
Arms Trade Treaty

Ninth Conference of States Parties

Geneva, 21 - 25 August 2023

Joint Working Paper:

Responsible Business Conduct and the Arms Trade Treaty

Ninth Conference of States Parties to the Arms Trade Treaty

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Summary: This Working Paper is a contribution to the Presidential theme for the Ninth Conference of States Parties (CSP9) to the Arms Trade Treaty (ATT), on the 'Role of Industry in Responsible International Transfers of Conventional Arms.'

The Republic of Korea's Presidency Draft Working Paper¹ notes that 'the ATT framework provides guidance to companies involved in different aspects of the international arms trade on what constitutes responsible behaviour, complementing other guidance developed at the multilateral, regional, and national levels in this sphere', referencing the UN Guiding Principles on Business and Human Rights² (UNGPs) and the UN Working Group on Business and Human Rights information note on "Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights"³.

The synergies between the ATT and the UNGPs provide an opportunity for states, international organisations, industry and civil society to exchange best practices and develop relevant guidance towards ensuring responsible business conduct with respect to the international trade in conventional arms.

This Working Paper therefore:

- elaborates on the complementarities between the ATT and other relevant mechanisms, norms and standards, in particular the UNGPs and the process Human Rights Due Diligence (HRDD)
- explores how the two can be mutually reinforcing in the shared objective of ensuring a responsible international trade in conventional arms through the respective responsibilities and obligations of industry and States

¹ [ATT/CSP9/2023/PRES/755/PM2.WP](https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf)

² [Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework | OHCHR](https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf)

³ <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>

- offers recommendations in those regards for CSP9.

For the purpose of this paper, “industry” refers to the full value chain of business actors involved in the international transfer of conventional weapons⁴.

The Arms Trade Treaty and Responsible Business Conduct:

The ATT aims to establish the highest possible common international standards for regulating the international trade in conventional arms, and recognizes the links between development, peace and security. The ATT also aims to prevent violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL), as underlined by its preamble, principles and many of its provisions, including in Articles 6 to 14. For example, Article 7 requires an exporting State Party to assess the potential that the transferred arms or items could be used to commit or facilitate a serious violation of IHL or IHRL, including in particular acts of gender-based violence (GBV) or violence against women and children.

The Treaty also recognizes “the voluntary and active role that civil society, including nongovernmental organizations, and industry, can play in raising awareness of the object and purpose of the Treaty, and in supporting its implementation.” In this regard, industry has a role to play in ensuring responsible arms transfers, in line with the object and purpose of the Treaty.

In 2011, the UN Human Rights Council unanimously endorsed the UNGPs, a set of guidelines that outline States’ obligations and business enterprises’ responsibilities with respect to preventing, addressing and remedying corporate related human rights abuses. They introduced principles for responsible business conduct, including HRDD, which requires companies to have policies and processes that help to identify, prevent, mitigate and remedy the adverse impacts their operations, services and products may have, including along their value chains, and publicly communicate in the fullest way possible the risks identified, how they are being addressed and the effective grievance mechanisms available.⁵

Such policies and processes should be proactive and preventive, aimed at preventing human rights harms. They apply to all areas of a company’s value chain, up to and including assessing and addressing the risk of misuse of their products and services by a third party. Furthermore, the responsibilities outlined in the UNGPs apply to all businesses, both transnational and others, regardless of their size, sector, location, ownership and structure, including state-owned businesses; and regardless of government licensing and export requirements.

Importantly, they also allow for a clear delineation of the respective responsibilities of each actor without substituting companies’ responsibilities with States’ obligations or vice versa. As noted in UNGPs, industry has responsibilities to respect human rights that ‘exists

⁴ including those producing or being directly linked to the research, development, design, production, delivery, maintenance, repair and overhaul of military weapons systems, subsystems, parts, components, and ancillary equipment (Information Note by the UN Working Group on Business and Human Rights)

⁵ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf, GP 21

independently of States' abilities and/or willingness to fulfil their own human rights obligations⁶, and *irrespective* of their ability to gain a licence to export.

States Parties, in their ATT obligations and implementation of the UNGPs⁷, and industry, through their responsibilities as outlined in the UNGPs, can mutually benefit from exchanging information and good practice with regard to their respective risk assessment and HRDD policies and processes – at the national and regional levels as well as throughout CSP cycles. For instance, some companies, through long-term service and maintenance agreements and *in situ* staff, may have relevant data on weapon use or diversion risks that states may not readily have access to for their own assessment – and vice versa in other instances. Creating this link can help ATT States Parties implement their Treaty obligations, and help industry respect their human rights responsibilities, avoiding reputational, financial, governance, regulatory, and legal risks.

Recommendations:

The focus of the Republic of Korea's Presidency offers the opportunity to enhance collaboration between key stakeholders on responsible arms transfers and increase effectiveness in the implementation of the ATT, including by promoting responsible business conduct throughout the international trade of conventional arms.

In support of the Presidency's focus and draft Working Paper, and to advance the goal of ensuring responsible business conduct with respect to the international trade of conventional arms, CSP 9 should:

- **Welcome** the UN Guiding Principles on Business and Human Rights and the Information Note by the UN Working Group on Business and Human Rights on “Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights”⁸.
- **Agree to continue and deepen discussions on the role of industry in responsible international transfers of conventional arms** and ensure that the work undertaken in the ATT includes the involvement of external stakeholders, such as representatives of the business and financial communities, international organisations and civil society, including NGOs with specific expertise on responsible business conduct, arms transfers and the effects of the illicit and unregulated trade in conventional arms.
- **In that regard, future work on this issue should include the following objectives:**
 - (i) Raise awareness of respective obligations and responsibilities under the UNGPs.
 - (ii) Share existing processes, guidance and related materials, as well as lessons learned and effective measures relating to UNGPs implementation by States and industry.

⁶ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf, GP 11

⁷ Under pillar 1 of the UNGPs, States should require arms companies to respect human rights by, inter alia, mandating that they carry out HRDD through national legislation or other regulatory requirements

⁸ <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>

- (iii) Develop a list as a living document of reference material pertaining to responsible business conduct with respect to international trade in conventional arms.
- (iv) Articulate concrete steps and options for industry to develop and/or adapt their respective HRDD processes and oversight to contribute to supporting ATT implementation.
- (v) Develop operational guidance for different commercial actors in the value/supply chain as to how to assess human rights risk with respect to specific contracts/transfers.
- (vi) Explore the link between arms transfers and human rights by including OHCHR, Human Rights Council Mechanisms and Treaty Body reports into ATT Working Group discussions as appropriate.
- **Call on** relevant working group chairs to allocate time in their meetings, as appropriate, to discuss the role of industry in responsible international transfers of conventional arms, and to report to the CSP.
- **Call on** the CSP Presidents to dedicate time at the CSP for discussion of the issue.
