

# Saint Louis University Public Law Review

---

Volume 33

Number 1 *Saving the Cities: How to Make America's  
Urban Core Sustainable in the Twenty-First Century*  
(Volume XXXIII, No. 1)

Article 13

---

2013

## Time to Reload: States Request More Time on the Arms Trade Treaty

Dean M. Hunter  
dhunter3@slu.edu

Follow this and additional works at: <https://scholarship.law.slu.edu/plr>

 Part of the [Law Commons](#)

---

### Recommended Citation

Hunter, Dean M. (2013) "Time to Reload: States Request More Time on the Arms Trade Treaty," *Saint Louis University Public Law Review*: Vol. 33 : No. 1 , Article 13.  
Available at: <https://scholarship.law.slu.edu/plr/vol33/iss1/13>

This Comment is brought to you for free and open access by Scholarship Commons. It has been accepted for inclusion in Saint Louis University Public Law Review by an authorized editor of Scholarship Commons. For more information, please contact [erika.cohn@slu.edu](mailto:erika.cohn@slu.edu), [ingah.daviscrawford@slu.edu](mailto:ingah.daviscrawford@slu.edu).

## TIME TO RELOAD: STATES REQUEST MORE TIME ON THE ARMS TRADE TREATY

### INTRODUCTION

On October 11, 2012, Turkish officials grounded a Russian plane headed for Syria.<sup>1</sup> According to the Turkish Prime Minister, the plane contained arms and munitions bound for the Syrian government.<sup>2</sup> President Assad's Syrian regime is currently embroiled in a long civil war against an insurgency, and Russia remains Syria's top arm supplier.<sup>3</sup> Non-Governmental Organizations (NGOs) continue to raise awareness about illegal arms that flow into Syria from Russia and other states.<sup>4</sup> They point to the Syrian conflict and several conflicts in Africa as reasons for why global arms regulation is a necessity.<sup>5</sup> The United Nations had been trying to advance such an international instrument for the regulation of arms for several years.<sup>6</sup>

In 2006, the United Nations General Assembly voted on a resolution to draft a binding arms trade treaty that would regulate the international transfer of arms.<sup>7</sup> The resolution drew overwhelming support with 153 states casting votes in favor of it, and only the United States casting a "no" vote.<sup>8</sup> In October 2009, however, the United States indicated a dramatic change in policy and

---

1. Ellen Barry & Rick Gladstone, *Turkish Premier Says Russian Munitions Were Found on Syrian Jet*, N.Y. TIMES, Oct. 12, 2012, at A1, available at [http://www.nytimes.com/2012/10/12/world/middleeast/syria.html?\\_r=0](http://www.nytimes.com/2012/10/12/world/middleeast/syria.html?_r=0).

2. Ian Black & Miriam Elder, *Turkey Accuses Russia of Supplying Syria with Munitions*, THE GUARDIAN (Oct. 11, 2012), <http://www.guardian.co.uk/world/2012/oct/11/turkey-accuses-russia-syria-munitions>.

3. Louis Charbonneau, *Arms Trade Treaty Negotiations Begin, Syria Casts Shadow*, REUTERS (July 2, 2012), <http://www.reuters.com/article/2012/07/02/us-arms-treaty-IdUSBRE86107720120702>.

4. *Id.*

5. *Id.*

6. See *infra* Part I.A–B.

7. G.A. Res. 61/89, ¶¶ 1–4, U.N. Doc. A/RES/61/89 (Dec. 6, 2006).

8. There were 24 abstentions including the Russian Federation, China, and Iran. See U.N. BIBLIOGRAPHIC. INFO. SYS., <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=G383523NL4900.26363&profile=voting&uri=full=3100023~!820106~!4> (follow "New Keyword Search" under "Voting Records;" follow "Search by: UN Resolution Symbol;" input A/RES/61/89) (last visited Apr. 22, 2014).

declared that it would support the Arms Trade Treaty (“Treaty”).<sup>9</sup> Former secretary of state Hillary Clinton stated that the United States would help negotiate a treaty that “contains the highest possible, legally binding standards for the international transfer of conventional weapons.”<sup>10</sup> In December of 2009, the General Assembly of the United Nations agreed on a resolution to hold a conference in 2012 for the drafting and passage of the comprehensive Treaty.<sup>11</sup> The United Nations Conference on the Arms Trade Treaty, which met on July 2-27, 2012, had the opportunity to establish a global regulatory regime for both conventional weapons and small arms. As the Conference for the Arms Trade Treaty drew to a close, however, the United States announced that more time was needed to conclude the convention.<sup>12</sup> Russia, North Korea, Cuba, and Venezuela agreed that the treaty was not yet satisfactory.<sup>13</sup> Thus, in an October meeting the First Committee of the General Assembly, the Committee passed a resolution to reconvene the conference in March 2013.<sup>14</sup>

During the March 2013 Conference, States did not pass the new draft of the treaty. The UN General Assembly, however, overwhelmingly approved the Treaty when it met in April. It will now go to the States for ratification before it can enter into force.

The Treaty will continue to face barriers to both its ratification and its implementation.<sup>15</sup> Groups of states that export arms had an economic interest in producing a weaker treaty. Meanwhile, groups that stress their own security and sovereignty interests also pushed against a strong treaty. Other groups of states, however, subscribed to the goal of imbedding human security interests into a very strong treaty.<sup>16</sup> These factors, which stalled the Treaty’s passage in July 2012, will continue to play a role in the Treaty’s implementation. Even

---

9. Press Release, Hilary Rodham Clinton, Sec’y of State, U.S. Dep’t of State, U.S. Support for the Arms Trade Treaty (Oct. 14, 2009), *available at* [www.state.gov/secretary/20092013/clinton/rm/2009a/10/130573.htm](http://www.state.gov/secretary/20092013/clinton/rm/2009a/10/130573.htm).

10. *Id.*

11. G.A. Res. 64/48, ¶¶ 4, 6, 8, U.N. Doc. A/RES/64/48 (Dec. 2, 2009).

12. Press Statement, Victoria Nuland, Dep’t Spokesperson at the U.S. Dep’t of State, Arms Trade Treaty Conference (July 27, 2012), *available at* <http://www.state.gov/r/pa/prs/ps/2012/07/195622.htm>.

13. Mark Bromley et al., *The UN Arms Trade: Arms Export Controls, the Human Security Agenda and the Lessons of History*, 88 INT’L AFFAIRS 1029, 1029 (2012).

14. G.A. First Comm. 67/L.11, ¶ 2, U.N. Doc. A/C.1/67/L.11 (Oct. 18, 2012). The First Committee of the General Assembly focuses on Disarmament and International Security. It is one of the Six Main Committees within the General Assembly. *See* First Committee, GAOR, <http://www.un.org/en/ga/first/> (last visited Apr. 22, 2014).

15. *See infra* Part III.

16. Most Western European states, who have already developed a humanitarian framework in their regional arms control regimes, are strong supporters of this framework for the ATT. *See Human Rights*, ARMSTREATY.ORG (Jan. 12, 2014), <http://www.armstreaty.org/issue/human-rights>.

after the states concluded the Treaty in April 2013 through the United Nations General Assembly, the success of the treaty will largely rely on enforcement from the same states that desire a weaker treaty: the nations that supply the majority of the world's arms.

This article argues that the issues that plagued the negotiation of the Treaty in July 2012 will continue to be an issue in the implementation of the Treaty. But it also suggests that the 2012 draft of the Arms Trade Treaty both balanced the goals of the several frameworks and could effectively regulate the global arms trade. Part I will explain the historical roots of this Treaty and will examine the goals of the Treaty. The previous agreements concerning the international arms trade demonstrate the principles behind the methods that the Treaty uses. Part II will provide frameworks for analyzing the competing interests of states during negotiations of the Treaty. Part III will explain that the 2012 draft of the Arms Trade Treaty balances these interests to produce an agreeable treaty.

#### I. HISTORICAL PRECEDENTS LEADING TO THE ARMS TRADE TREATY

Pre-Cold War efforts to regulate the global arms trade met with little success.<sup>17</sup> Following World War I, states attempted to regulate the arms trade through the Convention of the Trade in Arms and Ammunition.<sup>18</sup> The treaty advanced principles of licensing arms exports, publication of annual reports, and restrictions to “prohibited areas.”<sup>19</sup> Because the treaty restricted trade to non-signatories, many states did not ratify the treaty because they did not want to be restricted in their arms sales or purchases.<sup>20</sup> Thus, the treaty never came into force.<sup>21</sup> In 1925, a subsequent treaty negotiated in Geneva did not come into force because states that relied on imports for their arms raised concerns about sovereignty and their ability to obtain arms.<sup>22</sup>

Due to the bipolar hostilities of the Cold War, most pre-1990 arms control measures focused on state security interests.<sup>23</sup> The United States and its allies established the Coordinating Committee for Multilateral Export Control to prevent arms transfers to the Soviet Union and its allies,<sup>24</sup> and the Soviet

---

17. See SARAH PARKER, IMPLICATIONS OF STATES' VIEWS ON AN ARMS TRADE TREATY 2–3 (2008), available at <http://unidir.org/publications>; Bromley et al., *supra* note 13, at 1031–33.

18. PARKER, *supra* note 17, at 2.

19. *Id.* at 3. The “prohibited areas” included “Africa and Asian parts of the Ottoman Empire.” *Id.* The idea of publication of annual exports and licensing are still dominant themes in the Arms Trade Treaty negotiations.

20. *Id.*

21. *Id.*

22. Bromley et al., *supra* note 13, at 1032–33.

23. *Id.* at 1034; ANNA STAVRIANAKIS, TAKING AIM AT THE ARMS TRADE: NGOS, GLOBAL CIVIL SOCIETY, AND THE WORLD MILITARY ORDER 51 (2010).

24. PARKER, *supra* note 17, at 3.

Union also restricted its allies from producing or exporting arms.<sup>25</sup> The few successful agreements prior to 1990 primarily involved the dominance of arms supplying states at the expense of arms importing states.<sup>26</sup> Finally, due to the types of weapons that the United States, Soviet Union, and their respective allies traded, the focus of international arms trade during the Cold War was large, conventional weapons.<sup>27</sup> Following the breakup of the Soviet Union, then, states wishing to advance international arms regulation continued to use a framework dedicated to conventional arms and states' security interests.<sup>28</sup> The creation of the United Nations Register of Conventional Arms in 1991 reflected many of these characteristics.<sup>29</sup>

#### A. *United Nations Register of Conventional Arms*

##### 1. Original Methodology

The United Nations General Assembly created the Register of Conventional Arms (Register) in 1991.<sup>30</sup> Its goal, both then and now, was to increase the transparency of international arms transfers.<sup>31</sup> Increasing transparency had two desired goals: first, the Register would increase confidence because states would be less likely to misinterpret an importing state's intentions than if such transfers were secret; secondly, states would be more aware of those instances in which an "excessive and destabilizing accumulation" of arms might be taking place.<sup>32</sup>

---

25. *Id.* However, the two sides continued to exchange arms extensively with their allies. *See* Bromley, et al., *supra* note 13, at 1033.

26. Bromley et al., *supra* note 13, at 1031. These agreements include the Brussels Act of 1890, the Coordinating Committee for Multilateral Export Controls in 1949, and the 1950 Tripartite Declaration. *Id.* at 1031–34.

27. *See* Harold Hongju Koh, *A World Drowning in Guns*, 71 *FORDHAM L. REV.* 2333, 2343 (2003).

28. Bromley et al., *supra* note 13, 1034–35.

29. *See* G.A. Res. 46/36 L U.N. Doc. A/RES/46/36 (Dec. 6, 1991). Then UN General Assembly "Realizing that excessive and destabilizing arms buildups pose a threat to national, regional, and international peace and security . . ."

30. G.A. Res. 46/36 (L), (X), U.N. Doc. A/RES/46/36 (Dec. 6, 1991).

31. CONVENTIONAL ARMS BRANCH OF THE U.N. OFF. FOR DISARMAMENT AFFAIRS, UNODA OCCASIONAL PAPERS NO. 16, APR. 2009: ASSESSING THE UNITED NATIONS REGISTER OF CONVENTIONAL ARMS, at 5, U.N. Sales No. E.09.IX.4 (2009); *See also* PAUL HOLTOM, TRANSPARENCY IN TRANSFERS IN SMALL ARMS AND LIGHT WEAPONS: REPORT ON THE UNITED NATIONS REGISTER OF CONVENTIONAL ARMS, 2003-2006, SIPRI POLICY PAPER NO. 22, 3 (2008), available at [http://books.sipri.org/product\\_info?c\\_product\\_id=362](http://books.sipri.org/product_info?c_product_id=362).

32. UNODA OCCASIONAL PAPER NO. 16, *supra* note 31, at 5.

The Register also promotes *public* transparency by “making information on a state’s preferences, intentions, and capabilities available to its citizens.”<sup>33</sup> Public transparency allows a state’s citizens and arms control NGOs to monitor a state’s compliance with its international obligations and to hold that state accountable for its violations of those obligations.<sup>34</sup> The Register originally listed seven types of arms for which it encouraged states to report annual transfers: battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles or missile systems.<sup>35</sup> Absent from the list was a provision for small arms or light weapons despite their prevalent transfers throughout the Cold War.<sup>36</sup>

## 2. Expanding the Register

In 2003, however, the United Nations expanded the Register to allow states to submit reports on small arms and light weapons transfers.<sup>37</sup> In 2006, the Register took the step of creating a standardized reporting form for these types of arms.<sup>38</sup> While states recognized the benefits of transparency that the Register provided, they also have realized that “the scope of [the Register] [was] too limited”<sup>39</sup> and did not account for the potentially devastating effects of small arms and light weapons.<sup>40</sup> Many conventional arms export agreements concluded in the 1990s between former Cold War states focused on state security as their primary concern.<sup>41</sup>

States slowly began to recognize that there were security concerns presented by the oversupply of small arms and light weapons.<sup>42</sup> Meanwhile, NGOs and several states began stressing human security concerns in conventional arms control fields.<sup>43</sup> This focus on a human security framework by NGOs “bridged the divide between issues of arms control and export

---

33. Compare the Register to the Wassenaar Agreement, which provides strictly *intergovernmental* transparency through confidential reporting at biannual meetings. HOLTOM, *supra* note 31, at 6.

34. HOLTOM, *supra* note 31, at 6.

35. G.A. Res. 46/36 (L), *supra* note 30, at Annex.

36. See Koh, *supra* note 27, at 2343–44.

37. PAUL HOLTOM & MARK BROMLEY, IMPLEMENTING AN ARMS TRADE TREATY: LESSONS ON REPORTING AND MONITORING FROM EXISTING MECHANISMS 5 (2011), available at [http://books.sipri.org/product\\_info?c\\_product\\_id=426](http://books.sipri.org/product_info?c_product_id=426); See also G.A. Res. 58/54, ¶ 2, UN Doc. A/RES/58/54 (Dec. 8, 2003).

38. HOLTOM & BROMLEY, *supra* note 37, at 6.

39. See HOLTOM & BROMLEY, *supra* note 37, at 5.

40. See Koh, *supra* note 27, at 2336 (linking the spread of the AK-47 to guerrilla resistant movements in Africa and Al Qaeda in Afghanistan).

41. See Bromley et al., *supra* note 13, at 1035.

42. See Koh, *supra* note 27, at 2343. Koh suggests that the oversupply of small arms contributed to the conflicts in Rwanda, Bosnia, and Kosovo. See *id.*

43. Bromley et al., *supra* note 13, at 1035–36.

control.”<sup>44</sup> The changes to the Register in 2003 and 2006 demonstrated the shift in the understanding of small arms and light weapons as a global concern. It also exemplified the introduction of the human security framework and shift away from the state security framework for some states.

### 3. Criticism of the Register

The Register has received varying degrees of criticism for its effectiveness.<sup>45</sup> The number of states that have consistently reported is few.<sup>46</sup> This lack of participation undercuts both the transparency and confidence building functions of the Register. Moreover, NGOs and some states have concerns that the register is too limited in its scope.<sup>47</sup> The United Nations took thirteen years to include small arms and light weapons in the Register despite notice of their danger and ability to cause instability. Some scholars also present a concern that the Register is not flexible enough and has “failed to secure comprehensive participation and consistent observance.”<sup>48</sup> Despite these limitations, many states support the transparency and confidence building aspects of the Register, and desire to incorporate a reporting mechanism into the Treaty.<sup>49</sup> Understanding the criticisms and limitations of the Register will help states negotiating the Treaty improve the mechanism that has helped provide transparency in the global arms trade.

#### *B. Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*

Building on the momentum from the 1990s for controlling the transfer of arms using the human security framework, the United Nations convened its Global Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001 and approved the Programme of Action (PoA).<sup>50</sup> The PoA attempted to balance states’ national security concerns with emerging human security concerns. The preamble notes that the participating states are

---

44. Bromley et al., *supra* note 13, at 1037.

45. See Cristiane Carneiro, *From the United Nations Arms Register to an Arms Trade Treaty—What Role for Delegation and Flexibility*, 14 ILSA J. INT’L & COMP. L. 477, 478–81 (2008). See HOLTOM & BROMLEY, *supra* note 37, at 7 for an analysis of the numbers of states reporting to the Register.

46. See HOLTOM & BROMLEY, *supra* note 37, at 7 (noting that only thirty-seven UN member states have reported for each year between 1992-2009).

47. *Id.* at 5.

48. Carneiro, *supra* note 45, at 478–79 (citing SEIMON T. WEZEMAN, THE FUTURE OF THE UNITED NATIONS REGISTER OF CONVENTIONAL ARMS 24 (2003), available at <http://books.sipri.org/files/PP/SIPRIPP04.pdf>).

49. HOLTOM AND BROMLEY, *supra* note 37, at 2.

50. Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, July 9–20, 2001, ¶ 1, UN Doc. A/CONF.192/15 [*hereinafter* PoA].

“*Determined* to reduce human suffering caused by illicit trade in small arms; *Recognizing* that illicit trade in small arms and light weapons. . . undermines respect for international humanitarian law; and [are] *Gravely concerned* about [the illicit trade’s] devastating consequences on children . . . women and the elderly . . .”<sup>51</sup> Measured against these goals are a series of reaffirmations concerning “the inherent right to individual or collective self-defense; the right of each State to manufacture, import, and retain small arms and light weapons for its self-defense and security needs; and the right of self-determination for all peoples . . .”<sup>52</sup> The PoA thus “calls on states to pursue a variety of national, regional, and global measures” to combat the illicit trade in small arms and light weapons.<sup>53</sup>

The PoA places the most responsibility for combating illicit trade in small arms and light weapons at the national level.<sup>54</sup> At the national level, the PoA calls on states to pass laws to effectively regulate the manufacture, export, import, and transit of small arms.<sup>55</sup> States should designate a national “point of contact” to interact with other states and aid in implementing the PoA.<sup>56</sup> Another crucial element to the PoA is the urge for states to pass legislation requiring marking on all firearms in order to facilitate tracking the weapons.<sup>57</sup> Finally, among other suggestions, the PoA calls on states to take measures to secure surpluses of arms and destroy confiscated small arms where appropriate.<sup>58</sup> Securing and destroying surplus arms helps prevent arms from being diverted to human rights abusers.

At the regional and global level, the PoA focuses on fostering transparency and cooperation among states. Specifically, states ought to establish mechanisms at the regional level for fostering information-sharing and cooperation of law enforcement and custom control agencies.<sup>59</sup> At the global level, the PoA tasks the secretary general, through the Department of Disarmament Affairs, with disseminating reports on implementation of the PoA provided voluntarily by states.<sup>60</sup> The PoA also encourages states to aid the involvement of civil society and NGOs in the area of preventing illicit arms transfers.<sup>61</sup> The significant drawback of the PoA is that it is a politically

---

51. *Id.* at ¶¶ 4–6.

52. *Id.* at ¶¶ 9–11.

53. Sean D. Murphy ed., *UN Conference on Illicit Trade in Small Arms*, 95 AM. J. INT’L L. 901, 903 (2001).

54. *See* PoA, *supra* note 50, Part II, ¶¶ 2–23.

55. *Id.* at ¶ 2.

56. *Id.* at ¶ 5.

57. *Id.*

58. *Id.* at ¶¶ 16–19.

59. *Id.* at ¶ 27.

60. PoA, *supra* note 50, at Part II, ¶ 33.

61. *Id.* at ¶ 40.

binding rather than legally binding document.<sup>62</sup> States voluntarily report on their implementation of the PoA to the secretary general, but they are not required to do so. States recognize the important steps that the PoA has taken, however, and have included many of the PoA's elements into the Treaty.

### C. *Toward an Arms Trade Treaty*

The buildup to the Treaty relied heavily on individual actors and NGOs in the mid-1990s. In 1995, Nobel Peace Prize laureate Oscar Arias began a campaign to promote an establishment of an international arms trade agreement.<sup>63</sup> Other Nobel Peace Prize laureates joined him in drafting the Nobel Peace Laureates International Code of Conduct on Arms Transfers in 1997.<sup>64</sup> The International Code of Conduct set forth ambitious human rights standards for regulating arms transfers,<sup>65</sup> and encouraged further development of an international arms regime.<sup>66</sup> In 2003, a group of NGOs created the Control Arms campaign to pursue a robust arms trade treaty and to lobby states to their cause.<sup>67</sup> While Finland and the United Kingdom became early European supporters of a strong arms trade treaty in 2004, states in sub-Saharan Africa, Latin America, and the Caribbean showed the appeal of such a treaty beyond the boundaries of Western Europe.<sup>68</sup>

In the summer of 2006, several states submitted a draft resolution titled "Toward an Arms Trade Treaty" to the First Committee of the UN General Assembly.<sup>69</sup> This draft resolution drew strong support in the First Committee

---

62. Murphy ed., *supra* note 53, at 903.

63. PARKER, *supra* note 17, at 5.

64. *Id.*

65. Ernie Regehr, *An International Code of Conduct for Arms Transfers*, 18 PLOUGHSHARES MONITOR, no. 2, June 1997, available at [http://ploughshares.ca/pl\\_publications/an-international-code-of-conduct-on-arms-transfers/](http://ploughshares.ca/pl_publications/an-international-code-of-conduct-on-arms-transfers/). Article 5, for example, prohibited transfer of arms to states that did not respect democratic rights, and Article 7 prohibited transfer if the receiving state did not participate in the Register of Conventional Arms.

66. Bromley et al., *supra* note 13, at 1039. The Code of Conduct developed into the 2001 Framework Convention on International Arms Transfers. The goal of the framework was to codify already existing international law and provide a general treaty that states could amend with future protocols. This process would provide flexibility and universality. See Framework Convention on International Arms Transfers, n.i., [http://www.seesac.org/sasp2/english/publications/2/4\\_1\\_Framework.pdf](http://www.seesac.org/sasp2/english/publications/2/4_1_Framework.pdf) (last visited Apr. 22, 2014).

67. Amnesty International, Oxfam, and the International Action Network on Small Arms started Control Arms, and many other civil society groups and NGOs have joined Control Arms since 2003. See Bromley et al., *supra* note 13, at 1039; See also Member Organizations, CONTROL ARMS, <http://www.controlarms.org/about-controlarms> (last visited Apr. 22, 2014).

68. Bromley et al., *supra* note 13, at 1039.

69. Those states included Australia, Costa Rica, Finland, Japan, Kenya, and the United Kingdom. *Id.* at 1040.

and then in the UN General Assembly at large.<sup>70</sup> This original 2006 UN resolution called on states to submit their views on the feasibility, scope, and draft parameters of the treaty to the secretary general of the United Nations.<sup>71</sup> Over ninety states submitted their views to the secretary general, and these views have provided indications about the areas in which states agree and disagree.<sup>72</sup> The 2006 resolution also called for establishing a group of governmental experts to examine those views and issue a report to the UN General Assembly.<sup>73</sup> Finally, in 2009, the assembly agreed to a resolution for the scheduling of the preparatory committees in 2010 and 2011, and the actual Arms Trade Treaty Conference for July of 2012.<sup>74</sup>

## II. FRAMEWORKS FOR ANALYZING TENSIONS BETWEEN STATES' GOALS FOR THE ARMS TRADE TREATY

The Treaty faces several obstacles from a collection of state interests. The frameworks that this section presents are ways of conceptualizing the different interests and opinions that groups of states have about the Treaty. Different groups of states have different goals for the Treaty.<sup>75</sup> Moreover, these groups do not overlap perfectly.<sup>76</sup> These frameworks illustrate the different interests that groups of states have expressed throughout the process of negotiating the Treaty. While not determinative of state action, the frameworks provide insight into the tensions that such a treaty creates between states.

### A. *Analysis from the Perspective of State Interests*

One of the obstacles that the Treaty faces is the inclusion of human rights and humanitarian concerns as criteria for assessing arms transfers.<sup>77</sup> A large group of states and many NGOs have pushed for a strong treaty that includes

---

70. G.A. Res. 61/89, *supra* note 7, ¶¶ 1–4.

71. *Id.* at ¶ 4.

72. SARAH PARKER, ANALYSIS OF STATES' VIEWS ON AN ARMS TRADE TREATY 1 (2007), available at <http://unidir.org/publications>.

73. G.A. Res. 61/89, *supra* note 7, at ¶ 2. The group of governmental experts issued their report in 2008, and the General Assembly adopted the report that year. G.A. Res. 63/240, ¶ 1, U.N. Doc. A/RES/63/240 (Dec. 24, 2008).

74. G. A. Res. 64/48, ¶¶ 4, 6, 8, U.N. Doc. A/RES/64/48 (Dec. 2, 2009).

75. See PARKER, *supra* note 72, at 6.

76. Bromley et al., *supra* note 13, at 1030 (explaining why the United States is difficult to categorize: at the July conference, the United States “remained an outlier in negotiations, adopting positions that were often at odds with many Western allies and progressive states but also supporting many of the elements of the ATT that were opposed by sceptical [sic] states.”); *Id.* at 1043 (categorizing states as either maximalist or skeptical and by Global North and South, and analyzing state preferences).

77. *Id.* at 1042.

those humanitarian considerations.<sup>78</sup> Other interests exist as a possible framework for the treaty, however, and do not necessarily coincide with the humanitarian interests.<sup>79</sup> These other interests include national security interests, state sovereignty interests, and economic interest. The frameworks differ in the obligations that the Treaty would place on the states.<sup>80</sup> The humanitarian interest framework and other frameworks are not necessarily opposed to each other, however. A state might employ one framework for a particular issue, and a different framework for another issue.<sup>81</sup> Moreover, two states within the same framework might disagree about a particular issue. States have a wide range of opinions about the potential provisions of the Treaty, and it is therefore impossible to lock a state into one particular framework. Based upon state responses during negotiations, however, it is possible to say what framework a state generally utilizes when assessing the issues embedded in the Treaty. This analysis will explain the underlying interest generally, and then describe how specific states emphasize those interests in negotiating the Treaty.

### 1. Humanitarian Interests

Humanitarian interests emphasize human security. The United Nations Development Programme introduced the concept of human security in 1994, and defined it as (1) “safety from such chronic threats as hunger, disease and repression,” and (2) “. . . protection from sudden and hurtful disruptions in the patterns of daily life—whether in homes, in jobs, or in communities.”<sup>82</sup> States and NGOs link the arms trade to human security because “conventional arms often assist in the perpetration of serious violations of human rights such as torture, the excessive use of force by security forces, extrajudicial executions, forced evictions and disappearances.”<sup>83</sup> For these reasons, humanitarian interest supporters believe that it is necessary to have a strong and

---

78. *Id.* at 1041–42.

79. *Id.*

80. Humanitarian interests, for example, would create more restrictive requirements than sovereignty interests.

81. These two frameworks are not the only two frameworks that a state might use either. This article uses them because they are broad frameworks and well represented by states that are negotiating this treaty.

82. Roland Paris, *Human Security: Paradigm Shift or Hot Air?*, 26 INT’L SEC. 87, 89 (Fall 2001) (citing United Nations Development Programme, *Human Development Report*, at 22 (New York: Oxford University Press, 1994)).

83. Clare da Silva, *Creating a Human Rights Standard for the Arms Trade Treaty*, in DISARMAMENT FORUM: IDEAS FOR PEACE AND SECURITY 27, 27 (U.N. Inst. for Disarmament Res., et. al eds., 2009), available at <http://www.unidir.org/files/publications/pdfs/ideas-for-peace-and-security-en-323.pdf>.

comprehensive treaty that would prevent violence and human rights abuses against civilian populations across the world.<sup>84</sup>

## 2. State Sovereignty and National Security Interests

While humanitarian interests focus on individuals, state sovereignty interests and national security interests focus on the state as a corporate body within the international arena.<sup>85</sup> A state adhering to sovereignty interests tries to retain as much decision making power as possible and avoid limitations to that power.<sup>86</sup> Because of its emphasis on maintaining independence, states that jealously guard their sovereignty have emphasized the need for making decisions for the Treaty by consensus.<sup>87</sup> They have also resisted restrictive provisions that put significant burdens on their ability to import and export arms.<sup>88</sup> States that rely on arms imports could be opposed to assessment criteria that required a transporting state to account for the importing state's need for the arms.<sup>89</sup> Attempts to assess the legitimate defense needs of an importing state "second-guess[es] a state's assessment of its own security and defense needs, and intrudes on state sovereignty issues."<sup>90</sup>

National security interests focus on a state's self defense capability and territorial integrity.<sup>91</sup> States, however, also cite national security interests for

---

84. Ray Acheson, Editorial, Enhancing Human Security by Regulating the Arms Trade, 5 ARMS TRADE TREATY MONITOR, July 2, 2012, at 1, 1–2, available at <http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/monitor/ATTMonitor5.1.pdf>.

85. See PAUL R. VIOTTI & MARK V. KAUPPI, INTERNATIONAL RELATIONS THEORY: REALISM, PLURALISM, GLOBALISM, AND BEYOND 56 (3rd ed. 1999) (discussing the Realist school of international politics).

86. *Id.* at 56–57, 68–69, 76–77.

87. See Statement by the Chinese Delegation at the Great Debate of United Nations Conference on the Arms Trade Treaty, (July 2012) [hereinafter Statement of the Chinese Delegation], available at [http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706\\_China\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706_China_E.pdf) (stating that the Treaty should not "be misused for political purposes to interfere with the normal arms trade and internal affairs of any state.").

88. United Nations Conference on the Arms Trade Treaty, July 2–27, 2012, *Compilations of Views on the Elements of the Arms Trade Treaty*, 38 A/CONF.217/2 (May 10, 2012), available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/CONF.217/2&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/2&Lang=E). The views of Algeria, India, Saudi Arabia, and Venezuela demonstrate this resistance to strong treaty provisions that may curb their arms imports.

89. PARKER, *supra* note 17, at 35.

90. *Id.*

91. Samuel M. Makinda, *Sovereignty and International Security: Challenges for the United Nations*, 2 GLOBAL GOVERNANCE 149, 151–52 (1996). This is admittedly a simplistic view of state sovereignty. States face many constraints to their independence and decision-making, and often willingly cooperate internationally. National security interests of states do, however, still resist interference in their internal affairs. *Id.* at 165.

their international use of force.<sup>92</sup> A national security interest framework might see a substantial benefit to an arms regulation treaty as a means of “prevent[ing] illicit transfers of [small arms and light weapons] and related ammunition to criminal gangs and armed groups operating on their national territory.”<sup>93</sup> Criminal groups and terrorists within states undermine a state’s security.<sup>94</sup> Thus, national security interests would most likely support a requirement that international arms transfers avoid diversion to such internal groups.<sup>95</sup> The transparency that comes with reporting requirements could also fit within the national security interest framework. Transparency in arms transfers helps alleviate the dangers that could arise from arms accumulation.<sup>96</sup>

Exporting states, meanwhile, may also rely on a state sovereignty framework to defend their interests. States that export arms do not want restrictions on their ability to transfer arms unless they freely consent.<sup>97</sup> The Wassenaar Arrangement provides a model for arms regulation that adheres to a state sovereignty interest framework.<sup>98</sup> The forty-one participants of the Wassenaar Arrangement are “primarily major producers of conventional arms and dual use items.”<sup>99</sup> The Wassenaar Arrangement publishes guidelines for its members to utilize for assessing arms export decisions, sets the list of military goods and technologies covered, and “leaves to the judgment of individual

---

92. See *id.* at 161, 163 (suggesting that while the United Nations has been in the process of reinterpreting traditional notions of sovereignty, national security interests of the states on the UN Security Council influence those decisions. For example, the United States had a security interests in supporting UN intervention in Haiti in 1994 to depose a military dictatorship because of Haiti’s proximity to the United States and its allies).

93. Bromley et. al, *supra* note 13, at 1039.

94. Owen Green & Ariel Macaspac Penetrante, *Arms, Private Militias and Fragile State Dynamics*, in *SMALL ARMS, CRIME AND CONFLICT: GLOBAL GOVERNANCE AND THE THREAT OF ARMED VIOLENCE* 138, 139–42 (Owen Green & Nicholas Marsh eds., 2012) (describing how “fragile” states face destabilization from the illicit diversion of small arms and light weapons to non-state actors in their borders).

95. See PARKER, *supra* note 17, at 25–28.

96. Transparency might be a double-edged sword from the national security interest framework. National security information usually needs to be secret to be effective. However, a treaty that balances concerns for keeping some information private and reporting on physical capability might properly balance the interests involved.

97. Statement of the Russian Federation, Statement at the United Nations Conference on the Arms Trade Treaty, July 2–27, 2012, at 2, available at [http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706\\_Russia\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706_Russia_E.pdf) (stating that states should individually determine their own national standards for arms transfers based on the highest common agreed upon standards).

98. Bromley et. al, *supra* note 13, at 1035.

99. *Id.*

states how to implement export controls.”<sup>100</sup> The scope of the Wassenaar Arrangement is flexible and allows for changes to the list of covered items by consensus.<sup>101</sup> It thus provides an exporting state discretion in arms transfers by only including items that all the states freely agree to report.

States that rely on imports for their national defense are going to view any arms agreement largely through the lens of their national security interests. Importing interests may assert the inherent right of self-defense available to all states to justify the acquisition of particular arms.<sup>102</sup> Article 51 of the United Nations Charter enshrines the principle of self-defense, and thus gives an international legal basis to assert the right to obtain arms.<sup>103</sup> States that do not have a strong domestic arms manufacturing industry, therefore, are going to be hesitant to agree to international restricts that may prevent them from acquiring arms. For example, Egypt stated at the July Conference that the Treaty should reflect the interest of importer states as well as exporter states.<sup>104</sup> Specifically, Egypt noted that the Treaty needs to be assessed to prevent providing exporting states “added tools to further consolidate their practices in the context of existing export control regimes, often seen as discriminatory and highly politicized.”<sup>105</sup>

### 3. Economic Interests

Large exporting states have a strong economic incentive to maintain their level of arms trade. The arms industry is annually a \$40 to \$70 billion dollar industry.<sup>106</sup> In negotiations of arms regulations, exporting states will want to protect their economic interests by ensuring the widest scope of legalized arms trade possible. Economic interests often combine with sovereignty interests for exporting states to create a strong prejudice against intrusive international regulations on arms transfers. Their ability to discriminate in arms transfers gives them the power to expand their influence and effectuate their interests abroad.<sup>107</sup> Exporting states may resist restrictions on transfers to non-state

---

100. Aaron Fellmeth, *The U.N. Arms Trade Treaty: Temporarily Holstered*, INSIGHTS, Sept. 20, 2010, available at <http://www.asil.org/insights/volume/16/issue/30/un-arms-trade-treaty-temporarily-holstered>.

101. *Id.*

102. RUCHI ANAND, SELF-DEFENSE IN INTERNATIONAL RELATIONS 63 (2009).

103. *Id.* See also U.N. Charter art. 51.

104. Mootaz Ahmadein Khalil, Statement at United Nations Conference on the Arms Trade Treaty, ¶ 5 (July 2012) available at [http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705\\_Egypt\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705_Egypt_E.pdf).

105. *Id.* Egypt stated that it was particularly worried about exporting states “impos[ing] self proclaimed restrictions” on the basis of international humanitarian law to exert power over importing states. See *id.*

106. Fellmeth, *supra* note 100.

107. See Berry & Gladstone, *supra* note 1.

actors. While their real motivation is most likely sovereignty and economic interests, large exporting states also argue that they are trying to help those resisting an oppressive regime or trying to prevent genocide.<sup>108</sup>

### B. *Negotiating the Parameters of the Arms Trade Treaty*

The Treaty would be a comprehensive regime with several components.<sup>109</sup> The most difficulty in negotiating the binding agreement, however, is determining the criteria and scope of the treaty. The states' failure to conclude a treaty in July 2012 probably resulted from disagreements over the assessment criteria and scope of materials that the draft treaty included. These two areas will also provide the most opportunity for another breakdown of negotiations in March.

#### 1. Criteria of Assessment for Arms Transfers

##### a. Human Rights

While the humanitarian interest, sovereignty interest, national security interest, and economic interest frameworks could all recognize potential benefits of a global arms trading regime, they differ in the acceptable assessment criteria and scope of the treaty.<sup>110</sup> States supporting humanitarian interests at the conference wanted to include a prohibition on transfers of arms when those arms present a substantial risk of violating human rights law.<sup>111</sup> The most frequently cited criterion in the state's submissions to the secretary general was whether the transferred arms could be used to commit human rights violations.<sup>112</sup> Of the ninety-six states that submitted views to the secretary general before the conference, sixty-two favored using "human rights" as a criterion for assessment of potential arms exports.<sup>113</sup> Fifty-eight states listed international humanitarian law as a criterion.<sup>114</sup> For the humanitarian interest states, human rights are the cornerstone of the treaty and

---

108. Denise Garcia, *Arms Transfers Beyond the State-to-State Realm*, 10 INT'L STUD. PERSP. 151, 156–157 (2009).

109. See *infra* Part III.

110. Bromley et al., *supra* note 13, at 1041–42.

111. Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, European Union Opening Statement at the United Nations Conference on the Arms Trade Treaty, ¶ 7 (July 2, 2012) [hereinafter European Union Opening Statement], available at [http://www.un.org/disarmament/ATT/statements/docs/20120705/Regional%20Groups/20120705\\_EU\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120705/Regional%20Groups/20120705_EU_E.pdf).

112. See PARKER, *supra* note 17, at 31; See also da Silva, *supra* note 83, at 27.

113. PARKER, *supra* note 72, at 9–10, Chart 3. While this is only about one third of the world's nations, states that did not express human rights as a criterion to the secretary general may still support its inclusion in the treaty.

114. PARKER, *supra* note 17, at 30–31. Human rights and international humanitarian law made up the two most cited areas for creating criteria for the assessment of arms transfers. *Id.*

proper assessment criteria. For example, at the July Conference, Finland stated that “the most important criteria [for licensing] relate to human rights, international human rights law, and humanitarian law. These criteria must be binding.”<sup>115</sup> Mechanisms exist for assessing the human rights records of states.<sup>116</sup> A reliance on humanitarian interests would require states to utilize those mechanisms before making an arms import, export, or transport decision.<sup>117</sup> If a destination were to fall below the human rights standard set within the guidelines, the state should not be able to grant an export license to that destination. The stronger the criteria that the Treaty codifies, the more difficult it will be for exporting states to justify arms transfers to suspected human rights abusers.

This human rights criterion, however, met with resistance from states that emphasize the other interests. Russia, China, India, Egypt, the Collective Security Treaty Organization, and the League of Arab States at the conference all expressed disapproval at the emphasis on human rights.<sup>118</sup> China, for example, asserted at the July Conference that all states have “sovereign rights to decide whether to give [a] green light or not to a certain arms trade transaction. [T]he criteria should. . .exclud[e] any political, controversial, or discriminatory elements.”<sup>119</sup> Those importing states with poor human rights records also objected to the use of humanitarian interests to set the criteria for arms transfers because they had concerns about being targeted for sanctions from arms trades.<sup>120</sup> Despite these dissenting views, humanitarian rights remain a core element of the treaty negotiations. The group of states committed to the humanitarian framework continued to push for a strong treaty that includes those humanitarian considerations well into the July conference.<sup>121</sup>

---

115. H.E. Erkki Tuomioja, Statement at the United Nations Conference on the Arms Trade Treaty (July 2012), available at [http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705\\_Finland\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705_Finland_E.pdf).

116. PARKER, *supra* note 17, at 30. For example, the EU Code of Conduct on Arms Exports provides guidelines for exporting states to use when considering if a potential importer state has violated human rights laws.

117. *Id.*

118. Fellmeth, *supra* note 100; See also Bromley et al., *supra* note 13, at 1040–41. China and Russia have demonstrated opposition to the humanitarian interest framework in the past. The two countries object to the application of humanitarian interest to arms export decisions as an improper constraint on their state sovereignty and decision making. The two reject the imposition of arms embargoes on human rights violators such as the Sudan, Burma, Zimbabwe, and Syria. The arms embargoes are largely applications of the human security framework. *Id.* at 1038.

119. Statement of the Chinese Delegation, *supra* note 87, at 3.

120. This group of states include Cuba, Iran, North Korea, Pakistan, Syria, Venezuela, and Zimbabwe. Bromley et. al, *supra* note 13, at 1040.

121. *Id.* at 1041.

b. Socio-Economic Development and Gender Violence

NGOs have also strongly supported requiring assessment of a recipient state's economic development before permitting an arms transfer, even though only eight states suggested the criterion in their submissions to the secretary general in 2007.<sup>122</sup> At the July Conference, NGOs continued to press states to consider including "provisions on poverty or socioeconomic development, gender-based armed violence, [and] armed violence in general."<sup>123</sup> States that firmly assert their sovereignty and economic interests, however, oppose assessing the economic decisions of recipient states as a criterion for arms transfers because such a requirement involves intruding on the recipient state's ability to decide its own economic priorities.<sup>124</sup> Brazil, for example, stated that they do "not favor the inclusion of criteria . . . that may associate a transfer with the impairment of efforts of poverty reduction or socio-economic development."<sup>125</sup> While the European Union did expressed support for including socio-economic development among the assessment criteria during the July conference,<sup>126</sup> Canada, which usually aligns with humanitarian interests states, stated that including such criteria in the Treaty would be unworkable.<sup>127</sup> Because a socio-economic development as an assessment criterion faces opposition even within the humanitarian interest framework, the negotiating states will probably not include it as a firm requirement in the treaty.

c. Illicit Transfers, Diversion, and Non-State Actors

Preventing diversion to criminal groups and illicit transfers, which serves both humanitarian and national security interests, provided a bridge between the states that support primarily those interests.<sup>128</sup> Humanitarian interests want to ensure that legally traded arms are not diverted to groups who could commit human rights abuses. To this end, the Treaty should provide clear guidelines for states to follow when assessing the potential risk of diversion of arms

---

122. PARKER, *supra* note 17, at 36.

123. Ray Acheson, Editorial, *Negotiating an ATT with Teeth*, ARMS TRADE TREATY MONITOR, July 17, 2012, at 1, 1–2, available at <http://reachingcriticalwill.org/disarmament-fora/att/negotiating-conference/att-monitor>.

124. PARKER, *supra* note 17, at 36.

125. H.E. Ambassador Antonio Guerreiro, Statement at the United Nations Conference on the Arms Trade Treaty (July 2012), available at [http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705\\_Brazil\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705_Brazil_E.pdf).

126. European Union Opening Statement, *supra* note 111, at ¶ 8.

127. Statement by the Delegation of Canada, Arms Trade Treaty PrepCom (July 14, 2011), available at <http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom3/2011-July-14/2011-07-14-Canada-EL.pdf>.

128. Statement of the Chinese Delegation, *supra* note 87, at 2; Bromley et. al, *supra* note 13, at 1039.

transfers.<sup>129</sup> States that employ a national security framework to the Treaty also present concerns about diversion to terrorist and criminal groups.<sup>130</sup> States widely agree that “accumulations and flows of [small arms and light weapons] present unacceptably high risks of obstructing post-conflict state-building and of driving fragile or conflict-prone states into a spiral of decline toward state collapse or war.”<sup>131</sup> While states largely agree that diversion and illicit transfers should fall within the scope of the Treaty, they do not agree that the Treaty should prohibit transfers to all non-state actors.

National security interests and state sovereignty interests do not necessarily overlap in the assessment of trade to non-state actors. Few states submitted the view that there should be a prohibition of arms sales to non-state actors in their statements to the secretary general.<sup>132</sup> These particular arms transfers are controversial, and even states that utilize the same framework likely disagree about the level of restrictions that should be placed on them. National security interests would want to restrict and prohibit arms deals to non-state actors. India is a good example of a state employing the national security framework for the issue of transfers to non-state actors. India stated at the July 2012 Conference that the Treaty should focus on combating terrorism by “making it obligatory for states not to authorize transfer of conventional arms to terrorists or non-state armed groups.”<sup>133</sup> It then declares, however, that the treaty should not infringe on the legitimate right of states to purchase arms.<sup>134</sup> By advocating the ability of states to obtain arms rather than non-state groups, India is trying to stabilize its own national security.

State sovereignty and economic interests, on the other hand, support the ability to provide arms to non-state actors. The conduct of large exporting states suggests that they may oppose, or ignore, a ban on transfers to non-state actors if it suits their economic or sovereignty interests.<sup>135</sup> The combination of economic benefit and sovereign decision-making interests often prompts a

---

129. See PARKER, *supra* note 17, at 26 (summarizing the view of the United Kingdom that clear guidelines are necessary to prevent confusion or inconsistent application by states in assessing potential arms transfers).

130. Greene & Penetrante, *supra* note 94, at 139–42 (arguing that proliferation of small arms, while not the primary factor in state failure, is a strong contributing factor in fragile states).

131. *Id.*

132. Only six states’ submissions suggested prohibiting sales to non-state actors. PARKER, *supra* note 17, at 29.

133. Ambassador Suata Mehta, Statement at United Nations Conference on the Arms Trade Treaty (July 2012), available at [http://www.un.org/disarmament/ATT/statements/docs/20120710/20120710\\_India\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120710/20120710_India_E.pdf).

134. *Id.*

135. *The ‘Big Six’ Arms Exporters*, AMNESTY INT’L (June, 11 2012), <http://www.amnesty.org/en/news/big-six-arms-exporters-2012-06-11> (noting questionable arms transfers by China, Russia, Germany, France, the United Kingdom, and the United States).

negative reaction to possible restrictions from exporting states.<sup>136</sup> For example, “political support for the Palestinians explains the Arab and Iranian objections to the establishment of a new norm against prohibiting the transfer of arms to non-state actors.”<sup>137</sup>

NGOs that support humanitarian interests monitor this behavior by arms exporting states and cite “irresponsible transfers” as further proof of the need for a strong treaty.<sup>138</sup> However, the concept of controlling exports to “terrorists, rebel groups, and rogue states has legitimized selective discrimination according to the interests of suppliers rather than the impartial application of standards on human rights, corruption, and development.”<sup>139</sup> Because there is not a clear consensus about how to handle transfers to all non-state actors, it will probably not be a big part of the treaty.

## 2. Scope of the treaty

The humanitarian interest framework generally wants to include the widest possible scope of items for inclusion in the Treaty. National security interests, sovereignty interests, and economic interests generally support a much narrower, well-defined scope for the treaty. There are categories of items, however, that split the groups of states that normally employ those interests.

### a. Conventional Weapons and Small Arms and Light Weapons

There are several possible approaches for deciding the scope of the Treaty.<sup>140</sup> Different approaches facilitate different goals. A general list that contains broad categories of arms, like the Register, would be easy to update with subsequent protocols.<sup>141</sup> Such a generic list, however, invites ambiguity about whether the treaty covers a potential transfer item.<sup>142</sup> A detailed list of items would help solve the ambiguity problem, but would be more difficult to negotiate because of the wide range of states’ opinions about including different classes of arms.<sup>143</sup> States suggested several options for the scope of the Treaty at the July Conference. Generally, the states that adhered to state sovereignty interests, economic interests, and national security interests suggested using the seven categories of the Register and then adding small arms and light weapons.<sup>144</sup> A portion of the states that adhere to humanitarian

---

136. Denise Garcia, *Arms Transfers Beyond the State-to-State Realm*, 10 INT’L STUD. PERSPS. 153, 153–68 (2009).

137. *Id.*

138. AMNESTY INT’L, *supra* note 135.

139. *See* Bromley et. al, *supra* note 13, 1037–38.

140. PARKER, *supra* note 17, at 12–13.

141. *Id.* at 13.

142. *Id.*

143. *Id.*

144. Bromley et al., *supra* note 13, at 1043.

interests also wanted to employ the Register framework, but wanted expanded categories for small arms and light weapons, ammunition, and parts and components.<sup>145</sup> The other group of humanitarian interest states suggested a comprehensive and detailed list that included “all conventional arms, ammunition, munitions, other military equipment, internal security and riot control equipment, and technology included in the Wassenaar Arrangement’s Munitions List.”<sup>146</sup>

While nearly all states agreed to include small arms and light weapons in the Treaty,<sup>147</sup> there were disputes over whether the scope of the Treaty should comprehensively include conventional weapons such as combat vehicles, artillery, military aircraft, and missiles.<sup>148</sup> This dispute over conventional weapons demonstrates the distance between the humanitarian interest framework and the framework premised on national security, state sovereignty, and economic interests. While China, Brazil, several North Africa countries, and much of the Middle East opposed including a wide range of conventional weapons in the treaty, the United States and European Union supported a more comprehensive list.<sup>149</sup> Even among the states that support the humanitarian interest framework, disputes arose. Amnesty International, an active NGO, and several humanitarian interest states stated that private and sporting guns should be within the scope of the treaty.<sup>150</sup> New Zealand, however, held the position that privately owned firearms and sporting rifles should not be within the scope of the treaty.<sup>151</sup> Canada also wanted a clear statement in the treaty that affirmed the legality of hunting and sporting arms.<sup>152</sup> Thus, in the March 2013 Conference, the scope of the conventional arms covered by the treaty will continue to be a widely contested area.

#### b. Ammunition

The inclusion of ammunition also created disputes between the humanitarian interest states and the national security, state sovereignty, and

---

145. *Id.*

146. *Id.*

147. Fellmeth, *supra* note 100.

148. *Id.*

149. *Id.*

150. AMNESTY INT’L, KEY ELEMENTS OF THE ARMS TRADE TREATY: AN ANNOTATED GUIDE 25 (2012), available at <http://www.amnesty.org/en/library/asset/ACT30/068/2012/en/011b61d5-df64-4b68-a56b-eb658333dd84/act300682012en.pdf> (noting that hunting and sporting rifles can have a similar capacity to police or military arms). See also PARKER, *supra* note 72, at 9.

151. PARKER, *supra* note 72, at 9 n.30.

152. Canadian Delegation, Statement at the United Nations Conference on the Arms Trade Treaty (July 2012), available at [http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705\\_Canada\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120705/Member%20States/20120705_Canada_E.pdf).

economic interest states. When the secretary general solicited states' views on the Treaty, states cited ammunition most frequently for inclusion in the Treaty.<sup>153</sup> Arguing that inclusion of ammunition served both humanitarian and national security concerns, states from Africa, Latin America, and the Caribbean considered the inclusion of ammunition "an essential element of an arms trade treaty to address domestic arms control problems."<sup>154</sup> Humanitarian interest states, such as Germany, strongly pushed for inclusion in the treaty.<sup>155</sup> Inclusion of ammunition, however, met with strong resistance from the United States and other exporting states. The United States called ammunition a "redline" and announced that "there will be no requirement for reporting on or marking and tracing of ammunition or explosives."<sup>156</sup>

The basis of the United States' objection to the inclusion of ammunition is most likely based upon sovereignty and economic interests. Thomas Countryman, assistant secretary of the Bureau of International Security and Nonproliferation, stated in April 2012 that "the United States, which produces over seven billion rounds of ammunition a year, has resisted those efforts [to include ammunition in the Treaty] on the grounds that including ammunition is hugely impractical."<sup>157</sup> Ammunition is too "fungible and consumable" to be effectively accounted for and controlled consistent with the goals of the Treaty.<sup>158</sup> Several NGOs, however, noted that the United States already conforms to the Wassenaar Arrangement Munitions List, which includes ammunition.<sup>159</sup> Thus, the United States appears to be resisting further restrictions and responsibilities on their trade of ammunition. Because the United States is the largest arms exporter in the world,<sup>160</sup> its support for the Treaty is crucial for the Treaty's success. Therefore, the humanitarian interest states will probably try to accommodate it as much as possible while trying to adhere to their humanitarian goals.

---

153. See PARKER, *supra* note 17, at 14 (noting that 62 states out of 98 that submitted reports at the time of the article's writing included ammunition in their submission).

154. Bromley et. al, *supra* note 13, at 1043-44.

155. See H.E. Ambassador Dr. Peter Wittig, Permanent Representative of Germany to the United Nations, Statement at United Nations Conference on the Arms Trade Treaty (July 2012), available at [http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706\\_Germany\\_E.pdf](http://www.un.org/disarmament/ATT/statements/docs/20120709/20120706_Germany_E.pdf).

156. *Arms Trade Treaty*, U.S. DEP'T OF STATE, <http://www.state.gov/t/isn/armstradetreaty/> (last visited Apr. 22, 2014).

157. Thomas Countryman, Assistant Sec'y of the Bureau of Int'l Sec. and Nonproliferation, Positions for the United States in the Upcoming Arms Trade Treaty Conference (Apr. 16, 2012), <http://www.state.gov/t/isn/rls/rm/188002.htm> (last visited Apr. 22, 2014).

158. *Id.*

159. Ray Acheson, Editorial, *12 Billion Reasons to Include Ammunition in the ATT*, ARMS TRADE TREATY MONITOR, July 12, 2012, 1, 1, available at <http://reachingcriticalwill.org/disarmament-fora/att/negotiating-conference/att-monitor>.

160. Charbonneau, *supra* note 3.

c. Technology and Dual Use Goods

Other items that are under consideration for inclusion in the Treaty are technology and dual-use goods. States supporting the human security framework want to ensure that the treaty covers both arms and the means for producing them.<sup>161</sup> Australia, in its submission to the secretary general, pointed out the need “to ensure that emerging technologies can be covered as far as possible without requiring constant amendment of the treaty text.”<sup>162</sup> Many states that adhere to the state sovereignty framework, however, oppose the inclusion of technology and dual-use goods in the treaty. Brazil explicitly stated that dual-use goods should not fall within the scope of the treaty in its submission to the secretary general.<sup>163</sup> Moreover, several importing states with national security interests and exporting states with economic and sovereignty interests opposed broadening the scope of the treaty under the humanitarian interest framework because they “were concerned that the treaty would affect their ability to access technology to develop indigenous arms industries or [it would] restrict opportunities for arms exports.”<sup>164</sup> Similar to the debate over ammunition, then, a small group of states with economic, national security, and state sovereignty interests exerted substantial influence over the July 2012 negotiations by virtue of their extensive involvement in the arms market.

### III. RECOMMENDATIONS FOR CONCLUDING A SUCCESSFUL TREATY

#### A. *Analyzing the Arms Trade Treaty Draft*

Despite negotiating for nearly a month, states were not able to agree to the text of a treaty.<sup>165</sup> On July 26, the president of the conference, Ambassador Moritan of Argentina, submitted a draft treaty but was unable to obtain final consensus for the text.<sup>166</sup> The draft treaty provides a view of the work done to find consensus on the Treaty so far, and establishes a platform from which to start the March 2013 negotiations.

The 2012 draft of Arms Trade Treaty relies heavily on the Register and PoA for its structure. The draft treaty tries to incorporate and enhance the reporting aspects of the Register by making those reports binding on States.<sup>167</sup> Meanwhile, the PoA’s emphasis on the humanitarian interest framework and

---

161. PARKER, *supra* note 17, at 15.

162. *Id.*

163. *Id.* at 16.

164. Bromley et al., *supra* note 13, at 1041.

165. *See supra* notes 12–13 and accompanying text.

166. Fellmeth, *supra* note 100. *See also* United Nations Conference on the Arms Trade Treaty, July 2–27, 2012, *Draft of the Arms Trade Treaty*, U.N. Doc. A/CONF.217/CRP.1 (Aug. 1, 2012) [hereinafter *Draft of the Arms Trade Treaty*].

167. *See Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 4 ¶¶ 1–5.

reliance on states' cooperation continue to be themes in the draft treaty.<sup>168</sup> Just as important as these structural arrangements, the draft treaty tries to balance the frameworks of the humanitarian, national security, state sovereignty, and economic interests.

### 1. Criteria of Assessment

The draft treaty largely incorporates this humanitarian interest framework as a way to obligate States to assess humanitarian concerns before approving an export of arms.<sup>169</sup> Under Article 3, the draft treaty would prohibit States from transferring arms "if the transfer would violate its obligations under measures adopted by the United Nations Security Council" or that would violate a State's international obligations or agreements.<sup>170</sup> Article 3 also prohibits authorizing a transfer of arms "within the scope of this Treaty for the purpose of facilitating the commission of genocide, crimes against humanity, war crimes constituting grave breaches of the Geneva Conventions of 1949, or serious violations of common article 3 of the Geneva Conventions of 1949."<sup>171</sup> Though the provisions do enshrine several elements of humanitarian international law, NGOs with humanitarian interests criticized Article 3 for not being strong enough.<sup>172</sup>

Article 4 provides a crucial set of compromises in the draft treaty. Article 4, paragraph 2 says that before a state can authorize an arms transfer, it must assess whether the export will:

- (a) be used to commit or facilitate a serious violation of international humanitarian law;
- (b) be used to commit or facilitate a serious violation of international human rights law; or
- (c) be used to commit or facilitate an act consisting of an offense under international conventions and protocols relating to terrorism to which the transferring State is a Party.<sup>173</sup>

Moreover, Article 4, paragraph 6 states that when a state is considering exporting an item within the scope of the treaty, it "shall consider taking feasible measures . . . to avoid the arms:

- (a) being diverted to the illicit market or for unauthorized end use;

---

168. *See id.* at 1.

169. *Id.* at Art. 4, ¶¶ 1–2.

170. *Id.* at Art. 3, ¶¶ 1–2.

171. *Id.* at Art. 3, ¶ 3.

172. Ray Acheson, Editorial, *Demanding More from an Arms Trade Treaty*, ARMS TRADE TREATY MONITOR, July 27, 2012, 1, 2, available at <http://reachingcriticalwill.org/disarmament-fora/att/negotiating-conference/att-monitor> (arguing that the "for the purposes of facilitating the commission of genocide" standard is too high).

173. *Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 4, ¶ 2.

- (b) being used to commit or facilitate gender-based violence or violence against children;
- (c) being used for transnational organized crime;
- (d) becoming subject to corrupt practices; or
- (e) adversely impacting the development of the importing State.”<sup>174</sup>

These provisions establish the humanitarian interests as the core of the assessment criteria for all the arms that would fall within Article 2 of the treaty. The draft treaty did compromise the humanitarian interests, however, with the state sovereignty interests. The provisions in Article 4, paragraph 6, for example, are not subject to as high of standards as the provisions of Article 4, paragraph 2. Article 4, paragraph 2 states that States “shall assess” the provisions of the paragraph, and under Article 4, paragraph 5, if “there is an overriding risk of any of the consequences under paragraph 2 of this article, the State Party shall not authorize the export.”<sup>175</sup> Article 4, paragraph 6, by contrast, explains that states shall “consider taking feasible measures . . . to avoid” the provisions of the paragraph.<sup>176</sup> Moreover, states that advocated their sovereignty interests, economic interests, and national security interests were able to include in the draft treaty a mitigation provision under Article 4, paragraph 4 to allow for more discretion in their arms transfer decisions.<sup>177</sup>

## 2. Scope of the Draft Treaty

The draft treaty modeled its scope after the Register. Article 2 of the draft treaty states that the treaty, at a minimum, “shall apply to all conventional arms within the following categories.”<sup>178</sup> It lists the seven categories of the Register,<sup>179</sup> but then also includes small arms and light weapons.<sup>180</sup> By limiting its scope to the Register and small arms and light weapons, the draft treaty seems to be catering to the state sovereignty and national security interests. The draft treaty provides a very limited and general list of items for its scope, and excludes controversial categories such as technology and dual use items.

174. *Id.* at Art. 4, ¶ 6.

175. *Id.* at Art. 4, ¶¶ 2, 5.

176. *Id.* at Art. 4, ¶ 6.

177. Article 4 ¶ 4 states that “in assessing the criteria set out in paragraph 2 of this article, the exporting State Party may also take into consideration the establishment of risk mitigation measures, including confidence-building measures and jointly developed programmes by the exporting and importing States.” *Id.* at Art. 4, ¶ 4.

178. *Id.* at Art. 2, ¶ 1.

179. *Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 2, ¶ 1. The seven groups of weapons of the Register are: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large caliber artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; and (g) Missiles and missile systems. *See* G.A. Res. 46/36 L, *supra* note 29 and accompanying text.

180. *Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 2, ¶ 1.

States and NGOs that adhere to the humanitarian interest decried the absence of ammunition from the scope of the draft treaty.<sup>181</sup> The draft treaty did include ammunition and parts and components in Article 6 on export controls, but those items are not subject to the assessment requirements of Article 4, paragraph 6 within the draft treaty.<sup>182</sup> Article 4, paragraph 6 contained an extra measure for several human security objectives that states must apply to arms transfers and could have helped prevent illicit diversion of ammunition.<sup>183</sup> The humanitarian interest states may argue that the “at a minimum” language provides the opportunity for expansion of the scope of the treaty through amendments. Amendments, however, must pass by consensus and not by some majority of states party to the treaty.<sup>184</sup> Because amendments must be unanimous, states with state sovereignty and exporting interests retain flexibility to bar any new arms that they do not want restricted in the treaty. Due to the extensive compromises that the humanitarian interests made, despite being in the majority, the draft treaty’s assessment criteria and scope favor state sovereignty, economic, and national security interests.<sup>185</sup>

### 3. National Implementation and Record Keeping

Like the PoA, the draft treaty relies on national implementation to bring the provisions of the treaty into effect. Article 5, paragraph 3 of the draft treaty, for example, states that “each State Party shall take all appropriate legislative and administrative measures necessary to implement the provisions of this Treaty.”<sup>186</sup> Like the PoA, the draft treaty has states “designate one or more national points of contact to exchange information on matters related to the implementation of the treaty.”<sup>187</sup> Finally, the enforcement provision in Article 11 would provide that “each State Party shall adopt appropriate national measures and policies as may be necessary to enforce national laws and regulations and implement the provisions of this Treaty.”<sup>188</sup> These provisions place obligations on states to create administrative frameworks to properly

---

181. Acheson, *supra* note 172, at 1–2.

182. *Id.* at 1–2, 4 (describing the fewer restrictions placed on ammunition by virtue of its placement in the Treaty and reporting that Côte d’Ivoire, Ireland, Nigeria, South Sudan, Spain, Zambia, and France believed ammunition should be placed under the scope section of the draft treaty); *See also Draft of the Arms Trade Treaty, supra* note 165, at Art. 6, ¶¶ 4–5.

183. *See Draft of the Arms Trade Treaty, supra* note 166, at Art. 4 ¶ 6. Compare United Nations Conference on the Arms Trade Treaty, Mar. 18–28, *Draft Decision*, Art. 7, U.N. Doc. A/CONF.217/2013/L.3 (Mar. 27, 2013), which incorporates many of the provisions of Article 4 of the draft treaty.

184. *Draft of the Arms Trade Treaty, supra* note 166, at Art. 20, ¶ 3.

185. Bromley et. al, *supra* note 13, at 1046.

186. *Draft of the Arms Trade Treaty, supra* note 166, at Art. 5, ¶ 3.

187. *Id.* at Art. 5, ¶ 4.

188. *Id.* at Art. 11.

manage an arms regulation program. But because implementation of the treaty's provisions is national, states that assert state sovereignty interest have discretion to create a regime that serves their interests but still complies with the Treaty. India, a state that adheres to state sovereignty, economic, and national security interest frameworks,<sup>189</sup> stated at the July Conference that "the proposed treaty should respect differing constitutional, legal, and regulatory systems in various countries and should avoid being intrusive or prescriptive with respect to national policies or procedures."<sup>190</sup> The Treaty's implementation and enforcement provisions seem to allow the amount of deference that states like India seek.

The Register provides a point of comparison for Article 10 of the draft treaty, which covers Reporting and Record Keeping.<sup>191</sup> Article 10 would require states to maintain national records of their export authorizations and actual exports of arms within the scope of the treaty.<sup>192</sup> Under Article 10, paragraph 4, states must provide to the secretariat an initial report on the actions that state has taken to implement the treaty within the first year after entry into force.<sup>193</sup> These two requirements will aid implementation of the treaty. Criticisms that previous international reporting mechanisms, such as the Register, failed to draw strong participation stemmed from the need for "effective systems of inter-agency communication" and a high level of capacity.<sup>194</sup> With the draft treaty requiring the submission in Article 10, paragraphs 1 and 4, the international community can assess which States will need assistance to meet their reporting requirements early in the process.

Article 10, paragraph 3 allows, but does not require, states to report to the secretariat "any actions taken to address the diversion of conventional arms to the illicit market or for unauthorized end use."<sup>195</sup> Article 10, paragraph 5 does require states to annually submit a report to the secretariat on their authorizations and actual transfers of arms that are under the scope of the draft treaty.<sup>196</sup> The secretariat, however, will only submit the annual reports to the states party to the treaty, and states may omit commercially sensitive or national security information.<sup>197</sup> The Netherlands, Japan, and Costa Rica stated

---

189. See Ambassador Mehta, *supra* note 133.

190. *Id.*

191. *Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 10.

192. *Id.*

193. *Id.*

194. HOLTOM & BROMLEY, *supra* note 37, at 20–25.

195. *Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 10, ¶ 3.

196. *Id.* at Art. 10, ¶ 5.

197. *Id.* at Art. 10, ¶ 5 & Art. 12.

that the reports under Article 10, paragraphs 4 and 5 should be public.<sup>198</sup> By only making the reports available to the states, the regime set up by the draft treaty nearly eliminates public transparency and the ability of a state's citizens or NGOs to monitor compliance with the Treaty. Like the scope and transfer assessment criteria, then, the draft treaty made substantial compromises to state sovereignty, national security, and economic interests in the provisions of the more mechanical aspects of the treaty.

### B. *Can The Arms Trade Treaty Work?*

The Treaty faces criticism from states and groups that claim that the treaty, even if implemented, will be ineffective.<sup>199</sup> Currently there are arms embargoes against Zimbabwe and the Democratic Republic of the Congo, and these nations are still able to import arms due to noncompliant governments.<sup>200</sup> The Treaty faces criticism for not only being unable to stop states from overriding these embargoes, but also for potentially easing the path to some of the illicit transfers.<sup>201</sup> These criticisms are particularly relevant after the draft treaty seemed to balance the interests strongly in favor of the state sovereignty, national security, and economic interests. NGOs expressed a fear that the draft treaty swung too far away from humanitarian interests in the attempt to secure more widespread support.<sup>202</sup> However, the Treaty does take a useful approach toward creating a global arms regime.

Harold Koh, professor at Yale Law School and former assistant secretary of state for Democracy, Human Rights, and Labor, suggested an approach to creating a global regulatory regime for arms.<sup>203</sup> That approach involves the "transnational legal process," in which "public and private actors. . .interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalize rules of international law."<sup>204</sup> The transnational legal process regarding global arms regulation entails five main stages.<sup>205</sup> The first stage is knowledge of the global problem.<sup>206</sup> Most states

198. Maj Rørdam Nielsen, *News in Brief*, ARMS TRADE TREATY MONITOR, July 27, 2012, at 1, 4, 6, available at <http://reachingcriticalwill.org/disarmament-fora/att/negotiating-conference/att-monitor>.

199. David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Arms Trade Treaty: Zimbabwe, The Democratic Republic of the Congo, and the Prospects for Arms Embargoes on Human Rights Violators*, 114 PENN ST. L. REV. 891, 908–09 (2010).

200. *Id.* at 909.

201. See Greg Suchan, *Why You Shouldn't Expect Too Much (Or Anything) From an ATT*, 103 AM. SOC'Y INT'L L. PROC. 339, 341 (2009) (suggesting that if low standards become the criteria in the ATT, it could legitimize arms transfers to terrorists groups and pariah states).

202. See Acheson, *supra* note 172, at 1.

203. Koh, *supra* note 27, at 2342.

204. Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 182, 183–84 (1996).

205. Koh, *supra* note 27, at 2342.

acknowledge the problem of illicit arms transfers and support the Treaty movement.<sup>207</sup> The second step in the process involves using networks of NGOs and civil society to build a regime to address the issue.<sup>208</sup> There has been and continues to be active participation of NGOs and civil society involved in the drafting and monitoring of the Treaty process.<sup>209</sup> The third is developing norms and finding committed individuals to promote those norms.<sup>210</sup> Oscar Arias and the Nobel Peace Laureates drafting of the Nobel Peace Laureates International Code of Conduct on Arms Transfers in May 1997 provided a framework for discussing international arms regulations.<sup>211</sup> The fourth is a “horizontal process” that occurs in the interaction between states’ governments.<sup>212</sup> The Register and PoA have set global norms for reporting, transparency, and international cooperation, albeit imperfect ones.<sup>213</sup> The fifth and final step of the process is the “vertical process” that occurs within the domestic law arena of an individual state.<sup>214</sup> The Treaty provides the potential for the vertical process to occur by requiring states to pass domestic legislation to implement the treaty and comply with the reporting requirements.<sup>215</sup> The transnational legal process, therefore, provides a model for improved prospects for the Treaty.

#### IV. CONCLUSION

The Arms Trade Treaty will continue to face barriers as it approaches March 2013 Conference. The July Conference left without a completed treaty but did substantial work to widen the Treaty’s appeal. The state sovereignty, national security, and economic interests of states have substantial protection in the draft treaty. Humanitarian interests still make up the core of the draft treaty, and if states comply with the provisions of the treaty as drafted, those humanitarian interests may sink into the domestic law regimes of the states.

---

206. *Id.*

207. G.A. Res. 61/89, *supra* note 7, ¶¶ 1–4.

208. Koh, *supra* note 27, at 2342.

209. *Id.* at 2344.

210. *Id.* at 2342.

211. PARKER, *supra* note 17, at 5.

212. Koh, *supra* note 27, at 2342.

213. Bromley et. al, *supra* note 13, at 1035, 1037.

214. Koh, *supra* note 27, at 2342.

215. *Draft of the Arms Trade Treaty*, *supra* note 166, at Art. 5, ¶ 3.

## V. POST-SCRIPT

The March 2013 Conference, like the July 2012 Conference, failed to produce consensus on the Arms Trade Treaty text.<sup>216</sup> The UN General Assembly, however, agreed overwhelmingly upon the Treaty on April 2, 2013.<sup>217</sup> The Treaty that passed in the UN General Assembly in April 2013 differs in some significant provisions from the draft treaty analyzed in this article.<sup>218</sup> For example, the 2013 Treaty's Article 3 and 4 bring ammunition and parts and components within the requirements of the Treaty. These differences between the July 2012 draft treaty and the 2013 full Arms Trade Treaty demonstrate the constraints that the consensus requirement put on the negotiating process. Because the July 2012 and March 2013 Conferences required consensus by all states, the states that opposed those provisions could prevent their inclusion. The need for consensus does not constrain the UN General Assembly, and so the stronger humanitarian principles that a majority of states supported could be included in the treaty.

The failures of the July 2012 Conference and March 2013 Conference demonstrate the powerful effect that the interest frameworks had on the negotiating process. The 2012 draft treaty tried to balance the diverging interests of all states but could not obtain consensus. A majority of states supported the inclusion of humanitarian interest in the treaty, and so those provisions became key provisions in the April 2013 General Assembly resolution that adopted the Treaty. The Treaty still faces several hurdles to be effective. States that had pushed their national security and sovereignty interest still have considerable power in implementing the Treaty and ensuring its effectiveness. As norms develop, however, states will converge on good domestic and international practices to prevent the illicit trade in arms.

DEAN M. HUNTER\*

---

216. United Nations Conference on the Arms Trade Treaty, March 18–28, 2013, *Report of the Final United Nations Conference on the Arms Trade Treaty*, Art. 4 ¶ 15, U.N. Doc. A/Conf.217/2013/2 (Apr. 2, 2013).

217. Niel MacFarquar, *UN Treaty Is First at Regulating Global Arms Sales*, N.Y. TIMES, Apr. 3, 2013, at A12, available at <http://www.nytimes.com/2013/04/03/world/arms-trade-treaty-approved-at-un.html?pagewanted=all>. The vote for the Treaty in the General Assembly was 154 to 3, with 23 abstentions.

218. See United Nations Conference on the Arms Trade Treaty, *supra* 165, at 4, 5. Groups of states adhering to national security and state sovereignty interests had strongly opposed the inclusion of Articles 3 and 4 of the Treaty.

\* J.D. Candidate 2014, St. Louis University School of Law. I would like to thank Professor Maggi Carfield for her encouragement, guidance, and assistance during the development and writing of this article. I would also like to thank Lauren Whittaker and my family for their support during the writing process.