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Seminar – 6 May 2011

***Arms Trade Treaty:  
Perspectives and Implementation Issues***

Geneva, Palais des Nations, Room XVI

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The implementation of an Arms Trade Treaty (referred to below as the ATT) will be the subject of the next Preparatory Committee (PrepCom) meeting of July 2011 for the Diplomatic Conference in 2012.

The objective of the Seminar, co-organized by the Strategic Research Foundation (FRS), the French Ministry of Foreign and European Affairs and the United Nations Institute for Disarmament Research (UNIDIR), was to **identify the principal issues raised by the implementation of an ATT and possible effective responses**. It took place in the presence, inter alia, of Ambassador Roberto Garcia Moritan, President of the Preparatory Committee on the ATT Conference, and brought together more than a hundred participants from a very wide audience: Geneva-based diplomatic representations, members of civil society (NGOs, think-tanks, academics), and representatives of the armaments industry.

The **point** of holding a seminar on implementation issues, on the eve of the last substantive PrepCom meeting, was **underlined by all participants**.

After the welcome and the opening remarks by the three co-organizers, the working day was structured around two special themes:

- The morning was devoted to **national implementation of the Arms Trade Treaty**, with two round tables on the national control system, enforcement mechanisms and criminalization of violations.
- The afternoon was intended for discussion of **international implementation mechanisms**, with a focus on international cooperation and assistance, the possible institutional structure of an Arms Trade Treaty, and mechanisms for monitoring implementation and transparency.

During the day's first session on **national control systems**, it was possible to discuss the elements required for States Parties to implement such systems, while recalling that there is **no one-size-fits-all system for the entire international community**.

It was underlined that an ATT was to define the objective of developing a number of the system's basic elements (an authorization system, via a licensing mechanism taking account of common criteria, etc.). Speakers stressed the importance for each State Party to establish its own national system, starting with these basic elements and depending on its legal traditions and administrative system.

Regarding the application of the **criteria** that could be defined by an ATT, the Chair's Paper transmitted last March distinguishes between **purely objective** criteria such as embargo violations and violations of international instruments ratified by the State in question, and **criteria that require making risk assessments** of the undermining of international, regional or national peace and security, and of serious violations of international humanitarian law and human rights. Each State Party will be responsible for applying these criteria in a sovereign way.

The ICRC speaker underlined that many existing instruments or regimes have drawn up **Handbooks/Guidelines** for States. These Handbooks/Guidelines provide States with indicators that allow greater **predictability** in the authorization process and hence call into question the "subjectivity" for which risk assessment-based criteria are criticized. For its part, the ICRC has written a practical guide on the application of international humanitarian law criteria. She pointed out that it was possible for negotiators to rely on institutions like the ICRC to draw up guides and indicators of this kind.

Certain delegations stressed the fact that **these criteria could not be applied "mathematically", however, given the high level of complexity inherent in each arms transfer situation**.

The **French and European** systems were presented as an illustration, while reminding participants that the aim was quite obviously not to retranscribe these regional systems at international level in the framework of an Arms Trade Treaty.

Many participants, in particular from civil society, emphasized the necessary role of parliaments among national-level actors.

That session dealt more particularly with the internal **enforcement and criminalization measures** that could be established with a view to the effective implementation of an ATT.

Once again, it was recalled that enforcement measures were **to be decided in a sovereign way by each State**. According to the Swedish Ambassador, these decisions should not be appealable. Regarding possible sanctions, it was stressed that, at international level, one should probably not go beyond "naming and shaming" mechanisms.

It was recalled that the Arms Trade Treaty would have a hybrid **sui generis nature**. It is neither completely an arms control treaty, nor an export control treaty. It is therefore necessary for States to exercise caution when one is considering drawing on existing mechanisms contained in different instruments.

As regards the criminalization of violations of an ATT, the Amnesty International representative presented a series of recommendations intended for States. His speech centred on a basic assumption, namely the **need for an official authorization** to conduct arms transfer activities. The speaker made a list of elements to be borne in mind, such as: export licences and other documents; establishing a national authority; end user certificates; measures to prevent diversion risks; regulation of brokering activities; transit, transshipment and transport licences; verification of deliveries; the need for authentic and verifiable documents; mechanisms for the prevention of corruption and money laundering; the establishment of administrative and criminal sanctions, and so on.

The discussions raised many questions, particularly as regards the risk of duplication of the criminalization of offences with other existing international instruments (particularly with the 2001 United Nations Convention against Transnational Organized Crime).

**Everyone recognized the sui generis nature of the ATT, which calls for a degree of creativity on the part of negotiators, and of the discussion process itself (new negotiating method, new partners, etc.).**

The afternoon session focused on the international implementation of an Arms Trade Treaty, and more particularly on the **cooperation and assistance mechanisms** that could be developed, as well as on the **international institutional structure** that could back an ATT, and on transparency mechanisms.

Implementation challenges for all members of the international community are evident, for all States Parties, whether they be exporting, importing or transit States. It will be necessary for each State **to identify the type of cooperation and assistance it may need** (assistance in adopting a national legislation, setting up of a national authority, licensing mechanisms, transfrontier cooperation, criminalization, and so on). The setting up of an **Implementation Support Unit** was therefore discussed and supported by a certain number of speakers and participants.

The second speaker, from the “Control Arms Campaign”, detailed, by way of illustration, the example of Chad among the States that could request to benefit from cooperation and assistance mechanisms. As regards the **financing** of these mechanisms, it was suggested to establish an international Fund that could be managed by the Implementation Support Unit and financed by the States Parties. Introducing a transfer tax was also envisaged.

The last round-table speaker, a representative of Interpol, stressed **the possible impact of the adoption of an Arms Trade Treaty on the fight against trafficking**. It was recalled that, to date, unlike what is taking place in other areas such as the fight against drug trafficking or piracy, efforts on the part of the international community have proved relatively inadequate. There are no cooperation tools, no databases, no networks and no investigating methods. **Many reasons were put forward for the lack of operational measures**, namely: lack of political will, a fragmented body of normative law, and inadequate cooperation structures in relation to the threat. **Adopting an ATT would make it possible to lay the foundations for operational international cooperation in the fight against trafficking by defining preventive measures, and establishing a solid and binding legal foundation and harmonized cooperation methods.**

The last round table focused in particular on the **institutional structure of an Arms Trade Treaty**. A presentation was given of all **options relating to entry into force, the establishment of an Implementation Support Unit, meetings of States Parties, the peer review mechanism, the setting up of an experts committee, and so on, while stressing the difficulties arising from the establishment of such organs and mechanisms.**

Special attention was paid to **compliance and transparency mechanisms**. The speaker from the Stockholm International Peace Research Institute (SIPRI) first recalled the hybrid nature of an ATT and then detailed the **type of information** that could result in the exchange of information under the Treaty: its **structure**, i.e. the elements of the national control system, transfer activities (current transfers and/or licensing decisions), **enforcement measures** (efforts to prevent violations of controls and combat trafficking), as well as exchange of information on **denial of transfer** (while underlining that the instruments that provide for such an exchange of information on denials fall under a club logic rather than a universal logic such as would prevail under an Arms Trade Treaty).

**In conclusion, it was emphasized that current negotiations towards an Arms Trade Treaty come under more global, international efforts aimed at establishing a global governance. It was recalled, therefore, that it was the responsibility of all members of the international community to support this joint effort.**