



## Asia Regional Meeting to Facilitate Dialogue on the Arms Trade Treaty

26-27 February 2013  
InterContinental Hotel, Kuala Lumpur

# SUMMARY REPORT

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### SUMMARY

A two-day meeting was organised to facilitate dialogue on the upcoming Final United Nations Conference on the Arms Trade Treaty, to be held 18-28 March 2013 in New York City. The meeting gathered together 50 senior-level participants from 19 Asian and Pacific countries in Kuala Lumpur, Malaysia, on 26-27 February 2013. The meeting was organised by the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific (UNRCPD), hosted by the Government of Malaysia, and supported by the generous contributions of the Governments of New Zealand, Japan, and Switzerland.

The goal of the meeting was two-fold: to supply useful and relevant information to delegations as they contemplate their positions in advance of the final Arms Trade Treaty (ATT) negotiations, supported by expert presentations on key elements; and to give states the opportunity to meet face-to-face and discuss ATT issues of mutual interest.

The meeting firmly met these goals, thanks to the engaged and participatory approach delegates took to voicing their opinions and concerns, and through the quality of the presentations and interventions. Of particular note were the breakout groups held on various issues, all six of which were lively and constructive.

### DAY ONE

Discussions on Day One examined the security and humanitarian impacts of an ATT for the Asia-Pacific region, engaged in an overview of the ATT and negotiations to date, and covered the development of the ATT process since July 2012 to the present. Breakout groups in the afternoon addressed issues of implementation, scope, and criteria/national assessment.

The humanitarian impact of unregulated small arms and light weapons (SALW) was acknowledged as significant for Asia and the Pacific. The ATT was said to represent an opportunity for states to counter the challenges posed by SALW proliferation through the establishment of common international laws and standards. Strong economic growth coupled with border, territorial, and maritime disputes fuel the illegal arms trade and increase insecurity for citizens and states alike. Reference was made to the Cambodian experience with SALW, as well as their successful efforts to enact domestic control measures.

It was noted that porous borders, coupled with weak or uncoordinated law enforcement efforts, meant problems in one country often become problems for their neighbours. SALW have been the weapons behind human rights violations, including rape, forced disappearance, torture, forced displacement, and the recruitment of child soldiers. As such, SALW proliferation was identified as not just a transnational crime and terrorism issue, but also a domestic security and humanitarian issue with negative implications for the region. It was highlighted that the region received 44% of total global arms transfers in 2011, and is home to the five largest arms importing states internationally. As such, Asia had a special responsibility to ensure a strong, robust, and effective ATT.



Distinct from the 2001 UN Programme of Action (PoA) that was created to prevent the *illicit trade* of SALW, the ATT was conceptualised to regulate *all transfers* of conventional weaponry. While some states have national legislation in place to regulate arms transfers, these controls are like a 'patchwork quilt' with holes that allow for circumvention. The process of concluding an ATT

began in earnest in 2006, and it was viewed that the ATT conference in July 2012 made significant progress in creating a convergence of views amongst states. Delegates identified a number of issues within the 26 July draft treaty text. The President-designate of the Final UN Conference on the Arms Trade Treaty has pledged to discuss as much as possible in plenary to give all states an equal voice.

A future ATT would constitute the fundamental basis for the legitimate trade of conventional arms, as well as introduce norms to better control the illicit trade. With only nine negotiating days slated for the Final Conference in March 2013, the effective use of time is of utmost importance to achieving consensus on an ATT. Gains in the 26 July draft text should be kept and built upon wherever possible, and states are being encouraged to make concrete textual suggestions and to prepare bridging language based on that text in order to overcome issues of concern. It was also noted that concluding an ATT in March does not mark the end of the process, but rather the start of a new process of employing the ATT as *the* framework for the trade in arms.

## Implementation

Issues regarding the ability of states to implement a final ATT were discussed, including in relation to national capacity, existing national legislation and defence cooperation agreements. The issue of transit and transshipment reporting in the 26 July draft text were also discussed and the difficulty of meeting those obligations fully. The language of ‘generality’ within the text was felt by a number of discussants to be useful as it permitted a level of discretion with regards to implementation, but concern over the potential for abuse was also acknowledged. Model legislation was cited as a useful tool to, at a minimum, provide the ‘boxes to tick’ for national legislation. It was also noted that the Conference of States Parties provided for in the treaty was an opportunity to lend further definition and refinement to the treaty once it is adopted.



## Scope

Discussions on scope centred on the clarity of definitions regarding weaponry and activities regulated by the treaty. States have existing legal obligations that include definitions of some of the items under discussion and it was felt that these should be in harmony with an ATT. It was felt generally that the inclusion of SALW in the treaty was necessary to meet the core goal of reducing the negative impact of these weapons, but the issue of ammunition was divisive and is a red line for some states on both sides of the issue. It was suggested that this was an area that could also be further clarified by a Conference of States Parties once a treaty is in place.

## Criteria/National Assessment

The issue of criteria is primarily dealt with in Articles 3 and 4 of the treaty text. There exists a ‘hierarchy’ of criteria, with elements listed in Article 3.3 providing criteria that would prohibit a transfer, Article 4.2 calling for an assessment based on violations of international humanitarian law and human rights law, and Article 4.6 employing more subjective criteria. There was a discussion of assessing assessment based on ‘intent’ versus ‘knowledge’. Discussants addressed the movement of arms to non-state actors, the risk of diversion, and the importance of dialogue between importers and exporters if a transfer is not approved. The legal language of the text as it relates to criteria was similarly examined.

## DAY TWO

Discussions on Day Two centred on possible solutions to outstanding concerns regarding the 26 July draft text and possible tools and support for states to implement a future ATT. Breakout groups in the afternoon addressed the issues of information sources and sharing, legal/legislative matters, and licensing and enforcement.

Nine key issues in the 26 July draft text were identified as causing concern for some states. These issues included: Article 2.1 (scope), Article 2.2 (national control lists), Article 3.3 (scope), Article 4.5 (and the term ‘overriding risk’), Article 4.6 (criteria), Article 5.2 (bilateral defence cooperation agreements), Article 9.1 (transit and transshipment), and Article 10.5 (reporting and recordkeeping). Additional issues of possible concern not explicitly addressed within the 26 July draft text included the lack of definitions clarifying issues of scope or prohibited activities, the lack of reference to non-state actors who often constitute the recipients of illicit transfers, the status of regional organisations that would like to join the ATT as signatories, and the issue of gender.

It was recognised that many states parties to a future ATT will require assistance to fulfil their treaty obligations, and the issue of international assistance has been consistently raised throughout the process. Delegates were briefed on the existing tools and support mechanisms in place that can assist states to regulate their arms transfers and prevent and

combat illicit trafficking, and new obligations that could emerge from an ATT were outlined. New tools and support mechanisms will also need to be created in order to ensure states are able to implement the treaty fully. Possible synergies between ATT-related obligations and existing export and transfer control systems were explored. States could approach other states with experience in these issues, as well as the UN, other international organisations, regional organisations, NGOs, universities, research institutes and commercial enterprises. It was highlighted that Australia and Germany had already pledged a total of \$1.8 million to a voluntary trust fund to assist states with implementation.

### Information sources and sharing

States within the region could assist each other with regard to information sharing. It was noted that the reference to information sharing appears twelve times in the 26 July draft text. There already exists considerable experience in the region regarding drug- and human-trafficking-related information sharing, and these mechanisms could be employed as well to implement ATT obligations (e.g. Interpol). Reporting and the differing obligations of exporting and importing states were raised, especially in the context of Asia-Pacific, which is a largely importing region. Discussants also considered the potential mandate of the Secretariat proposed in the 26 July draft text as it relates to information sources and sharing, and how public to make the reports submitted by states regarding the ATT.



### Legal/legislative matters

Discussants considered especially the needs of smaller states and the assistance they will need. The concept of national control lists was highlighted, including as a way for companies to know which items were allowed for export. Delegates discussed the sharing of best practice guides and model legislation, in particular within legal families (e.g. common law), as a way of supporting implementation. Delegates also considered ways in which states in Asia and the Pacific could cooperate under Article 4.6 on national assessment and the accompanying legislative requirements.

### Licensing and enforcement

Participants discussed the different existing national structures and practices of states in the region with regards to licensing and enforcement. They acknowledged the diversity in the region, including as regards capacity, and identified states' focus as being variously on export, import and/or transit. The issues of transshipment, brokering, and ammunition were also discussed. Participants noted the challenges with monitoring arms trafficking and the importance of databases and accurate, actionable intelligence on illegal shipments. Sharing model legislation and standardised templates were discussed, including end-user certificates and private security companies. Information sharing of best practices and experience between states in the region was suggested, as well as bilateral cooperation between states, and regional and international organisations that could bolster enforcement capacities were examined. National control lists, outreach programmes to industry and shipping, the need for assistance with monitoring and legislation, and the linkages between arms trafficking and other transnational organised crime were also highlighted.

## CONCLUSION

By the conclusion of the two-day meeting, there was an enhanced understanding of both the elements of the 26 July draft treaty text and possible ways forward, as well as what an ATT will mean to Asian and Pacific states at a national level. High levels of participation were a testament to the importance that states in the region give to the successful conclusion of an ATT in March. The open and frank exchange of views, even on contentious issues, allowed for a better understanding of the issues and where national positions compare to others. It was strongly felt that in order to agree an ATT in March,

delegations will need to arrive prepared with well-thought-out positions and the flexibility to adopt a treaty of importance to the majority of UN member states.



For more information on the ATT and UNRCPD, please visit:  
[http://www.unrcpd.org.np/asia\\_regional.html](http://www.unrcpd.org.np/asia_regional.html)