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TOWARDS A GLOBAL ARMS TRADE TREATY AND BANGLADESH: OPPORTUNITIES AND CHALLENGES AHEAD

Abstract

After all these years, it is frustrating to know that still, there exist no binding international standards to regulate, control and monitor the massive activities that fall within the boundaries of conventional arms transfers. The void left by the non-existence of any international binding standards engenders many consequences. They range from distressing global scenarios such as increasing armed conflicts and casualties, human rights violations to undesired arms transfers e.g., illicit trafficking in arms, arms transfers to conflict regions, to non-state actors as well as arms transfers even to countries undergoing arms embargoes. One of the main objectives of the paper, therefore, is to provide an analysis of the multifaceted need for a legally binding international arms trade treaty (ATT). While providing an overview of the content of the treaty, the paper also discusses the various challenges that the ATT process is experiencing especially due to the international community's unrelenting efforts to incorporate some crucial yet contentious provisions within the treaty framework. The paper also probes into the relevance of the treaty for Bangladesh. It is argued that since small arms proliferation constitutes serious socio-political and security concerns in Bangladesh, an ATT would yield handful benefits for the country. Nevertheless, as revealed in the paper it will also create new hurdles for Bangladesh in terms of fulfilling the treaty commitments.

1. Introduction

The world community's efforts toward having a global arms trade treaty to regulate the transfer of conventional weapons offer great opportunities for a

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developing country like Bangladesh while at the same time, being a ‘small state’¹ in the cohort of states, the country is also faced with some odd challenges. After all these years, it is frustrating to know that still, there exist no binding international standards to regulate, control, and monitor the massive activities that fall within the purview of conventional arms transfers². Some scholars often highlight the fact that due to the rigid provisions of the World Trade Organisation (WTO), the trade in bananas are even more regulated than the trade in conventional weapons and, especially the trade in Small Arms and Light Weapons (SALW). There have been many attempts to institute international standards both at the global as well as at the regional level but with limited success or in some cases efforts have either been ineffective or turned out to be futile at the end. The United Nations Register of Conventional Arms (UNROCA) was one such example in the post-Cold War period which fell short of binding standards and, in the early years of 21st century, the United Nations (UN) SALW process also exhibited similar outcomes although in the later years it converged with the arms trade treaty process. The consequences are upsetting and agonising. Around 2000 people lose their lives daily³ i.e., 4 persons die in every three minutes as victims of firearms, with many more thousands wounded, displaced, raped or otherwise abused as a result of armed violence. In addition, there are many victims and traumatised survivors of the blatant misuse of larger conventional weapons, munitions and military equipment in armed conflicts and brutal acts of repression across the globe.⁴

¹ Bangladesh, despite impressive improvements in the human development indicators and consistent economic growth for almost a decade by now, remains a ‘small state’ in terms of the basic and commonplace indicators of size and strength viz., territory, GNP, productive capability, resource base, industrial capacity, etc., except population, as well as from the point of view of remaining weak economically, militarily, and technologically. See Shaheen Afroze, “Small States in Global Perspective: In Search of a Role Model in Regional Stability”, in Mohammad Humayun Kabir (ed.), *Small States and Regional Stability in South Asia*, Dhaka: Bangladesh Institute of International and Strategic Studies and University Press Limited, 2005, p. 14.

² The term ‘transfers’ needs to be understood here in a comprehensive manner as advocated by the supporters of the global Arms Trade Treaty. It encompasses all activities related to international arms transfers that include: a) all import and export of arms and ammunition; b) arms and ammunition brokering activities; c) transfers of arms and ammunition production capacity; and d) the transit and trans-shipment of arms and ammunition. See the document: *Compilation of Global Principles for Arms Transfers*, London: Amnesty International, 2006, available at <http://www.amnesty.org/en/library/asset/POL34/004/2006/en/71d95abe-d41e-11dd-8743-d305bea2b2c7/pol340042006en.html>, accessed on 13 October 2012.

³ This is an Oxfam estimate often cited by the ATT advocates.

⁴ Daniel Mack and Brian Wood, “Civil society and the drive towards an Arms Trade Treaty”, *A Background Paper*, available at <http://unidir.org/pdf/activities/pdf15-act431.pdf>, accessed on 14 November 2012.

Perhaps realising this and seeing either no signs of initiatives or some futile attempts by the world's major arms traders, the global civil society stepped forward and took the initiative. Backed by a group of Nobel Peace Laureates, the International Non-Governmental Organisations prepared the proposal Draft Framework Convention on International Arms Transfers and tabled it before the 2001 UN SALW Conference. It was in October 2006 that the governments of Argentina, Australia, Costa Rica, Finland, Japan, and Kenya backed by the United Kingdom circulated the draft resolution 'Towards an Arms Trade Treaty', among the members of the UN General Assembly (UNGA) First Committee thereby initiating the Arms Trade Treaty (ATT) process. Since then, the ATT process has experienced many setbacks but overcoming those it moved forward and finally, the 2012 UN ATT Conference in July 2012 was decided as the negotiating forum to come up with a robust ATT. To some distress, the Conference failed to produce an arms trade treaty but the hope is still on since a latter schedule i.e., March 2013 has been agreed for another Conference to finalise the treaty.

Against this, the main objectives of the paper are to raise some important questions and seek answers to them as well. Why do we really need an ATT? What is in there in the proposed arms trade treaty? What are the obstacles that the treaty process is facing? What is the relevance of the treaty for Bangladesh? Will the treaty yield any benefits for Bangladesh or will it create further hurdles for Bangladesh? And how to overcome those hurdles are some of the very pertinent questions. To probe into these queries, the discussion in the paper is structured into six sections. Section one is introduction and section two delineates the crucial needs for a global arms trade treaty. Section three highlights the various significant features of the proposed/draft treaty. In section four, attempt has been made to identify the various challenges to a universal and legally binding treaty that arises especially due to the international community's unrelenting efforts to incorporate some crucial yet contentious provisions within the treaty framework. Section five delineates the many opportunities that an ATT offers to a country like Bangladesh, a 'small trader' in the arena of international arms trade. This section also sheds light on the challenges and hurdles that the ATT might pose to a resource-constraint Bangladesh as well as how to deal with those challenges. Finally, section six concludes the discussion.

2. The Need for a Global Arms Trade Treaty (ATT)

There is no denying the fact that the void left by the non-existence of any international binding standards for transfers of conventional weapons engenders many consequences. They range from distressing global scenarios such as increasing armed conflicts and casualties, human rights violations to undesired arms transfers e.g., illicit manufacturing and trafficking in arms, arms transfers to conflict regions, to non-state actors as well as arms transfers even to countries

undergoing arms embargoes. To cite an instance, in April 2008, the Chinese ship “An Yue Jiang” was sailing towards Zimbabwe to deliver three million ammunition units at the height of grave political tensions and worsening violence against unarmed civilians in that country.⁵ The export was strongly resented by the civil society in several African countries with the support of a global non-governmental organisation (NGO) campaign.⁶ Dock workers in South Africa and Angola refused to disembark the shipment, human rights lawyers began successful national court actions and religious leaders and parliamentarians protested across the South African Development Community (SADC) region. All these led to an international outcry by the governments, eventually forcing China to suspend the shipment and recall the ship.

In a different context, the South African arms exports to Colombia and Algeria in the year 2003 can also be cited as an example among many other examples of undesired arms transfers. Despite the South African government’s enactment of new legislation on arms control in 2002⁷, which provided for the government committee considering arms-export applications ‘must avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms’- South Africa has exported arms to several questionable locations.⁸ There has been a steady rise of South African arms exports to Colombia, the value of which reached US\$ 33 million in 2003 (see Figure 1 in Appendix 1), in spite of the publicly-available evidence of human rights abuses perpetrated in Columbia during that period. The country also made similar questionable transfers to countries like Algeria, a country with recent history of internal conflicts and widespread human rights abuses.⁹

Moreover, as informed in the UN Resolution 61/89 of December 2006, “the absence of common international standards on the import, export and transfer of conventional arms is a contributory factor to conflict, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development.”¹⁰ The need for an international ATT is

⁵ *Ibid.*

⁶ The International Action Network on Small Arms (IANSA) coordinated the NGO campaign.

⁷ National Conventional Arms Control Act 2002.

⁸ “Towards an Arms Trade Treaty: Next Steps for the UN Programme of Action”, *Control Arms Briefing Paper*, June 2005, available at <http://controlarms.org/wordpress/wp-content/uploads/2011/02/Towards-an-ATT-Next-steps-for-the-UN-POA.pdf>, accessed on 15 October 2012, p. 7.

⁹ In 2003, heavy weapons worth US\$ 30 million and sensitive support equipment, such as missile guidance systems and gun sights, worth US\$ 23 million, have been exported to Algeria from South Africa.

¹⁰ See the UNGA Resolution A/RES/61/89 entitled, “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of

also delineated in Article 1 of the draft ATT under the goals and objectives as: “to establish the highest possible common standards for regulating or improving the regulation of the international trade in conventional arms to prevent, combat and eradicate the illicit trade in conventional arms and their diversion to the illicit market or for unauthorised end use; prevent the international trade in conventional arms from contributing to human suffering; and promote cooperation, transparency and responsibility of States Parties in the trade in conventional arms, thus building confidence among States Parties”.¹¹ However, apart from these, the recent trends in conventional arms transfers and the weaknesses and insufficiency of the existing instruments also expose the necessity of a legally binding global arms trade treaty.

2.1 International Arms Trade Trends

The downward trend exhibited by the global arms trade immediately in the aftermath of the Cold War reversed at the dawn of the new century.¹² From 1990 through 1995, worldwide arms exports declined by 73 per cent.¹³ This trend has reversed in the first decade of the twenty first century. After reaching their lowest point in 2002, the volume of international transfers of major conventional weapons according to the Stockholm International Peace Research Institute (SIPRI) data shot up to 22 per cent higher during 2005-2009 than during 2000-2004.¹⁴ This ‘increasing’ trend is still continuing and the volume of international transfers is again 24 per cent higher during the period of 2007-2011 than in 2002-

conventional arms”, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/89&Lang=E, accessed on 02 July 2012.

¹¹ See the final draft of the Arms Trade Treaty prepared on 26 July 2012 during the UN Conference on ATT, available at <http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/negotiating-conference/documents/consolidated-text-26July.pdf>, accessed on 11 October 2012.

¹² During the Cold War, the two blocs, and individual countries, used conventional weapons transfers with little restraint to establish or maintain spheres of influence. The end of Cold War removed this competition of winning spheres of influences from world politics resulting in a sharp decline in the transfers of conventional weapons in the next five years.

¹³ US, Arms Control and Disarmament Agency (ACDA), *World Military Expenditures and Arms Transfers (WMEAT), 1995*, Washington, D.C.: Government Printing Office, 1996, p. 15. Quoted in Tom Lansford, “Towards an International Regime on Small Arms Trade: Progress and Problems”, *International Studies*, Vol. 39, No. 4, 2002, p. 365.

¹⁴ Paul Holtom and Mark Bromley, “The International Arms Trade: Difficult to Define, Measure, and Control”, *Arms Control Today*, July/August 2010, Arms Control Association, 2010, available at http://www.armscontrol.org/act/2010_07-08/holtom-bromley, accessed on 08 July 2012.

2006.¹⁵ This trend is further illustrated in Figure 2 in Appendix 1. However, the SIPRI arms transfer database includes only major conventional weapons. According to the Small Arms Survey,¹⁶ the global annual value of trade in small arms and light weapons, their parts, accessories, and ammunition has been found to be at least US\$ 8.517 billion¹⁷ (see Figure 3 in Appendix 1)—a number significantly higher than all previous estimates.¹⁸ Again, this figure does not include the trade in parts of guided missiles and components of light weapon ammunitions and accessories other than weapon sights, incorporating whose value would conceivably increase the figure to US\$ 10 billion or more.¹⁹

The estimates provided by the Congressional Research Service (CRS) of the United States on the other hand, include all conventional arms transfers except SALW²⁰, according to which the value of all arms transfer agreements worldwide in 2011 was US\$ 85.3 billion, an extra-ordinary increase over the 2010 total of US\$ 44.5 billion and the highest worldwide arms agreements total since 2004.²¹ Of these, arms transfer agreements with developing countries constituted 83.9 per cent of the total which is worth of US\$ 71.5 billion, a large increase from US\$ 32.7 billion in 2010. This increase is ascribable mainly to Saudi Arabia since the country placed orders for US\$ 33.7 billion worth of

¹⁵ Paul Holtom *et. al.*, “Trends in International Arms Transfers, 2011”, *SIPRI Fact Sheet*, Stockholm International Peace Research Institute, March 2012, available at http://books.sipri.org/product_info?c_product_id=443, accessed on 13 October 2012.

¹⁶ An independent research project located at the Geneva-based Graduate Institute of International and Development Studies, Geneva, Switzerland.

¹⁷ According to Small Arms Survey, the annual average value of documented transfers is US\$ 5.4 billion whereas undocumented transfers’ worth is US\$ 3.1 billion i.e., 62.83 per cent and 37.2 per cent respectively of the total US\$ 8.5 billion transfers. Small Arms Survey, Geneva, *Small Arms Survey 2012: Moving Targets*, Cambridge: Cambridge University Press, 2012, p. 251, available at http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2012/eng/Small-Arms_Survey-2012-Chapter-08-EN.pdf, accessed on 02 November 2012.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ The Dictionary of Weapons & Military Terms defines small arms as ‘all arms, including automatic weapons, up to and including those of .60 cal. and shotguns.’ And according to Jane’s infantry, small arms embrace “all crewportable direct weapons of less than 50 mm and will include a secondary capability to defeat light armour and helicopters.” ‘Light weapon’ denotes all conventional arms that can be carried by an individual combatant or by a light vehicle. Neila Husain, “Proliferation of Small Arms and Politics in South Asia: The Case of Bangladesh”, *RCSS Policy Studies* 7, Colombo: Regional Centre for Strategic Studies, 1999, pp. 1-2.

²¹ Richard F. Grimmett and Paul K. Kerr, “Conventional Arms Transfers to Developing Nations, 2004-2011”, *CRS Report No. R 42678*, Washington DC: Congressional Research Service (CRS), August 2012, pp. 3-5, available at <http://www.fas.org/sgp/crs/weapons/R42678.pdf>, accessed on 15 October 2012.

conventional weapons in the year 2011.²² However, arms transfer agreements are made for future deliveries. The actual deliveries that have been made to the recipients in the year 2011 stands at US\$ 44.3 billion. Of these, 63.3 per cent deliveries worth of US\$ 28 billion, the highest since 2004 were made to the developing countries, mostly to the Asian region (see Figure 4 in Appendix 1).²³ And yet this is only the official data. According to one estimate, the “grey” and “black” market in arms inevitably in developing countries may be as high as 50 per cent of the official average arms exports to developing countries.²⁴

According to SIPRI estimates, the United States, Russia, Germany, France, and the United Kingdom (in descending order) are the top five suppliers of major conventional weapons accounting for 75 per cent of exports of major conventional weapons during 2007-2011. India, South Korea, Pakistan, China, and Singapore (in descending order) on the other hand, are the top five recipients during the same period accounting for 30 per cent of the world total.²⁵ This ranking of major suppliers and recipients remain same as it was during 2002-2006, nevertheless, interestingly different from the ranking in the period of 1980-1984. The Soviet Union was the largest supplier during that period whereas Iraq was the largest recipient along with India, Libya, Syria and Egypt (compare Tables 1, 2, and 3 in Appendix 2). However, for small arms and light weapons, the United States, Italy, Germany, Brazil, and Australia (in descending order) are the top 5 exporters whereas the United States, the United Kingdom, Saudi Arabia, Australia, and Canada (in descending order) are the top five importers²⁶ (see Table 4), a significant contrasting scenario than the suppliers and recipients of major conventional weapons.

Although, the dominant objective of the ATT does not include taking measures to directly reduce the volume of international transfers of conventional arms which would definitely irk the world’s major arms exporters, these massive activities of arms transfers need to be regulated and monitored. More importantly, lack of an ATT surely leaves space for leakages in the system resulting in undesired arms transfers to non-state actors and even to countries undergoing arms embargoes. Even without leakage, as Denise Garcia noted, states’ transfer of weapons to non-state actors, that is, groups they deem

²² This is the largest arms deal for at least two decades constituting orders for 84 new and 70 rebuilt F-15SG combat aircraft mostly (99 %) from the United States. This one agreement has distorted the arms transfers’ trend for the year 2011 registering a 91.7 per cent increase from the year 2010. See Paul Holtom *et. al.*, “Trends in International Arms Transfers, 2011”, *op. cit.*, p. 1.

²³ *Ibid.*

²⁴ Jasjit Singh, “Controlling the Arms Trade as a Contribution to Conflict Prevention”, *Strategic Analysis*, April 1990, p. 5.

²⁵ Paul Holtom *et. al.*, *op. cit.*, p. 6.

²⁶ Small Arms Survey, Geneva, *op. cit.*, p. 242.

legitimate to, is a customary practice and a long-consolidated norm.²⁷ The unrestrained transfer of weapons is an established foreign policy practice and it is the way states form, uphold alliances, extend friendships, and build spheres of influence.²⁸ Examples are abundant including the United States' arms transfers to Afghan Mujahideen during the Afghan war, North Vietnamese and the Chinese support for the Viet Cong during 1958-1975, and the Arab assistance to the Palestine Liberation Organisation (PLO) from 1966 till date. The most recent example includes arms transfers to Syria since the eruption of the civil conflict there in 2011, both to the state and non-state entities that undoubtedly are sustaining the fatalities and, more importantly leading to intense and increasing violence resulting in severe human rights abuses and international humanitarian law violations. Considering the fact that states' transfers to non-state actors may continue, the proposal for prohibition of transfers both to state and non-state actors if it involves grave or systematic violations of human rights and the international humanitarian law is a crucial necessity.

Arms transfers to non-state actors also suffer from serious transparency issue. As illustrated in Figure 5 in Appendix 1, state-to-state arms transfers are usually transparent while states' transfers to non-state actors are usually non-transparent. In cases where arms imported by a state is transferred to a non-state actor of another state, it is often partially transparent but when that non-state actor transfers arms to non-state actor of another state, transparency is increasingly lost. Considering this fact and recognising that non-state actors play an important role in engendering conflicts as well as in facilitating arms transfers to "undesirable" end-users, the UN imposed arms embargoes upon many non-state actors such as non-state actors against the Democratic Republic of Congo (DRC), Ivory Coast, Liberia, Sierra Leone, Sudan, and Somalia, as well as Al-Qaida and associated persons.

Moreover, recent data also shows evidence of arms transfers to countries undergoing arms embargoes. Since 1990, the United Nations has imposed 28 arms embargoes against targets in 17 countries.²⁹ However, states retain primary responsibility for enforcing arms embargoes. The UN sanctions committees and panel of experts charged with monitoring arms embargoes have documented different roles states have played in violating arms embargoes. Countries often give more priorities to their national interests – domestic, political, foreign policy, and security – than the existence of any multilateral or bilateral arms embargoes imposed upon a particular country. For instance, although the

²⁷ Denise Garcia, "Arms Transfers beyond the State-to-State Realm", *International Studies Perspectives*, Vol. 10, No. 2, May 2009, p. 151.

²⁸ Gerald L Sorokin, "Alliance Formation and General Deterrence: A Game-Theoretic Model and the Case of Israel", *Journal of Conflict Resolution*, Vol. 38, No. 2, June 1994, pp. 298-325, quoted in *ibid*.

²⁹ Paul Holtom and Mark Bromley, *op. cit*.

European Union (EU) and the US have arms embargoes against Iran, Myanmar, Sudan, and Zimbabwe, Russia continues to supply weapons systems to these states. According to one estimate, between 2000-2010 arms transfers worth of US\$ 2.2 billion have gone to countries subject to arms embargoes including Iran and North Korea.³⁰ Therefore, as advocated stronger transfer control policies and increased monitoring are of central importance for preventing violations of UN arms embargoes.

2.2 Weaknesses and Insufficiency of the Existing Instruments

The issue of global guidelines for the control of conventional arms transfers has been on the international agenda for a long time.³¹ The first such attempt was made as early as in 1925 when the League of Nations produced a draft Convention on the Arms Trade that was never adopted.³² However, according to some scholars, up until the end of the Cold War, the 1890 Brussels Act was the only ratified broad-based international treaty providing for the regulation of aspects of the conventional arms trade although it should be noted that the treaty was actually intended to curb the slave trade.³³

Disarmament is an element of the UN Charter and although the question of conventional arms control³⁴ has been frequently discussed in the General

³⁰ This is an estimate by Oxfam GB. See “Stay on Target: Will the UK fight the battle for tough arms control?”, *Control Arms UK Briefing Paper*, Oxford: Oxfam GB, 25 April 2012, available at <http://policy-practice.oxfam.org.uk/publications/stay-on-target-will-the-uk-fight-the-battle-for-tough-arms-controls-220271>, accessed on 02 July 2012. To arrive at this estimate, Oxfam GB considered only the full embargoes imposed on UN member states disregarding all partial embargoes or those placed on non-governmental entities that were in force between 2000 and 2010, imposed either by the UN, regional organisations, or by any other multilateral initiatives.

³¹ Paul Holtom and Siemon T. Wezeman, “Appendix 10C. Towards an arms trade treaty?”, in Stockholm International Peace Research Institute (SIPRI), *SIPRI Yearbook 2007: Armaments, Disarmament and International Security*, Oxford: Oxford University Press, 2007, p. 431.

³² *Ibid.*

³³ Mark Bromley, Neil Cooper and Paul Holtom, “The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history”, *International Affairs*, Vol. 88, No. 5, 2012, p. 1031.

³⁴ It is important to note that ‘arms control’ and ‘disarmament’ have different meanings. ‘Arms Control’ refers to agreements between two or more states to limit or reduce certain categories of weapons or military operations to diminish tensions and the possibility of conflict. It also includes measures to verify compliance and enhance transparency. ‘Hard’ arms control refers to reductions or limitations of actual military hardware, while ‘soft’ arms control is normally associated with transparency measures over military exercises, budgets and doctrine. ‘Disarmament’, by contrast, is often imposed by a state or group on one or more states, normally at the conclusion of a war, such as the limits imposed on Germany at the end of the First and Second World Wars, or the restrictions placed on

Assembly's annual deliberations on armaments, yet there are no global conventions or treaties restricting transfers of conventional weapons, in contrast to chemical, biological and nuclear weapons, which are governed by global conventions prohibiting their transfers. In 1991, the UNROCA was established to promote transparency in the conventional arms trade. In the mid-1990s, the global focus shifted towards SALW (leading to the 2001 UN SALW Conference). However, the 2001 UN SALW conference focused narrowly on 'illicit' trade. Its key outcome was the Programme of Action (POA), which tasked governments with several measures to combat the illicit SALW trade. In addition to biennial reviews, it was agreed that after five years the POA would be assessed, modified if necessary, and that efforts would be made to reach agreement on new issues to be addressed within the POA framework. The first clear signs that the review conference would not meet this goal were evident in the preparatory meeting in January 2006. A lack of consensus mainly on the issues of ammunition possession, prohibitions on transfers to non-state actors and global guidelines for SALW transfers prevented the adoption of an official agenda for the conference.

At the review conference in New York in July 2006, opposition from a number of states on the same issues ensured that the conference concluded without agreement on a final document and failed to provide 'either a mandate to conduct a further review in five years, or guidance on future implementation'. The difficulty of achieving consensus within the UN system is regarded as one of the reasons for conference's lack of success. It has been argued that it was the 'tyranny of the minority'- China, Cuba, Egypt, India, Iran, Israel, Pakistan, Russia and the United States - that obstructed the POA process. This minority is largely formed of the same countries that have consistently blocked attempts to broaden the process since the 2001 SALW conference. However, the lack of success within the POA process, in fact, motivated the member states to combine it with the ATT process.

Iraq by the UN at the conclusion of the 1991 Gulf War. This distinction is important because "while an arms-control regime is maintained by a harmony of interests among the participants, disarmament may require external pressure to ensure implementation and compliance." Jeffrey D McCausland, "Conventional Arms Control and European Security", *Adelphi Paper No. 301*, Oxford: Oxford University Press, 1996, p. 4. Understanding this distinction is also important for the purposes of this paper to perceive ATT as a way forward towards 'arms control'; is not an effort towards 'disarmament' as often misconstrued by many.

2.3 *The Road towards an Arms Trade Treaty*

A distinguishing feature of the present UN sponsored arms trade treaty effort is the fact that it is largely aided and advocated by a group of NGOs.³⁵ The idea for a legally binding instrument drawing on existing relevant principles of international law and standards emerged from discussion between Amnesty International, Saferworld, the British American Security Information Council (BASIC), and the World Development Movement. In 1980s, this led to the development of a policy to promote strict legal control of military, security, and police transfers.³⁶ The Arias Foundation of Costa Rica was also working at the moment toward an international code of conduct, and in 1995 with American Friends Service Committee, Amnesty International, BASIC, Saferworld, and other NGOs, drafted “the International Code of Conduct on Arms Transfers” as a proposal for a legally binding instrument. Encouraged by the success of the international campaign to ban landmines, in 1997, Costa Rican President Dr. Oscar Arias called upon a group of fellow Nobel Peace Laureates³⁷ to promote the Code. By 2000, this International Code was transformed with the assistance of lawyers from Cambridge University and Amnesty International into a more refined proposal entitled, Draft Framework Convention on International Arms Transfers. It was first circulated at the 2001 UN SALW Conference; an early example of how the campaigns for improving SALW controls and the ATT initiative have converged.³⁸

In October 2003, the Amnesty International, Oxfam and the IANSA launched the Control Arms campaign. In September 2004, the UK became the first permanent member of the UN Security Council to back the initiative. The EU issued a statement of support the following autumn. On 24 July 2006, the governments of Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the

³⁵ This group of non-governmental organisations includes: the Africa Peace Forum, Amnesty International, Arias Foundation, Caritas International, the Friends Committee on National Legislation, Non-Violence International, the International Action Network on Small Arms (IANSA), Oxfam International, Project Ploughshares, Saferworld, the Schweitzer Institute, Sou da Paz, Viva Rio, and the Women’s Institute for Alternative Development (WINAD). See the document: *Compilation of Global Principles for Arms Transfers*, *op.cit.*

³⁶ Daniel Mack and Brian Wood, *op. cit.*

³⁷ This group of Nobel Peace Laureates supporting the ATT initiative included: Adolfo Perez Esquivel, Albert Schweitzer Institute, American Friends Service Committee, Amnesty International, Aung San Suu Kyi, Betty Williams, Elie Wiesel, the Dalai Lama, International Physicians for the Prevention of Nuclear War, Jimmy Carter, Jody Williams, José Ramos-Horta, Lech Walesa, Oscar Arias, Desmond Tutu, and Rigoberta Menchu.

³⁸ Paul Holtom and Siemon T. Wezeman, “Appendix 10C. Towards an arms trade treaty?”, *op. cit.*, p. 433.

UK circulated a draft resolution, 'Towards an Arms Trade Treaty', among the members of the UNGA First Committee which was adopted on 26 October 2006. In the UNGA vote on 06 December 2006, 153 governments voted in its favour and 24 governments abstained from voting while the United States was the only government voted against the resolution.

The 2006 UN Resolution 61/89 established a process in 2007 for a UN Secretary-General consultations with all member states that followed in 2008 by formation of a Group of Governmental Experts (GGE) to examine the "feasibility, scope and parameters" of a legally-binding ATT. An unprecedented 101 countries submitted their views. The GGE met in three sessions³⁹ and submitted a consensus report in August 2008. In October 2008, the UN Resolution 63/240 mandated an Open-Ended Working Group (OEWG) for all UN member states to meet in six sessions during 2009-2011 to consider the elements for a legally binding treaty. The OEWG met for two sessions (02-06 March and 13-17 July) in 2009, and has been able to gear-shift the discussion from "whether" we would have an ATT to "when" and "how". A positive development occurred at the moment when the US Secretary of State Hillary Clinton announced in October 2009, a policy reversal in the United States supporting the ATT efforts, leading to the immediate adoption of another UN Resolution. In the UNGA vote for the Resolution 64/48 of 2009, again 153 states voted in favour, 20 abstained, and this time only Zimbabwe voted against the resolution. The US support for the resolution reinvigorated the already geared up ATT process. The resolution converted the remaining four sessions of the OEWG into Preparatory Committee sessions. Four Preparatory Committee sessions were held in 12-23 July 2010, 28 February-04 March 2011, 11-15 July 2011, and 13-17 February 2012 respectively. As decided in 2009 resolution, a four-week intensive negotiation took place during the UN Conference on ATT from 02-27 July 2012. However, despite the efforts put forth by all the governments, NGOs and other participants, the July Conference failed to reach an agreement and the negotiation ended without an ATT.⁴⁰ Nevertheless, the UNGA has decided to convene another conference in March 2013 to conclude the work that began in July 2012.

3. The Proposed/Draft Arms Trade Treaty

A number of discussion papers have been prepared for negotiations since 2006 leading to two drafts of the treaty. The first discussion paper was prepared during the First Preparation Committee. It had fourteen chapters including: preamble/principles, goals and objectives, general obligations and rights, scope

³⁹ The three sessions were met from 11-15 February, 12-16 May, and 28 July-08 August respectively in 2008.

⁴⁰ The author intends to analyse the reasons for failure of the July 2012 ATT negotiations in a forthcoming article.

of the treaty, implementation and application, transparency provisions, compliance, international cooperation, assistance and capacity building, etc., and final provisions regarding review processes, amendments, reservations, entry into force, withdrawal, and duration etc. The second and the third discussion papers both titled as “Chair’s Paper” were circulated during the Third Preparation Committee meeting and during the UN Conference on ATT on 03 July 2012 respectively.⁴¹ The second Chair’s Paper contained seven chapters and the third one contained ten chapters both covering almost similar items identical to the first discussion paper. During the UN Conference in July 2012, two drafts of the treaty were prepared. The first one was circulated on 24 July 2012, and the second, and final one on 26 July 2012.

The final draft contains 25 Articles along with two introductory chapters namely preamble and principles. The preamble delineates the need for an ATT, recognises the legitimate political, security, economic and commercial rights and interests of states in international arms trade and the sovereign right and responsibility of any state to regulate and control transfers of conventional arms that take place exclusively within its territory. The Principles section enumerates many principles in line with the UN Charter that include: right of all states to individual or collective self-defence, the settlement of international disputes by peaceful means, non-intervention in domestic jurisdiction of any state, and the responsibility of all states in establishing and implementing their respective national export control systems etc.

The goals and objectives of the treaty are described in Article 1 of the treaty. Article 2 stipulates the scope of the treaty by enumerating the items that will be covered as well as the activities that will be under the ATT jurisdiction.⁴² Article 3 discusses the prohibited transfers and, Articles 10, 11, and 12 discuss about the reporting and record-keeping mechanisms, enforcement and the Secretariat respectively. National assessment procedures regarding whether and how an export to be authorised are delineated in detail in Article 4 of the draft treaty. Articles 6, 7, 8 and 9 again elaborate the scope of the treaty so far the export, import, brokering, transit and transshipment of conventional weapons are concerned. Articles 13 and 14 discuss the need and indicate the processes for international cooperation and assistance for implementation of the treaty. Signature, ratification, approval or accession processes, timing of entry into force, duration of the treaty, withdrawal procedure, amendment procedures etc., are specified in Articles 15-20 and in Article 22 respectively. Articles 23 and 24

⁴¹ All the official documents relating to the ATT process are available at the website, “Reaching Critical Will”, a project of the *Women’s International League for Peace and Freedom*, available at <http://reachingcriticalwill.org/disarmament-fora/att>, accessed during 02-12 October 2012.

⁴² For details see the final draft, available at <http://reachingcriticalwill.org/disarmament-fora/att>, accessed on 06 October 2012.

define the relationship of the signatory of this treaty with states not party to this treaty as well as the treaty's relations with other instruments. The draft treaty also incorporates provisions for Conference of States Parties discussed in Article 21 of the draft. This Conference which has to be convened within a year of the entry into force of the treaty, shall adopt rules of procedure and rules governing its activities, including frequency of meetings and rules concerning payment of expenses incurred in carrying out those activities.

Therefore, an assessment of the draft ATT shows that the negotiating parties at the July 2012 UN Conference have successfully come up with a document that incorporates almost all the issues and concerns of the advocates of the ATT that are debated for almost two decades especially, the "golden rule" that no international conventional arms transfer should be permitted where the weapons, munitions or equipment are likely to be used to commit serious violations of international human rights and humanitarian law – which has been categorically incorporated in Article 4 of the draft treaty under national assessment although munitions or equipment have been left out. However, the issues and concerns that the negotiating member states have failed to incorporate in the draft are discussed in the following section as challenges towards a universal and legally binding ATT. In large part these challenges also involve the enforcement and/or implementation aspects of the treaty.

4. Challenges to a Universal and Legally Binding Arms Trade Treaty

As Ron P Smith noted, "the arms trade is interesting because it is where foreign policy issues such as security, human rights and international order interact with economic issues such as trade, jobs and profits."⁴³ Therefore, understandably the negotiation process for the arms transfer/trade treaty which involves states' complicated, overlapping, and very sensitive economic, political, foreign policy, and security interests, the global efforts ought to face intense and severe constraining challenges.

4.1 Scope of the Treaty

What weapons categories and what types of transactions will be covered within the framework of a binding ATT are being debated ever since the idea was mooted. Advocates of the ATT have been pressing for 'comprehensiveness' to cover all types of conventional weapons including ammunitions, spare parts, components, upgrade kits, arms-making equipment and dual-use goods as well as technology transfers and licensed production. It has also been advocated that all kinds of arms transfers – exports, imports, transit and trans-shipment as well as brokering activities should be covered. Moreover, non-state actors like armed

⁴³ Ron P Smith and Ali Tasiran, "The Demand for Arms Imports", *Journal of Peace Research*, Vol. 42, No. 2, 2005, p. 167.

rebel groups should also be included in the list of prohibitions as advocated by many human rights organisations as well as some sub-Saharan African states.⁴⁴

However, the final draft of the ATT circulated on 26 July 2012, has partially been able to incorporate these issues. Article 2 of the draft has covered almost all types of conventional weapons including the long advocated SALW but utterly fails to incorporate the ammunitions and spare parts as well as technology transfer. The United States has been opposing the inclusion of ammunitions within the scope of the ATT although many states do support such inclusion. Similarly, the ‘technology transfer’ could not be included due to Brazilian opposition. Moreover, the draft has also failed to address the non-state actors’ issue especially the armed rebel groups. It may be noted that nowhere in the draft, the term ‘non-state actors’ has been mentioned. Although, it may be said that the concern has been partially addressed by incorporating prohibitions on arms transfers that violate UN arms embargoes since some of those embargoes specifically target certain rebel groups.⁴⁵ However, to be effective to thwart undesired arms transfers, ammunitions, spare parts, components, equipments etc., need to be incorporated within the scope of the treaty. This remains a critical challenge for the advocates of a strong ATT, especially since they were incorporated in all the previous drafts.

4.2 Monitoring, Verification and Sanction Mechanism

As often indicated, one of the most innovative proposals of the early ATT initiative is to suggest for mechanisms to monitor and verify compliance as well as to impose sanctions for non-compliance. If implemented, these measures would remedy one of the major shortcomings of existing transfer control arrangements, and under such conditions compulsory reporting to UNROCA could be realistically considered. However, the challenge remains, such levels of public transparency may not be acceptable to all UN members.⁴⁶

There are examples of prohibitive arms control treaties that include elaborate verification apparatus, compliance mechanisms and non-compliance measures.⁴⁷ However, as the final draft reveals, it is unlikely that such intrusive mechanisms could be established to verify compliance within an ATT. One alternative

⁴⁴ The US is opposed to a complete ban on arms transfers to rebel groups since this would remove its option of providing military support to ‘pro-democratic’ rebels in totalitarian countries, rather the US has been the leading advocate for prohibiting transfers of man-portable air defence systems (MANPADS) to rebel groups.

⁴⁵ Paul Holtom and Siemon T. Wezeman, *op. cit.*, p. 436.

⁴⁶ E. J. Laurance, S. T. Wezeman and H. Wulf, “Arms Watch: SIPRI Report on the First Year of the UN Register of Conventional Arms”, *SIPRI Research Report No. 6*, Oxford: Oxford University Press, 1993, pp. 10-13.

⁴⁷ For example, the Treaty on the Elimination of Intermediate-range and Shorter-range Missiles and the Chemical Weapons Convention.

suggested by many scholars is to establish a permanent international sanctions committee, which would collect national reports on transfers in a manner comparable to UN sanctions committees. However, such a body would be unlikely to avoid the problems that the UN sanctions committees face in sanctioning arms embargo violators.

4.3 Reporting Mechanism

For some time states have largely agreed that reports on steps toward full implementation of the treaty should be mandatory that include updates on legislation to bring national controls in line with the treaty's requirements. However, it is the reporting on application of the treaty that has proven to be more contentious since it includes details on arms transfers and license approvals. Although some states already provide public reports on some or all arms transfers viz., the US publishes an annual '655 report' on direct commercial sales and the EU member states submit their arms sales data under the 'Code of Conduct' obligations to publish the joint EU annual report on arms transfers and licenses, most states are not in favour of making their reports public. They do agree sharing of reports between states parties.

4.4 International Cooperation and Assistance

A concomitant to extensive and effective reporting and monitoring mechanism is to have provisions for international cooperation and assistance. For smaller and developing states with weak existing trade controls, meeting the obligations of the treaty may prove difficult both in terms of financing and technical expertise. At the same time, arms smugglers often use these same states for transfer purposes precisely because of their lax standards. In the course of discussions with state proponents of the treaty, developing countries therefore, have stressed the importance of creating a framework for cooperation and aid as an integral part of the treaty.

Therefore, while the ATT is unlikely to create a large secretariat, most states are in agreement that a small support unit will be needed to collate state reports and facilitate international cooperation projects. The size of an Implementation Support Unit (ISU) will ultimately depend on the roles assigned to it. Almost all parties are in agreement that the ATT should not create a transnational regime that monitors the actions of state-parties or verifies reports. Moreover, disagreements exist also over the issue whether the ISU should be hosted within the United Nations or should be separate and funded by states parties alone.

4.5 Balancing the Interests of Suppliers and Importers

The ATT initiative is notable for the role played by states that are not major arms producers or suppliers. Because of its non-discriminatory nature the initiative has also attracted strong support from states in the sub-Saharan Africa

and Latin America, unlike 'exclusive' international supplier groups as has been seen in case of the Wassenaar Arrangement.⁴⁸

However, Cuba, Israel and Libya have expressed fears that ATT guidelines could be used for political ends to block arms transfers to countries that are merely attempting to meet their legitimate defence needs. There are also concerns that an ATT could lead to the establishment of yet another 'supplier cartel' for conventional arms. On the contrary, supplier states not only want to preserve their ability to use transfer controls as a foreign policy tool (to deny arms to foes and supply allies), but also to protect their commercial and economic interests. Therefore, support for the ATT initiative by the British Defence Manufacturers Association could be viewed as a sign that the British Government does not foresee ATT as an obstacle to arms sales.⁴⁹ It remains to be seen whether other national arms industries also exhibit similar attitude. Since the Russian arms industry is particularly export dependent and some of its recipients are not universally regarded as responsible end-users, Russian concerns and demands could be especially hard to overcome. For an ATT to succeed, it seems clear that the differences of opinion between the suppliers and the recipients must be dealt with.

5. Arms Trade Treaty and Bangladesh: Opportunities and Challenges Ahead

The prospects of establishing international legal standards for arms transfers offer great opportunities for a country like Bangladesh while, at the same time, the very fact of implementing the treaty might create new challenges for the country. Although Bangladesh remains a 'small trader' both in terms of value and volume, proliferation of small arms especially due to leakages in the system, illicit trade of small arms, use of Bangladesh as a transit state as well as arms transfers to non-state actors in the country has been serious socio-political and security concerns for Bangladesh. These concerns substantiate the need and relevance of an ATT for Bangladesh.

5.1 Why an ATT is Important for Bangladesh: Opportunities

Small arms proliferation and the concomitant armed violence continue to be an ever-prevalent threat to economic and social development of Bangladesh. Despite not being affected by any major conflict Bangladesh has a significant

⁴⁸ The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is a multilateral export control regime (MECR) with 41 participating states including many former Warsaw Pact countries. It is the successor to the Cold War-era Coordinating Committee for Multilateral Export Controls (COCOM), and was established on 12 July 1996.

⁴⁹ 'Arms trade treaty', *Defence Manufacturers Association News*, No. 35, January 2006, p. 4, quoted in Paul Holtom and Siemon T. Wezeman, *op. cit.*, p. 438.

small arms proliferation problem. Key sources of illegal SALW in Bangladesh are perceived to be those trafficked or smuggled into Bangladesh, homemade weapons that are being manufactured locally and weapons that are leaking from state stocks.⁵⁰ Small arms are used extensively both by petty criminals and organised syndicates in various criminal activities in Bangladesh viz., extortions, robbing, kidnapping etc., often resulting in human casualties.

A distinguishing feature of small arms proliferation, armed violence, and criminal activities in Bangladesh are their linkages with the politics of the country. Political rivalries among the politicians often result in armed violence where illicit SALW are used. Even during various political activities such as *hartals* (strikes) and protests small arms are used leading to armed violence, destruction of properties and even human fatalities. Political parties maintain armed cadres to intimidate and exert power and influence over the rival political activists. An alarming situation emerges when small arms are handed over to students' wing of the political parties and those arms are used in various political activities.

Bangladesh has also become a key 'transit route' for the trafficking in and smuggling of weapons in South Asia. All the points of entry i.e., air, land and sea routes are used for trafficking and smuggling and it is alleged that the Bangladesh-India land routes are used extensively for the business.⁵¹ The Chittagong and the Khulna sea ports are also used as transit routes for arms smuggling. The 2004 Chittagong arms haul case is a crucial example of Bangladesh being used as a transit country.⁵² Small arms are also used by the extremist groups especially the religious extremists in Bangladesh. There are instances of use of small arms viz., grenades, improvised explosive devices (IEDs) and homemade explosives in many cases in Bangladesh. The most devastating incident occurred on 17 August 2005, when over 400 IEDs exploded simultaneously across the country. Although government has been immensely successful in countering extremism in Bangladesh, lack of international arms transfer standards leaves scope for arming these various non-state actors by external entities both state and non-state.

Therefore, considering the challenges posed by the unabated proliferation of SALW, an international arms trade treaty is expected to deliver handful benefits to Bangladesh. An ATT would help Bangladesh: (a) to address the serious issue

⁵⁰ National Forum against Small Arms *et. al.*, "Challenges to Peace and Security: Consulting Communities on Small Arms in Bangladesh", *Small Arms and Security in South Asia Report*, London: Saferworld, December 2006, p. ii.

⁵¹ The most frequently used land borders by the underworld network of smugglers are the country's south-west borders of Shatkhira, Bhaiali, Madra, Keragachi, Hijoldi, Borali; Jessore's Shikarpur, Mashila, Jhenidah, Meherpur; Chuadanga, Meherpur (Ganguni), Kushtia (Daulutpur). See Neila Husain, *op. cit.*, p. 27

⁵² "The biggest arms haul", *Dhaka Courier*, Dhaka, 09 April 2004, p. 7.

of illicit arms trade in the country; (b) to counter illicit arms trafficking by putting an end to utilising Bangladesh as a transit state; (c) by ending or at least limiting arms transfers to the few extremist groups in the country that are still functional; (d) in ensuring transparency in its own international arms trade though Bangladesh remains a small trader; and (e) in eradicating leakages in the system, therefore, making serious contribution in Bangladesh's socio-political development as well as enhancing overall security situation of the country.

5.2 Bangladesh's Position on the Proposed/Draft ATT

Considering the necessity to combat small arms proliferation and illicit trafficking and transfer, Bangladesh has rightly expressed its position in favour of a comprehensive, legally binding arms trade treaty.⁵³ Bangladesh urged that the treaty negotiation process must be carried out through open and transparent discussion and while expressed its position in favour of decision on the 'basis of consensus', proposes observance of alternatives in case of absence of 'universal consensus'. Bangladesh upholds the view that one or two member states should not be allowed to derail or undermine many years of good work by the international community.⁵⁴

Bangladesh strongly supported that the scope of the treaty should be comprehensive enough to cover all sorts of transfers – export, import, state-to-state, state-to-private end-user, commercial sales, leases, loans or gifts or any other form of transfers of material goods or expertise, re-export, transit, temporary transfer and trans-shipment and brokerage of all conventional arms, including heavy weapons, SALW, ammunitions, parts and components etc. However, the scope should also be feasible for implementation. Bangladesh has proposed for a regular updating of items to be covered by the treaty. Bangladesh proposes for a flexible and adaptable definition of conventional arms to adjust to future technological developments in the arms industry.

Participation of NGOs in the July 2012 Conference was also supported by Bangladesh. Bangladesh expressed its support for the involvement of NGOs and civil society organisations in the UN process and believed that NGOs participation is necessary and helpful for a successful conclusion of the treaty.

⁵³ The author's assessment of Bangladesh's position on the ATT is largely based on the last two statements made by Mr. Md. Mustafizur Rahman, Deputy Permanent Representative, Permanent Mission of Bangladesh to the UN, during the 4th Session of the Preparatory Committee on 15 February 2012 and during the UN Conference on ATT on 10 July 2012.

⁵⁴ See the *Statement* of Mr. Md. Mustafizur Rahman, Deputy Permanent Representative, Permanent Mission of Bangladesh to the UN, during the 4th Session of the Preparatory Committee on 15 February 2012, available at http://www.un.org/disarmament/convarms/ATT_Prep_Com/Documents/Statements-MS/PrepCom4/13-February-2012/0120213_Bangladesh_E.pdf, accessed on 07 July 2012.

While the final decisions will be made by sovereign states, the knowledge and expertise of the non-state actors can also be a catalyst in achieving treaty objectives by raising awareness and mobilising public support.

Throughout the ATT process, Bangladesh also rightly stressed the importance of international cooperation and assistance. The ATT will require member states to enact and enforce effective national laws and regulations to control the flow of arms into, out of and through their respective territories. Bangladesh highlighted that some states with well-established national control systems will be better placed than others to fulfill such requirements. Bangladesh, therefore, proposes that development partners including emerging economies provide developing countries especially to the least developed countries (LDCs) with materials, training, human resource, technology and funds as necessary for implementation. Moreover, Bangladesh espoused that the treaty needs to be more focused on the types of assistance needed and must include provisions for binding commitments from the developed countries to assist the developing countries especially the LDCs to fulfill their treaty commitments.

5.3 Challenges Bangladesh might face if an ATT does Materialise and How to Overcome Them

As is evident from the aforementioned discussion, being an LDC member Bangladesh will face serious challenges as far as the implementation of the treaty is concerned. Two major implementation aspects of the treaty as elaborated in Articles 5 and 10 of the proposed draft involving national legislation requirements and reporting commitments pose significant challenges for Bangladesh.

Paragraph 3 of Article 5 states that:

“Each State Party shall take all appropriate legislative and administrative measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the international transfer of conventional arms.”

Again Paragraph 5 of the same Article 5 states:

“States Parties involved in an international transfer of conventional arms shall, in a manner consistent with this Treaty, take appropriate measures to prevent diversion to the illicit market or for unauthorized end use.”

These two provisions of the draft clearly shows that the ATT will put Bangladesh like all other states under obligation to take all the necessary legislative and administrative measures to implement the treaty provisions. This obligation of instituting national control system will definitely require Bangladesh to adopt new national legislations, which will put Bangladesh under strains given the country's technical and financial capability and constraints.

According to a study⁵⁵ between 2002 and 2008, only 52 countries had established national legal control measures on brokering in SALW, that is only one-third of states could have established a national legal framework to control any forms of arms brokering, and even, where national laws and regulations do exist many of them are too weak to effectively control the flow of weapons. For a developing country like Bangladesh meeting this ‘necessary legislative and administrative measures’ will, therefore, be a crucial challenge.

The record-keeping and reporting requirements of states are elaborated in Article 10 of the draft treaty. It is stipulated that each state has to maintain national records of all export authorisations and arms transfers for a minimum of ten years. And within the first year after entry into force of the ATT, each state has to provide an initial report to the secretariat covering activities undertaken to implement the treaty including national laws, regulations and administrative measures. Afterwards each state party has to do this reporting annually by the deadline of 01 July covering all export authorisations and actual transfers of conventional arms under the scope of the ATT. It is inevitable that this reporting requirement under the ATT will overlap with some of the existing instruments, particularly the voluntary UN reporting mechanisms i.e., UNROCA and UN POA. It is a good thing because if an ATT is expected to increase transparency, then existing obligations could serve as the baseline. But for resource-constrained developing countries, this provision would place additional responsibilities⁵⁶ upon the overstressed, dysfunctional and more importantly poorly resourced state machinery. This is true for Bangladesh. Being a developing country with funding constraints and with an overstressed bureaucracy, another reporting mechanism under the ATT would not only be difficult for Bangladesh but to some extent the country may not be able to fulfill this requirement without international assistance.

To assist states who have neither the capacity nor the resources to meet the treaty commitments, the ATT keeps provisions for international cooperation and international assistance as stipulated in Articles 13 and 14 of the draft. States are encouraged to cooperate to enhance implementation of the treaty and provide

⁵⁵ Silvia Cattaneo and Sarah Parker, *Implementing the UN Programme of Action on Small Arms and Light Weapons: Analysis of the National Reports Submitted by States from 2002 to 2008*, Geneva: United Nations Institute for Disarmament Research (UNIDIR), 2008. Quoted in Brian Wood, “International Initiatives to Prevent Illicit Brokering of Arms and Related Materials” in Kerstin Vignard (ed.), “Tackling Illicit Brokering”, *Disarmament Forum*, No. 3, Geneva: UNIDIR, 2009, p. 6, available at <http://www.unidir.org/pdf/articles/pdf-art2887.pdf>, accessed on 12 October 2012.

⁵⁶ Apart from the responsibility of instituting one or more national contact points to exchange information with the ATT secretariat, the reporting requirement will necessitate an operational responsibility for inter-agency coordination and cooperation at the national level. See Paul Holtom and Mark Bromley, “Implementing an Arms Trade Treaty: Lessons on Reporting and Monitoring from Existing Mechanisms”, *SIPRI Policy Paper No. 28*, SIPRI, July 2011.

international assistance to a state, which needs it upon request. Article 14 also provides provision for a trust fund to assist states to implement the treaty and the trust fund is to be administered by the secretariat under the supervision of states parties, but the trust fund is kept voluntary. As advocated by Bangladesh, the assistance and the funding provisions of the ATT should be made binding. In fact, Bangladesh needs to continue its effort to push for these assistance and funding provisions to be made binding and take the leadership as a stalwart of LDC countries, as Bangladesh has had done in many other UN negotiations viz., climate change negotiations.

6. Conclusion

As revealed in the paper, the needs for global arms trade treaty are multifaceted. It would contribute in preventing arms transfers to conflict regions, irresponsible arms transfers to undesirable end-users as well as limiting and eradicating illicit manufacturing and trafficking in conventional arms thereby restraining violations of international human rights law and international humanitarian law as well as, preventing proliferation of conventional arms and SALW. However, the ATT process initiated through the UN Resolution 61/89 of 2006 has been facing serious challenges due to the fact that the international community is strongly pushing for inclusion of such provisions that are considered contentious by many. Attention should be given to the fact that the ‘tyranny of minority’ that has been blocking many efforts at the global level to establish international arms trade standards could not succeed in case of the ATT. Since the US is supporting the ATT process, this ‘tyranny of minority’ has already been weakened. However, efforts should be made to accommodate the interests of all of the world community rather than neglecting the legitimate concerns of some otherwise disagreeing members of the UN.

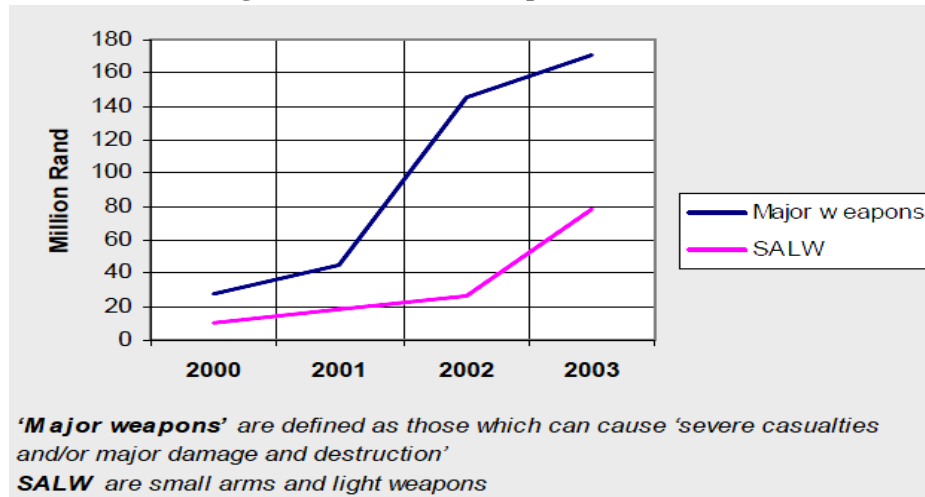
Bangladesh being a developing country and suffering from grave consequences of SALW proliferation in the society will greatly benefit if an ATT does materialise. Having the binding international standards will enable Bangladesh to address some of the crucial issues viz., deterring illicit arms trade in the country, ending the use of Bangladesh as a transit state, countering arms falling into the hands of the extremist groups, and ensuring transparency in its own international arms trade. Nevertheless, the country will face crucial difficulty in fulfilling the treaty commitments such as reporting and ensuring national control system in line with the international standards especially being a resource-constraint country. A binding provision for international assistance and funding within the treaty framework will contribute in resolving such difficulties for the developing members of the world community.

However, it is to be noted that, ATT is an effort for controlling, monitoring or regulating export i.e., a supply side management of the conventional arms trade. If controlling proliferation of conventional arms is also considered as an

objective of the arms trade standards then other side of the trade i.e., the demand side also needs to be addressed. Finally, the perennial question that might still irritate the scholars and researchers is: is the ATT being done in the interests of the Western or developed nations or in the interests of all nations? In the eyes of some, Western interests in this regard coincided with those of the rest of the world while, others seem to adopt the notion that export controls by instituting a global standards threatened their military security and technological development. Further research and analysis are required to address the issues in this grey area.

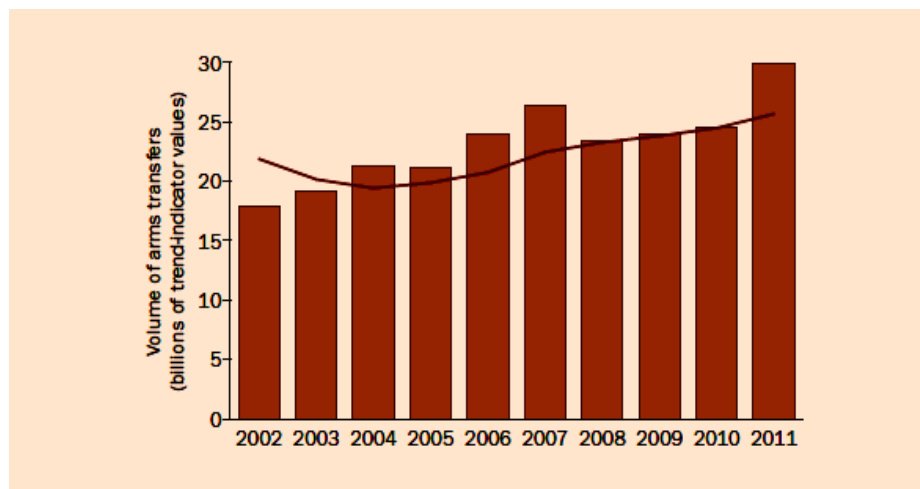
Appendix 1

Figure 1: South African Exports to Colombia



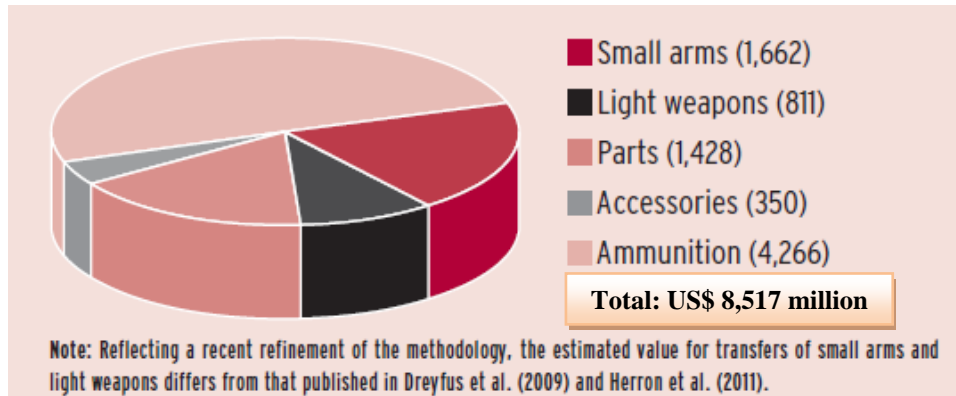
Source: "Towards an Arms Trade Treaty: Next Steps for the UN Programme of Action", *Control Arms Briefing Paper*, June 2005, p. 7.

Figure 2: Trend in International Transfers of Major Conventional Weapons



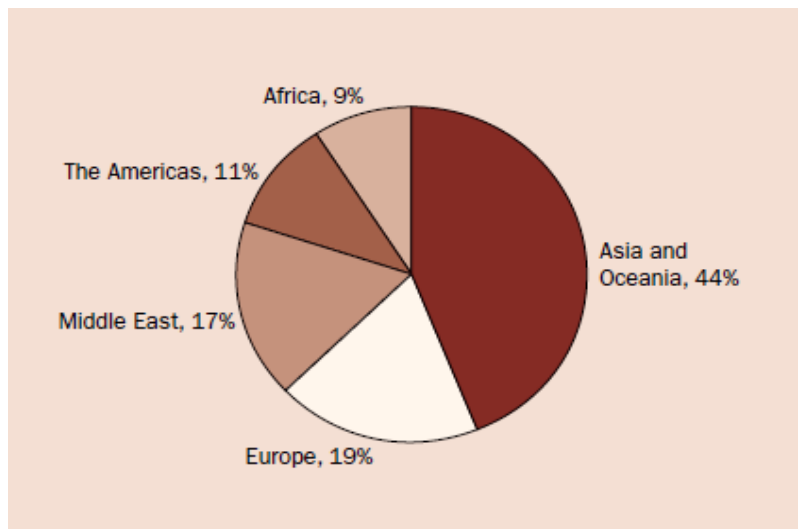
Note: The bar graph shows annual totals and the line graph shows the 5-year moving average (each data point in the line graph represents an average for the preceding 5-year period). The SIPRI trend-indicator value (TIV) is a measure of the volume of international transfers of major conventional weapons. The method used to calculate the SIPRI TIV is described on the SIPRI Arms Transfers Programme website at <<http://www.sipri.org/research/armaments/transfers/measuring>>.

Figure 3: Annual Estimated Value of International Transfers of Small Arms, Light Weapons, Parts, Accessories, and Ammunition (in US\$ million)

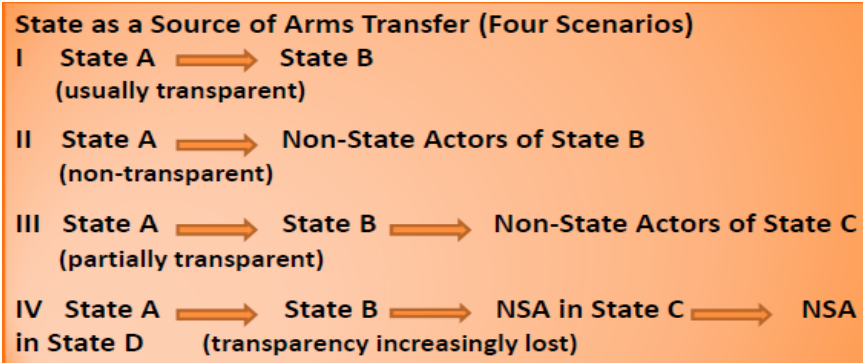


Source: Small Arms Survey, Geneva, *Small Arms Survey 2012: Moving Targets*, Cambridge: Cambridge University Press, 2012, p. 248, available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2012/eng/Small-Arms-Survey-2012-Chapter-08-EN.pdf>, accessed on 02 November 2012.

Figure 4: The Recipients of Major Conventional Arms by Region, 2007-2011



Source: Paul Holtom, et.al., "Trends in International Arms Transfers, 2011", *SIPRI Fact Sheet*, Stockholm International Peace Research Institute (SIPRI), March 2012, p. 5.

Figure 5: Arms Transfers to States and Non-state Actors and Transparency

Source: Neila Husain, "Proliferation of Small Arms and Politics in South Asia: The Case of Bangladesh", *RCSS Policy Studies* 7, Colombo: Regional Centre for Strategic Studies, 1999, p. 8.

Appendix 2

Table 1: Five Largest Suppliers and Five Largest Recipients of Major Conventional Weapons during 1980-1984

Five Largest Suppliers	Five Largest Recipients
The Soviet Union (37%)	Iraq (7%)
United States (29%)	India (6%)
France (8%)	Libya (5%)
United Kingdom (5%)	Syria (5%)
Germany (5%)	Egypt (5%)
* Top five suppliers accounted for 84% of all exports.	* Top five recipients accounted for 27% of total imports.

Source: Paul Holtom and Mark Bromley, “The International Arms Trade: Difficult to Define, Measure, and Control”, *Arms Control Today*, July/August 2010, Arms Control Association, 2010, available at http://www.armscontrol.org/act/2010_07-08/holtom-bromley accessed on 08 July 2012.

Table 2: The Five Largest Suppliers of Major Conventional Weapons and their Major Recipients, 2007-11

Supplier	Share of international arms exports (%)	Main recipients (share of supplier's total exports)		
		1st	2nd	3rd
United States	30	South Korea (13%)	Australia (10%)	United Arab Emirates (7%)
Russia	24	India (33%)	China (16%)	Algeria (14%)
Germany	9	Greece (13%)	South Korea (10%)	South Africa (8%)
France	8	Singapore (20%)	Greece (10%)	Morocco (8%)
United Kingdom	4	Saudi Arabia (28%)	United States (21%)	India (15%)

Source: Paul Holtom, *et. al.*, “Trends in International Arms Transfers, 2011”, *SIPRI Fact Sheet*, SIPRI, March 2012, p. 3.

Table 3: The Five Largest Recipients of Major Conventional Weapons and their Major Suppliers, 2007-11

Recipient	Share of international arms imports (%)	Main suppliers (share of recipient's total imports)		
		1st	2nd	3rd
India	10	Russia (80%)	United Kingdom (6%)	Israel (4%)
South Korea	6	United States (74%)	Germany (17%)	France (7%)
Pakistan	5	China (42%)	United States (36%)	Sweden (5%)
China	5	Russia (78%)	France (12%)	Switzerland (5%)
Singapore	4	United States (43%)	France (39%)	Germany (8%)

Source: Paul Holtom, *et. al.*, “Trends in International Arms Transfers, 2011”, *SIPRI Fact Sheet*, SIPRI, March 2012, p. 4.

Table 4: Top Five Exporters and Recipients of Small Arms and Light Weapons, their Parts, Accessories and Ammunition in 2009

Top Five Exporters (% share of world total)	Top Five Recipients
The United States (8.2 %)	The United States
Italy (6 %)	The United Kingdom
Germany (5.3 %)	Saudi Arabia
Brazil (4.5 %)	Australia
Australia (3 %)	Canada

Source: Small Arms Survey, Geneva, *Small Arms Survey 2012: Moving Targets*, Cambridge: Cambridge University Press, 2012, available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2012/eng/Small-Arms-Survey-2012-Chapter-08-EN.pdf>, accessed on 02 November 2012.