

## **FRANCE'S RESPONSE TO THE UNITED NATIONS SECRETARY-GENERAL'S REQUEST FOR VIEWS.**

### **TOWARDS AN INTERNATIONAL ARMS TRADE TREATY: ESTABLISHING COMMON INTERNATIONAL STANDARDS FOR THE IMPORT, EXPORT AND TRANSFER OF CONVENTIONAL ARMS.**

#### **Introduction**

The international trade in conventional arms has changed a great deal since the 1990s, following the appearance of new threats and as a result of the gradual globalization of the arms industry and market.

The fight against illegal transfers and the irresponsible spread of conventional arms, and counter-terrorism are key security and defence challenges to be met by the international community by means of suitable control instruments.

Defence policies and military doctrines have changed to adapt to new forms of conflict. The modernization of armed forces, the concepts of the use of projection forces – including as part of peacekeeping operations – and the appearance of regional forums on common security and defence have generated new needs, both in the sovereignty weapons sector and in the security and defence equipment sector.

In the armaments industry, globalization has seen an increase in component production, transfers of production, the multiplication of subsidiaries, the diversification of arms manufacturing countries, and the intertwinement of military industries and civil technology. Changing supply and demand on the arms market accounts partly for the multiplication of cooperation programmes that help increase international transfers of conventional arms and their ammunition.

In this respect, France is concerned about the growing uncontrolled presence of non-state actors in armed conflicts. This factor, noted in many United Nations reports, comes concurrently with the increasing emergence of non-state actors in arms transfers. Arms traffickers involved in short-lived coalitions are today in a position to destabilize States and entire regions. The people behind this trafficking operate with relative impunity as they exploit the diversity of our national judicial and legal systems and make the most of a globalization that was, however, not intended for them.

In such conditions, insufficient progress as regards the harmonization of control systems is a growing risk to peace and security.

Thus, France considers that establishing common rules and principles for the international trade in conventional arms must be seen as a priority security stake by all States.

In accordance with the right to self-defence set out in Article 51 of the Charter of the United Nations, all States are entitled to manufacture, import, export, transfer and retain conventional arms and to conduct brokering activities for self-defence and security needs. The embargoes decided by the Security Council in order to resolve a regional or domestic crisis constitute the sole legitimate exception to this. The legal arms trade is a prerogative of sovereignty.

France is one of the principal actors in the arms trade sector and ranks among the leading world exporters. It applies a responsible and binding arms trade control policy in strict compliance with its commitments at regional and international level.

At a national level, under the French Defence Code, arms exports are prohibited as a general rule. Exemptions are granted by the Prime Minister following investigation of applications for export authorization by the Interministerial Commission for Examination of War Materiel Exports (CIEEMG). This policy ensures that all export authorization decisions are taken under a clear and coherent comprehensive system. In addition, procedures for the import, export and transfer of war material, arms, ammunition and other related material are laid down by French Defence Code implementing provisions.

At an international level, France strongly supported the drafting, adoption and implementation of the European Union Code of Conduct on Arms Exports with its dual objective of transparency and harmonization. Thus, since 1998, CIEEMG decisions comply with the eight criteria laid down by the Code of Conduct. The Code also includes a mechanism for consultation and exchange of information among partners which allows for the gradual harmonization of export policies within the European area.

Within the Framework of the United Nations, France would like to work towards establishing an international treaty on the trade in conventional arms. France welcomes the adoption of Resolution A/Res/61/89 by the United Nations General Assembly on 6 December 2006, which provides for the creation of a “comprehensive, legally binding instrument” to control the international trade of conventional arms. It welcomes the massive support that was expressed in favour of this Resolution and hopes that national responses submitted to the Secretary-General will display a continuous interest and steadfast effort over the long term.

**The principal objective of such a treaty is to lead States to adopt rules on responsible, transparent and proportionate behaviour regarding the transfer of conventional arms.**

**If order to be effective, the future treaty will have to be universal and, in any event, will have to be adopted immediately by the greatest number of States, particularly by the principal importers and exporters of arms.**

### **Feasibility**

The future treaty aims to become the universal reference instrument based on existing commitments in the field of conventional arms.

Given the multiple sources in the field of the control of international transfers of arms, France recommends that reflection be carried out beforehand on a body of standards that will be used as a reference. This reflection will provide an opportunity to explore the most effective way of incorporating a future instrument into the body of existing international, regional, sub-regional and national standards with a view to conducting effective control at all levels.

For the future treaty to be adopted by the greatest number of States, with a view to ensuring the universality of that treaty and out of concern for its legitimacy, the selection of accepted sources will first and foremost be made on the basis of those originating from the United Nations.

The principal difficulty the treaty must overcome lies in the differences between regional instruments and between national systems. **The future treaty should aim to harmonize**

**standards and to the greatest extent possible universalize existing rules that will have emerged as the most successful in practice.**

## **Scope**

### **1) Scope of equipment.**

France recommends that a specific list be compiled to determine the scope of conventional arms, possibly drawn from existing lists of military equipment, first and foremost the UN Register of Conventional Arms. This list should be limited to **conventional arms and their ammunition.**

**As a minimum, the list should include items on the UN Register of Conventional Arms, to which an eighth category for small arms and light weapons and their ammunition, including man-portable air defence systems (MANPADS), should be added.**

At this stage, France recommends the review of a more inclusive scope that could include, in addition to SALW and their ammunition, transfers of all conventional arms ammunition and possibly repair and maintenance equipment intended to ensure operability for all such arms.

To respond to the specific security needs, the scope could later be supplemented if necessary by means of additional protocols on particularly sensitive arms and defence materials.

The new list should be:

- understandable and operational for manufacturers as well as the government department responsible for control, States that do not export many goods as well as those with a substantial arms industry, and States that import as well as those that export;
- clear for everyone;
- technically precise.

### **2) Scope of transfers.**

Regarding exports, the treaty aims to define the international principles whose implementation will control export authorizations and denials that all States issue in response to applications that are submitted to them. Regarding imports, it would be advisable to call on States to adopt national rules to control imports in their territories.

France would like to draw attention to the fact that the notion of transfer can cover various realities. Therefore it recommends that discussions be held resulting in an open definition of international transfers of conventional arms. The definition could include intermediation activities, costly and free-of-charge transfers, re-exports, temporary exports, transits and transshipments, transfers of production capacity and transfers of intangible goods.

Transfers included in the scope of the treaty should be limited to cross-border transfers with a change of ownership or user. They should concern all types of actors and end-users, whether they be non-governmental, private or public.

Lastly, the treaty should include the issue of operational needs in connection with the movement of armed forces, particularly within the context of restoration and peacekeeping missions.

Regarding intermediation, France is in favour of introducing all references to ongoing work on this issue by the group of governmental experts established by Resolution 60/81 of 11 January 2006, particularly on best practices, which could be incorporated into national legislation on brokering in light weapons.

## **General Parameters**

### **1) Political principles.**

**The general parameters stem from political principles that States Parties to the treaty will undertake to implement.** They will apply to all actors involved in transfers (manufacturers, suppliers, intermediaries and clients).

**To lead States to adopt standards for responsible, transparent and proportionate behaviour regarding transfers of conventional arms, France considers that the treaty should encourage the adoption of national export control systems meeting existing international standards and allow for the implementation of measures decided by the United Nations Security Council. It adds that the treaty should limit the supply of arms and ammunition in unstable areas; respect human rights and preserve peace, security and regional stability; prevent misappropriation; improve the management of arms stockpiles in excess of defence needs; and lastly, increase transparency when it comes to arms transfers.**

France considers that undertakings in these areas should be backed by enhanced international and regional cooperation. The cooperation could be based on the exemplary efforts already being made by such African regional organizations as ECOWAS, SADC and the Nairobi Convention, and European organizations including the OSCE and the European Union.

The recitals of the preamble of Resolution A/Res/61/89 recall the purposes and principles enshrined in the Charter of the United Nations and reaffirms respect for international law, human rights and international humanitarian law. They commend the initiatives undertaken by States at all levels and the role played by NGOs and civil society to build confidence and transparency in the field of responsible arms trade. The recitals of the preamble of this Resolution are compatible with the EU Code of Conduct on the Principles Governing Conventional Arms Transfers adopted by the OSCE. For all those reasons, it could constitute the content of the general parameters.

France suggests to first establish a summary of existing and binding standards in this field starting with laws that impose prohibitions or limitations such as the Geneva Conventions and their Additional Protocols and UNSC embargo rules, in order to include them in the general parameters.

### **2) Operational criteria.**

To give States the means they need to establish responsible and proportionate policy in the field of arms trade, France would support the idea of accompanying political principles with a list of operational criteria to implement them. The criteria would provide States with an analytical grid to evaluate each import, export or transfer application submitted to States and reasons for denying applications that are transparent and easily understood by their government departments responsible for carrying out controls and other States Parties. The criteria could be based on the denial criteria set out in the European Union Code of Conduct on Arms Exports.

**Political principles accompanied by operational criteria could constitute the general parameters.**

### **3) Implementing measures.**

France considers that once the treaty is established it would only be sustainable if it provides for means to assist States in implementing the treaty. Therefore the effectiveness of the treaty will largely depend on implementing measures:

- a. Control measures. Each State signatory to the Treaty should undertake to acquire an appropriate set of laws and administrative procedures regarding transfers of arms, accompanied by robust implementing measures. To seek growing convergence in the interpretation of the treaty and in its implementation it could be useful to explore the possibility of providing the treaty with political commitments in a guide of best practices for example, or a peer-review system on control mechanisms.
- b. Transparency and confidence-building mechanisms. The treaty should set out one or several transparency mechanisms with a view to building confidence among States and to further their cooperation. It could make mandatory the publication of national reports on a yearly basis and the keeping of a universal register on transfers based on the UN Register of Conventional Arms. Export licences that are authorized or denied could be the subject of information exchanges according to arrangements to be defined in the future.
- c. Pedagogical provisions to assist in implementation and performance evaluation. Designed to assist States and regions that are the least developed in terms of the control of arms transfers in accordance with the graduation principle, they allow for outreach workshops, training of governmental experts in customs and control, communication about best practices and so forth.

### **4) Provision on fighting corruption**

When implementing responsibility and transparency principles, France suggests that the future treaty should provide for a clause on combating the bribery of foreign public officials in the context of international trade transactions, a clause which forms the subject-matter of several existing instruments.

### **Conclusion**

The creation of a group of governmental experts by the end of 2007 is a significant step in the elaboration of an international treaty establishing common international standards for the import, export and transfer of conventional arms. France intends to take an active and constructive part in the working group.

France considers that the work should give consideration to the specific situation of every continent affected by the dissemination of conventional arms and the lessons learnt within the regional and sub-regional organizations on this matter. The work could draw on existing confidence-building and cross-border cooperation measures which will be a gauge of the **effective implementation** of the principles of responsibility, transparency and proportionality in arms transfers, the foundations for the future treaty on arms trade.

