventional arms, cooperation, institutions, human security, major conventional weapons, security dilemma, small arms and light weapons.

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Acronyms

ABMT	Anti-Ballistic Missile Treaty
ATT	Arms Trade Treaty
ATTSC	Arms Trade Treaty Steering Committee
CAAT	Campaign Against Arms Trade
CMC	Cluster Munition Coalition
CSP	Conference of States Parties
CCM	Convention on Cluster Munitions
COCOM	Coordinating Committee for Multilateral Export Controls
CoC	EU Code of Conduct on Arms Exports
ECOWAS	Economic Community of West African States
EU	European Union
GGE	Group of Governmental Experts
ICBL	International Campaign to Ban Landmines
ICRC	International Committee of the Red Cross
INTERPOL	International Criminal Police Organization
IHRL	International Human Rights Law
IHL	International Humanitarian Law
LTTE	Liberation Tigers of Tamil Eelam
LTBT	Limited Test Ban Treaty
MANPADS	Man-Portable Air-Defense Systems
MBT	Mine Ban Treaty
NATO	North American Treaty Organisation
NRA	National Rifle Association
NEACC	Near Eastern Arms Control Committee
NGO	Non-Governmental Organisation
OWEG	Open-Ended Working Group
OSCE	Organization for Security and Co-operation in Europe
PoA	Programme of Action on Small Arms
SALW	Small Arms and Light Weapons
SIPRI	Stockholm International Peace Research Institute
START	Strategic Arms Reduction Treaty
IANSA	The International Action Network on Small Arms
UN	United Nations
UNODA	United Nations Office for Disarmament Affairs
UNTOC	United Nations Convention Against Organized Crime
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNROCA	United Nations Register of Conventional Arms
UNSC	United Nations Security Council
WA	Wassenaar Arrangement
WMD	Weapons of Mass Destruction

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1. Introduction

1.1 General Introduction

This study shines a light on the campaign for an Arms Trade Treaty (ATT). This thesis brings together the issues of human security and the shifting arms control agenda of the post-Cold War period. It provides an understanding of the significance and the efforts of regulating the international trade in conventional arms, and the emergence of the ATT as the world's first legally-binding instrument to regulate the transfers, with a focus on SALW. Regarded as among the most influential weapons in modern conflicts, the SALW trade and production have been on the up with a growing arms industry and sustained demand. Around the time of the end of the Cold War, several conflicts emerged and others intensified in many corners of the world, from Africa to Europe and elsewhere. Although much of the conflicts have eased, there are states that still have not overcome the conflicts especially in parts of Africa due to the presence of other actors alongside the legitimate ones fighting over different causes such as the control of natural resources. At the turn of the millennium, we have also witnessed new conflicts, mainly in the Middle East and North Africa region, some of which are still ongoing, as well as an upsurge in different brands of organised crime and terrorism. Although the treaty is aimed at setting common standards for the international trade in conventional arms with small arms and light weapons (SALW) included in its scope, this thesis focuses more on the latter. SALW is at the heart of modern conflicts, violence and crimes; although this thesis concerns both major conventional weapons and SALW, the weapons that comprise conventional arms, the reason that this study focuses on SALW is largely due to availability of information, as majority of the research on conventional arms concerns SALW.

Major conventional weapons are usually used by armed forces, while unauthorised actors in several conflict zones have also been recorded using these weapons. SALW can be acquired for use by a state for their own national security and self-defence, law-enforcement as well as contributing to UN peacekeeping missions; they can also be used for private purposes such as hunting, while also to commit crimes resulting in violations of national and international

laws.¹ Conventional arms surpluses have a general tendency of triggering, intensifying or prolonging conflict while civil unrest or war fuels the arms trade.² An essential prerequisite for committing many human rights abuses, crimes or acts of terrorism is the availability of weapons.³ The global trade in conventional arms reflects the dual nature of the end-users end-uses; on one hand there are legitimate transfers between states and/or non-state actors, while on the other hand there exists the illicit trade between which lies a large grey area.⁴

The international trade and transfers of conventional arms have a huge impact on peacebuilding, security and development, formation of strategic alliances and geopolitics, geo-economics among other major issues.⁵ The impacts of SALW proliferation ranging from diversion to trafficking have had significant impact on human security and development. Illicit trafficking in particular have been an issue in Africa, Latin America, the Pacific and South-East Asia. A 1999 study undertaken by the International Committee of the Red Cross (ICRC) revealed that a major contributor to civilian suffering during and after armed conflicts and heightened casualties was the unregulated availability of SALW.⁶ The increased availability of weapons increased the likelihood of human rights violations and acted as a hindrance to provisions of development and humanitarian assistance.⁷

In this thesis, the terms 'arms trade' and 'arms transfers' have been used interchangeably in many cases, however it should be noted that these two terms are not entirely similar. 'Arms transfers' is the more complete term in relation to the ATT, as it is not limited to commercial trade in conventional arms but also includes all items crossing borders that include exports, imports, transit, transshipment and brokering. This implies that the ATT is a treaty for regulating the trade, however, according to the ATT, its definitions cover transfers. The terms 'small arms and light weapons', 'small arms' and 'SALW' have also been used interchangeably. The conventional arms terminology is perhaps a little complex, as the term 'conventional arms' or 'conventional weapons' includes all major conventional weapons and SALW. In this

¹ Coppen, 2009, p.354.

² Ibid.

³ Stohl and Grillot, 2009.

⁴ Feinstein, 2011; Yihdego 2012.

⁵ Hartung, 2013, p.442.

⁶ Woolcott, 2014, p.2.

⁷ Ibid.

study, major conventional weapons have been used interchangeably with 'major weapons'. The conceptualisations of these weapon types are described in more detail in chapter 1.4.

1.2 Research Problem

It was noted in the ATT's first UN Resolution that "the absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism" and undermines peace, reconciliation, safety, security, stability and sustainable social and economic development.⁸ Also, the Nobel Laureates International Code of Conduct states that "Indiscriminate weapons sales foster political instability and human rights violations, prolong violent conflicts, and weaken diplomatic efforts to resolve differences peacefully".⁹ Alongside the civil society organisations campaigning for the ATT, the supportive states have also expressed strong opinions on the importance of regulating the international arms trade by echoing the above views. It is very surprising that the global trade in major weapons and SALW has been largely unregulated throughout history, with the absence of common international standards having played a devastating role in different parts of the world, especially in conflict zones. Despite these weapons starting to receive global attention since the end of the Cold War, it took quite some time to be considered at the UN General Assembly (UNGA) when in 2006 along with the adoption of the first resolution on an ATT, the process to examine the feasibility of a treaty to establish common international standards for the global trade in conventional arms was launched.

The absence of an instrument to regulate the conventional arms trade at the global level for such a long period of time is surprising because states have failed to take action and coordinate despite their effects having been recognised for over a hundred years in which there had been two World Wars and countless other inter-state as well as intra-state conflicts. There were several efforts aimed at controlling SALW transfers around the time of the First World War, however, all of them failed due to conflict of interests between states and sovereign security concerns. Soon after the end of the Second World War, focus shifted

⁸ UNGA, A/RES/61/89.

⁹ Nobel Peace Laureates' International Code of Conduct on Arms Transfers, 1997.

towards the Weapons of Mass Destruction (WMD). Following the atomic bombings of Hiroshima and Nagasaki that ended the war, the nuclear weapons agenda came into prominence, and the Cold War era was marred by nuclear arms races, while this arms build-up also paved the way for several arms control agreements aimed to contain the threats posed by nuclear weapons. Although the nuclear arms races and relevant control agreements are to blame for the delayed rise in prominence of conventional arms control, there are also other important factors behind the delay. Exporters want to export arms, to bolster the military of their allied states as well as to enhance their own defence industries. Importers want to obtain arms to improve their military capability mainly with regard to self-defence. These phenomena are discussed in more detail with the help of the Security Dilemma theory in chapter 3.1.

SALW over the years have been increasingly linked with conflicts around the world. Armed conflicts, as well as the proliferation of SALW among unauthorised end-users such as non-state actors result in countless deaths and injuries. According to Small Arms Survey, more than 560,000 people died violent deaths in 2016, out of which 210,000 deaths were caused by firearms only.¹⁰ Since the end of the Cold War, 2,238,326 people have died in armed conflicts.¹¹ At the turn of this millennium, it was estimated that around 300,000 deaths were caused by small arms in conflict zones annually.¹² A later study building on all existing data concluded that a more accurate figure for gunshot wounds accounting for deaths is between 196,000 and 229,000.¹³ A huge majority of deaths by small arms occur in armed conflicts or in violent urban contexts, while between 15,000 and 20,000 landmine casualties have been recorded each year.¹⁴ Most of the casualties in some conflicts are caused by SALW ranging from handguns, rifles, shotguns, mortars, and others. According to some estimates, SALW were used as the sole weapons of conflict in 46 out of the 49 recorded regional conflicts around the world between 1990 and 2000.¹⁵ Considering the role that small arms play in modern conflicts and crimes, there has been an urgent need to have a common international

¹⁰ McEvoy & Hideg, 2017.

¹¹ Amnesty International, 2017.

¹² Cukier, 2002, p.263.

¹³ Richmond, Cheney and Schwab, 2005, p.348.

¹⁴ Garcia, 2004, p.3.

¹⁵ Dimitrov, Sprinz, DiGiusto and Kelle, 2007, p.149; This estimate lacks accuracy.

standard to control the flow of small arms and light weapons (SALW) for quite a while now. Arms proliferation have proven to have devastating effects on peace and security on a global level- including human rights violations on large scales as well as aggravating conflicts in weak states while hindering peace efforts, and facilitating corruption worldwide.¹⁶

With regard to the largely unregulated trade in small arms, a recent study by Small Arms Survey concluded that there were just over 1 billion firearms globally by the end of 2017, out of which 857 million were civilian-held firearms.¹⁷ About 12 billion bullets are produced each year according to the Peace Research Institute Oslo.¹⁸ The global trade in small arms, light weapons, their parts, accessories, and ammunition is estimated to be at least worth US\$8.5 billion per year.¹⁹ The global military spending in 2017 stood at US\$1.74 trillion, and ten countries accounted for three-quarters of the total amount- the US, China, Saudi Arabia, Russia, India, France, UK, Japan, Germany and South Korea.²⁰ According to the Stockholm International Peace Research Institute (SIPRI), the global conventional arms trade was worth US\$ 88.4 in 2016. Research by the SIPRI has identified 25 of the largest arms exporters of major weapons, between the period 2013-2017, which is illustrated below:²¹

Table 1: The 25 largest arms exporters of major weapons and their main clients, 2013-2017

¹⁶ Cukier, 2002, p.263.

¹⁷ Small Arms Survey, 2018.

¹⁸ Wallacher and Harang, 2011.

¹⁹ Grzybowski, Marsh and Schroeder, 2012, p.241.

²⁰ SIPRI, 2018.

²¹ Fleurant, Kuimova, Tian, Wezeman and Wezeman, 2017; Figures show the change in volume of the total arms exports per exporter between the 2 periods;

Exporter	Share of arms exports (%)		Per cent change from 2008–12 to 2013–17 ^a	Main clients (share of exporter's total exports, %), 2013–17		
	2013–17	2008–12		1st	2nd	3rd
1 United States	34	30	25	Saudi Arabia (18)	UAE (7.4)	Australia (6.7)
2 Russia	22	26	-7.1	India (35)	China (12)	Viet Nam (10)
3 France	6.7	5.8	27	Egypt (25)	China (8.6)	India (8.5)
4 Germany	5.8	7.4	-14	South Korea (14)	Greece (11)	Israel (8.7)
5 China	5.7	4.6	38	Pakistan (35)	Bangladesh (19)	Algeria (10)
6 United Kingdom	4.8	3.8	37	Saudi Arabia (49)	Oman (14)	Indonesia (9.9)
7 Spain	2.9	2.9	12	Australia (34)	Turkey (14)	Saudi Arabia (8.3)
8 Israel	2.9	2.1	55	India (49)	Azerbaijan (13)	Viet Nam (6.3)
9 Italy	2.5	2.4	13	UAE (12)	Turkey (10)	Algeria (9.9)
10 Netherlands	2.1	2.1	14	Jordan (15)	Indonesia (15)	USA (11)
11 Ukraine	1.7	2.5	-26	Russia (23)	China (20)	Thailand (12)
12 South Korea	1.2	0.8	65	Indonesia (26)	Iraq (24)	Philippines (11)
13 Switzerland	0.9	1.1	-11	Saudi Arabia (20)	China (17)	USA (11)
14 Sweden	0.9	2.0	-53	UAE (17)	Thailand (16)	Saudi Arabia (13)
15 Turkey	0.8	0.4	145	Turkmenistan (31)	UAE (24)	Saudi Arabia (16)
16 Canada	0.8	1.0	-18	Saudi Arabia (19)	India (11)	USA (9.4)
17 Norway	0.6	0.6	14	Finland (29)	Oman (23)	USA (18)
18 Belarus	0.4	0.4	12	Viet Nam (26)	China (26)	Sudan (23)
19 Australia	0.3	0.3	15	USA (51)	Indonesia (28)	Oman (8.5)
20 Czech Republic	0.3	0.1	467	Iraq (44)	USA (19)	Viet Nam (11)
21 South Africa	0.2	0.6	-51	UAE (22)	India (8.7)	Nigeria (7.0)
22 UAE	0.2	0.1	320	Egypt (52)	Jordan (26)	Kuwait (6.9)
23 Finland	0.2	0.3	-5.7	Poland (59)	Sweden (11)	Saudi Arabia (5.8)
24 Brazil	0.2	0.3	-20	Afghanistan (32)	Indonesia (31)	Angola (9.3)
25 Portugal	0.2	0.1	74	Romania (90)	Belgium (7.1)	Uruguay (2.8)

Source: SIPRI

There are several reasons how irresponsible arms transfers have a negative impact on security and development. For instance a country's military expenditure can possibly divert financial, human and technological resources from development objectives; this causes a diversion of key resources and is discouraged under Article 26 of the UN Charter- but "excessive military expenditure can also affect a State's economy, including investment, as spending on armaments is often economically non-productive and inefficient and occurs in non-competitive conditions".²²

²² Article 26, 'In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments'; UNGA, A/59/119, para.28.

There are many examples of irresponsible arms transfers that have been rigorously researched by major civil society organisations. One of the recent examples worth a mention is the Chinese ship 'An Yue Jiang' sailing towards Zimbabwe to deliver 3 million rounds of ammunition for AK-47 assault rifles at a time when political tensions in the African country were severe in the midst of a worsening situation with rising levels of violence against unarmed civilians sponsored by the state.²³ Eventually the Chinese government was forced to suspend the shipment and recall the ship largely owing to strong resistance by a major NGO campaign orchestrated by the International Action Network on Small Arms (IANSA).

Arms transfers may also contribute to the continuation or the initiation of conflicts. In case of civil conflicts, arms transfers can "enhance the capacity of the state for repressive violence and thus contribute to the extent and severity of human rights abuses".²⁴ In the context of inter-state conflicts, when a country acquires conventional weapons, it is often perceived by other countries as a threat to their national security, prompting them to respond by building up arms, giving rise to an arms race; continuation or exacerbation of inter-state and civil conflicts has serious negative implication for poverty reduction and economic growth in the countries or regions in question.²⁵ This phenomena of arms races is explained very well with the help of the theory of Security Dilemma, a major realist theory in international relations, in the chapter 3.1.

Last but not least, arms transfers may "contribute to a deepening of corruption in recipient societies, with negative consequences for economic growth and development", according to a report by the Centre for International Cooperation and Security.²⁶ For instance, inappropriate purchases alongside increased spending on arms is encouraged by corruption in the arms trade; this contradicts the principle regarding the least diversion of economic and human resources to armaments comprised in Article 26 of the UN Charter.²⁷

²³ Mack and Wood, 2009, pp.1-2; BBC, 2008.

²⁴ Bourne, Chalmers, Heath, Hooper and Turner, 2004, p.29.

²⁵ Parker, 2008, pp.7-8.

²⁶ Bourne et al., 2004, p.29.

²⁷ Parker, 2008, p.8

There is substantial evidence through research to state that small arms fuel conflicts. Prominent arms trade researcher Nicholas Marsh contributed in some crucial groundbreaking research where he put forward a hypothesis that looks at the correspondence between the availability of weapons and the modality of conflicts as well as the types of insurgencies.²⁸ SALW in particular are closely linked with many global challenges today which consist of intra-state conflicts, organised crime, trafficking in drugs and humans, and a variety of other human rights violations. In parts of Africa, SALW had a big impact on the struggle for power and control over natural resources by armed groups and militias. On the other hand, in Sri Lanka, a small island country in South Asia, endured civil war for 26 years which was a struggle for power by an insurgency from Liberation Tigers of Tamil Eelam (LTTE) caused by political rancour between two ethnic groups, the majority Sinhalese and the minority Tamils, and the flow of SALW had been very closely related to the long-running conflict.²⁹ A report published by the Small Arms Survey in 2003 demonstrated the linkage of the readily available conventional weapons with human rights violations, forced displacements, economic collapse, injuries and deaths in Fiji, the Solomon Islands and Papua New Guinea.³⁰

As modern warfare evolved from conflicts between sovereign states and state-based defence forces, the world has seen the emergence of non-state actors and intrastate conflicts, where non-state actors fight the legitimate government forces and sometimes rival actors. The total number of intrastate armed conflicts in the world rose to its highest level at 50 in 2015, which is a record high since the end of the Cold War in 1991 when there were 52 active armed conflicts. The Arab Spring had major effects on the escalation of intrastate conflicts and the Middle East and North Africa region was where most of the conflicts and conflict deaths had occurred.³¹ A total of 97,000 people were killed in armed conflicts in 2015 out of which 46 per cent died in Syria, 18 per cent in Afghanistan and 12 per cent in Iraq; three countries having the highest armed conflict deaths and the ongoing Syria conflict is by far the deadliest since the end of the Cold War.³² Much of this is due to the rise of militias such as Daesh/ISIS with extremist ideologies, that sprouted like mushrooms due to the security vacuum created by

²⁸ Marsh, 2007.

²⁹ Foster and Abeywardana, 2006.

³⁰ Alpers and Twyford, 2003.

³¹ Dupuy, Gates, Nygård, Rudolfson, Rustad, Strand and Urdal, 2016.

³² Ibid.

intrastate conflicts challenging legitimate governments and the lack of post-conflict planning or support by major Western alliances, of which the major powers such as US, France and the UK had been supporting the forces fighting against authoritarian leaders such as Muammar Gaddafi of Libya and Bashar al-Assad of Syria.

1.3 Research Question

The arms industry is a multi-billion dollar industry, however, the trade in conventional arms was not regulated by a comprehensive treaty at the global level prior to the formation of the ATT. There have been regional arrangements for effective arms control, especially in the EU and ECOWAS.³³ There had been several attempts to introduce mechanisms aimed at controlling international arms transfers; unfortunately most of them so far had only been politically-binding and none of them are legally-binding. The campaign for an ATT was the first ever campaign aimed at regulating the international trade in conventional arms at the global level. This thesis sets out to trace the developments in conventional arms control after the end of the Cold War while attempting to identify potential links between some of the conventional arms agreements that may have played a role in the campaign for an ATT, and aims to answer the following question:

- Why was the campaign for an Arms Trade Treaty a success?

Although there is only one research question, it is one that involves several issues related to peace, security and disarmament. The end of the Cold War brought about a new conceptualisation of human security, moving away from the traditional view of security as protection of the nation state and the ATT campaign was among a handful of conventional arms control campaigns to have integrated both the International Humanitarian Law (IHL) and the International Human Rights Law (IHRL) in its agenda.³⁴ In light of all the developments made in human security and the arms control agenda since the end of the Cold War, this thesis aims to contextualise these particular developments that led to deeper scrutiny of the effects of conventional arms and especially SALW, prompting civil society to launch a

³³ ECOWAS stands for the Economic Community of West African States, while its regional arms control agreement is known as the ECOWAS Convention on SALW.

³⁴ The other two being the Mine Ban Treaty and the Convention of Cluster Munitions.

campaign calling for regulations in the conventional arms trade. Thus, answering the main research question entails that I examine the factors that influenced the campaign for an ATT.

Regarding the factors of influence, two important points must be noted. First, conventional arms in general were among the post-Cold War arms control agenda, and in relation to the newly introduced human security concept, major arms control agreements such as the 1997 Mine Ban Treaty (MBT) and the 2008 Convention on Cluster Munitions (CCM) were achieved that were also based on IHL and IHRL; however, this thesis focuses particularly on the ATT which covers major weapons and SALW, and in the process attempts to identify a possible link between the other conventional arms control agreements. The focus on SALW is useful because it plays a major role in modern conflicts, and while major conventional weapons are also used in civil conflicts, these are mostly used by legitimate governments or intergovernmental military alliances such as the North Atlantic Treaty Organization (NATO). A common form of the use of major conventional weapons by legitimate governments is the use of combat aircrafts to attack a particular region or to target air strikes. Although such attacks do have a negative impact on the civilians and national infrastructure in conflict areas, and in some cases may also be responsible for escalating or sustaining conflicts, these issues known as military interventions are related to foreign policies of states and are not covered in arms control. However, the MBT and CCM are referred to in several occasions, with regard to the human security agenda and civil society campaigns that played a significant role in the realisation of these major global prohibition regimes. This has been done so because the weapons that kill indiscriminately were prioritised, and after the realisation of the MBT, focus quickly shifted towards SALW. Furthermore, the success of the campaign for an ATT in the context of this thesis refers not only to the achievement of the treaty through the UN processes that included seven years of discussions, negotiations along with civil society efforts, but also the major factors mentioned above that influenced the campaign for the treaty in the first place. Also, the term 'success' in this study refers strictly to the achievement of the treaty, and must not be confused with its operational success.

Arms trade is very closely linked to national interests of all states. There have been cases in which governments have participated in the industry by offering credit and by using weapons

deals as an instrument for diplomacy and improving international relations.³⁵ Moreover the permanent members of the United Nations Security Council (UNSC) have always been major arms exporters as far back as the data go (except for China whose prominence is more recent). Besides the issues mentioned above, the conventional arms industry is a multi-billion dollar industry with a significant influence on government policy. The US is a great example of this, being the largest exporters of conventional arms in the world for many years. To complement the massive arms industry, it boasts an incredibly influential gun lobby, spearheaded by the National Rifle Association (NRA), which deals with the interests of the industry mainly at the domestic level. Exporters and importers of arms for much of history have had a desire to not have restrictions on the arms trade for strategic reasons in relation to national security, with the commercial advantages of exporting also playing a key role. And since the biggest exporters have always been major world powers, the reason why there has not been a treaty regulating the arms trade is perhaps self-explanatory.

1.4 Literature and Key Concepts

There is a fair amount of literature on small arms issues. These include the trade, transfers and proliferation of small arms. The end of the Cold War triggered the interest resulting in hundreds of major publications, policy briefs and several books. However, the topic of small arms control has not received as much attention as it deserves, and most of the academic work in the field of SALW focuses on the small arms problematique. These relate to for example the role of SALW in conflicts, different brands of crimes and violence. The existing literature on small arms and major conventional weapons is largely policy-oriented. Peace, security and arms trade scholars Owen Greene and Nicholas Marsh identified 655 academic articles on firearms and violence, and 400 on armed conflicts in fragile states published in the period 1999 to 2009 with majority of these being applied policy research that were published within the existing policy context.³⁶ Some of the widely circulated small arms literature include those on armed conflicts in the context of civil wars and non-state actors. There has certainly been a lack of interest among international relations scholars to conduct research on issues related to SALW.

³⁵ Stohl and Grillot, 2009, pp.16-17.

³⁶ Grip, 2017, p.36; Greene and Marsh, 2013.

Neil Cooper and David Mutimer argue that civil society and policy-makers have overtaken academia in sharing information on the arms control agenda largely due to a lack of broader analytical approach, prompting them to claim that academic arms control have predominantly focussed on ‘problem-solving’, and that little work has been done to critically reflect on “the relationship between current practice and traditional arms control theory, on the security framings underlying current policies or on the functions served by the current global architecture of arms control”.³⁷ With regard to the ATT, there is a significant lack of non-policy oriented, academic research linking the conceptualisation of the human security phenomenon and the arms control agenda of the post-Cold War era mainly relating to major conventional weapons and small arms, as well as the role of civil society in driving campaigns with the humanitarian imperative. This thesis delves deep into these issues, and attempts to bridge the gap between these particular phenomena.

On the other hand research on major conventional weapons is rather scarce, and even more so when it comes to conventional arms control. Cristiane Carneiro remarks that conventional arms control, or conventional disarmament, especially with regard to the trade in conventional arms is “surprisingly scarce”.³⁸ Some other notable scholars and including Keith Krause and Neil Cooper have made major criticisms aimed at the major assumptions in the context of contemporary arms control policy as well as practice, mainly due to their Eurocentrism and Western bias.³⁹ There is no specific theory on arms control or small arms issues, however in the context of this thesis, there are several international relations theories that are very relevant and they are discussed in detail in the chapter 3. There are also a number of concepts that constitute a major part of this thesis that include conventional arms, small arms and light weapons, arms control and last but not least, human security, the concept which was integral to the post-Cold War arms control agenda, and they are reviewed below.

1.4.1 Conventional Arms

³⁷ Cooper and Mutimer, 2011, p.3.

³⁸ Carneiro, 2007, p.477.

³⁹ Ibid, p.51.

The term 'conventional arms' is the broader term what binds together a plethora of weapons that are categorised as either major conventional weapons or SALW. Although there is no specific definition, conventional arms is a term used for weapons that are not deemed to have 'mass destructive' capabilities ascribed to nuclear, biological and chemical weapons.⁴⁰ Conventional arms include armoured combat vehicles, combat helicopters, combat aircraft, warships, small arms and light weapons (SALW), landmines, cluster munitions, ammunition and artillery. In the context of the ATT, the conventional arms are represented by the seven categories of major conventional weapons formulated by the UN Register of Conventional Arms (UNROCA) plus SALW. The term 'major conventional weapons' is widely used by civil society, policymakers and relevant institutions that refer to all the seven categories of conventional weapons listed in UNROCA that does not include SALW, and the items are listed in chapter 4.3.

1.4.2 Small Arms and Light Weapons

There is no universally accepted definition of small arms and light weapons (SALW). One of the main reasons is that the categories concerning SALW have seen major changes owing to technological advancement. Also due to its broad nature, consisting of a range of items of different specifications and sizes, with different specialisations. However, Small Arms Survey, one of the major small arms research institutes, largely adopt the proposal put forward by the 1997 UN Panel of Governmental Expert which considers portability as a defining characteristic.⁴¹ For the purpose of the ATT, the term 'Small Arms and Light Weapons' will mean "any lethal, man-portable weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique SALW or their replicas".⁴² Antique SALW and their replicas are to be defined as per domestic law. Antique SALW will in no case include those manufactured after 1899. The definitions of 'small arms' and 'light weapons' are described below with their distinct characteristics:

⁴⁰ Ponti, 2013, p.643.

⁴¹ UNGA, A/52/298.

⁴² Parker, 2014, p.82.

“Small arms are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns; Light weapons are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.”⁴³

Initially progress was made in the UN recognising SALW as the main challenge as they were deemed the preferred weapons of modern conflicts and armed violence. This resulted in the non-binding UN Programme of Action (PoA) in 2001 which is discussed in more detail in chapter 4. However the focus shifted to conventional arms as a complete package that included SALW. It was stressed during discussions that there was a major gap in the regulation of conventional arms and it was about time a strong instrument was introduced.

1.4.3 Arms Control

Arms control is a term that is often used in the same context as disarmament. But it must be noted that these two are distinct terms. Disarmament refers to the reduction or withdrawal of military capacity of a specific region, that may include military forces as well as weapons. Disarmament has a longer history and legacy than arms control and had been a common theme in international relations since the 1950s.⁴⁴ On the other hand, arms control refers to measures taken to mitigate the negative effects, for example through prohibition regimes or regulations on transfers. Morgan defines arms control as:

“Arms control consists of measures, directly related to military forces, adopted by governments to contain the costs and harmful consequences of the continued

⁴³ UNGA, 2005, para. II.4.

⁴⁴ Larsen, 2002, p.3.

existence of arms (their own and others), within the overall objective of sustaining or enhancing their security in international politics.”⁴⁵

In the context of this thesis, as well as in the current global context, arms control refers to restrictions on the development, production, stockpiling, proliferation, distribution or usage of weapons. This may take place in the form of bilateral or multilateral treaties and other agreements. In terms of the ATT, arms control comes in the form of a legally-binding instrument to regulate all transfers of weapons, with the overall aims of increasing transparency, accountability and preventing diversion. Earlier theorists put arms control in a broader spectrum where military cooperation between anarchic states or potential enemies were formed in order to ensure international stability. Bull provides a definition of arms control to contextualise these phenomena:

“Cooperation between antagonistic pairs of states in the military field, whether this cooperation is founded upon interests that are exclusively those of the cooperating states themselves or on interests that are more widely shared.”⁴⁶

1.4.4 Human Security

The concept of ‘human security’ was first introduced by the United Nations Development Programme (UNDP) in its Human Development Report 1994. Previously the term security was mostly associated with national security in the peace and security arena. For much of history, the traditional view of security meant the use of military in ensuring territorial integrity of sovereign states.⁴⁷ The broadening of the security discourse in the peace and security arena proved vital as this brought about a new era of movements and measures towards protecting civilian populations around the world. Different actors such as civil society integrated the human security concept with different agendas, which can be otherwise understood as ‘protection of civilians’. The UNDP report defines the concept as:

⁴⁵ Morgan, 2012, p.15.

⁴⁶ Bull, 1961, p. xxxv.

⁴⁷ King and Murray, 2001, pp.587-588.

“Human security can be said to have two main aspects. It means, first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life- whether in homes, in jobs or in communities.”⁴⁸

The definition provided lacks precision and the scope is vast- any kind of unexpected, irregular discomfort could possibly be seen as a threat to human security. However, civil society, development agencies, and largely ‘middle power states’ have successfully associated this concept with arms control, with regard to major conventional weapons and small arms and their advocacy brought about some major breakthroughs starting with the ban on anti-personnel landmines (MBT) in 1997, followed by campaigns for CCM and the ATT. The association mainly takes place in terms of incorporating the IHL and IHRL into arms control regimes.

⁴⁸ UNDP, 1994, p.23.

2. Methodology and Data

In order to explore the key contents of this thesis, a combination of historical and empirical analysis was made. The main objective of this study is to identify the factors that influenced the successful campaign for an ATT from its initiation to adoption. For this purpose, case study has been chosen as a method suitable for this study in order to put focus on the particular phenomenon. To complement the case study, the document analysis method is also employed, which mainly assists in the collection and classification of data, in particular by reviewing primary and secondary sources mainly concerning the limited available conventional arms control literature, institutional reports, and official policy documents primarily from the UN in relation to the ATT.

2.1 Case Study

Case study is an empirical enquiry that is commissioned to closely examine data within a specific context. It investigates complex social phenomena within its real-life context where the boundaries between a certain phenomenon and context are not clearly evident; and provides a comprehensive understanding of the underlying research problem with the use of multiple sources of evidence.⁴⁹ In brief, case study is an intensive study that is capable of producing rich descriptions of a single phenomenon, organisation, event or program.⁵⁰ According to Yin, case studies can be classified into three categories- explanatory, exploratory or descriptive, and can involve single or multiple cases.⁵¹ In the context of this thesis, single case study is relevant and the research can be classified into the explanatory category. Explanatory type of case study refers to any study that seeks to explain causal links between the case and its context within a real-life situation, or in other words, “an explanatory case study should be used when the aim is to understand why a phenomenon takes place”.⁵²

Case study approach has been used to explain the events, ranging from the shift in the arms control agenda in the post-Cold War period to the adoption of the first resolution at the UNGA in 2006, followed by the discussions, preparations and the negotiations leading up to the

⁴⁹ Yin, 1994.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² De Massis and Kotlar, 2015, p.16.

creation of the ATT, all of which form chapters 4 and 5. To explain the build-up to the ATT, information has been gathered from previous research within the arms control literature, primary and secondary sources on the events leading up to the ATT that include UN documents, civil society publications and other sources. A significant portion of the data include policy documents from the UN, which mainly refers to the various resolutions adopted in the context of an ATT. The data has been linked closely to three major international relations theories- realism, neoliberal institutionalism and constructivism, which assist in understanding the phenomena of conventional arms control, the developments made especially since the end of the Cold War, trying to find a link between these developments and the initiation of the ATT campaign and finally how the treaty was achieved under the auspices of the UN.

Criticisms of case study include a lack of systematic handling of data or scientific rigor, and enabling bias in influencing results. It also does not provide a basis for scientific generalisation and may end up being lengthy and time-consuming.⁵³ In order to avoid any possibility of such problems arising, data must be handled carefully and evidence to be reported fairly and accurately. This thesis concerns the journey of the ATT, connecting key events in a chronological sequence while highlighting real world problems and efforts made by several key actors in addressing them, leaving little room for bias. It must be noted that the focus is not on the contents of the treaty but just the achievement of it as a prospective measure to tackle several major underlying problems at the global level.

2.2 Document Analysis

Document analysis refers to the systematic process for the reviewing and evaluation of documents that include printed as well as electronic material.⁵⁴ It is an analytical method in qualitative research which involves the data being examined and interpreted to generate meaning, gain understanding and develop empirical knowledge.⁵⁵ Documents can include a variety of material ranging from academic journals, books, newspapers, brochures to press releases, television and radio scripts, institutional or organisations reports, policy documents

⁵³ Ibid.

⁵⁴ Bowen, 2009, p.27.

⁵⁵ Ibid.

public records as well as survey data. The process requires collecting, analysing, categorising, organising data mainly through content analysis.⁵⁶ The process involves using credible data sources in order to bring about credible results while reducing the impact of potential biases. It also entails “finding, selecting, appraising (making sense of), and synthesising data contained in documents”.⁵⁷

Document analysis complements qualitative case studies which involves intensive research to produce rich descriptions of a particular phenomenon. For an empirical historical research, the reliance on prior studies is of utmost importance.⁵⁸ Case study research gives immense value to documents, and rationalises the role of document analysis in its methodological and data triangulation.⁵⁹ Triangulation refers to “a confluence of evidence that breeds credibility”.⁶⁰ Bowen presented a comprehensive list of five specific functions of documentary material:

- Documents allow the researcher to gather data on any specific context, and in relation to past events documents provide background information along with historical insight; this in turn assists researchers in identifying the historical roots of a particular topic and “indicate the conditions that impinge upon the phenomena currently under investigation”;
- Documents assist ongoing research by generating additional enquiries within the context;
- Documents provide additional research data, from which information and insights can be obtained to boost the knowledge base;
- Documents can play a crucial role in tracking change and development within a given issue;
- Documents can be analysed as a means to verify findings or to corroborate evidence gathered from other sources.⁶¹

⁵⁶ Ibid.

⁵⁷ Ibid, p.28.

⁵⁸ Merriam, 1988.

⁵⁹ Bowen, 2009, p.29.

⁶⁰ Eisner, 1991, p.10.

⁶¹ Bowen, 2009, pp.29-31.

The advantages of the document analysis method include:

- Efficiency as a method: not very time-consuming and requires data 'selection' and not 'collection';
- Availability: most documents are easily available due to being in the public domain especially in the digital age;
- Cost-effectiveness: less costly than most other methods and one data is gathered the only task required to be done is evaluation of the quality of documents;
- Lack of obtrusiveness and reactivity: 'unobtrusive' and 'non-reactive' are two words to describe documents- meaning they cannot be affected by the research process;
- *Stability, exactness* and *coverage* are also among the strengths of document analysis.⁶²

Despite many advantages document analysis also has several limitations including biased selectivity from the researcher's part, low retrievability, and finally insufficient detail-referring to the fact that many documents are produced for purposes independent of a research agenda, thus, they may not always be effective in providing sufficient information in answering a research question.⁶³

The process of document analysis involves the researcher to read the documents in question, decipher meanings, and put them into context. The overall process primarily involves elements of content analysis as well as thematic analysis. Content analysis is more relevant to this study and it refers to the process where information is collected, organised and categorised in order to address the central research questions in any particular context. Content analysis is an effective method as the documents in use, especially those from primary sources are highly reliable, stable, unobtrusive and can be reviewed repeatedly. It enables researchers to examine large volumes of data in a systematic way and allows inferences to be made.⁶⁴ A weakness involving the analysis of documents is the likelihood of bias from the researcher undertaking the study who is in charge of selecting the documents.⁶⁵

⁶² Ibid, p.31.

⁶³ Ibid, pp.31-32.

⁶⁴ Stemler, 2001.

⁶⁵ Yin, 2009, p.102.

However in the context of this thesis, it must be noted that there is limited room for bias in this thesis, as its main goal is to provide an explanatory account of how conventional arms control rose in prominence, the normative change in arms control since the end of the Cold War, and the key actors behind the change leading up to the ATT.

The document analysis consisted of studying documents including the limited available arms control literature especially with regard to conventional arms control, organisational reports, official policy documents and more. Primary sources including official UN documents have been used as a major source of information. Much of these include resolutions on the ATT adopted by the UNGA in relation to the ATT between 2006 and 2013, and also several publications by United Nations' Institute of Disarmament Research (UNIDIR) between 2008 and 2013 which reported on issues including the impact of poorly regulated arms transfers as well as information on the key events at the UN processes. Besides the documents of the resolutions adopted at the UNGA on the ATT, other UN publications have also been key sources of information including one in particular by Ambassador Peter Woolcott, president of the final Negotiating Conference. Many of the sources focused on a range of issues from the effects of irresponsible transfers and arms proliferation, arms trade facts and figures, to arms control and the ATT. Secondary sources constitute the literature on arms control, the ATT and other major weapons and small arms issues that have been obtained from influential scholars and researchers including Denise Garcia, Keith Krause, Mark Bromley, Neil Cooper and Paul Holtom who have contributed extensively to the literature on arms control, arms trade, the ATT or other relevant issues within the peace and security domain. Major sources of information also constitute major publications by civil society organisations including the International Committee of the Red Cross (ICRC). Saferworld, Small Arms Survey and the Stockholm International Peace Research Institute (SIPRI).

A very small amount of information has been obtained from credible news sources such as Reuters and BBC. There are several journal articles that have been used extensively in this study. These consist of mainly non-policy oriented research that focuses on post-Cold War arms control, small arms, human security and the ATT. One of the major articles include 'The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history' authored by Mark Bromley, Neil Cooper and Paul Holtom. To trace the developments

in small arms control and the broader conventional arms control, historical information has been collected, dating from the pre-Cold War era to the major developments of the post-Cold War era. Much of these data consisted of policy-oriented research as well as non-policy oriented research carried out by prominent arms trade and arms control researchers with a traditional focus on policy, and affiliated with major institutions such as Small Arms Survey and SIPRI, along with a few from academia, including Keith Krause, Mark Bromley, Rachel Stohl, Paul Holtom, Denise Garcia and Neil Cooper.

On the other hand, majority of the data concerning the formal process of the ATT has been collected from UN documents consisting of mainly different resolutions adopted from, for example resolutions convening the formal meetings for feasibility studies, discussions and negotiations to those concerning the scope of the treaty. Data have also been gathered from reports from international institutions mainly consisting of civil society actors including NGOs and UN organisations. All the data is combined to find a link between early developments in conventional arms control and the successful campaign for an ATT, while also identifying the key actors, and the causal factors for the success of the campaign.

3. Theoretical Framework

Despite arms control having received a lot of attention especially during the Cold War era, attention shifted towards conventional arms in the aftermath of the Cold War. However, there has not been a specific theory on arms control. International relations scholars have not given considerable attention to small arms or major weapons or the control of these weapons, and majority of the existing literature is policy oriented and are argued to have significant levels of Eurocentrism and Western bias. Critics have argued that there is a significant lack of theoretical understanding of the phenomenon of arms control. However, there are several major theories in international relations that have significant links to the international arms trade and arms control. Speaking of contemporary arms control, the key issue that arises is the global arms trade and its different dynamics, how it affects or is affected by the international relations between states, the power dynamics, state decision-making, security, cooperation, international institutions, and the major risks of the trade which include irresponsible transfers and diversion that fuel or sustain conflicts. The risks involved are such that an instrument to regulate the global arms trade had clearly been a necessity. Several major international relations theory have been selected for the purpose of this thesis and considered most relevant in identifying and explaining the relevant phenomena. The key issues in the context of this thesis is security, cooperation and the role of institutions. Arms control is a phenomenon that connects these issues in order to explain the underlying problems and possible solutions. The three major international relations theory are within the realist, neoliberal institutionalist and constructivist schools of thought, all of which will be used to explain developments made in the post-Cold War era conventional arms campaigns control resulting in the successful campaign for an ATT. In addition, cooperation and the role of institutions are discussed in brief from both the realist and neoliberal institutionalist perspectives, highlighting the traditional antagonism between realist and liberal traditions while also discussing the key arguments and recent developments. Also within the three major schools of thought, the theory of Security Dilemma, Balance of Power, International Regimes and Norm Building are discussed in detail to provide a broader understanding of the key issues and developments with regard to the post-Cold War arms control and the campaign for an ATT.

3.1 Neoliberal Institutionalism

Neoliberal institutionalism is a critical theory in understanding the concept of cooperation and the impact of institutions. Major developments since the Second World War were mainly made in studies of regional integration that were closely associated to neofunctionalism rather than classic liberalism.⁶⁶ However, the focus stayed within issues emphasised by liberal traditions, while moving towards pluralistic security communities to overcome the Security Dilemma which is viewed by realists as characterising international politics.⁶⁷ Subsequent scholars have built on the work by expanding to economic, social, and political interdependence and regional integration, which highlighted the changing global environment that fostered cooperation while redefining national interests.⁶⁸ New actors emerged in the international system with varying levels of influence which included international agencies, labour unions, multinational corporations, regional and global transnational coalitions and more.⁶⁹ In this context, institutions are defined by Robert Keohane as “persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain activity and shape expectations”.⁷⁰ Drawing on the definition, Keohane adds that international institutions can come in three forms- formal intergovernmental or cross-national nongovernmental organisations, international regimes and conventions.⁷¹

Keohane points out that neoliberal institutionalism is not a single, deductive, logically connected theory, and similarly to liberalism or neorealism it just provides perspectives on world politics.⁷² The central focus of this theory is the impact of institutions on state behaviour or decision-making processes, and the causes of institutional change.⁷³ Neoliberal institutionalism has two main propositions within the international system. First, it considers states as key actors and in terms of cooperation, mutual interests must be present between actors and they also must potentially gain from the cooperation which in other words is

⁶⁶ Nye, 1988, p.339.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Mir, 2014, p.166.

⁷⁰ Keohane, 2011, p.73.

⁷¹ Ibid.

⁷² Ibid, pp.72-73.

⁷³ Ibid.

known as absolute gains; second, institutionalisation is variable rather than constant, and variations overserved in the degree of institutionalisation affects state behaviour.⁷⁴

Among the key proponents of neoliberal institutionalism, Robert Keohane and Joseph Nye carried out extensive research and came up with crucial concepts such as *complex interdependence* which brought about new ideas of cooperation and also suggests that reduction in military is a means to solve inter-state conflicts; the prominent theorists also claimed that the increasing nature of cooperation in the international arena leads the phenomenon of interdependence to influence power relations between states.⁷⁵ Under the framework of interdependence, cooperation is achievable under certain circumstances, especially under the supervision of an international institution or regime.⁷⁶ Keohane and Nye state that a regime is influenced or affected by a system's power structure, while the regime itself also influences the daily decision-making or political bargaining within the system.⁷⁷ Neoliberalism distinguishes states as those having different goals and objectives and their preferences are subject to change internally, with institutions having the ability to influence domestic politics. This implies that international arrangements could go as far as influencing the power dynamics, objectives and beliefs of groups in societies which in turn may affect foreign relations of states.⁷⁸

3.2 International Institutions and Cooperation in Realism and Neoliberal Institutionalism

Realism is critical to gaining an understanding of the state of conflict in the international system as well as the concept of cooperation and the role of international institutions. The traditional realist view is that world politics is always in a state of conflict, room for cooperation is limited and institutions do not play a significant role. However, liberals view things differently. As international relations theory has experienced significant progress since the end of the Second World War, realism rose in prominence. Several decades later liberal

⁷⁴ Ibid, p.73.

⁷⁵ Keohane and Nye, 1977, pp.24-25.

⁷⁶ Iglesias, 2009, pp.12-13.

⁷⁷ Keohane and Nye, 1977, p.21.

⁷⁸ Jervis, 1999, p.61.

institutionalism followed and this paved the way for crucial debates in international relations. Realism and liberalism have almost always been incompatible in how they see world politics and the motives of states. Liberal institutionalism during the 1960s and 1970s challenged realism significantly. Neoliberalism in particular does not deny some of the core ideas of realism, however underscores the cooperation and the role of institutions in a way realism does not.

Realism focuses on power, anarchy, self-help, security, alliances and balance of power, while on the other hand liberals traditionally focus on politics in the domestic sphere, interdependence, transnationalism and international institutions.⁷⁹ Power is what drives states towards their motives in realism, and while power is important, neoliberal institutionalism also takes into account other variables with both schools of thought considering states as key actors and anarchy as constant in terms of state preferences and actions. One of the major difference is the role of international institutions with neoliberals considering them an independent force facilitating cooperation while realists are opposed to this idea as states are always the main actors for them and do not consider institutions to have any significant influence in decision making.⁸⁰

Institutions are important actors for state actions because they affect the incentives facing states, regardless of their interests being defined autonomously.⁸¹ Institutions facilitate actions that are otherwise considered inconceivable while also affecting costs that may be associated with other alternatives had they existed independently.⁸² However, the possibility of evasion cannot be ruled out even if it is certain that they do affect state behaviour, and it cannot be guaranteed that they will always bring the desired results.

3.3 International Regimes (Regime Theory)

International regimes, or more commonly known as the regime theory, is a major international relations theory. It originates from the liberal tradition which claims that

⁷⁹ Ozkan and Cetin, 2016, p.90.

⁸⁰ Grieco, 1988.

⁸¹ Keohane, 2011, p.74.

⁸² Ibid.

international institutions or regimes the behaviour of states or other international actors always have a certain level of influence on the behaviour of states or other international actors. The theory also has connections with structural realism that has been further developed by Keohane which mainly includes emphasis on international institutions and elements such as soft power. While realists consider conflict to be the norm in international relations, regime theorists argue that cooperation is possible even in the anarchic nature of the international system. Regimes operate as international institutions or similar formalised systems and can affect state behaviour.

Having elements of realism as well as liberalism, regime theory has usually been approached distinctly by the differing and often incompatible schools of thought. However, anarchy is the common factor while it can be widely viewed as a hybrid concept where cooperation and the role of institutions is highlighted. Lionel Fatton states that from a theoretical viewpoint, the key consequence of an international arms control regime is a reduction of insecurity among the member states.⁸³ Arms control assists in the improvement of the predictability of others' behaviour as well as the perception of their intentions; due to the absence of a supranational authority governing international relations, insecurity arises between countries as they find it difficult to be assured about the intentions of other states, whether they will keep their promises and respect the terms of cooperation.⁸⁴ Countries have a set of tools for communications with each other which can be verbal or behavioural; member states may use arms control to disseminate their pacific intentions.⁸⁵ Besides direct communications, countries in the security domain can notify others of their motives through shaping their defence policy unilaterally or harmonising with other countries, and what an arms control agreement does is that it assists potential antagonists in demonstrating peaceful motives.⁸⁶ It gives a level of assurance that countries will not turn to aggression, thus prompting Abram Chayes and Dinah Shelton to claim that arms control is a form of 'security regime'.⁸⁷

⁸³ Fatton, 2016, p.202.

⁸⁴ Ibid.

⁸⁵ Bohnet and Frey, 1999, p.44.

⁸⁶ Glaser, 1994, pp.68-69; Glaser proposes three types of policy that can be used for this purpose: arms control, unilateral defence, and unilateral restraint.

⁸⁷ Chayes and Shelton, 2000, p.529.

A key regime theorist, Stephen Krasner, provided the most extensively used definition for regimes which according to him are 'sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations'.⁸⁸ Fatton states that an arms control instrument can be decisive in providing countries a level of trust and predictability in relation to their military expansion and position and that such a regime is a mix of international law and diplomacy.⁸⁹ As pointed out by Donald Puchala and Raymond Hopkins, a key notion within the regime theory is "Regimes themselves are subjective: they exist primarily as participants' understandings, expectations or convictions, about legitimate, appropriate, or moral behaviour", which broadly explains the characteristics of regimes as systems of cooperation within the global arena, and also distinguishes regimes from institutions.⁹⁰ Regimes are able to function as formalised systems that are unequivocally stated similar to treaties and institutions, and can influence state behaviour despite being systems that may not be expressly addressed in treaties for instance;⁹¹ in this context the 'tacit rule' can be used as an example that effectively prohibits use of nuclear weapons.⁹²

International regimes can be viewed as a remedy to anarchy in the international arena. Interestingly, the study of regimes is approached differently by liberal and realist theorists- with liberal theorists arguing that cooperation in anarchy is possible without a hegemon due to the existence of a "convergence of expectations", while realists conclude that only a strong hegemon is what makes for a regime that is successful and robust. A major purpose of regimes is to form the foundations for cooperation that encourages or even enforces compliance from states parties to the specified obligations, while diminishing chances of defection that could hamper the cooperation.⁹³

Using Cold War as an example, there existed a state of anarchy between the Eastern and the Western blocs. The intense geopolitical tensions between the main protagonists the US and

⁸⁸ Krasner, 1983, p.1.

⁸⁹ Fatton, 2016, p.203.

⁹⁰ Puchala and Hopkins, 1983, p.62.

⁹¹ Saldner, 2013, p.30.

⁹² Nye, 1987, p.375.

⁹³ Little, 2008, pp.303-304.

the Soviet Union resulted the building up of nuclear arsenals as fear and insecurity crept in and snowballed. And although it was only when Gorbachev came to power that the Soviets realised that there was room for cooperation instead of intensifying the geopolitical tensions further especially to improve their plummeting economy as part major reforms, major forms of cooperation had already commenced largely owing to the arms race. The two countries realised the major risks of a possible nuclear warfare and thus opened the door for discussions and informal agreements until a Limited Test Ban Treaty (LTBT) was signed in 1963. Later in the year 1972 further agreements were signed which included the Anti-Ballistic Missile Treaty (ABMT) which was a major milestone. However as the Soviet Union collapsed bringing an end to the Cold War, the relationship between Russia and the US had remained anarchic, however, further treaties were signed up until the Obama era, all of which were nuclear arms reduction treaties, the latest being the New START (Strategic Arms Reduction Treaty) signed in 2010.⁹⁴

According to institutionalists there are challenges associated with security cooperation and compliance with treaties with similar objectives, one of which is defecting or cheating. Treaties and conventions may not always be sufficient for an effective arms control regime, as majority of participating states normally prefer to be 'free riders', there is a crucial need for independent monitoring and verification.⁹⁵

The ATT is regarded as an international arms control regime. As the first international instrument aimed at regulating the international transfers in conventional arms including SALW, it requires states parties to follow a certain criteria in order to maintain high levels of transparency and accountability. It is not something which introduces new contents or criterion, it rather builds on pre-existing regimes, integrating elements from for example the UNROCA, the UN Programme of Action (PoA) as well as the MBT and the CCM.

3.4 Security Dilemma and Arms Races

⁹⁴ Den Dekker, 2010; Diakov et al., 2011, p.15.

⁹⁵ Grip, 2017, p.44.

It is important to understand why countries buy arms and build up their military before getting to the point why there is a need for arms control. Especially today the multi-billion dollar global arms industry reflects the fact that states all over the world are buying and selling more weapons, although only a few actually use it to attack. We have seen the consequences of the two World Wars in the 20th century, proxy-wars in the context of the Cold War, to the shifting dynamics of conflicts leading up to intra-state conflicts that are rife in a number of regions around the world. The era of global conflicts are seemingly over mainly due to growing economic cooperation between many countries among other reasons. The arms trade plays a major role in the trade and cooperation between countries; the world spent a staggering US\$ 1.69 trillion on military in 2016 which is just over 2 percent of the global GDP.⁹⁶ While most of the top traded products such as apparel and textiles have strong regulations all over the globe, it is nothing short of fascinating that the first major initiative towards regulating the global trade in conventional arms was taken so late.⁹⁷

One of the most crucial theories in the context of this thesis is the Security Dilemma, which is a major realist theory that explains state behaviour in relation to their national interests and security. The concept of Security Dilemma is based on the key ideologies of realism, where the international relations between states are anarchical in nature. Influential defensive realist Robert Jervis states that because of the anarchy in the international system, they build up their military capability. States are unaware of each other's intentions and may judge another state's defensive build-up as offensive. For instance when one state is accumulating arms in order to bolster their security, other states may feel threatened thus causing a Security Dilemma resulting in other states bolstering their own arms in order to make themselves ready for any potential threats or attacks. Another aspect of Security Dilemma put forward by Jervis is that even when a state is certain that another state is non-threatening, they cannot disregard the possibility that others will get aggressive in the near future nor can they guarantee plausibly that they themselves will remain pacific.⁹⁸

⁹⁶ Amnesty International, 2017.

⁹⁷ The ATT was first addressed in the UN in December 2006 when the General Assembly adopted resolution 61/89 "Towards an Arms Trade Treaty: establishing common international standards for the import, export and transfer of conventional arms".

⁹⁸ Jervis, 1976, pp.62,76; and Jervis, 2001, p.36; The uncertainty about each other's present and future intentions under anarchy is crucial to the formation and maintenance of the security dilemma. Many authors tend to forget this causing misunderstandings.

While classical realist John Herz points out that the main source of Security Dilemma is anarchy, Jervis emphasised on the idea that an increase in one's state security can make others less secure largely due to the anarchic context of international relations, and not due to misperceptions or imaged hostility. Jervis goes on to define Security Dilemma as "these unintended and undesired consequences of actions meant to be defensive".⁹⁹ However, contemporary realist Shiping Tang argues that neither of the three main proponents of the Security Dilemma theory provide a rigorous and coherent definition and comes up with his own definition, "Under a condition of anarchy, two states are defensive realist states—that is, they do not intend to threaten each other's security".¹⁰⁰ Tang further goes to provide eight major aspects in understanding the Security Dilemma, out of which three are absolutely essential: "anarchy (which leads to uncertainty, fear, and the need for self-help for survival or security), a lack of malign intentions on both sides, and some accumulation of power (including offensive capabilities)".¹⁰¹ These are causal elements while the others are either regulators or consequences of the Security Dilemma. This study identifies that Security Dilemma contributes in hindering the establishment of a global treaty to regulate the arms trade.

Arms accumulation and the anarchical context are crucial dispositions of the Security Dilemma theory which makes it very relatable to arms control. These two factors are pivotal in studying modern conflicts in the form of intra-state conflicts, where the anarchical context of the state and the access to arms or more specifically to SALW both play a significant role in the escalation of conflicts, which mainly takes place in the current context between legitimate governments and one or multiple groups of non-state actors. Considering the fact that arms are a major disposition of the Security Dilemma, arms control efforts can be regarded as a means for amelioration or even as a potential solution to the Security Dilemma.¹⁰² Security Dilemma theorists have also noted another noteworthy ameliorating factor which is the impact of institutions and norms such as an arms control regime in the diminution of the ever

⁹⁹ Tang, 2009, pp.591-592; Jervis, 1976, p.66.

¹⁰⁰ Tang, 2010, chap.1; Briefly, defensive realist states do not threaten each other intentionally, and offensive realist states do.

¹⁰¹ Tang, 2009, p.595.

¹⁰² Croft, 1996.

present antagonism between states while bringing about the likelihood for cooperation instead of breeding anarchy.¹⁰³

Tang mentions Security Dilemma among the most important theoretical ideas in international relations.¹⁰⁴ Since the early development of the concept by John Herz and British historian Herbert Butterfield in the early 1950s, and later by Robert Jervis, it has gone through various expansions and applications aimed at addressing some of the most important questions in international relations theory as well as security policy in its early years.¹⁰⁵ The most crucial elements to the formation and maintenance of the Security Dilemma is the uncertainty between the present or future intentions of states all working under a system of anarchy.¹⁰⁶

Arms control comes into the equation from the fact that superpowers of the world, regardless how anarchical they are, have common interests as well as conflicting ones- especially in the military arena and cooperation and conflict are two phenomena that are so closely tied that one cannot be analysed without the other having received significant attention.¹⁰⁷ Thomas Schelling and Morton Halperin, two influential nuclear arms control theorists from the early Cold War era stated in *Strategy and Arms Control* the following: "The essential feature of arms control is the recognition of the common interest, of the possibility of reciprocation and cooperation even between potential enemies with respect to their military establishments."¹⁰⁸ Arms control is reliant on the theory that the chances of wars and conflicts can occur when states fail to realise the cooperation that their interests entail- mostly in the shape of military policy.¹⁰⁹

In the offense-defense theory devised by Jervis, the Security Dilemma can lead to an arms race and formation of alliance. States that feel threatened by the arms acquisition and military enhancement of another state, but lack the means through which they can accumulate their

¹⁰³ Wendt, 2008.

¹⁰⁴ Tang, 2009.

¹⁰⁵ Butterfield, 1951; Herz, 1951; Jervis, 1976, chap.3; Jervis, 1978; Glaser, p.172.

¹⁰⁶ Jervis, 1976.

¹⁰⁷ Jervis, 1993, p.240.

¹⁰⁸ Schelling and Halperin, 1961, p.2.

¹⁰⁹ Jervis, 1993, p.241.

own arms form alliance with one or a group of states in a similar situation.¹¹⁰ Subsequently the common assumption is that states may interpret defensive build-up as offensive, which could cause the other state to have an aggressive stance causing the situation to get unstable.¹¹¹ Jervis attempts to explain whether the defensive has an advantage over the offensive or vice versa, and whether it is possible to distinguish between offensive weapons and policies from defensive ones. In the process Jervis tries to address or uncover state intentions- that offensive arms could suggest that the possibility or presence of antagonistic intentions.¹¹² He also argues that the same weapons can be used for both offensives and defensives and that 'a state may not necessarily be reassured if its neighbour constructs strong defenses', because defensive weapons could be produced by expansionist leaders in order to defend themselves from possible negative consequences of their own offensives;¹¹³ Jervis uses Germany as an example as they stressed the importance of having a strong line of defense just on the eve of the Second World War.¹¹⁴

Jervis used the spiral model which is closely associated with the Security Dilemma or sometimes also used interchangeably. This model can be used to explain the arms races. Without a global sovereign, the world is anarchic. In this context states can only rely on themselves for security and attempts of self-protection only threatens others. Thus states join a race to accumulate arms to nullify threats they feel from others doing the same. Fear is what drives states towards the mutually aggravating process where one's military gain becomes a threat to others, while this state of uncertainty is intensified further by perceived hostilities. In most cases defensive accumulation of arms is virtually impossible to be distinguished from offensive ones thus prompting Jervis to define it as "these unintended and undesired consequences of actions meant to be defensive".¹¹⁵

The Cold War for instance contained elements of the Security Dilemma, mainly due to the fact that the war repeatedly fed misperceptions, intensified tensions while obscuring

¹¹⁰ Jervis, 1978, pp.186-210: Offense-defense.

¹¹¹ Ibid.

¹¹² Ibid, p.169.

¹¹³ Ibid, p.202.

¹¹⁴ Ibid, pp.200-205.

¹¹⁵ Tang, 2009 , p.591.

attempts of resolving disputes between the two blocs.¹¹⁶ There was also the arms competition that constituted a major component of the Security Dilemma- the Soviets had the idea that the US and the European alliance were hostile towards them and posed high threats if they did not for example build up arms to defend themselves. The impression was that both sides sought superiority in the Cold War in an attempt to increase their political leverage. The nuclear arms race during the Cold War was of great significance. Due to the escalating insecurities between the two blocs, they kept building their nuclear arsenal. It was more of a race between the US and the Soviet Union, while some of the allies did build up their arsenal, the warheads were for instance nowhere near as many as the two main rivals had. However there was room for cooperation in order to avoid a major nuclear conflict which will be discussed in the next theory.

3.5 Balance of Power

The balance of power theory in international relations can also be used to understand why countries may consider arms control agreements. This theory is an important part of realism, and it aims to explain state behaviour. Arms control and security scholar Jeffrey Larsen defines arms control as “any agreement among states to regulate some aspect of their military capability or potential”.¹¹⁷ Defensive neorealist Stephen Walt defines balance of power as an international system consisting of three or more states where the propensity to balance against emerging threats offsets the likelihood of a hegemon thus safeguarding the independence of sovereign states.¹¹⁸ Some balance of power theorists claim that the function or purpose of the balance of power system is to maintain international peace by maintaining an equilibrium of power and prevent hegemony; in order to prevent hegemony, states seek a balance of power either by increasing their own power, or what is more likely, by forming alliances with other states and ensuring that no state amasses enough resources to dominate others.¹¹⁹

¹¹⁶ Jervis, 2001, p.55.

¹¹⁷ Larsen, 2002, p.1.

¹¹⁸ Schofield, 2000, pp.748-749.

¹¹⁹ Levy, 2004, pp.31-32; Schofield, 2000, p.751.

Arms control can be understood as a means to achieve international security through military strategies, and it can possibly be achieved with the acceptance of a balance of power between the key actors in the system.¹²⁰ This resonates realism and the state of anarchy, where one state building their military or having the capability to do so may leave other states concerned about the possibility of that state pursuing military superiority in order to achieve influence.¹²¹ In the context of this thesis, multilateral conventional arms control to regulate the trade in conventional arms is the focus of study, and it can be said that arms control is a means to achieve balance of power due to a large number states forming alliance to promote responsible transfers and aiming to establish peace and reduce the likelihood of wars, while preventing destabilising accumulation of weapons by any state, thus achieving a balance of power in maintaining international peace by ensuring no state accumulates enough resources, in this case conventional weapons, which it could use to dominate the system. However, there is a lot of ambiguity in the theory of balance of power; considering it is a theory of international politics, many theorists do not agree on the key propositions and assumptions, some claim balance of power helps in maintaining peace, while others claim it plays a part in the onset of war, while others claim the theory is not capable of making any determinant predictions on war and peace at all.¹²² The balance of power theory contains several key elements that can be useful in understanding state behaviour with regard to arms control agreements. However, despite having notable features, this theory cannot be regarded as the most viable or complete theory to explain the phenomenon of arms control.

3.6 The Major Disagreements Between Realism and Liberalism

Liberalism became a major challenge to realism when it underwent development and appeared as part of the functionalist integration theory in the 1940s and 1950s, neofunctionalist regional integration theory in the following decades and as part of the interdependence theory in the 1970s, all of which criticised the realist propositions of state and its pessimistic views of world politics.¹²³ The liberal institutionalist propositions offered

¹²⁰ Larsen, 2002, p.2.

¹²¹ Ibid.

¹²² Levy, 2004, pp.29-30.

¹²³ Grieco, 1988.

more optimistic assessments of international cooperation and the capability of international institutions in facilitating that.

During the 1970s, regional conflicts escalated tensions which all but reaffirmed propositions of realism and in the process undermining liberal institutionalism that had progressed significantly in the previous decades. However, power dynamics and inter-state cooperation amidst the regional tensions paved the way for neoliberalism, seen as an upgraded version of liberalism.¹²⁴ As mentioned previously, both realism and liberal institutionalism consider the international system as anarchic, however, the worldview of the latter is more optimistic in that states are willing to cooperate and give institutions significant agency to influence state behaviour.

Jervis stated that the traditional disagreements between the realist and liberalist schools of thought are exaggerated or in some cases false. The characterisation of the differences is wrong because the focal points of the two schools are often different, for example neoliberal institutionalism focuses on issues with regard to the international political economy as well as the environment while realists tend to focus on state behaviour, international security and the onset and consequences of war.¹²⁵ According to Jervis, neorealism does not see more cooperation than realism, however, it believes there is significant unrealised or potential cooperation, and also regarding how much conflict is avoidable or unnecessary in terms of failure of actors to cooperate or come to agreement despite preferences overlapping.¹²⁶ An important argument is whether institutions are effects or causes- with realists describing institutions as mainly effects, and see them as tools of statecraft that are established when states see mutual benefits, therefore they can be seen as reflections of state interests.¹²⁷

Also notably, realism focuses on relative gains which refers to a zero-sum game implying wealth cannot be expanded unless it is taken from another state. On the other hand neoliberalism tends to focus on absolute gains from international cooperation. The liberal

¹²⁴ Mir, 2014, p.165.

¹²⁵ Jervis, 1999, p.45.

¹²⁶ Ibid, p.47.

¹²⁷ Ibid, 63.

view can be depicted as one where states with common interests tend to make efforts to maximise their absolute gains, while those that try to maximise relative gains have no common interests.¹²⁸ Relative gains are more relatable to security matters than economic affairs.¹²⁹ Keohane stated that the importance of relative gains have been underestimated by neoliberal institutionalists, which may have been because of similarities in behaviour of states pursuing relative gains and those that seek absolute gains.¹³⁰ It must also be noted that the realist focus is on security issues while neoliberals focus on the political economy, indicating that their differences in how they view cooperation may be related to subject matters they focus on. Neorealist theory suggests that alliances are products of major antagonism and are formed to supplement the capabilities of states, otherwise viewed as fundamentally shaped by the anarchic structure of the system.¹³¹ To sum up the neoliberal institutionalist proposition, already discussed in more previously in this chapter, it puts emphasis on the role of international institutions in facilitating cooperation, suggesting cooperation by no means is merely a product of antagonism.

3.7 Norm Building

The field of international relations has been dominated by realism and liberal institutionalism for most of history leading up to the end of the Cold War. It was not until after the Cold War that political scientists explored new ideas and started experimenting social constructivist or sociological influences that had been borrowed from other disciplines.¹³² In the last two or three decades the explanation of politics and international relations with the help of constructivist approaches have burgeoned. A particular notion in political science has emerged addressing that different choices made by different players are largely influenced by their own perceptions- how they perceive the world at large as well as themselves from their position. International norms have become an important concept in international relations over the past few decades, and forms a major part of constructivist school of thought. Norms can be understood to promote identities and values that present states with

¹²⁸ Baldwin, 1993, pp.5-6.

¹²⁹ Ibid, p.6.

¹³⁰ Ibid.

¹³¹ Keohane, 2011.

¹³² Gardner, 2011, p.14.

legitimacy and effectiveness to assist them in pursuing their interests.¹³³ A major criticism regarding the norms scholarship is that more often than not emphasis has been given on successful cases of the creation and existence of norms while overlooking failures of such norms.¹³⁴

This constructivist theory having undergone crucial developments in the 1990s, is very closely linked to the research questions this thesis aims to answer, from identifying the lack or absence of an arms control instrument with regard to the conventional arms trade to the formation of the instrument. Martha Finnemore and Kathryn Sikkink are two of the most influential theorists of the post-Cold War conceptualisation of norms; they state that there is a general agreement on defining norm as a “standard of appropriate behaviour for actors with a given identity”.¹³⁵ The concept of norm has several meanings in the contexts of sociology for example among other areas, however this thesis will attempt to focus on the one that is closely related to international relations. Robert Axelrod provided a key understanding of norms from a political science perspective, “A norm exists in a given social setting to the extent that individuals usually act in a certain way and are often punished when seen not to be acting in this way”.¹³⁶ Finnemore and Sikkink argue that it is not the distribution of power, but the “shared ideas, expectations and beliefs about appropriate behavior are what give the world structure, order and stability”¹³⁷. German sociologist Karl-Dieter Opp introduced a couple of factors that are important for the understanding and differentiation of norms in IR from other conceptualisations:

- Oughtness- “how a person (moral or legal), or a group of people, is expected to behave in a given circumstance.”¹³⁸
- Behavioural- “a norm exists only if there is some probability that non-conformity is sanctioned.”¹³⁹

¹³³ Thomas, 2012, p.10.

¹³⁴ Checkel, 1998.

¹³⁵ Finnemore, 1996, p.22; See also Katzenstein, 1996, p.5.

¹³⁶ Axelrod, 1986, p. 1097

¹³⁷ Finnemore and Sikkink, 1998, p.894.

¹³⁸ Adapted from Homans, 1974, p. 96.

¹³⁹ Opp, 2001, p.103.

Annika Björkdahl further explains norms as what appropriate behaviour *ought to be* and goes on to describe norms as “social structures consisting of intersubjective understandings of appropriate behaviour in the international community”.¹⁴⁰ Finnemore and Sikkink identified three stages of norm-building- ‘emergence of a norm’, ‘point at which a certain norm begins to influence behaviour of actors’ and the final one is the phase in which ‘norms become institutionalised’.¹⁴¹ In other words the main proposition of the proponents is that norms are developed from the process of persuasion, and then reach a critical point and are soon diffused for general use through socialisation followed by internationalisation. However it is not always evident whether a norm will go through all these phases, because some issues just do not raise as much awareness as expected while others face strong opposition from powerful actors.¹⁴²

3.7.1 Norm Emergence

Norms and ideas are usually promoted by ‘norm entrepreneurs’; international norms are usually materialised through these norm entrepreneurs from the initial stages. These norm entrepreneurs are actors that are commonly involved in non-governmental organisations or civil society, social movements, international organisations, or can just be dedicated individuals.¹⁴³ These actors are committed to a particular set of values or ideas, motivated by social change and the potential to influence state behaviour through acts of lobbying, persuasion or even shaming. However, Björkdahl makes a case similar to that of other theorists such as Wendt, that states can also be norm entrepreneurs as states throughout history have been noted for promoting issues that they feel strongly about, particularly in areas of peace and security. An example is the MBT which was advocated by the International Campaign to Ban Landmines (ICBL), a coalition of civil society organisations whose main objective was a world free of anti-personnel landmines and cluster munitions. Norm entrepreneurs tend to look for political support and take actions in mobilising popular opinion; they make attempts to raise awareness, assist in the formation of harmonious movements in different regions and make efforts to attract international attention to their

¹⁴⁰ Björkdahl, 2002a, p.43; Björkdahl 2002b.

¹⁴¹ Finnemore and Sikkink, 1998.

¹⁴² Grillot, 2011.

¹⁴³ Björkdahl, 2002a, p.44.

cause.¹⁴⁴ In the case of the ATT, the Control Arms Campaign, which was a coalition of some of the most influential civil society organisations such as Amnesty International, International Action Network on Small Arms (IANSA), Oxfam and Saferworld, operated as the lead organisational platform while civil society groups also campaigned individually by actively participating in the discussions and negotiations within the auspices of the UN. The Control Arms Campaign used various popular mobilisation techniques to reach out to public and governments, while also playing a part in the formal processes. Civil society is among those largely responsible in bringing together a group of like-minded states that tabled the first resolution at the UNGA in 2006 and has been instrumental in getting more and more countries to support the campaign for an ATT. According to Finnemore and Sikkink, the motivating forces for the norm entrepreneurs can be described as “empathy, altruism and ideational commitment”.¹⁴⁵ The capability of the norm entrepreneurs in influencing policy outcomes is a major element of building norms.¹⁴⁶ Norm entrepreneurs are able to use certain tools of advocacy in the form of different power dimensions; in this context ‘soft power’ can be important, contrary to traditional power it involves different techniques. The soft power concept was coined by Joseph Nye as the antithesis to ‘hard power’ which traditionally involves a level of forcefulness or coercion. Soft power involves non-coercive actions, and refers to the ability to change or shape ideas or preferences of others through appeal and attraction and Nye goes further by stating that “Seduction is always more effective than coercion, and many values like democracy, human rights, and individual opportunities are deeply seductive”.¹⁴⁷ Soft power can include social skills, technical expertise, knowledge resources and moral authority.¹⁴⁸

Another key element of norm emergence is the presence of an organisational platform.¹⁴⁹ Because in reality, promoting a new norm in a global arena is extremely difficult without an organisational platform that can provide institutional and informational backing. The organisation is in charge of promoting and establishing the new norm, and in that particular

¹⁴⁴ Nadelmann, 1990.

¹⁴⁵ Finnemore and Sikkink, 1998, p.898.

¹⁴⁶ Thomas, 2012, p.11.

¹⁴⁷ Nye, 1990; Nye, 2004, p.x.

¹⁴⁸ Björkdahl, 2002b, p.49.

¹⁴⁹ Finnemore and Sikkink, 1998, p.899.

setting is where the idea can be examined and subsequently moulded into a viable policy.¹⁵⁰ In the current global context, it is virtually impossible for a new norm to get acceptance in the international community without this platform. The main organisational platform is provided by civil society assisting in the strengthening of the norm in question, while also have a crucial role to play in persuading states to share their views. The ATT itself is a great example of this- hundreds of civil society partner organisations including major NGOs such as Amnesty International, IANSA, Oxfam International and Saferworld formed the Control Arms Coalition which successfully campaigned for the creation of the ATT. The campaign included coordinated advocacy, international popular mobilisation, research and policy analysis, involvement of a wide range of stakeholder organisations and importantly a partnership approach with supporting states.

Following the emergence the norm is institutionalised in order to get acceptance from the global society. With the help of an organisational platform the agenda gets a higher level of credibility, and then it seeks support of legitimate authorities which comprises sympathetic states. The agenda is pushed further forward and diffused and in the process gets approval from the major actors incorporating it as the new custom.¹⁵¹ This is basically how a new emerging norm is successfully integrated into the global society.

¹⁵⁰ Ibid, pp.899-900.

¹⁵¹ Finnemore and Sikkink, 1998, pp.901-902.

4. Arms Control Agreements Preceding the Arms Trade Treaty

4.1 Earliest Small Arms Control Efforts

The most significant act towards controlling the flow of arms and ammunition before the 20th Century was the Brussels Act of 1890, which was mainly an anti-slavery initiative also seeking to improve the conditions of existence of native races. The trade of firearms and ammunition was also a big part of the act mainly due to the colonised population being threatened by the effects of the weapons trade.¹⁵² During the interwar period of the First World War a number of treaties were signed which sought to control the trade in arms and ammunition among which was the 1919 St Germain Convention.¹⁵³ The motivation behind this treaty was mainly the Allied security concerns over surplus stocks of weapons that had the possibility of ending up in the hands of 'problem actors'.¹⁵⁴ However it never came into force due to conflict of interests between the US and the major European powers and Japan, although the latter were still keen on imposing restrictions on areas of colonial influence where exports would destabilise situations and thus committed to imposing special restrictions to parts of the Ottoman empire, the Arabian peninsula and most of Africa.¹⁵⁵

Further negotiations on related issues paved the way for the Geneva Traffic Convention of 1925. Notable changes took place and there were efforts made towards an inclusive agreement involving all suppliers, importers and non-producers, however, it failed to materialise due to sovereign security concerns of the major importers.¹⁵⁶ It caused concerns among the importers about the powerful arms producing states to have a level of authority in terms of imposing economic and political conditions on the smaller non-producing states and at the end the treaty never came into force.¹⁵⁷ Despite neither of the conventions from 1919 and 1925 having succeeded in coming into force, the first arms export licensing systems was created around the same time while discussions continued.¹⁵⁸ The Security Dilemma can

¹⁵² Bromley et al., 2012, p.1031

¹⁵³ Ibid, p.1032.

¹⁵⁴ Ibid.

¹⁵⁵ Stone, 2000, p.218.

¹⁵⁶ Bromley et al., 2012, p.1034.

¹⁵⁷ Ibid, p.1032.

¹⁵⁸ Ibid, p.1033.

be said to have contributed to the failure of these efforts. Especially in the case of the 1925 efforts, as importers, consisting of largely middle power states were not convinced about the intentions of the arms suppliers and feared being dominated.

The Cold War era had been characterised by the establishment of arms export control regimes, with the development of nuclear weapons having played an important role in the process primarily due to its mass destruction capacities. The Cold War gave rise to several export control instruments among which was the Coordinating Committee for Multilateral Export Controls (COCOM) formed in 1949 by Western bloc powers which was aimed at managing an embargo on arms transfers to the Eastern bloc- among other regimes that sought to prevent inter-bloc arms transfers while putting no restrictions on intra-bloc transfers.¹⁵⁹ In the following year, the Tripartite Declaration was signed by France, The UK and the US which was an effort to regulate defence sales to the Middle East and was materialised through creation of the top secret Near Eastern Arms Control Committee (NEACC) which acted as a council for consultation between the three states. In the 1960s, the security priorities of the three key states diverged, but it did act effectively as a forum for discussion in which states were not subject to any mandatory obligations but where they were compelled to take the views of other members into account.¹⁶⁰

Bromley, Cooper and Holtom state that these previous initiatives to regulate international arms transfers were hegemonic impositions, and the initiative such as the Brussels Act, COCOM, and the Tripartite Declaration- the only ones to be implemented were possible due to being concluded between small groups of supplier states and the third parties that included the Eastern bloc and the Middle Eastern states were not in a position to prevent the agreements as they were not considered to be given the chance to participate in the negotiation table.¹⁶¹

4.2 Arms Control in the Post-Cold War Period

¹⁵⁹ Ibid.

¹⁶⁰ Ibid, pp.1033-1034.

¹⁶¹ Ibid, p.1034.

The end of the Cold War brought about a new era of arms control where the human security agenda played a big part. The conceptualisation of 'non-state actors', and the re-conceptualisation of security in terms of protection of civilians or 'human security' were the major developments that paved way for a paradigm shift in the arms control agenda. The absence of and the need for regulating the flow of conventional arms started to gain attention. Particularly SALW started to get into limelight due to its devastating effects which had largely been overlooked in the past. Since 1988, the subject of 'international arms transfers' within the UN made several developments including forming of subcategory of resolutions on 'General and complete disarmament' when decision was taken that arms transfers in all their aspects must be taken into consideration by the international community because of three key issues that consisted of:

- "Their (international arms transfers) potential effects in areas where tension and regional conflict threaten international peace and security and national security;
- Their known and potential negative effects on the process of the peaceful social and economic development of all peoples; and
- Increasing illicit and covert arms trafficking."¹⁶²

The issue rose in prominence since the early 1990s as observers noted a rise in the frequency and number of 'low intensity' conflicts especially in parts of Africa. The UN peacekeeping operations provide a good example- 56 out of the 69 total operations since 1948 were established after 1988. Although the end of the Cold War enabled UN to operate more effectively as rivalries dissipated, it demonstrates that leaders around the world cared more about intrastate warfare. The Iraqi invasion of Kuwait in 1990 also gained attention, with post-war inspection teams discovering a wide range of Western industrial equipment used in illegal weapons programmes by Iraq, who at that time had the fourth largest army made possible with the help of foreign arms acquisitions.¹⁶³ The following years were crucial as the first attempts to promote responsible arms transfers were made.

¹⁶² UNGA, A/RES/43/75, Section I.

¹⁶³ SIPRI Yearbook 2006, p.777.

4.2.1 Post-Cold War Arms Control and Human Security

Before the end of the Cold War, there was the arms control agenda from the 1960s which was aimed at reducing the risks, severity, and cost of war between states, through legally-binding and verifiable treaties of agreed military constraints in the “numbers, types, deployment or use” of nuclear weapons and related military technologies.¹⁶⁴ SALW were overlooked because of having been perceived to be inconsequential to the balance of military power between the two rival blocs, the US and the Soviet Union.¹⁶⁵ However, as the Cold War came to an end, the security discourse was broadened. Non-state actors were introduced as among the new security threats, and security as a subject was deepened in a way that defined security in terms of protection of civilians or “human security”.¹⁶⁶ In 1992, the then UN Secretary-General Boutros Boutros-Ghali published a report in which the term “human security” was used, referring mainly to the safety and security of people in conflicts.¹⁶⁷

A major development took place in 1993, when then president of Mali, Alpha Oumar Konaré handed in a request to the UN Secretary-General Boutros-Ghali regarding a possible UN mission to observe the impact of uncontrolled proliferation of small arms in Mali.¹⁶⁸ Boutros-Ghali called for international attention soon afterwards in 1995 to control the proliferation of SALW as well as their disarmament, which according to him “are actually killing people in the hundreds of thousands”.¹⁶⁹ In the early 1990s, scholars such as Laurence started to give attention to the global arms trade and its security implications.¹⁷⁰

Subsequently “humanitarian arms control and disarmament” started gaining recognition in the arms control discourse to put the issue under the microscope in an attempt to mitigate the threats to civilians of certain “indiscriminate” and “inhumane” weapons.¹⁷¹ These gave rise to crucial developments in the conventional arms control agenda, starting with the

¹⁶⁴ Krause, 2011, p.26.

¹⁶⁵ Sears, 2012, p.37.

¹⁶⁶ Krause and Williams, 1996, p.230.

¹⁶⁷ Boutros-Ghali, 1992, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January.

¹⁶⁸ Ibid.

¹⁶⁹ Boutros-Ghali, 1995, Supplement to the Agenda for Peace.

¹⁷⁰ Laurence, 1992.

¹⁷¹ Cooper and Mutimer, 2011, p.10; Krause, 2011, p.35.

success of the campaigns for the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, otherwise known as the Mine Ban Treaty (MBT) taking place in 1997 and later, the Convention on Cluster Munitions (CCM) in 2008. More recently, a reconceptualization of arms control has taken shape as “controlling the means of violence,” which broadened the scope to address key issues such as ““who can possess, use, develop and transfer the technologies of violence, under what circumstances, against whom, and for what ends””.¹⁷² By this time SALW started to get recognition as one of the primary tools of destruction and keeping them under control arose as among the in the arms control agenda as it was categorised as a major security threat.¹⁷³ The reconceptualization of arms control had several objectives that included:

“To reduce the likelihood that the instruments of armed violence are used against individuals, communities, or states; to reduce the effects of armed violence should it be employed; and to reduce the resources employed in the development, acquisition and deployment of the instruments of armed violence.”¹⁷⁴

4.2.2 The UN Register of Conventional Arms

The end of the Cold War saw rapid developments in arms control mainly owing to human security principles, and SALW were increasingly associated with conventional arms. In the 1990s there were several efforts at the UN to strengthen the regulation and increase transparency of the international arms transfers. These efforts were largely driven by state security concerns such as ‘reducing regional and international tensions’ and ‘maintaining international peace and security’, besides also including elements reflecting human security concerns.¹⁷⁵ In 1991, the ‘P5 guidelines for conventional arms transfers’ was established which was followed by the 1996 ‘UN guidelines for international arms transfers’- both came up with recommendations for the prevention of illicit arms trafficking, while also urging states to take into account several other factors before authorising arms transfers- including ‘the promotion of economic and social development, the peaceful resolution of regional conflicts,

¹⁷² Krause, 2011, p.29.

¹⁷³ Sears, 2012, p.38.

¹⁷⁴ Cooper and Mutimer, 2011, p.11.

¹⁷⁵ Bromley et al., 2012, pp.1034-1035.

and efforts to prevent bribery and corruption'.¹⁷⁶ The role of international institutions was being increasingly observable in the field of arms control.

The UN Register of Conventional Arms (UNROCA) was formed in 1991 which was envisaged to build confidence among states by increasing transparency in the international arms trade;¹⁷⁷ it was targeted at states encouraging them to help 'prevent excessive and destabilising accumulation of arms', requiring all the UN member states to provide annual reports on imports and exports of seven categories of major conventional weapons.¹⁷⁸ It is noteworthy that the UNROCA is voluntary in nature weakening it as an instrument for arms control, and as a result there are no guarantees that all possible data are handed out. Although it has made a significant contribution in terms of better transparency in reporting arms transfers, the state participation has not been consistent, and quality of reporting has also varied making it difficult to compare the information provided. Although not in the scope, countries have taken it upon themselves to report on SALW in recent years, and as a result the Register only recently created a standardised template for reporting SALW transfers.¹⁷⁹ The seven categories of major conventional weapons that are covered under the UNROCA consist of:

- Battle tanks;
- Armoured combat vehicles;
- Large-calibre artillery system;
- Combat aircraft;
- Attack helicopters;
- Warships; and
- Missiles or missile launchers¹⁸⁰

4.2.3 The Wassenaar Arrangement

The next big step at the global level was the Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies of 1995 which Bromley et al. describes as an evolution of COCOM.¹⁸¹ The WA was established outside the auspices of the

¹⁷⁶ UNGA, A/51/42; Bromley et al., 2012, p.1035.

¹⁷⁷ Holtom, 2010, p.61.

¹⁷⁸ UNGA, A/RES/46/36 L.

¹⁷⁹ See <https://www.unroca.org>.

¹⁸⁰ UNGA, A/RES/46/36.

¹⁸¹ Bromley et al., 2012, p.1035.

UN and its primary motive was to contribute to international security and stability “by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies” in an attempt to prevent ‘destabilising accumulations’ (Initial Elements, Section I, para. 1).¹⁸² The WA covers 22 items designed for military use including:

- Small arms and light weapons and related ammunition;
- Tanks and other military armed vehicles;
- Combat vessels (surface or underwater); and
- Armoured and protective equipment¹⁸³

The WA does not have any legal enforcement into the national legislations, and the participating states all contribute to the development of lists of items to be controlled and guidelines for licensing as well as transfers, discuss policies on certain regions or destinations and exchange information on transfers to the non-participating countries.¹⁸⁴ The WA, like UNROCA is primarily a tool for transparency in international arms transfers, and secondarily a control measure. Under the WA instrument, the most recognised measures are the “Best Practice Guidelines for Exports of Small Arms and Light Weapons”, adopted in 2002 and amended in 2007 and the “Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS; WA Elements 2-6)”¹⁸⁵. Regulation of MANPADS and information exchange are the strengths of the WA. Although the WA has a range of mechanisms capable of making it an effective instrument of arms control, it is not legally binding, and civil society did not play any significant role in the establishment of the WA, thus it remains a ‘club of the arms producing states’ and information is confidential.¹⁸⁶

Shortly after the end of the Cold War, human security principles were introduced into the field of arms export controls. There has been a growing trend of similar links in the field of conventional arms control. This is largely due to significant efforts from civil society as well as sympathetic states¹⁸⁷. The reconceptualization in security discourse considered ‘humans’ as the main subject of security policy moving away from the traditional priority that was always

¹⁸² WA, 1998; WA, 2002.

¹⁸³ Parker and Wilson, 2012, pp.68-69; The 22 items are from the Common Military List of the European Union.

¹⁸⁴ Jaffer, 2002.

¹⁸⁵ MANPADS are portable guided or unguided weapons that are used to shoot at aircrafts; WA, 2007.

¹⁸⁶ Laurance, Wagenmakers and Wulf, 2005, p.239.

¹⁸⁷ Borrie and Randin, 2006; Borrie, 2009.

given to the interests of the state.¹⁸⁸ These resulted in reviewing the field of conventional arms control and on humanitarian grounds, there have been bans on entire categories of conventional arms. The most notable steps taken to address humanitarian issues related to arms control include the successful campaigns for a MBT, adopted in 1997, and the CCM in 2008. These were the emergence of global norms that would have a huge impact on the campaign for an ATT from the first steps taken by civil society to the realisation of the treaty. This was the time that civil society established themselves as the major international institutions having a significant role to play in the field of arms control.

4.2.4 The Firearms Protocol

There was a major breakthrough in SALW control at the turn of the millennium. In 2001 the UN made an attempt to address the proliferation of SALW and their effects with legislation. The UN The Protocol Against the Illicit Manufacturing of, and Trafficking in Firearms, Their Parts and Components and Ammunition (the Firearms Protocol) was added in 2001 as a supplement to the United Nations Convention Against Organized Crime (UNTOC)¹⁸⁹. The Firearms Protocol entered into force in 2005 and was the first legally-binding instrument on SALW at the global level. It creates a common international standard by combining measures taken by a variety of regional agreements “to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition”.¹⁹⁰ It criminalises illicit manufacturing of and trafficking in firearms, parts of firearms, ammunition and components. The Firearms Protocol also calls on states to mark each legally produced, exported and imported weapon with identification information or markings and requires States Parties to establish export licensing and authorisation systems.¹⁹¹ Although this was a big step towards addressing the SALW problematique by bringing SALW into the restraints of international law, it did have its limitations. According to Article 4 of the Protocol, relevant offences need to be “transnational in nature and involve an organised criminal

¹⁸⁸ Bromley et al., 2012, p.1036.

¹⁸⁹ UNGA, A/RES/55/25.

¹⁹⁰ Garcia, 2011; UNGA, A/Res/55/255.

¹⁹¹ The Firearms Protocol came into effect in 2005, after the requisite number of states ratified it; Articles 5 and 8.

group”, and it does not apply to transfers between states or in occasions where a certain transfer can have the capacity to threaten a state’s “national security”.¹⁹²

4.2.5 The UN Programme of Action

A 1988 UN General Assembly saw the first efforts being taken in recognising the effects or international arms transfers on fragile states, development and illicit transfers.¹⁹³ The Cold War period saw several attempts by a small number of NGOs to bring small arms issues into attention. However it was not until the end of the Cold War that their efforts started to materialise. Following the end of the Cold War, several intrastate conflicts broke out or escalated owing largely to the diffusion of unregulated weapons, while soon afterwards the world witnessed the introduction of human security principles which was soon integrated into the arms control agenda, and civil society started to take major steps towards campaigns on the issues of conventional arms control. In the years following the introduction of the UNROCA, a number of resolutions were adopted, all of which stressed the importance of national legislation, disarmament and confidence building measures in the conventional arms control agenda. The International Action Network on Small Arms (IANSA) was formed in 1999 which was part of a campaign representing civil society organisations that were concerned about arms control, disarmament and human rights.¹⁹⁴ IANSA acted as an umbrella organisation for various campaigns concerning SALW control.¹⁹⁵

Civil society campaigning played an important role in driving international action on the regulation of arms transfers, and these international institutions played a substantial role in bridging the gap between issues of arms control and export control.¹⁹⁶ The efforts led to creation of the United Nations Programme of Action on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) which was the outcome document of the UN Small Arms Conference held in July 2001. The PoA states the importance of civil society in its preamble in assisting states in the prevention of the illicit trade in SALW.¹⁹⁷ It acknowledged

¹⁹² Article 4.

¹⁹³ Krause, 2001, p.11.

¹⁹⁴ Rogers, 2009, p.173.

¹⁹⁵ Ibid, p.177.

¹⁹⁶ Bromley et al., 2012, p.1037.

¹⁹⁷ Rogers, 2009, p.181.

that the illicit arms trade leaves a negative impact in a way that “sustains conflicts, exacerbates violence, contributes to the displacement of civilians, undermines respect for international humanitarian law, impedes the provision of humanitarian assistance to victims of armed conflict and fuels crime and terrorism”, and outlined for states a variety of agencies to undertake in order to tackle the illicit SALW trade.¹⁹⁸ The PoA requires states to seriously address the risks related to the illicit SALW trade with the establishment of effective export control and licensing systems, standardised record-keeping and reporting of transfers and ensuring all arms manufacturers and suppliers are licensed.¹⁹⁹ Despite the document only being politically binding, the PoA provided the most comprehensive understanding of a range of issues related to the transfer or SALW. It played a crucial role in the development of the normative framework on SALW, and as Laurence and Stohl have deduced, the PoA established the basis for policy-making on SALW control through six thematic areas: regulating trade; marking and tracing; brokering; destruction and reduction of surplus stocks; stockpile security; and information exchange and transparency.²⁰⁰ Further developments include recommendations to take action at regional, national and international levels and to increase international cooperation.²⁰¹ The programme contributed significantly in the establishment of norms in customary international law. Following the outlining of the PoA, a legally-binding instrument to identify and trace SALW was established in 2005 known as the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (The International Tracing Instrument). The International Tracing Instrument requires States Parties to considerably improve efforts and take necessary steps in the marking and record-keeping of weapons, technical assistance and information exchange between states, creation of national points of contact; and cooperate with the International Criminal Police Organization (INTERPOL).²⁰²

4.3 Regional Arms Export Controls

There are several regional arms control agreements that emphasise the urgency of preventing armed conflicts and violations of the IHL. Perhaps the best example is the standards adopted

¹⁹⁸ UN PoA, A/CONF.192/15, I: 5.

¹⁹⁹ Ibid.

²⁰⁰ Laurance and Stohl, 2002, p.5.

²⁰¹ Ibid, pp.41-42; UNGA, A/CONF/192/15.

²⁰² UNGA, A/60/88); Sears, 2012, p.40.

by the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU).²⁰³ Integrating human security principles into declared policy has most significantly been accomplished by the EU.²⁰⁴ In 1998 the EU Code of Conduct of Arms Exports (EU Code) was introduced, which was built upon on 1996 UN guidelines and provided guidelines on the prevention of arms exports that have the capacity to prolong armed conflicts or be used in human rights violations.²⁰⁵ The 2008 EU Common Position replaced the EU Code which defined common rules determining the control of the exports of military equipment and technology, further introducing several additional elements that included an obligation to prevent the export of military equipment or technology deemed to be risky- i.e. where it is likely that they may be used to cause serious violations of IHL.²⁰⁶ There was a clear influence from civil society campaigns that targeted the EU member states to strengthen export controls and to take into account human security concerns in their policies by including them into the EU Code. Significant developments were noticed as the EU member states under the EU Common Position were required to publish publicly available reports on their arms exports, form a culture of information-sharing and cooperation by sharing data on authorisations and exports of conventional arms, ammunition and military equipment and publish data on export licenses.²⁰⁷ It was mainly after the success of the MBT and the effective campaigning from civil society that led to the introduction of the Code of Conduct.

4.4 Arms Embargoes and the UN Security Council

It is worth mentioning that the UN Security Council (UNSC) plays an important role in security threats caused by arms flows or transfers. It has the authority of declaring arms embargoes that are legally-binding prohibition of arms transfers to defined states. The primary objective of embargoes is to counter global security threats, provide support in the peaceful settlement of armed conflicts and reinforce legitimate government authorities.²⁰⁸ There have been

²⁰³ OSCE, DOC.FSC/3/96.

²⁰⁴ Bromley, Cooper and Holtom, 2012, p.1036.

²⁰⁵ Ibid.

²⁰⁶ Council of the European Union, 'European Union Code of Conduct on Arms Exports', 8675/2/98 Rev 2, 5 June 1998; Council Common Position 2008/944/CFSP, 8 Dec. 2008, defining common rules governing control of exports of military technology and equipment, Official Journal of the European Union L335, 8 Dec. 2008.

²⁰⁷ Bromley et al., 2012, p.1037.

²⁰⁸ Fruchart, Holtom, and Wezeman, 2007, p.v.

instances where countries have violated such embargoes, however, the UNSC have not managed to sanction all states that have made violations.²⁰⁹

4.5 Cooperation and the Role of Institutions in Post-Cold War Arms Control

It is evident from the developments in the arms control agenda since the end of the Cold War that there has been increasing levels of cooperation at the regional and global levels, while institutions, ranging from civil society actors to the EU as well as the UN have all had their share of influence in different stages of developments at the regional or global levels. EU member states were already party to several economic, security and other cooperation agreements which made it easier to agree on a regional arms control agreement. The role of civil society in pursuing them to adopt the CoC in 1998, and the subsequent adoption of the EU Common Position nearly a decade later as a legally-binding instrument, substantiate the significant role institutions have played in influencing states towards and advancing cooperation. It is also safe to say that the momentum gained in conventional arms control in the mid-to-late nineties considerably impacted the major developments in SALW control at the turn of the millennium such as the Firearms Protocol and the PoA. These developments validate the neoliberal institutionalist propositions regarding the role of international institutions in international cooperation. The trend towards increasing European integration for instance also strongly support these neoliberal views.

²⁰⁹ Schroeder and Lamb, 2006, p.77.

5. The Campaign for an Arms Trade Treaty

The Arms Trade Treaty (ATT) is the first ever legally-binding instrument at the global level aimed at establishing the “highest possible common standards for regulating or improving the regulation of the international trade in conventional arms” (Article 1). Having entered into force on 24 December 2014, it seeks to promote responsible and transparent arms transfers and to prevent and eradicate the illicit trade and diversion of conventional arms. It was a historically significant event, when the UNGA adopted the initiative for an ATT on 1 April, 2013, which had emerged through a campaign by the civil society seeking to promote a human security agenda for the regulation of international conventional arms transfers first introduced in the Nobel Peace Laureates’ initiative known as the International Code of Conduct on Arms Transfers published in 1997.

5.1 First Steps Towards an ATT

The first few steps towards regulating the conventional arms trade at the global level were taken by civil society. As civil society along with the Nobel Peace Laureates expressed their concerns regarding the unregulated nature of the international arms trade and their impact on human security, it was followed by subsequent actions leading to the proposals of a treaty brought to the UN in 2006.²¹⁰ As countries reviewed existing instruments and exchanged views towards a potential treaty, many of the states acknowledged that the existing international and regional instruments to control arms transfers were rather limited in scope, purpose and implementation resulting in inadequate restraints on international arms transfers.²¹¹ The revelation of Idi Amin’s death squads in Uganda having used UK-supplied military and paramilitary equipment caused outrage, which was followed by similar scandals involving arms from the US, Germany and other countries in the 1980s; these led the Amnesty International’s governing body to develop policy aimed at promoting strict legal control of the arms transfers of security, military as well as police with respect to human rights, and to determine the timing for public calls to stop transfers that contribute to grave human rights violations.²¹²

²¹⁰ Parker, 2008; UNGA, A/RES/61/89.

²¹¹ Parker, 2008, pp.9-10.

²¹² Mack and Wood, 2009, p.3.

The first major steps were taken by NGOs with the help of international lawyers, who worked on creating a “Code of Conduct for the European Union”. An EU-wide NGO-campaign resulted in the adoption of a EU Code of Conduct of Arms Exports in 1998, although it was a politically-binding agreement, and not a legally-binding one as the NGOs had campaigned for.²¹³ Soon afterwards, NGOs with a shared vision on responsible arms transfers with regard to human rights formed a “Code Working Group”, seeking to come together to promote their agenda.²¹⁴ In 2001, the Code of Conduct on Arms Transfers was developed into Framework Convention on International Arms Transfers, calling on governments to strictly fulfil their commitments on IHL and IHRL when they consider applications for export licenses.²¹⁵ Following the success of civil society campaign for a humanitarian arms control convention on landmines, the campaigners switched from an initial goal of a framework convention to a treaty. Subsequently, the Control Arms campaign was launched in October 2003 by a coalition of major civil society influencers that included Amnesty International, Oxfam, Saferworld and the International Action Network on Small Arms (IANSA) that advocated the adoption of an “Arms Trade Treaty”, calling for a ‘maximalist ATT’, based on human rights, development and IHL concerns.²¹⁶ This would mean that the treaty would stress on a couple of important factors: (a) states will be required to deny authorisation to arms transfers that is likely to a negative humanitarian impact, or have the potential of being diverted to end-users that are unauthorised or illicit trade; and (b) comprehensiveness when it comes to activities including the requirement to cover all conventional arms, military technology and equipment and ammunition.²¹⁷ The aim of the ATT is to create a new global norm where the arms transfer practices of states will be measured in the future.²¹⁸ Civil society called for a strong and robust ‘maximalist ATT’ that ensures that:

- The treaty text clearly reflects its humanitarian purpose;
- The scope includes all forms of conventional arms, including all their ammunition;
- The broadest definition of arms transfers is provided; and

²¹³ Ibid, p.4.

²¹⁴ Ibid, pp.4-5.

²¹⁵ Draft Framework Convention on International Arms Transfers, 2001.

²¹⁶ Green and Macdonald, 2015; Control Arms, 2015.

²¹⁷ Bromley et al., 2012, p.1039.

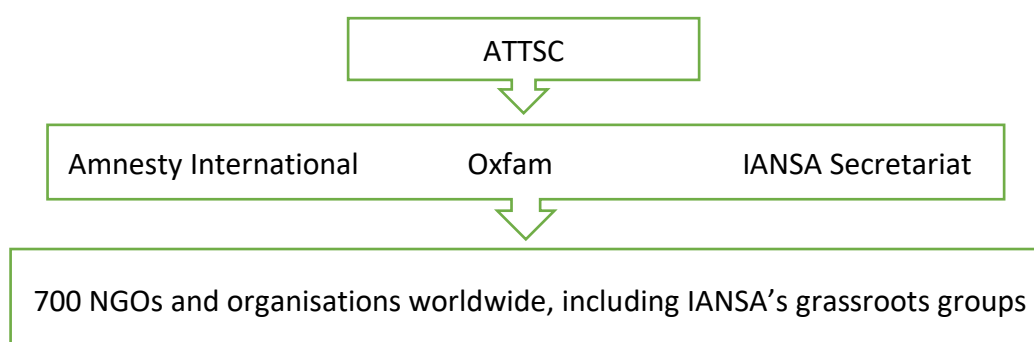
²¹⁸ Control Arms, 2013.

- With respect to IHL, the risk assessment before authorising transfers must adhere to the following:
 - (a) Assessing the likelihood of the arms transferred being used to commit serious violations of IHL; and
 - (b) Refraining from authorising transfers in case there was a clear risk that the arms could be used to commit serious violations of IHL.²¹⁹

5.2 Civil Society Campaign and State Participation for an ATT

Civil society was equally active on a global level, raising governments' and public awareness. The NGOs involved shared a common vision that all international arms transfers must be put under regulations to prevent serious human rights violations. The Code Working Group which was formed years before the launch of the Control Arms Campaign was expanded in 2001 and renamed as "ATT Steering Committee" (ATTSC).²²⁰ In 2002 the ATTSC decided to come up with an international campaign. Launched in October 2003, Control Arms used various popular mobilisation techniques in more than 120 countries in an effort to create awareness among governments and public alike; its 2005 publication titled "Global Principles for International Arms Transfers" was published in different languages and was promoted worldwide mainly as a blueprint to draft parameters for a potential ATT.²²¹ Below is an illustration of the synopsis of the Control Arms campaign that has been adapted from 'The Control Arms Campaign: A Case Study of NGO Impacts on international relations after the Cold War'.²²²

Figure 1: Synopsis of the Control Arms campaign.



²¹⁹ ICRC, 2016, pp.10-11.

²²⁰ Mack and Wood, 2009, pp.4-5.

²²¹ Ibid, p.5.

²²² Alcalde, 2012, p.7.

The treaty was first considered in 2006, as resolution 61/89 was adopted by the UN General Assembly, establishing a Group of Governmental Experts (GGE) on arms transfers; what followed like-minded states proposing a draft resolution to work towards an Arms Trade Treaty, which was accepted by the UN in 2009. The idea of a legally-binding instrument drawing on existing principles within the international law as well as standards to prevent irresponsible arms trade surfaced from discussions between Amnesty International, Saferworld, the British American Security Information Council and the World Development Movement.²²³ The Control Arms campaign succeeded in persuading many states to promote calls for a maximalist ATT, while they kept lobbying for support from others, drawing on the success of civil society campaigns that lobbied for conventions on landmines and cluster munitions as well as the PoA.²²⁴ Other NGOs including ICRC had been instrumental in raising governments' and public awareness of the severe human cost of the widespread availability of arms.²²⁵ Governments were pressed to accept the idea of a principled ATT. The UK became the first permanent member of the UNSC to support the ATT initiative in September 2004 and it went beyond the promotion of ATT as only concerning human security principles by also presenting it as an instrument that could promote the standards that were adopted in the pre-existing arms export control regimes.²²⁶ The ATT initiative complimented the EU views and commitments with regard to the EU Code of Conduct as well as the idea of the strengthening of export control systems in third countries²²⁷

There were seven Governments that supported the civil society campaigns backed up by Nobel Peace Laureates- Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the UK.²²⁸ These states became co-authors and sponsored the first United Nations General Assembly resolution on an Arms Trade Treaty in 2006.²²⁹ When they submitted a draft resolution entitled "Towards and arms trade treaty" to UNGA First Committee members, they requested the UN Secretary-General to seek the views of member states on the 'feasibility, scope and

²²³ Mack and Wood, 2009, p.3.

²²⁴ Brem and Rutherford, 2001.

²²⁵ ICRC, 2016, p.4.

²²⁶ Bromley et al., 2012, p.1039.

²²⁷ Holtom and Mičić, 2012.

²²⁸ Woolcott, 2014, p.2.

²²⁹ UNGA resolution 61/89 of 6 December 2006, adopted by 153 votes, 1 against and 24 abstentions (Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms).

draft parameters' for a legally-binding mechanism to establish "common international standards for the import, export and transfer of conventional arms"; 77 states had co-sponsored this resolution while 153 voted in favour of it, with the exception of the US which voted against.²³⁰ Following the submission of views by member states, the UN General Assembly adopted Resolution 64/48 by 151 votes, which called for a UN Conference on the Arms Trade Treaty in 2012, a four-week long conference with the objective of elaborating "a legally binding instrument on the highest possible common international standards for the transfer of conventional arms".²³¹

5.3 How was the ATT achieved?

The ATT was achieved through several phases of discussions, preparations and negotiations since the submission of the draft in 2006. When the first resolution was adopted by the UN General Assembly in December after seven countries presented the initial draft in July 2006, US was the only country to cast a negative vote. The journey from the 'Draft Framework Convention' to its adoption on 2 April 2013 was a remarkable one which faced adversities but managed to pull through due to the efforts of the key actors. The main journey of the ATT, of how the treaty was negotiated, can be divided into four phases and each of the phases are explained below, with key events and issues from the preparations and discussions to the negotiations.

5.3.1 Phase One: Initial Progress and the Formation of the GGE

A Group of Governmental Experts (GGE) was established by the first resolution seeking to make a feasibility examination of an ATT, which also welcomed the views of the member states to be submitted to the Secretary-General 'on 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'.²³² The GGE started discussions in 2008, while states submitted their views. Civil society played a vital role in campaigning to ensure that the ATT supporters' views were heard by the UN and that a

²³⁰ UNGA, A/RES/61/89; UN conference aimed at strengthening global effort against illicit small arms trade ends without agreement on final document', UN press release doc. DC/3037, 7 July 2006.

²³¹ UNGA, A/RES/64/48.

²³² UNGA, A/RES/61/89.

treaty regulating the arms trade was feasible and absolutely necessary. More than a 100 states answered the call to submit their views, creating history. Twenty-nine states participated in the sessions which included the US. The GGE sessions addressed the globalised arms trade that sees a huge number of equipment and weapons systems transfers including technology transfers, and also the illicit market which is run by unlicensed transfers and production, illegal re-exports as well as unlawful brokering, from which arms could be acquired to be used in acts of terrorism, organised crime and other criminal activities.²³³ The GGE held discussions on three occasions between February and August 2008, and a final report was adopted by consensus with Argentinian diplomat Ambassador Roberto Garcia Moritan playing a major role in the process. He was entrusted with chairing the GGE on the ATT, having previously chaired the GGE on the UNROCA. The ultimate outcome was a call for continued discussion within the UN General Assembly framework of universal membership for an ATT, maintaining openness and transparency.²³⁴

5.3.2 Phase Two: Establishment of OWEG

Drawing on developments made from the GGE, the co-authors submitted another resolution in 2008, which resulted in the creation of an Open-Ended Working Group (OWEG) to ‘further consider those elements in the report of the Group of Governmental Experts where consensus could be developed for their inclusion in an eventual legally binding treaty on the import, export and transfer of conventional arms...’.²³⁵ The OWEG met twice in 2009 chaired by Ambassador Moritan, which produced a procedural report with no recommendations. The UN General Assembly decided to convene a United Nations conference on the ATT in its resolution 64/48 of 2 December 2009, to meet for a four-week Negotiating Conference in 2012, in order to formulate a legally-binding instrument for “the highest possible international standards for the transfer of conventional arms”.²³⁶ It was concluded in the report previously adopted by consensus in paragraph 23 that:

²³³ Stohl, 2009.

²³⁴ Adamson and Pollard, 2015.

²³⁵ UNGA, A/63/334. pp.2-3.

²³⁶ UNGA, A/C.1/64/L.38/Rev.1.

“The Open-ended Working Group also recognized the need to address the problems relating to unregulated trade in conventional weapons and their diversion to the illicit market. Considering that such risks can fuel instability, international terrorism, and transnational organized crime, the Group supports that international action should be taken to address the problem.”²³⁷

5.3.3 Phase Three: Preparatory Committee

Leading up to the Negotiating Conference, the OWEG made way for the Preparatory Committees. Four sessions of Preparatory Committee was established seeking to provide the 2012 Conference with substantial recommendations.²³⁸ The US had opposed the resolutions up until that point, however, due to a change in political landscape it changed its position and expressed its support for the ATT, on conditions of consensus decision-making.²³⁹ This was when Obama was elected President of the US and Secretary of State Hillary Clinton reversed the policy to back negotiations on a treaty to regulate the arms trade.²⁴⁰ This created some tensions among the supporting states and the civil society because they did not see consensus in a favourable way, rather associating it with lack of progress, stagnation and lowest common denominator.²⁴¹ However, a shift in the standpoint of the US, a major world power, had a significant impact on the motivations of the co-authors as they felt strengthened and encouraged and subsequently put forward the consensus rule for the conference’s final outcome and vote it through. This resulted in the establishment of the Diplomatic Conference, also known as the Negotiating Conference, as 153 states voted in favour to 1 against (Zimbabwe), while 19 abstained and the Preparatory Committees were set to take place.²⁴² The Preparatory Committees were held in July 2010, February and July 2011, and February 2012.²⁴³ The first three committees were largely used for attempts to formulate a draft treaty in order to be used as the foundation for the Diplomatic Conference. During the Preparatory Committee, NGOs were present playing different roles; those with consultative

²³⁷ UNGA, A/RES/63/240.

²³⁸ Prizeman, 2012, p.2.

²³⁹ Adamson and Pollard, 2015, p.152.

²⁴⁰ Mohammed, 2009.

²⁴¹ Adamson and Pollard, 2015, p.152.

²⁴² Ibid.

²⁴³ The Preparatory Committee meetings, chaired by Ambassador Moritán, were held on 12- 23 July 2010, 27 February-3 March 2011 and 11-15 July 2011.

status were authorised to attend the main committee, others that were part of the campaign or had relevant work or goals were authorised to attend open meetings while representatives from accredited NGOs were able to address the committee through specified meetings allocated for that purpose.²⁴⁴ NGOs also called for an all-encompassing treaty, which should ideally contain the broadest range of conventional arms, beyond the categories of UNROCA as well as the broadest definition of international transfers.²⁴⁵ The negotiating position of civil society from the Preparatory Committees is best summarised by Prizeman as follows:

“There is a broad consensus on the main points of advocacy. The ATT must be robust and fully implementable to include a comprehensive scope, victims' assistance, primary attention on diversion, and provisions and structure to facilitate international cooperation and assistance that will ultimately stop transfers of arms and ammunition that fuel conflict, poverty, and serious violations of human rights and international humanitarian law.”²⁴⁶

The member states discussed contents and some put emphasis on the ‘7+1’ and the ‘7+1+1’ proposals referring to the reporting on the seven categories of conventional weapons from the UNROCA, with ‘+1’ referring to the addition of SALW and the second ‘+1’ ammunition.²⁴⁷ The Caribbean Community (CARICOM) and the Africa Union put massive efforts pushing for the inclusion of SALW as the regions have experienced the impact SALW in wrong hands can have.²⁴⁸ The EU also supported a comprehensive scope with the inclusion of SALW and ammunition. The reasoning on the inclusion of ammunition is that guns are useless without bullets. The Chair of the preparatory committee produced a non-paper under his own responsibility dated 14 July 2011 meant to serve as one of several background documents for the Diplomatic Conference.²⁴⁹ In the fourth committee, the logistical parameters on the Diplomatic Conference were discussed.

²⁴⁴ Preparatory Committee for the United Nations Conference on the Arms Trade Treaty, Draft decision on the modalities of attendance of non-governmental organizations at the sessions of the Preparatory Committee (A/CONF.217/PC/L.2, 9 July 2010)

²⁴⁵ Mack and Wood, 2009.

²⁴⁶ Prizeman, 2012, p.6.

²⁴⁷ Kytömäki, 2010, pp.22-23.

²⁴⁸ Prizeman, 2012, p.7.

²⁴⁹ UNGA, A/CONF.217/1, Annex 2.

The EU strongly supported the idea of an ATT since the beginning, and especially Finland and the UK were among the co-authors in tabling the initial UN resolution in 2006. Having developed its own common policy on arms export controls, the EU has over the years been a strong advocate of arms control having first established the EU Code of Conduct on Arms Exports (CoC) in 1998 and then having adopted the 2008 Common Position which is a legally binding instrument. Throughout discussions the EU presented its own export control regime as a significant example of a multilateral and effective export control regime.²⁵⁰

5.3.4 Phase Four: Negotiations

The United Nations Diplomatic Conference of the Arms Trade Treaty took place in New York for four consecutive weeks from 2 to 27 July under the Presidency of Ambassador Moritan. At the conference, the report from the Preparatory Committee was taken into account along with a compilation of views on the elements of an Arms Trade Treaty by member states prepared by the Secretariat.²⁵¹ From 9-20 July two committees were established to negotiate the elements of the ATT. Some of the most important topics that invited arguments were the scope of the treaty, SALW, ammunition, diversion and risk assessment criteria. For scope, many advocated an approach that is broad, with the treaty covering all conventional arms but it was difficult to negotiate because of the lack of a proper definition that would specify exactly what weapons and ammunition are included.²⁵² Inclusion of ammunition also received considerable mentions, while risk assessment criteria discussions raised questions on the factors to be considered by national authorities while making assessment before authorising transfers while taking into account human rights and the international humanitarian law.²⁵³ The EU Code of Conduct and ECOWAS guidelines for instance can serve as good examples for risk assessment that could be followed, but eventually no agreement was reached.²⁵⁴ Diversion to the illicit market also rose as a key issue of debate during negotiations, particularly concerned were Mexico and several other Latin American states although several

²⁵⁰ Depauw, 2012, p.4.

²⁵¹ UN Conference on the ATT, A/CONF.217/2, 10 May 2012 ; A/CONF.217/2/Add.1, 27 June 2012.

²⁵² Adamson and Pollard, 2015, p.153.

²⁵³ Ibid, pp.153-154.

²⁵⁴ Ibid, p.154.

states expressed doubts by questioning the ambiguity in the definition of diversion and what it should include.²⁵⁵

On 26 July 2012, President Moritan submitted the comprehensive draft ATT text but failed to find consensus.²⁵⁶ The main reason was divergent views from several states over certain areas. Mainly the US, with support from China, Cuba, Russia and several others, called for more time at the disappointment of many. Likewise there have been several areas of convergence as well as divergence from the member states, and eventually the conference was not able to reach a result, although the report was adopted on 27 July 2012.²⁵⁷ Civil society organisations including Amnesty International, Oxfam and ICRC refined their public advocacy for legal restrictions that are regarded as indispensable for the fulfilment of international human rights and humanitarian law obligations.²⁵⁸

5.3.5 The Final Negotiation

Upon submission of a new resolution, 67/234A in the sixty-seventh session of the UN General Assembly by the co-authors, the Final United Nations Conference on the Arm Trade Treaty was adopted, and was to be held in New York from 18 to 28 March 2013.²⁵⁹ Civil society played a significant role, as they had done so throughout the process; major lobbying was carried out by the Control Arms campaign, along with other international human rights NGOs.²⁶⁰ Ambassador Peter Woolcott of Australia was nominated President for the Final Conference.

There was significant political will in reaching a collective outcome at the Final Conference, especially since the July 2012 Conference failed to deliver results. The President provided delegates with three draft texts that were progressively stronger than the previous one; informal discussions were conducted with the help of certain facilitators on major elements of the texts.²⁶¹ The discussions led to significant restructuring of the elements from the 26 July 2012 text, including the addition of new major elements. The final treaty was well

²⁵⁵ Ibid.

²⁵⁶ UNGA, A/CONF.217/CRP.1.

²⁵⁷ UNGA, A/CONF.217/4.

²⁵⁸ Crovetto and Caponigro, 2016, p.29.

²⁵⁹ UNGA, A/RES/67/234.

²⁶⁰ Muggah, 2013.

²⁶¹ Woolcott, 2014, pp.3-4.

balanced and strong and was significantly able to hold together the divergent interests of major actors; there was notable divergence of views initially, however, delegations cooperated and compromised in order to make all the hard work throughout the years come to fruition and an effective and balanced treaty is achieved.²⁶²

The issues that were raised during the Preparatory Committees, as well as the first Negotiating Conference, were addressed without compromising the major elements. Diversion was given a designated article (Article 11). For risk assessment, four key criteria were drafted on which to assess arms transfers- violation of International Humanitarian Law (IHL), International Human Rights Law (IHRL), offences of transnational crime, and offences under terrorism instruments.²⁶³ Considering the scope of the treaty, references were taken from pre-existing instruments, mainly UNROCA and the Firearms Protocol, implying that conventional arms in the context of the ATT consisted of the seven categories of conventional arms as in UNROCA, plus SALW as the eighth category. However, despite calls from several states on the inclusion of ammunition in standard reporting, it was not covered in all aspects of the treaty.

On 28 March, Ambassador Woolcott prepared the amended text for adoption, which was supported by the US and not opposed by China and Russia, however, it was opposed by Iran, North Korea and Syria citing the Article 6 references to UN Security Council arms embargoes deeming it unacceptable thus blocking the adoption. As the treaty failed to achieve unanimous support, Ambassador Woolcott transferred the process to the UN General Assembly in an attempt to overcome objections by three states. Despite the treaty not being adopted, the final negotiations resulted in a robust treaty that had universal acceptance. The General Assembly resolution 67/234A which summoned the Final Conference had a built-in redundancy, and with the legitimacy of delegations as the treaty text went to the General Assembly, was adopted by the General Assembly 67/234B on 2 April 2013 by 154 states in favour to 3 against (Iran, North Korea and Syria) with 23 abstentions (including China, India, Russia and Gulf states).²⁶⁴

²⁶² Ibid, p.4.

²⁶³ Adamson and Pollard, 2015, p.156.

²⁶⁴ UNGA, A/RES/67/234 B

The treaty used the term transfer, that covers export, import, transit, trans-shipment and brokering (Article 2.2). It built on the foundations by UNROCA, and the description of relevant items covered within the conventional arms for reporting is as follows:

Table 2: Items covered in the scope of the ATT

i	Battle tanks	v	Attack helicopters
ii	Armoured combat vehicles	vi	Warships
iii	Large-calibre artillery systems	vii	Missiles and missile launchers
iv	Combat aircraft	viii	Small arms and light weapons (SALW) ²⁶⁵

The treaty provisions encompass, although to a lesser extent ammunition and munitions “fired, launched or delivered” by such types of weapons (Article 3); and parts and components were covered “in a form that provides the capability to assemble those arms” (Article 4).²⁶⁶ Article 5 on General Implementation recommends States Parties to include a wide range of conventional arms and as a requirement they must maintain a national control system which is transparent and effective in regulating transfers which means a national control list must be established by the States parties that works as a system of detailed authorisations prior to any export, while allocating resources to keep competent national authorities for regulating transfers.²⁶⁷ Transparency is a key element incorporated to the ATT’s main operative articles, and that ensures full and effective implementation of the ATT while building confidence in compliance. Overall, the main objective of the ATT is to establish the ‘highest common international standards’ for the transfer of conventional arms, and contribute to international and regional peace by reducing human suffering, promoting international cooperation, responsible arms transfers and transparency.

There were several final provisions of the treaty that include articles governing the establishment of the infrastructure of the treaty, how often meetings should take place, when amendments can be made to the treaty, settlement of disputes and requirements for it to enter into force and reservations. Some of the major elements of the ATT’s final provisions are as follows:

²⁶⁵ UNGA, 2013, ‘Certified true copy (XXVI-8)’, Art. 2(1).

²⁶⁶ Wood and Abdul-Rahim, 2015, pp.17-18.

²⁶⁷ Ibid, p.18.

- A Conference of States Parties (CSP) to be convened within a year following the entry into force. The first CSP will determine the frequency of future meetings and the rules of procedure that will govern such meetings;²⁶⁸
- Proposed amendments to the treaty can be made for the first time six years after entry into force, and every three years thereafter;²⁶⁹
- When a proposed amendment is being considered, achieving consensus should be the main objective of States Parties; in other cases three-quarters majority vote would mean the amendment may be adopted.²⁷⁰ Any amendment adopted will only bind States Parties that formally accept the amendment with the depositary;²⁷¹ and
- The treaty will enter into force 90 days after 50 states have ratified the treaty.²⁷²

NGO groups played a significant role both inside and outside the auspices of the UN. Outside, they partnered with people who have been directly affected by major weapons and small arms, politicians, celebrities, and used a wide variety of popular mobilisation techniques to raise public awareness at the global level, while being equally active with governments.²⁷³ They have actively participated in the discussions and negotiations, and have continuously advocated for an all-encompassing global treaty that included the broadest definition of international transfers as well as the broadest possible range of conventional arms.²⁷⁴ With the strong organisational platform, the NGO groups supported their cause by credible research, with over 50 reports published in a ten-year period on different aspects of a global treaty.²⁷⁵ A timeline of the ATT process under the auspices of the UN is illustrated below:²⁷⁶

²⁶⁸ Article 17(1)-(2).

²⁶⁹ Article 20(1); Amendments may likely assist in the strengthening of the treaty.

²⁷⁰ Article 20(3).

²⁷¹ Article 20(4).

²⁷² Article 22(1).

²⁷³ Mack and Wood, 2009, pp.15-16.

²⁷⁴ Ibid, p.12.

²⁷⁵ Green, 2014.

²⁷⁶ Adapted from Parker, 2014, p.79 in Small Arms Survey 2014: Women and Guns.

Figure 2: Timeline of the ATT

2006

18 October Resolution submitted by co-authors titled 'Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms' to UNGA
December UNGA adopts Resolution 61/89

2007

September GGE appointed

2008

11–15 February First GGE session
12–16 May Second GGE session
28 July–8 August Third GGE session
August GGE submits its report
December Resolution 63/240 adopted by the UNGA; OEWG established

2009

23 January Organisational session of OEWG
2–6 March First tangible OEWG session
13–17 July Second tangible OEWG session
July OEWG report submitted
December Resolution 64/48 adopted by the UNGA; Diplomatic Conference established

2010

2–23 July First ATT Preparatory Committee

2011

28 February–4 March Second ATT Preparatory Committee
11–15 July Third ATT Preparatory Committee

2012

13–17 February Fourth ATT Preparatory Committee
2–27 July UN Diplomatic Conference on the ATT
November Resolution 67/234 A adopted by the UNGA

2013

18–28 March Final Diplomatic Conference on the ATT
2 April The ATT is adopted by the UNGA through Resolution 67/234 B
3 June ATT opens for signature

6. Analysis and Discussion

This study recognises the shift in the arms control agenda since the end of the Cold War as a major causal factor for the creation of the first ever global treaty regulating the international transfers of conventional arms. It also identifies the developments made in arms control concerning conventional arms, and how each agreement was in fact progress being made in this field, increasing the focus on the humanitarian aspects of the arms trade from the licit to the illicit sphere and strengthening campaigns to address these issues. The end-product was the creation of an ATT- the first ever treaty aimed at regulating the international transfers of major weapons and SALW. There were several crucial factors that were behind the success of the campaign. The analysis section identifies the major causal factors behind the emergence to the success of the campaign for an ATT, drawing on constructivism, realism and neoliberal institutionalism.

6.1 A Paradigm Shift

Conventional arms and their deadly effects started to gain global attention since the early 1990s, while the UNROCA was established to promote transparency in conventional arms transfers. At that point there were only two NGOs addressing small arms problems from an advocacy point of view.²⁷⁷ The post-Cold War human security agenda, and the increased focus on issues such as human security, non-state actors, civil conflicts and development gave rise to a new era of arms control, shifting focus away from the nuclear arms control of the Cold War era. The Cold War era was dominated by nuclear arms races between the Eastern and Western Blocs, and simultaneously several arms control agreements were reached in order to contain the possibilities of a nuclear warfare. The end of the Cold War resulted in the broadening of the security discourse. The inclusion of non-state actors as major security threats was done in addition to the reconceptualisation of security in terms of protection of civilians or human security; the latter playing a pivotal role in bringing the effects of major conventional weapons and SALW into limelight. Campaigns followed soon afterwards from civil society resulting in a global prohibition regime in the form of a MBT, addressing the risks of anti-personnel landmines that were having devastating effects in parts of the world killing

²⁷⁷ Small Arms Survey Yearbook 2003, chap. 7.

people indiscriminately. Following the success of the MBT, civil society shifted focus on SALW as small arms issues continued to evolve in the UN agenda. At the turn of the millennium, the PoA and the Firearms Protocol substantiated the advances made within the small arms sphere. Soon after the creation of the Control Arms campaign several years later, progress was being made towards the creation of a new norm, the first ever treaty aimed at regulating the trade in conventional arms at the global level- the ATT.

6.2 Major Norms that Influenced the ATT Campaign

There are two major norms in particular that had a significant influence on the formation of the ATT. First is the MBT, which was largely and successfully promoted by norm entrepreneurs. Driven by the human security agenda in the post-Cold War era, the actors involved pushed for a total ban on the use, transfer, production and stockpiling of anti-personnel landmines, otherwise known as the MBT which was adopted in 1997 and entered into force in 1999. Besides domestic groups being involved in the MBT, a major actor in civil society, International Committee of the Red Cross took the responsibility of spreading knowledge and carrying out public campaigns highlighting the deadly impacts of anti-personnel landmines especially on civilians seeking a total ban. In the process, the International Campaign to Ban Landmines (ICBL) was formed, which is a coalition of civil society organisations similar to the Control Arms Campaign. ICBL was instrumental in pressuring governments and other stakeholders towards an effective global prohibition regime.

The 2008 Convention on Cluster Munitions (CCM) followed a similar process from its emergence as a norm up to the creation of the international law. The major issue with cluster munitions was also similar to that of anti-personnel landmines and in some ways more devastating- they have wide area effects and are unable to distinguish between civilians and combatants. The use of such munitions also leave behind large numbers of dangerous unexploded ordnance. In 2003 the Cluster Munition Coalition (CMC) was formed by a network of civil society organisations that included Amnesty International, Handicap International and Human Rights Watch, who started a campaign against the use, production, stockpiling and transfer of cluster munitions. It also partnered with supporting states, including Norway who

played a significant role alongside the CMC in organising campaigns, facilitating regional and international conferences, negotiations and discussions while maintaining the momentum and eventually resulting in the creation of the treaty in 2008 which entered into force in August 2010. The norm entrepreneurs played a vital role in the campaigning and creation of the cluster munitions norm.

The MBT was the first conventional arms control campaign since the normative change took place in arms control with integrated human security principles. The success of this campaign allowed civil society to realise their ability to bring results through bottom-up power and the campaign for a global treaty to regulate the conventional arms trade followed alongside the campaign to ban cluster munitions. While developments were being made in arms control concerning SALW that included the Firearms Protocol and the PoA, the success of the cluster munitions campaign was another major victory, and both the conventional arms control regimes with incorporated human security principles in the form of IHL and IHRL had a significant influence in the campaign for an ATT as it gained momentum.

6.3 A Constructivist Exposition of the Formation of the ATT

There was a global urgency for a normative change in conventional arms control, civil society took responsibility and the rest is history. Constructivism essentially explains the normative change resulting in the creation of the ATT as a new norm in arms control, with the help of the theory of norm building. The major norm entrepreneurs include primarily Control Arms, founded by some of the largest and most influential civil society organisations, along with the seven co-authors and other like-minded states. Civil society campaigns included effective popular mobilisation techniques, publishing reports on topics ranging from the effects to consequences of arms proliferation. There were also many other renowned NGOs such as the ICRC who have also participated in the process closely. All members of civil society were instrumental from the adoption of the very first resolution in the UN General Assembly in 2006, having the organisational platform, and providing informational backing. Civil society and partner countries were successful in transferring the norm on to the ATT agenda and subsequently to governmental discussions, and with the help of the UN platform, discussions and negotiations continued. Besides effective campaigns at the global level to raise

awareness of public and governments through popular mobilisation, they were also ever-present in the formal discussions and negotiations as well as side-events. It was crucial for the norm to progress from that point, and get the support of major powers, most of whom are major arms producers with quite a few showing their reluctance.

Much of the credit goes to the norm entrepreneurs for their relentless efforts behind the success of the ATT. As the humanitarian arms control agenda rose in prominence in the 1990s, major NGOs with a strong organisational platform campaigned for conventional arms control regimes aimed at reducing human suffering. They did a phenomenal job in disseminating information with the help of competent research and advocacy. Following the success of the MBT and CCM, the new norm in the global arms trade was created with the norm entrepreneurs playing the most important role from the beginning of the process till the end, from the global campaigns to gathering the support of and mobilising a large number of states to negotiate the treaty at the UN. There was a desperate need of a normative change which was finally achieved.

6.4 The Role of Civil Society as Norm Entrepreneurs and International Institutions

Civil society groups deserve praise for their enterprise and influence in successfully managing to deliver the notion of an ATT through to the UN process. They have been instrumental in their actions and drive, and there is little doubt that the success of the ATT campaign was largely due to the role they played from start to finish. While the ATT was being discussed and negotiated for nearly seven years, the NGO groups were very active in their campaign not only within the auspices of the UN, but also outside. Civil society groups from all over the world actively participated in the discussions and negotiations pushing for a 'maximalist ATT'. The ATT resolution in 2008 garnered massive support, however, the text was considerably weaker than what the active civil society groups had hoped for, prompting them to urge governments to boost their efforts for principled negotiations.²⁷⁸ The groups not only had credibility and years of experience in different issues, but were also very competent in research, policy and legal analysis, advocacy, and campaigning. The strategies for popular

²⁷⁸ ICRC, 2016, pp.10-11.

mobilisation included media engagements, connecting with and publicising the stories of many people around the world who suffer or have suffered from armed conflicts or other issues related to conventional arms. The campaign also involved influential celebrities, leaders and journalists in focusing on human sufferings due to irresponsible trade, while managing to collaborate with 20 prominent journalists who have experience of reporting from conflict zones.²⁷⁹ Also considered a major achievement was getting campaigners from 124 countries to collect over 2000 signatures from their local lawmakers, or members of parliament, in the process gaining a rather strong political backing.²⁸⁰

In September 2009, more than 1300 NGO representatives from over 50 countries gathered at the UN Department of Public Information/NGO Conference, where they asserted in their final “Disarming for Peace and Development” declaration that they offer “strong support for an effective arms trade treaty for all types of conventional weapons”.²⁸¹ Civil society has been present at every step within the UN processes, as they kept prompting delegations of the humanitarian imperative of a strong ATT through formal, bilateral as well as group meetings. An effective strategy was to conduct activities such as seminars, workshops and side-events with various stakeholders, many of which have been done in partnership with delegations from supportive states as well as various agencies of the UN including UNIDIR, and the UN Office for Disarmament Affairs (UNODA).

6.5 Neoliberal Institutional Exposure of the Successful Process of the ATT

6.5.1 The Role of Major Powers

The findings of this study suggest that some of the major world powers had a significant influence in the success and shaping of the treaty. Besides civil society’s contributions, governments were the ones responsible for the key developments during the discussions and negotiations. The UK was very crucial for the success of the ATT, due to its position as a major world power, and the 6th largest arms exporter in the world. The UK government’s partnership with major NGOs and its defence industry gave it legitimacy and influence during the UN

²⁷⁹ Mack and Wood, 2009, p.15.

²⁸⁰ Ibid, pp.16-17

²⁸¹ Ibid, p.18.

processes for an ATT. The government backed up by the industry had already removed possible blockers of the treaty in its early stages, and the UK government was able to exert a significant level of influence and encouragement towards other governments. It must also be noted that one of the biggest breakthroughs was the US government changing its standpoint after the Obama administration came to power. The US was the only country who voted against a treaty since the early stages and this shift was of huge significance to the success of the treaty. The country is not only considered the largest and most powerful economy in the world, but is also by far the largest exporters of conventional arms in the world. It can be said that the support of the US for an ATT turned the tide, and it also had an influence in the shaping of the treaty text. As discussed previously, the EU also provided strong support for a robust ATT which also made a huge difference as the region has some of the major world powers and largest arms exporters in the world.

6.5.2 The Role of Regional Groups and the Impact of Regional Transfer Control Agreements

Regional groups had a major influence in the shaping of the treaty. There were several regional groups that advocated for a strong and robust ATT. The Africa Group and the CARICOM were among the strongest supporters of an all-inclusive treaty, and they advocated for the inclusion of all major weapons, SALW as well as ammunition in the scope of the treaty. The EU also held a similar position, and during the discussions and negotiations the delegations from especially these three regional groups helped shape the elements of the treaty. Some of this was made possible due to several groups already having effective regional transfer control agreements in place, which made it easier to support one at the global level. The Africa Group already shared positive experiences from the ECOWAS Convention which prompted it to advocate for a global treaty to minimise the threats in their region. On the other hand, the EU Common Position on arms export controls, a legally-binding region-wide instrument effective since 2008, made it possible for many EU countries to support the ATT, and this was very important for the success of the campaign because some of the largest arms exporters are in the EU, such as France, Germany, Italy, Spain and the UK. The EU Common Position was an upgrade of the politically-binding EU Code of Conduct that was agreed in 1997 as a result of civil society efforts. Many of these countries are not only the largest exporters, but also boast some of the largest economies and are major world powers, which give them the ability to influence other governments on stages as big as the UN. France for instance

aligned itself with the likes of the UK as a strong supporter of an ATT as momentum behind a proposed treaty picked up in 2010.²⁸² The role of regional agreements was immense, because for states that were already party to a regional agreement, the ATT was evolutionary and not revolutionary. The variety of states from Europe to Africa among others which were party to regional agreements were part of the normative environment with tighter mechanisms on the arms trade. The efforts from the regional groups as well as the regional transfer control agreements were major stepping stones to an ATT. The new global norm was an upgrade of what had been a regional norm for a handful of states.

6.5.3 The Role of Industry

The arms industry played an important role in the formation of the ATT. While the US arms industry considered a global treaty a threat to their commercial endeavours, there were others from less influential regions that also opposed the idea of an ATT. However, the UK government was among the strongest supporters of a global treaty, and they have received full support from their own aerospace and defence industry as major companies provided crucial assistance from the early stages. The UK government was able to set up a campaigning partnership with two groups with largely opposite interests- major NGOs and major aerospace and defence corporations which delivered a powerful message to the rest of the world.²⁸³ Besides the UK arms industry's strong support for the initiative, Europe's defence industry also supported a strong and enforceable ATT. The Aerospace and Defence Industries Association of Europe has publicly supported a particularly strong legal instrument covering the global arms trade citing two key challenges of the international trade that comprised "the globalisation of the supplier base for conventional arms and the growing threat represented by the trade in, and the resulting global proliferation of, small arms".²⁸⁴ The support from mainly the European defence industry during the early stages of the ATT processes removed a set of parties that may have tried to block the treaty.

The defence industry had several possible reasons to support the ATT campaign. Co-ordinator of the Dutch Campaign Against Arms Trade Wendela de Vries made several statements

²⁸² Duncan, 2013.

²⁸³ Ibid.

²⁸⁴ Aerospace and Defence Industries Association of Europe, 2010.

regarding the ATT. She quoted the European arms industry lobby Aerospace and Defence Industries Association of Europe, "Increasing the number of countries operating under common standards of control will provide more predictability and confidence for organizations that operate in a global market place and with global supply chains", which means the ATT will create a level playing field for the arms industry by establishing rules and common standards; this claim may have been validated when the British Foreign Office had also sent out a letter on the ATT in which it stated that "International industrial collaboration in arms production will be promoted through the introduction of common standards".²⁸⁵ This suggests that the industry provided their support for the ATT in order to get a commercial advantage with the help of further promotion of the global arms trade as well as possible standardisation of the global industry which can ease trade and cooperation.

6.5.4 Major Powers, Regional Groups and Industry Support Neoliberal Concepts

The wide-ranging support for the ATT from several major exporters validate neoliberal ideas of cooperation. The EU, which boasts some of the largest exporters including the UK, France and Germany, have already been party to the EU Common Position, while most EU member states are party to several international and regional agreements on economic cooperation, security cooperation and intelligence sharing and more. Their strong support for the ATT was therefore was not a surprise as they have proven throughout history especially since the end of the Second World War that cooperation is increasingly necessary for mutual gains and avoiding shared harm. Likewise, the support from industry indicates that they too are willing to cooperate at the global level to help create a level playing field. These actors were crucial to the success of the campaign for an ATT, and their actions support the neoliberal institutionalist concept of cooperation and increasing levels of interdependence, along with influence from institutions on state behaviour. The EU has its own institutions promoting and assisting in their regional development, while in the case of the ATT, civil society groups were the major institutions that carried out most of the groundwork as well as providing significant assistance in the formal process.

²⁸⁵ De Vries, 2013..

6.6 Realist Exposition of the Position of Major Powers

There was divergence among states during the discussions and negotiations, however, majority saw cooperation despite anarchy, validating the claims of neoliberal institutionalism. The case of the US as described earlier in this thesis is rather interesting, as initially they voted against the first two resolutions in 2006 and 2008.²⁸⁶ But the change of administration in 2009 brought about a change in policies as they voted in favour of commencing the ATT negotiations.²⁸⁷ Since then, the US actively participated in all major negotiations and discussions and had a big impact in shaping the form of the final treaty.²⁸⁸ While there were regions such as Africa Group, the Caribbean Community, and the EU, all of which called for a strong treaty, covering a broad range of weapons, including SALW and ammunition, there were the three states- Iran, North Korea and Syria, who were hard-line sceptics having staged a last-ditch attempt to block a deal, with their cynical move stopping the treaty from being passed by consensus. Then there were the others who were reluctant and they mostly include major arms exporters and importers- among the 23 countries that abstained in the final vote were China, and Russia, two of the world's largest arms exporters and manufacturers, while four of the largest buyers- Egypt, India, Indonesia and Saudi Arabia also abstained.²⁸⁹ These groups did not vote against, because despite some disagreements regarding the contents of the treaty, there were those that they deemed useful or were in agreement with. For instance Russia were fine with all the items and activities covered but stated that it does not want human rights or humanitarian standards to play any role in the control of arms transfers. Russia's overall position on the treaty as summarised by Prizeman is:

“Interpretation of the ATT is narrower than some states have advocated for. Rather than wider humanitarian or disarmament goals, the ATT's main purpose is to cut off the channels of illicit arms trafficking.”²⁹⁰

²⁸⁶ UNGA, A/RES/61/89; UNGA, A/RES/63/240.

²⁸⁷ UNGA, A/RES/64/48.

²⁸⁸ Kytomaki, 2017, p.25.

²⁸⁹ Crovetto and Caponigro, 2016, p.29.

²⁹⁰ Prizeman, 2012, p.6.

It must be noted that the reason the first Diplomatic Conference in 2012 failed to reach an outcome was mainly due to the position of the US rather than the diverging views over the substance of the proposed agreement among states; the Obama administration was concerned about losing votes prior to the general elections that were to take place in November that year had they agreed to an ATT.²⁹¹ The country's extensive participation and considerable efforts from its negotiators to advance its government priorities meant that the final treaty text comprised several compromises driven by the US- such as ammunition not being covered by all aspects - that many saw as a weakening of the potential treaty.²⁹²

The considerable cynicism from some of the major buyers and sellers of conventional arms suggests that the Security Dilemma is an important factor with regard to the formation of the ATT. While only a few tried to block the signature, a significant number of states abstained. While a few claimed they did not have standard national control systems for compliance, there is little doubt that the majority were concerned about their own national security as well as that of their allies. While several major buyers and sellers were more optimistic, the position of the cynical states suggest that the presence of the Security Dilemma is significant and acts as a hindrance to the formation of the regime.

6.7 Critical Discussion From a Realist Perspective

The achievement of the ATT is no doubt a significant one and as the first ever legally-binding instrument to control conventional arms transfers at the global level, it has the potential to improve peace and security around the world by promoting responsible arms transfers with respect to IHL and IHRL. It was the first time in history that states are obliged to consider these two international laws as well international criminal law in their risk assessment, meaning before authorising transfers they must consider the risks involved or the potential breaking of the above laws. However, due to various reasons, there were several shortcomings with the treaty. Realism explains some of the major shortcomings, as the elements of the Security Dilemma hinders some states from participating in the signing of the treaty, while others, especially the US, have worked towards a treaty that is seen by many

²⁹¹ Kirkham, 2012, p.1.

²⁹² Ibid, pp.1-2.

from civil society as a weak or a watered-down treaty. Taking everything into consideration, there are four major areas of criticism regarding the ATT and they are discussed below.

6.7.1 Ammunition, Parts and Components

The ATT is considered a robust treaty by many, however, it must be noted that there are several issues regarding the treaty that may weaken its effectiveness. There was a huge debate regarding the inclusion of ammunition in the scope, with the African Group having made the biggest efforts in its inclusion. The regional and sub-regional committees played crucial roles, and despite getting support from the Caribbean Community and the EU member states, it was mainly the US that blocked ammunition from being included in all aspects of the treaty. The argument presented was that ammunition is untraceable and that monitoring the trade in ammunition as well as its reporting under consideration of diversion to illicit markets and wrong end-users is not feasible.²⁹³ However there are other possible reasons why the US had been at the forefront of efforts to exclude ammunition- it includes the powerful domestic gun-lobby led by the National Rifle Association (NRA), who strongly opposed an ATT due to concerns that it may undermine the gun ownership rights of law-abiding US citizens under the Second Amendment.²⁹⁴ Largely funded by the gun industry, the NRA has a major influence in shaping the government policy, and some of the reasons include investing millions of dollars lobbying, and due to the 'Citizens United' supreme court decision, it also provides major financial assistance to candidates in presidential and local election campaigns, who are loyal to them.²⁹⁵ Although the NRA resistance in the US does not apply strictly to ammunition, it is considered to have played a part.

Much to the frustration of civil society groups, the African and Caribbean states, as well as many Latin American states, ammunition was left out from some crucial aspects of the treaty. Majority of the delegations also from Latin America, Africa and the Caribbean stressed on gun violence and the uncontrolled flow of ammunition as their states were most affected by these. During the first negotiating conference, commenting on the substantive content of the treaty, 12 states explicitly stated the need to include ammunition, four opposed, and one

²⁹³ Flemish Peace Institute, 2013, p.5.

²⁹⁴ Charbonneau, 2013.

²⁹⁵ Hickey, 2013; Rushe, 2018.

sought more discussion.²⁹⁶ Nigeria and Côte d'Ivoire were at the forefront of discussions for the inclusion of ammunition in all aspects. ECOWAS argued that ammunition should be an integral part and excluding it would undermine peace and security in Africa. Although not included explicitly in the scope, certain provisions do apply as mentioned previously.²⁹⁷ Thus, transfers of certain ammunition, parts and components are prohibited and States Parties are required to make a risk assessment before authorising the export of such items.²⁹⁸ However, in a broader sense, these items do not have the same control as conventional arms- States Parties have no obligation to report or regulate the import, transit, transshipment, or brokering of ammunition, parts and components, nor include them in their record-keeping system or report the export or import of such items.²⁹⁹ A major argument for the inclusion of parts and components was that any restrictions on weapons exports would be rendered meaningless if States Parties are able to transfer components unconditionally to another state where the components could be assembled and used.³⁰⁰

The non-inclusion of ammunition in all aspects demonstrates the influence of the major arms producing states, with the US having been at the forefront. Although the reasons include powerful gun-lobby and limited restrictions on trade for the gun industry, another reason can possibly be explained by realism, due to the state of anarchy that exists, some states will likely be against strong regulations that they believe would undermine their national security. This demonstrates the power dynamics in international relations, and realism explains why some countries may not want elements such as ammunition to be included in all its aspects. The Security Dilemma acts as the deterrent from what could have likely been a strong treaty according to many. Ammunition is sensitive and of huge significance as without them weapons are rendered useless. Thus the Security Dilemma is an issue here because the size of ammunition stocks is an important indicator of a state's capability to self-defence or to attack. This is without a doubt the biggest weakness of the treaty, and likewise the most criticised.

²⁹⁶ Ying, 2012.

²⁹⁷ UNGA, 2013.

²⁹⁸ Articles 6 and 7.

²⁹⁹ Articles 8-13.

³⁰⁰ Brandes, 2013, p.408.

6.7.2 Risk Assessment

Another major issue was regarding risk assessment, where States Parties are required to refuse to authorise a transfer because of the risk of undermining the humanitarian and human rights law, which is to be based on an 'overriding risk' instead of a 'significant' or 'substantial' risk- setting the bar too low. A stricter criteria would have strengthened the treaty because exporting states can get away with supplying arms to high-risk states . There are currently several ongoing conflicts around the world and some major arms that include ATT States Parties exporters are supplying arms to countries that are accused of human rights violations particularly in conflict zones and a stronger threshold in this case would have had the possibility to halt or limit exports to guilty parties. Realism may explain why states do not want stricter control- because of the Security Dilemma, states do not want to restrict the import of export of weapons, especially to and from their allies. This is especially likely for non-democratic states as well as democratic states, including those that share certain levels of antagonism.

6.7.3 Lack of Enforcement Mechanism

There is a lack of strong enforcement mechanism in the ATT. It is very important that States Parties are complying with the ATT to ensure the success of the treaty at the operational level. Currently the only way to ensure compliance is via reporting and public criticism, or as some may call it- the "name-and-shame" process. However, there are several issues regarding reporting. Reporting is weak- there is no unambiguous requirements for States Parties to make reports public, and crucially, they can choose to report at their discretion which implies that they can quite literally report what they like and still be in compliance with the treaty text. The ATT Monitor Report 2018 validates these issues- only 45 per cent of the States Parties have submitted their Annual Transfer reports.³⁰¹ There has already been a dip in reporting each year since the treaty came into force in December 2014, and is the quality of information reported does not look promising- many States Parties reported information that lacked accuracy and comprehensiveness; some made excessive aggregations, some chose to keep specific information or the entire report confidential, some from the EU who were

³⁰¹ Dick, Hellendorf, Khan, Marsh, Muggah, Perkins, Stohl, Thompson, Tobón, Wezeman, Wezeman, and Young, 2018, p.13.

strong supporters of the ATT also failed to live up to the standards, particularly the UK, which was among the strongest supporters of the campaign totally failed to provide any information on imports.³⁰²

6.7.4 Criticisms from Civil Society

There are some groups from civil society that are sceptical about the ATT. Several members of the civil society which traditionally call for a total prohibition on the arms trade rather than having regulations have made some notable remarks. Kirk Jackson from the Campaign Against Arms Trade (CAAT) emphasised some issues with regard to the UK and the ATT. He claimed that the ATT is by no means more rigorous than the UK's own export licensing criteria that are meant to stop arms exports that could be used for human rights violations or internal repression.³⁰³ One of the major criticisms is that the treaty legitimises the arms trade as one of the treaty's core principles is "the respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence... and to produce, export, import and transfer conventional arms"; many major arms producers supply large quantity of weapons to repressive states and the treaty scope of the treaty accommodates for these sales as "legitimate".³⁰⁴ Wendela de Vries stated that arms trade is an instrument for foreign policy as well as military dominance as it promotes military cooperation and dependencies.³⁰⁵

Human security critics have argued that the adoption of human security principles are merely a continuation of previous trends rather than a normative change.³⁰⁶ Arguments include that the major global prohibition regimes concerning landmines and cluster munitions was possible because these weapons were not essential to the interests of the defence industry anymore, and also that many states did not regard them anymore as core elements of modern western warfare.³⁰⁷ This suggests that 'humanitarian arms control' could possibly just be an adaptation of militarism and that restricting transfers as part of arms export controls to other actors or rogue states legitimises selective discrimination of the suppliers owing to their best

³⁰² Ibid, pp.32-33.

³⁰³ Jackson, 2013.

³⁰⁴ Ibid.

³⁰⁵ De Vries, 2013.

³⁰⁶ Bromley, et al. 2012, p.1037.

³⁰⁷ Ibid.

interests instead of “impartial application of standards on human rights, corruption and development”.³⁰⁸ Despite the existence of the legally-binding EU Common Position for instance, exports have been authorised even in cases where national security interests were prioritised over human security concerns.³⁰⁹

The criticisms reflect the fact that the treaty is by no means perfect, that it does not include in its scope all the elements that civil society and some regional groups pushed for, and there are potential loopholes and aspects that may weaken its effectiveness. However, it will take quite a few years in operation to assess the impact of the treaty on the global arms trade. It must be noted that civil society will keep playing a crucial role even at the operational level, as Control Arms, as well as other organisations will be closely monitoring the treaty in action after it had entered into force and they could be the ones to identify the shortcomings and raise issues via different platforms and discussions such as the CSP, while working with governments to ensure a high level of compliance. All the criticisms and the potential weaknesses of the treaty can be attributed to realism, especially due to the Security Dilemma. On the other hand neoliberalism can possibly explain the benefits of the creation of a level playing field and standardisation of trade, improved cooperation between states as well as industry.

6.8 Theoretical Discussion

There were states that were affected by the Security Dilemma, mainly with regard to sovereignty and national security, and the idea of disclosing information publicly on their weapons and ammunition acquisition to their neighbours or the world at large raised insecurities. One of the reasons why such a large number of states including those affected by the Security Dilemma supported the ATT may be due to the fact that the reporting regime allows both exporters and importers to withhold information, and ammunition is not included in all aspects of reporting. This in a way indicates states can report exports or imports at their discretion, suggesting that the realism broadly may have been the biggest contributor to the formation of the treaty.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

The Security Dilemma is important to contextualise the processes that led to the formation of the ATT. In theory, the achievement of an arms control regime is meant to break the Security Dilemma. A successful international arms control regime is a tool to break the Security Dilemma as besides regulating the trade, it also seeks to promote cooperation and overall stability in stopping potential arms races. There definitely was a conflict of interest despite compromise being reached, and this suggests that despite the collective efforts and political will of a large majority of states, there will be some elements of anarchy. Also, considering the fact that a large number of states supported the ATT, it may imply that they seek a balance of power in terms of military capabilities, and that no state is able to accumulate a large volume of weapons with which it could dominate others. However, several major arms exporters as well as importers either abstained or voted against, implying that they might have considered the agreement as an impediment to their motives, or as a threat to their national security. The entire process of the ATT strongly suggests that the Security Dilemma acts as a hindrance to the formation of an international regime aimed at regulating the international trade in conventional arms. Due to the significance of the Security Dilemma, the treaty may not have been as strong as civil society and several regional groups may have hoped for.

At the same time the formation of the treaty also substantiates the regime theory and more significantly the neoliberal institutionalist propositions; the global system is anarchic, however, despite anarchy, there is room for cooperation and in the case of the ATT, the 154 states that voted for the ATT in the Final Negotiating Conference validated that. Neoliberal institutionalism offers a broader understanding of this issue, especially in terms of inter-state cooperation and the role of institutions. Despite acknowledging the existence of anarchy in the international system, in this modern era of globalisation, states are increasingly having to work together in order to produce mutual gains, avoid shared harm while mitigating effects of anarchy. Mutual cooperation is seen by most states as a possible means to eliminate the Security Dilemma, and international institutions play a significant role in influencing the decision-making of states. The Control Arms coalition, alongside other major civil society actors were among the key international institutions that had an impact on the decision-making of a number of states and subsequently cooperation was recognised as viable means

to ease the Security Dilemma while also identifying it as a possible future solution to prevent and eradicate irresponsible arms transfers and diversion to wrong actors which can fuel or sustain civil conflicts. Therefore, the NGOs and NGO Coalitions primarily campaigning for the ATT both inside and outside the UN were integral in the success of the entire campaign. Taking everything into consideration, it can be quite clearly observed that in the field of arms control, integration or cooperation has become part of a new normative environment. From the regional levels in Africa or Europe in the form of the ECOWAS Convention and the EU Common Position, to the global levels in the form of the MBT, Cluster Munitions Coalition and eventually the ATT, cooperation is at an all-time high, and institutions have had a considerable impact. The grassroots movements carried out by NGOs in the field of arms control exercising bottom-up power have effectively influenced the decision-making of individual states as well as regional groups, and provided a platform for cooperation.

Despite the traditional disagreements between realist and liberalist schools of thought, the events leading up to the formation of the ATT demonstrates that both realist and liberalist propositions can be observed in this process. It can be observed from the process that there were elements of the Security Dilemma, and also the significant influence international institutions have had in their campaigns in pursuing a large number of states into supporting a principled ATT. Therefore, it can be concluded that cooperation is possible under anarchy, and that institutions have a major role to play, validating neoliberal institutionalist claims regarding the impact of institutions in facilitating cooperation between states. However, it comes at a cost, in this case a potentially weak treaty, which all but confirms the significance of the realist propositions mainly with regard to the Security Dilemma. These observations suggest that strong elements of the major propositions of the two schools of thought were present in the process, and they are both crucial in understanding the phenomena. It must be noted that neoliberal institutionalism does acknowledge that although institutions affect state behaviour, they might not be successful in always achieving the desired objectives, which is relatable in the case of the ATT. Therefore, in the context of this thesis, neoliberal institutionalist theory provides a richer and more novel insight of the entire process, supporting Keohane's assertions, from the normative change in arms control since the end of the Cold War, to the civil society-led campaigns for conventional arms control leading up to the ATT. This is largely due to the fact that realist or neorealist interpretations of alliances do

not put enough emphasis on the role or impact of institutions particularly in relation to security and cooperation.

7. Conclusions

The key objective of this thesis was to identify the factors that influenced the campaign for an ATT, and how this campaign became a success. This is a broad topic that concerns the developments made in the field of conventional arms control and the campaigning by civil society that resulted in the formation of the first ever instrument regulating the international trade in conventional arms, as well as the details of the process through which it was achieved. The research question was:

- Why was the campaign for an Arms Trade Treaty a Success?

The literature on conventional arms control is scarce and largely policy-oriented. Much of the research have been done on related issues such as small arms proliferation. The normative change in the arms control agenda since the end of the Cold War has surprisingly not attracted as much attention as one would expect. It is not clear whether it is due to the lack of destructive capabilities that WMDs possess or whether it has been purposefully and strategically put off the radar by the major arms producing states for commercial or other reasons. One of the main objectives of this study is to contribute to the existing conventional arms control literature, highlighting the post-Cold War normative change and the rise in prominence of humanitarian arms control. Besides contributing to the contemporary arms control literature, it will also be among the few studies conducted that identifies and explains the close link between the post-Cold War arms control agenda with integrated human security principles, the civil society campaigns for conventional arms control aimed at reducing human suffering, and the linkage between these issues in relation to the successful campaign for an ATT.

This thesis contains only one research question, however, answering this particular question makes a long list of issues relevant in order to understand the underlying factors involving the campaign for an ATT, including the shift in the arms control agenda in the post-Cold War era, the broadening of the security discourse with the addition of 'human security', and the integration of the two that paved the way for rapid developments in the field of conventional arms control and with civil society having played a major role since the very beginning. Hence

all these issues can be said to be the causal factors behind the success of the campaign for an ATT.

The main findings are covered in chapters 4 and 5 of this thesis. Chapter 4 talks about the arms control agreements and efforts that preceded the ATT, including some of the earliest efforts from the late 19th Century as well as small arms control efforts before, during and after the Cold War. However, the main takeaways from this chapter are the post-Cold War developments. The most crucial development was the shift in the arms control agenda with conventional arms being the major concern, incorporating human security principles that resulted in the reconceptualisation of arms control as “controlling the means of violence”. Also of great significance is the civil society movement that followed, with their persistent campaigning successfully bringing results. The accounts of the post-Cold War arms control agreements along with the new security dimension essentially explain the normative change in conventional arms control. This change brought about rapid developments starting with the formation of MBT in 1997, and buoyed by the success, the major actors from civil society called for more actions to be taken in this field and soon afterwards the CCM was adopted while the ATT was being discussed within the auspices of the UN. These were major parts of the progress made within the humanitarian arms control agenda or in other words, conventional arms control. The developments in the post-Cold War arms control scenario acted as a prerequisite to the campaign for an ATT. The normative change in the field of conventional arms control along with integrated human security principles played a vital role in the creation of new the norms in the form of global prohibition regimes and an instrument to regulate trade at the global level.

Chapter 5 focuses on the campaign for an ATT from its early stages up until its adoption. It focuses on the processes through which the ATT was achieved within the auspices of the UN, with references to the significant role civil society have played in the campaign, both inside and outside the UN. This chapter gives a brief but concise account of the UN processes including the preparations, discussions and negotiations. The formal proceedings have been divided into four phases starting with the formation of the GGE to the establishment of the OWEG, the Preparatory Committees and finally, the Negotiations. These four phases highlight the major issues such as the position of different states and regional groups, the influence

and demands of major powers, and the key topics of discussions and negotiations. The position of the UK, as a co-author, strong supporter and a major world power is also discussed in this chapter along with the standpoint of the US and key regional groups such as CARICOM, the Africa Group, and the EU who along with civil society put in a massive effort for an all-encompassing treaty that included the broadest definition of international transfers and the broadest range of conventional arms that included SALW and ammunition. The main takeaways from this chapter include the power dynamics in relation to the roles played by some of the major world powers, the impact of regional groups and the influence of civil society through persistent campaigning outside the UN while also participating in the formal discussions and negotiations.

The ATT is the first ever legally-binding instrument aimed at establishing the highest possible common standards in the international trade in conventional arms comprising exports, imports, transit, transshipment and brokering and explicitly includes SALW in its scope. Before the ATT, there had been no legally-binding agreement covering all aspects of major conventional weapons and SALW at the global level. The path towards an ATT was long and full of obstacles, and it took collective efforts from governments and civil society alike to become successful. The UN processes took nearly seven years until the treaty was adopted, and the success was a demonstration of sheer determination, persistence and political will among all the supportive states and civil society groups involved and sets an example of normative development that was crucial for the world. This success also demonstrates the capability of global civil society in effectively exercising bottom-up power with the help of successful integration of human security concerns into a policy field that was previously dominated by the national security concerns of individual states.³¹⁰ However, the success of the campaign for an ATT was not a product of the work done by states and civil society, the post-Cold War developments in the arms control agenda were also vital to its success.

The success of the campaign for an ATT was a cumulative process building upon longstanding achievements at the national and regional levels, as well as on global treaties such as the MBT, and on the successful injection of IHL and IHRL in the conventional arms control agenda.

³¹⁰ Cooper, 2011, p.134.

Regional groups such as the Africa Group, CARICOM and the EU also played an important role in the formation of the treaty, while regional agreements such as the EU Common Position acted as a platform for increased support and faith in the treaty, with states party to such agreements already having the infrastructure and practice. Some of the major world powers also had key influence in the shaping up of the treaty. The support of the industry, mainly from the UK as well as the EU, accelerated support especially among the European governments including those that were sceptical for commercial reasons.

The scope of the treaty was a compromise between civil society alongside the supportive states that called for an all-encompassing treaty and the reluctant states that were driven by matters of national or regional security, economic interests or sovereignty over the authorisation of transfers. SALW was the most crucial inclusion and was an absolute prerequisite for the success of the treaty. Although ammunition, parts and components were not made compulsory for reporting on import, transit, transshipment, or brokering, their inclusion in Articles 6 and 7 still makes it a strong treaty, and hence a statement was delivered which indicated that circumventing the treaty's obligations regarding the exports of conventional weapons will not be an option for States Parties.³¹¹ The treaty had several important final provisions including the establishment of a CSP, the frequency at which the CSPs should take place, the requirements of the treaty to come into force, settlement of disputes and a time-frame for making amendments to the treaty.

Chapter 4 traces the roots of the normative change in contemporary arms control, while the overall findings assist in understanding how the change was formally achieved. The constructivist theory of norm building links all these developments together, while highlighting the role of civil society as norm entrepreneurs who were quick to take action when there was a need for conventional arms control at the global level, coming up with a strong campaign and eventually making it happen. The findings also support major realist and neoliberal institutionalist arguments- both at the same time despite there being a traditional disagreement between the two schools of thought. Realism shed light on the anarchic nature of states concerned with national security and sovereign affairs as the Security Dilemma acted

³¹¹ Brandes, 2013, p.409.

as a hindrance to the ATT from becoming a strong all-encompassing treaty. On the other neoliberal institutionalism helps understand better the significant role international institutions in the form of NGOs and NGO coalitions have played in influencing the decision-making of states and facilitating cooperation.

With regard to the wider implications of the treaty, the ATT has the potential to set high standards. As the first ever legally-binding instrument regulating international arms transfers, the greatest strengths of the treaty lie in its ability to prevent diversion and promote responsible arms transfers. While the ATT is aimed at controlling the legal trade in arms, eradication of the illicit trade is a major goal. Enhanced controls over exports, imports as well as transit in arms; controls on brokers, greater transparency and measures to prevent diversion and corruption in the legal trade will be of great benefit in assisting in the eradication of the illicit arms trade. While the campaign towards an ATT did not focus on disarmament, or a reduction in military spending or the levels of armaments, it is still quite likely that the treaty will assist in the cause of reduction of the overall levels of armament. Greater transparency is a major determinant of the success of the ATT in the long run. The scope will allow civil society to monitor compliance with provisions of the treaty and prompt strengthened compliance.

The treaty provides a universal benchmark against which all transfer decisions will be assessed, while also providing states with the framework to participate in responsible arms transfers. The success of the treaty will largely depend on the commitment of the states in the long run, and civil society will once again be vital in monitoring everything from arms transfers to the mandatory reporting of States Parties on their transfers, in the absence of a formal monitoring mechanism. States Parties have a major responsibility themselves, and it is likely that many will do. Monitoring export license authorisations by states, especially in terms of irresponsible transfers will most likely happen in the form of bilateral consultations and requests for clarification of authorisations, and also possibly within meetings of the Conference of States Parties.³¹² Also of great importance will be to monitor and highlight the

³¹² Parker, 2014. p.99.

problem areas and use the windows for amendments to make necessary changes in order to strengthen the treaty.

The significance of the ATT is that all transfers of major conventional weapons and SALW are now formally considered an international concern, something which has largely been a state concern throughout history. Increased scrutiny has the potential to prevent diversion, which is one of the primary sources of weapons ending up in the illicit markets, and mainly in the hands of non-state actors in the form of organised criminal groups and militias. There are many countries that lack capacity to implement the ATT, and the civil society will play a vital role in effective capacity-building measures for not only the signatories but also to those states that refused to ratify citing issues such as a lack or absence of national control systems. Ensuring states have proper national transfer control systems will result in greater transparency, which will significantly boost confidence-building and likely influence in greater security cooperation between states, all of which is vital for an effective and robust ATT.

The new international regime has brought about a normative change and has raised awareness and political will of states and civil society all over the world. Working together will be vital for these key actors to ensure future success of the ATT. The damaging effects of an unregulated trade in conventional arms have been recognised and for the first time in history an instrument to regulate the trade has become a reality. While there is room for improvement, the scope of the treaty addresses a reasonable amount of issues that should contribute to the improved peace and security, and provides policymakers with greater platform for scrutiny on the destructive and destabilising effects of small arms and major conventional weapons. A robust treaty strongly implemented by the States Parties can significantly reduce human suffering, and this normative shift will hugely impact future campaigns targeting issues such as higher accountability for arms transfers, arms reduction and disarmament.

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Appendix

The Arms Trade Treaty

THE ARMS TRADE TREATY

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty,

Determined to act in accordance with the following principles;

Principles

- The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;
- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;
- Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;
- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;
- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;
- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;

- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;
- Implementing this Treaty in a consistent, objective and non-discriminatory manner,

Have agreed as follows:

Article 1

Object and Purpose

The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Contributing to international and regional peace, security and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

Article 2

Scope

1. This Treaty shall apply to all conventional arms within the following categories:

- (a) Battle tanks;
- (b) Armoured combat vehicles;
- (c) Large-calibre artillery systems;
- (d) Combat aircraft;
- (e) Attack helicopters;
- (f) Warships;
- (g) Missiles and missile launchers; and
- (h) Small arms and light weapons.

2. For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.

3. This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3
Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4
Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5
General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.
2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.
4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.
6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6
Prohibitions

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer

would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.

3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Article 7

Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;

(b) could be used to:

(i) commit or facilitate a serious violation of international humanitarian law;

(ii) commit or facilitate a serious violation of international human rights law;

(iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or

(iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.

4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.
5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.
6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.
7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8

Import

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.
2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.
3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

Article 9

Transit or trans-shipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Article 10

Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11

Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.
3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.
5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.
6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 12

Record keeping

1. Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).
2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.
3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.
4. Records shall be kept for a minimum of ten years.

Article 13
Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14
Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15
International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.
2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.

6. States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices.

7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16

International Assistance

1. In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.

2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.

3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17

Conference of States Parties

1. A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.

2. The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.

3. The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.

4. The Conference of States Parties shall:

(a) Review the implementation of this Treaty, including developments in the field of conventional arms;

(b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;

(c) Consider amendments to this Treaty in accordance with Article 20;

(d) Consider issues arising from the interpretation of this Treaty;

(e) Consider and decide the tasks and budget of the Secretariat;

(f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and

(g) Perform any other function consistent with this Treaty.

5. Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

Article 18 **Secretariat**

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.

2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.

3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:

(a) Receive, make available and distribute the reports as mandated by this Treaty;

(b) Maintain and make available to States Parties the list of national points of contact;

(c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;

(d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and

(e) Perform other duties as decided by the Conferences of States Parties.

Article 19 **Dispute Settlement**

1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the interpretation or application of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.

2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20 **Amendments**

1. Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.

2. Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.

3. The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depositary shall communicate any adopted amendment to all States Parties.

4. An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depositary of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

1. This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.

2. This Treaty is subject to ratification, acceptance or approval by each signatory State.

3. Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.

4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 22

Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.

2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23

Provisional Application

Any State may at the time of signature or the deposit of instrument of its of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24

Duration and Withdrawal

1. This Treaty shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.
3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Article 25

Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.
2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26

Relationship with other international agreements

1. The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.
2. This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28

Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.