

# **Contesting negotiation traditions? The EU's possibilities to promote its foreign policy goals in multilateral negotiations**

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## **Abstract**

This paper analyzes the role of the EU as an actor in multilateral negotiations, considering contestation as an issue of external acceptance of the EU by other states. I aim to account for the EU's ability to play a central role in multilateral negotiations and analyze how the EU is able to introduce its objectives to the negotiation process. For this research, I analyze the case of the EU as an actor in the negotiations towards the Arms Trade Treaty (ATT). The ATT negotiations affected sensitive issues of security and defense, and arms trade is generally seen as a central issue of state sovereignty. I pursue two assumptions, the first following the assumption that the EU used a bargaining approach to bring its objectives to the discussion and into the final agreement. Considering the difficulties of the EU to bargain in a state-centric environment and with limited bargaining chips, I turn to the opposing mode of interaction of procedural justice. Procedural justice claims that the realization of a just and fair negotiation process increases the likelihood to adopt an agreement that is acceptable to all involved parties. This paper aims to contribute to the literature of regional organizations participating in multilateral negotiations, while being visible, heard and actively involved despite disadvantageous structures and modes of negotiation. Additionally, this paper will provide novel empirical insights to the role of the EU in the negotiation process towards the ATT that is significantly under-researched.

## Introduction

In recent decades, the EU has significantly increased its level of integration and by that, the Union has consolidated its status as the most integrated and advanced regional organization internationally. This development is also visible in multilateral negotiations at the UNGA. At the UNGA, non-state entities, such as regional organizations can become non-state observer entities; however, the extent of their rights and duties are highly informal and remain up for negotiation. As a consequence, regional organizations are in theory able to participate by using their observer status, however, in practical terms, their contributions to multilateral negotiations is often dependent on the status and the resources of their Member States. Due to the high complexity of multilateral negotiations, the very state-centric structure, and the limited formal participation rights, one would expected the EU to have a relatively weak role in multilateral negotiations at the UNGA. The EU nevertheless attempts to become a recognized actor and play a central role in multilateral negotiations, such as towards the Arms Trade Treaty (ATT). The effort of the EU to move from an observer entity to an active participant in multilateral negotiations is, however, met with suspicion and contestation.

The trade with conventional arms is widely acknowledged to be a global phenomenon that affects all countries and regions, however, has traditionally been a domestic issues that was dealt with nationally. Global arms trade has become so complex and interrelated, that states and regions are no longer able to effectively regulate and control the global arms trade, especially due to varying competence and resources in the arms trade. While global arms trade experience a period of decline after the Cold War, since 2002, the volume of traded arms have constantly increased.<sup>1</sup> To prevent illicit trade and to avoid the exploitation of loopholes and gaps, a comprehensive and international instrument to regulate arms trade was needed. The main aim would not be to prevent legal arms trade, but to set up rules and guidelines that regulate arms trade and make it more transparent and actionable.<sup>2</sup>

This case is particularly interesting, as it crosses the domains of two very different issues: trade and arms control. While trade in general is a frequent topic of bilateral and multilateral negotiations which organize trade bilaterally or multilaterally in different areas, arms control has been a sensitive issues that was mainly a national responsibility. While special types of weapons, such as nuclear weapons and landmines, have received some attention through the entry into force of the Nuclear Non-Proliferation Treaty in 1970 and Ottawa Convention in 1999, the trade of conventional weapons has remained unregulated and non-transparent until the adoption of the ATT in 2013. Before that, only some regional actors had taken up the challenge to regulate arms trade within their region, such as the EU, to guarantee some transparency and certainty for producers and buyers.<sup>3</sup>

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<sup>1</sup> With an exception of 2008.

<sup>2</sup> United Nations Institute for Disarmament Research, 2010, p. 1, 3, 7.

<sup>3</sup> Council of the EU, 14 October 2005, 13296/05.

The Arms Trade Treaty has been evaluated in the existing literature. However, many publications pursue an assessment of the strength of the treaty and the success of the implementation as they are conducted with a more practical purpose.<sup>4</sup> The particular role of the EU during the negotiations on the ATT have only been scrutinized by Romanyshyn (2015) and Panke et al (2018). Romanyshyn plays in line with several other publications on the effectiveness of the EU in multilateral negotiations. In the literature on the EU as an actor in multilateral negotiations, many scholars argue that speaking with a single voice and being perceived as a united actor would lead to a more effective representation of the EU and consequently, a greater role of the EU in the international fora.<sup>5</sup> Other researchers found that the EU sees itself often as a leader and frontrunner in multilateral negotiations. This self-image is however not always shared by the fellow negotiating parties and other Member States at the UNGA. This means that the EU sees itself as far more important, influential and central at the UN and in multilateral negotiations than other actors perceive the EU to be.<sup>6</sup> Scholars also support the claim that the cooperation among regional organizations and their ability to shape debates and negotiations at the UN has increased. However, most international organizations have only marginal possibilities for participation, and regional organizations and groups mainly use their Member States rights and resources combined to increase their role as a group. This means that states use the cooperation in regional organization or groups as an improvement of their role instead of advancing the regional organizations' roles.<sup>7</sup> Most literature on the EU as an actor in multilateral negotiations concentrates on "easy" cases, such as environmental negotiations and trade, and show that the EU is able to play a crucial role in international negotiations and be a recognized actor.<sup>8</sup> In these areas, the EU has often been recognized as a forerunner, and the role of the EU as an independent actor and with a central role has increased and consolidated over the time. More sensitive issues, such as defense and security issues, conflict solution and migration, have challenged the EU's self-conception as a leader in negotiations and as a driver of global issues.<sup>9</sup> Generally, cases that are located outside the popular areas of trade and environment have received relatively little attention, and new insights in more sensitive and difficult areas should be able to enhance to the understanding of the EU as an actor in multilateral negotiations.

This paper aims to look more closely at the EU's negotiation strategy and the role that the EU can play in multilateral negotiations. I ask: (1) To what extent has the EU been able to include its objectives into the negotiation process? (2) How and why has the EU increased its role in the multilateral negotiations on the Arms Trade Treaty? As a first step, I offer a theoretical framework to analyze the EU's

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<sup>4</sup> See various publications by the Stockholm International Peace Research Institute (SIPRI), Safer Globe, EU Non-Proliferation Consortium, Arms Control Association, etc.

<sup>5</sup> Blavoukos et al., 2017; Blavoukos and Bourantonis 2017; Drieskens et al., 2014; Gstöhl, 2011; Panke, 2014; Romanyshyn, 2015; Van Schaik, 2013.

<sup>6</sup> Costa, 2013; Elgström, 2006 and 2007a; Gehring et al, 2013; Laatikainen, 2010; Romanyshyn, 2018.

<sup>7</sup> Panke, 2018, 2013a and b; Laatikainen, 2017; Wunderlich, 2012.

<sup>8</sup> for example: Buck, 2009; Elgström, 2007a and 2007b; Groen and Niemann, 2013, Hampson et al, 1995; Koops and Macaj, 2015; Zartman and Rubin, 2004.

<sup>9</sup> Blavoukos et al, 2017, Elgström 2017a.

achievement of its objectives and the role that the EU plays during the negotiations toward an agreement. I start my analysis, using a bargaining approach, which is the most commonly used framework to evaluate negotiations. However, with the high complexity of the issue and the large number of involved actors in multilateral negotiations at the UNGA, a bargaining approach has often a limited explanatory power. In a state-centric environment and with the EU as a non-state actor attempting to play a central role in the negotiation at the UNGA, it is unclear whether a bargaining approach is the best strategy. I therefore also analyze an alternative assumption using procedural justice as the opposing mode of interaction to a bargaining approach. The aim is to show that pursuing a negotiation strategy along the lines of procedural justice could provide the EU with a central role in multilateral negotiations and support the achievement of the EU's objectives.

### **Method**

In this paper, the research consists of a within-case study and is conducted by applying an interpretative approach with qualitative data. My primary sources consist of EU and UN documents, and additionally semi-structured interviews with EU official.<sup>10</sup> I chose this combination of primary data, as the official documents from the EU and the UN frequently are insufficient to show the events occurring behind the official façade of diplomatic relations. I analyze two assumptions to learn more about the EU's role in negotiations under the mandate of the UNGA, and the characteristics that determine the EU's role in multilateral negotiations. The first assumption draws upon a bargaining approach, claiming that the EU needed to act rationally and used bargaining chips to persuade negotiations parties to support its goals. A bargaining approach is understood as using the strategies of carrots and sticks, so either reward or punish other negotiation parties, of buying other negotiation parties out by giving them something they want, or alternatively, the concept of *quid pro quo*, meaning "something for something", so that support is followed by future support on another issues. As an alternative, I move towards the concept of procedural justice, assuming that states care about just and fair negotiation processes, and that just and fair negotiations have a higher likelihood of a satisfactory outcome for all involved parties.<sup>11</sup> Procedural justice, as the opposing mode of interaction to bargaining, claims that negotiating parties should adhere to certain just standards to define their role in negotiation processes and outcomes. Procedural justice is operationalized as fair representation, fair treatment and fair play, voluntary agreement, and transparency.<sup>12</sup>

### **Background**

The trade with cars, fruits and vegetable is better regulated through international agreements than the international trade of arms. With this conclusion, the foreign ministers of Denmark, Germany, Mexico,

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<sup>10</sup> As part of the primary sources, I have analyzed EU communications, Notes of information of the HR/VP, summary records of the Council of the EU. From the UNGA, I have examined Official Records from the UNGA sessions, draft resolutions, resolutions, Letters from the UN Member States, and Notes by the Secretary-General.

<sup>11</sup> Albin, 2001; Welch, 2014; Hampson & Hart, 1995, p.355f.

<sup>12</sup> Albin, 2008.

the Netherlands and the UK urged their fellow colleagues at the final conference on the Arms Trade Treaty in 2013 to take a serious step forward towards a binding solution on illicit arms trade.<sup>13</sup>

The availability of weapons and ammunition has over decades led to the fueling of conflict and human rights abuses, political repression, crime and terror among civilians. The unregulated trade of arms and the inability to prevent the circulation of illicit weapons has caused uncountable cases of death, human suffering and hindered the socio-economic development of conflict-torn regions.<sup>14</sup> The EU accounts for 30% of worldwide weapon exports and is consequently among the greatest weapon producers and exporters.<sup>15</sup> On the multilateral, regional and national level, several initiatives have taken place to regulate the trade with different kinds of weapons. The UN Register of Conventional Arms from 1991, the UN Small Arms Conference from 2001, or the embargoes by the UN Security Council (UNSC) are some examples. However, these regulations and instruments remain relatively weak, as they are not legally binding, lack linkages to international law, or do not include control mechanisms.<sup>16</sup> Regional frameworks have been more successful, such as the EU's Code of Conduct on Arms Exports in 1998 or the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials in 2006. Some regional initiatives have a good level of coordination and regulation and therefore an effective implementation of the regulations. Nevertheless, the multitude of the different rules have also created inconsistencies and contradictions that fail to adequately address the cross-border character of arms traffic, which have frequently been exploited by arms traffickers.<sup>17</sup>

To address the lack of a global, legally-binding framework to regulate, but not prohibit, international arms trade, a group of Nobel Prize laureates met in 1997 to develop an "International Code of Conduct on Arms Transfers".<sup>18</sup> It took, however, nearly ten more years until a group of states<sup>19</sup> introduced a resolution to the UNGA, calling for "a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms". The resolution called for the establishment of a group of governmental experts (GGE), which should examine the feasibility, scope and draft parameters for an ATT, and was adopted with only the United States (U.S.) opposing.<sup>20</sup> The opinions of the UN Member States were collected, and published in a report by the Secretary-General.<sup>21</sup> Based on the work of the GGE and the views of the UN Member States, the UNGA adopted in December 2008 a resolution to establish an Open-End Working Group with the task to carry out the

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<sup>13</sup> Søvndal, V. et al., 2013.

<sup>14</sup> Depauw, 2012, p. 2; Geneva Academy of International Humanitarian Law and Human Rights, 2012 p. 5; Bromley, et al, 2012, p.1034f; European Parliament, 06.June 2012 ,2012/2636(RSP).

<sup>15</sup> European Parliament, 06.June 2012 ,2012/2636(RSP), p.2.

<sup>16</sup> Sears, 2012, p. 37-41.

<sup>17</sup> Panke et al., 2018, p.138, Geneva Academy of International Humanitarian Law and Human Rights, 2012, p. 5; Sears, 2012, p. 37-41; Council of the EU, 14 October 2005, 13296/05.

<sup>18</sup> Depauw, 2012, p. 2; Panke et al., 2018, p. 138.

<sup>19</sup> The resolution was introduced by Argentina, Australia, Costa Rica, Finland, Japan, Kenya, and the UK.

<sup>20</sup> UNGA, 2006, A/RES/61/89; Holtom and Bromley, 2013, p. 423.

<sup>21</sup> UNGA, 2007, A/62/278 (Part I and II).

GEE's recommendations. Again, the U.S. was the only state to oppose.<sup>22</sup> The working group was transformed into a preparatory committee for the ATT conference after the adoption of UNGA resolution 64/48 in 2009 calling for a Conference of the Parties (CoP). The resolution was adopted by 151 states voting in favor, 20 abstentions and only Zimbabwe voting against.<sup>23</sup> The U.S. changed its position due to a new president with a different agenda and voted in favor of an ATT conference. This large majority showed that despite the sensitive topic, a large agreement existed among the UN membership on the importance to achieve universal regulations on the trade of conventional weapons.<sup>24</sup>

The adoption of resolution 64/48 in 2009 was followed by a period of preparation. While the start of the ATT negotiation had so far been directly conducted at the UNGA, the more intense and active part of the negotiations was forwarded to the diplomatic process consisting of the Preparatory Committee (PrepComs) and the CoPs under the auspices of the UNGA.<sup>25</sup>

Despite the general agreement on the benefits of a better regulated arms trade, vast divisions concerning the specific measures and components of the treaty existed. The most contentious issues related to the criteria for export control, the scope of the treaty in relation to a weapons list and its activities, implementation mechanisms and transparency provisions.<sup>26</sup> The atmosphere at the PrepComs seemed consequently to be similar to earlier conferences on arms control. The U.S. came with last minute intransigence that endangered the consensus, China remained silently opposing, the EU and the like-minded states were eagerly active, the Arab League opposed any concrete measures, and the African and mostly affected states pleaded impassionedly.<sup>27</sup> The position could mainly be accounted to two groups: the more progressive "like-minded" states, and the sceptics. The "like-minded and similar circumstanced states"<sup>28</sup> were firm believer for the need of strong regulations for arms trade, including specific rules of import, export, transfer, and resale, but also transparency and accountability.<sup>29</sup> The U.S. continued to represent a strong critic of an ATT that not only insisted on a decision-making process based on consensus, but also aimed for a narrow scope and vague formulations. This was also part of the statement of the P-5 in the UNSC, which described their support for a treaty that would be "simple, short and easy to implement". This statement did not portray ambitious goals and damped hope of those that held a more maximalist position.<sup>30</sup>

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<sup>22</sup> Holtom & Bromley, 2013 p. 424; UNGA, 2009, A/RES/63/240.

<sup>23</sup> Panke et al., 2018, p. 38; Romanyshyn, 2015, p. 879f; Geneva Academy of International Humanitarian Law and Human Rights, 2012, p. 7; UNGA, 2010, A/RES/64/48.

<sup>24</sup> Panke et al., 2018, p.138; Holtom & Bromley, 2013, p. 424.

<sup>25</sup> Panke et al., 2018, p.138.

<sup>26</sup> Romanyshyn, 2015, p. 880; United Nations Institute for Disarmament Research, 2010, p. 9

<sup>27</sup> Sears, 2010, p. 43f.

<sup>28</sup> The group was comprised of the more progressive states within the Latin American and Caribbean Group, the African Group, the Asia-Pacific Region and the Western European and Others Group (including the EU).

<sup>29</sup> Callixtus, 2013, p.104; Romanyshyn, 2018, p. 7f.

<sup>30</sup> UN, 5 July 2012, DC/3364; Geneva Academy of International Humanitarian Law and Human Rights, 2012, p. 7-8; Bromely et al., 2012, p. 1040f.

The first diplomatic conference took place in July 2012 in New York and debated the draft treaty over a period of four weeks. The conference however started already with delay as the status of Palestine and the Holy See to the conference caused some discussion that were in the end solved with a compromise. All regional organizations with a standing invitation to observer in the UNGA, ergo hold a so-called observer status, could also observe the PrepComs and CoPs. Just as at the UNGA, they were allowed in the formal negotiations, but had no voting right.<sup>31</sup> During the conference, two main committees were established that worked on the treaty's goals and objectives, and its scope.<sup>32</sup> Contentious issues consisted of the inclusion of human security into the prohibitions and criteria for arms transfer, and secondly, the scope of the items that the treaty would cover. The disagreements on the scope included the types of arms that are included in the treaty and the types of transfers that the treaty should aim to prohibit. The outcome of the committees was presented in a draft presented by the conference's President. Disagreement however existed whether the draft had accommodated the sceptic states too much, and the conference would produce a weak treaty. The presentation of a weak draft apparently was a strategic decision by the president, however, when even the weak version was opposed by the sceptics, a revised and more ambitious version was presented.<sup>33</sup> The draft<sup>34</sup> did not find consensus among the negotiating parties, as divergent views remained until the end. Some put the blame exclusively on the U.S., as the U.S. was a central power in the discussions on an ATT and numerous concessions were made to accommodate the U.S.'s wishes. The main reasons for the U.S.'s opposition was the debate on the scope of the ATT, the prohibition of transfers, and the arms export risk assessments. While the U.S. was a central figure in the negotiations, the concerns were shared by Cuba, North Korea, Russia and Venezuela who seconded the need for more time to work on the text and the wish to convene another conference.<sup>35</sup> The first UN Conference on the ATT consequently closed without having reached the goal of a consensus-based ATT.

As a consequence, the UNGA adopted resolution 67/234A of 24 December 2012 that called for a Final United Nations Conference on the Arms Trade Treaty in March 2013 "in order to finalize the elaborations of the Arms Trade Treaty". The final conference was to be conducted in an open and transparent manner, according to the rules of procedures of the 2012 conference.<sup>36</sup> With the awareness that time was limited and results were particularly needed after the failure of the 2012 conference, the final conference started out with a considerable amount of political will present among the negotiating parties. The draft from the 2012 conference was used as the basis of the negotiations, and key aspects of the Treaty were reshaped and even new elements were added. The enhanced draft consisted of strong

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<sup>31</sup> Panke et al., 2018, p. 139

<sup>32</sup> UN, 6 July 2012, DC/3365.

<sup>33</sup> Woolcott, 2014, p.3. Bromley et al., 2012, p 1041; Holtom & Bromley, 2013, p. 423-5, 426; Romanyshyn, 2018, p. 7f.

<sup>34</sup> United Nations Conference on the Arms Trade Treaty, 2012, A/CONF/217/CRP.1.

<sup>35</sup> Bromley et al., 2012, p. 1041; Holtom & Bromley, 2013, p. 423, 426; Romanyshyn, 2018, p. 7f; Woolcott, 2014, p.3.

<sup>36</sup> UNGA, 2013, A/RES/67/234; Woolcott, 2014, p. 3; Geneva Academy of International Humanitarian Law and Human Rights, 2013, p. 5.

compromise, which demonstrated the strong divergences among states but also the willingness to make concessions. The final conference was nevertheless marked by significant divergences among the negotiating parties. Despite the considerable efforts of the majority of participating parties, consensus could not be achieved, due to the objections of the Syrian Arab Republic, Iran and the Democratic People's Republic of Korea.<sup>37</sup>

Despite the bitter taste of failure at the final conference on the ATT, UNGA resolution 67/234A had a built-in redundancy, a back-door, towards an agreement. The presidency was required to report to the UNGA on the outcome of the negotiations on the ATT. Therefore, the delegations were legitimately allowed to take the draft to the UNGA for adoption. Consequently, the hard work on the treaty was paid off when it was adopted by a great majority at the UNGA on 2 April 2013.<sup>38</sup> The ATT became with the formal adoption part of the international weapons law and opened for signature on 3 June 2013. The ratification occurred on 24 December 2014 after the 50<sup>th</sup> state party ratified the ATT.<sup>40</sup> The EU Member States were able to ratify the ATT after the Council Decision 2014/165/EU in March 2014. Since 2016 all EU Member States have ratified the Treaty.<sup>41</sup> So far, 101 states have ratified the Treaty and further 34 are signatories to the Treaty but have not yet entered the ratification process.<sup>42</sup>

#### *The EU's process and position towards an ATT*

The EU based its goals for the negotiations towards the ATT on the Council Common position 2008/944/CFSP that defined the rules for control of exports of military technology and equipment.<sup>43</sup> Since 2009, arms export controls were no longer developed within the CFSP, but also as part of the EU's industrial and trade policy.<sup>44</sup> Directive 2009/43/EC which regulated the competence of the EU on arms export controls was crucial for the ATT as the EU and its Member States had to determine the holder of competence for the negotiations. Additionally, the regulations of the ATT would become part of EU law and thus could not infringe EU law. The ATT touched upon both exclusive competences of the EU and the CFSP. As a result, the Commission drew up guidelines for the EU Member States to follow in the negotiations, and the EU's exclusive competences were transferred to the Member States for the purpose of the negotiations. Representatives of the Commission and the EEAs were assisting Member States in the negotiations and Member States had to follow negotiations directives set out by the Commission.<sup>45</sup> Before the first conference on the ATT in 2012, the European Council's working

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<sup>37</sup> UN, 28 March 2013, DC/3423; Woolcott, 2014, p. 3-4.

<sup>38</sup> Again, the Syrian Arab Republic, Iran and the Democratic People's Republic of Korea opposed the adoption of the ATT. Further 23 states abstained from voting.

<sup>39</sup> UNGA, 1 June 2013, A/RES/67/234B; United Nations, 2013.

<sup>40</sup> Geneva Academy of International Humanitarian Law and Human Rights, 2013, p. 6; Woolcott, 2014, p. 4; Kytömäki, 2017.

<sup>41</sup> Most EU Member States ratified the ATT before its entry into force in 24 December 2014. The only exception was Greece who did not ratify the Treaty until spring 2016.

<sup>42</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-8&chapter=26&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&clang=en)

<sup>43</sup> <https://thearmstradetreaty.org/treaty-status.html?templateId=209883>; Council of the EU, 2014, 2014/165/EU.

<sup>44</sup> Council of the European Union, Council Common Position 2008/944/CFSP of 8 December 2008

<sup>45</sup> Depauw, 2012, p. 6f; Council of the EU, 2009, 2009/43/EC.

<sup>45</sup> Depauw, 2012, p. 7; Council of the EU, 2009, 2009/42/CSFP.



groups on global disarmament and arms control (CODUN) and on conventional arms export (COARM) worked out the EU's position on the different aspects of the ATT.<sup>46</sup> Some of the most important and most disputed goals of the EU pertained the scope, the parameters, the implementation, the signatories and the transparency mechanisms of the ATT. The EU aimed for the scope to include conventional arm and systems, small arms and light weapons, ammunition, related technology, parts and components. In addition, the transfer of weapons was also seen as part of the scope. The parameters should include clear, strong and comprehensive criteria to assess arms export and brokering. Arms trade should be denied in cases where international human rights law or international humanitarian law is violated. This assessment also should include factors such as a region's stability, (potential) inter and intra-state conflicts, the risk of diversion of an arms transfer, and the possible effect of an arms trade on the socio-economic development of a region and a country. Implementation should be in the hands of the states and with the full responsibility by the state parties to establish a legal and administrative system to realize the control mechanism for arms trade. The EU was also lobbying for the inclusion of regional organization as parties to the Treaty, meaning that regional organizations would sign and ratify the ATT. To increase transparency, the EU did not only wanted to include annual reporting, but also public and obligatory reporting on the states progress to implement the ATT.<sup>47</sup>

### **Analytical Framework**

A frequently used theory to explain the participation and role of an actor in multilateral negotiations is a bargaining approach. According to the bargaining approach, the success in negotiations is dependent on an actor's strength and the bargaining chips that can be used to persuade other involved parties.<sup>48</sup> Actions in such an environment are consequences of the preferences that an actor has defined and determined according to its interest. Interests are hereby assumed to be permanent, and remain unchanged.<sup>49</sup> Actions are based on the preferences, but also following a cost-benefit-analysis. The outcome of a bargaining process is consequently dependent on the costs of complying outweighing the costs of a non-agreement.<sup>50</sup> This suggests that at the UN General Assembly, the actors holding the strongest bargaining power are the actors that can include their interests most successfully into the negotiations and the agreement.

As a consequence, it is also important to recall the context, in which negotiations occur. The negotiations parties have in most cases already interacted before a particular negotiation starts, so that the negotiation is affected by the quality of the pre-existing relationship.<sup>51</sup> In addition to the context of a negotiation, bargaining is part of a social role and is a legitimate part of negotiations. Bargaining also occurs in a

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<sup>46</sup> Romanyshyn, 2015, p. 883.

<sup>47</sup> EU, 5 July 2012, EU Opening statement by Mr. Thomas Mary-Harting; UNGA, 2007, A/62/278 part II; UNGA, 2011, A/66/166/Add.1; Council of the EU, 2008, 2008/944/CFSP.

<sup>48</sup> Elster, 2007.

<sup>49</sup> Eriksen & Weigård, 1997.

<sup>50</sup> Checkel, 2001.

<sup>51</sup> Mueller, 2004, p. 403.

normative environment, which mean that negotiations and bargaining are guided by rules. Negotiations are by definition consisting of the exchange of words, and it is the negotiators that decide on the right negotiations strategy and the right bargaining chip to play. Mueller claims that after centuries of developing bargaining behavior in negotiations, it is for actors appropriate to follow their self-interest, unless it collides with an acknowledged norm that prescribes a different behavior.<sup>52</sup>

The negotiating party's decision on the negotiation strategy and the specific measure of a bargaining approach is usually said to be guided by rational behavior, consisting of a cost-benefit-analysis. Rational behavior assumes that actors have consistent preferences, aim to maximize their utility, employ cost-benefit-analyses and follow strategic reasoning. The analysis of the gains can lead to the use of bargaining chips, which range from threats and coercion over quid pro quo and buying out, to the choice of a more cooperative approach, such as attraction or persuasion.<sup>53</sup>

In bargaining approaches, the idea of perfect information has frequently been a discussed issue. While it is generally acknowledged that perfect information is an unachievable ideal, imperfect information also play a significant role in bargaining failures. While this claim is often disputed, it is clear that bargaining is a costly strategy that requires not only large resources but also might lead to inefficient and time-consuming negotiation. This is particularly the case in multilateral negotiations, where a multitude with very different preconditions, aims and possibilities are gathered and aim in the ideal case for a consensus decision.<sup>54</sup>

In the case of the ATT negotiations, the EU would according to a bargaining approach be expected to follow a cost-benefit-analysis. For this purpose, the EU and its Member States would engage in a process of finding a common solution, consisting of the smallest common denominator. In the process of defining a common position, the preferences of the EU and its Member States would also be weighed against possible costs. The optimal outcome would be a common position that not only unites all EU Member States, but also is realistically achievable and with acceptable costs considering the benefits. In the area of weapon trade, both components, defining the EU's preferences and making a cost-benefit-analysis, is expected to be a hard and complicated task to complete. Issues of defense and security are generally defined as high politics, which according to rational assumptions are crucial for a states survival and therefore anticipate an intense engagement of states in the negotiations. As a next step and before entering active negotiations, the EU would use pre-negotiations and meeting at the UN to acquire information concerning other UN Member States' positions on the ATT and possible overlaps and divergences with other negotiation parties. This information is necessary to form alliances, but also to determine which party needs to be persuaded of the own position. Information is crucial for an informed and strategic entrance to negotiations, as the EU would also base its specific negotiation approach and

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<sup>52</sup> Mueller 2004, p. 416-8.

<sup>53</sup> Powell, 2002, p. 2; Elgström & Jönsson, 2000; Ulbert, C. & T. Risse, 2000.

<sup>54</sup> Powell, 2002, p. 7, 14ff, 23.

the choice of chips on that information. An ideal outcome would be to persuade negotiation parties with diverging preferences that the EU's aims are either compatible with their own, or that their own preferences are too costly to pursue towards an agreement. Finally, the EU would achieve a negotiation outcome that reflects a high level of the initial preferences and was pursued according to a cost-benefit-analysis, meaning that the benefits outweighed the costs.

An alternative view on influence on the process and outcome of negotiations can be provided by procedural justice. While justice has not been very present in the international relations research and in analyses on multilateral negotiations, this is puzzling as the achievement of a just order has been a central theme in political theory. The focus instead was to use an interest-based utility explanation to describe the motivation for political behavior.<sup>55</sup> However, scholars claim that states care about just and fair negotiation processes, and that just and fair negotiations have a higher likelihood of a satisfactory outcome for all involved parties.<sup>56</sup> To integrate justice may provide some new insights in the analysis of concluding an agreement in multilateral negotiations. Jönsson and Aggestam have developed a framework that incorporates the rule setting for diplomatic negotiations. They claim that diplomacy “rests on a norm of coexistence” and “coexistence implies, if not equality, at least equal rights to participate in international intercourse”.<sup>57</sup> The authors also stress the importance of reciprocity as a dominant element of just negotiations. Reciprocity is defined as an exchange of approximate equivalents, which is seen as a form of compensatory justice. Nevertheless, the concept of reciprocity is also closely linked to the justice dimension of recognition by Fraser (2008) and therefore, applies also to diplomatic negotiations and the idea of political justice.<sup>58</sup>

For Fraser, participatory equality, as the morally supreme principle of liberal societies, can only be achieved by combining economic and cultural justice. The issue of mutual recognition is thus as a question of status, meaning the recognition as full partners is social and political interactions. Recognition is no longer a matter of group identity, but social (and political) subordination and thus the prevention to participate in social (or political) life. Mutual recognition is thus a normative principle that regulates the social forms of interaction. To be misrecognized is according to Fraser not to be looked down upon or to be devalued in attitudes, beliefs or representation. Instead, misrecognition is to be seen as inferior, excluded or invisible, and thus denied the status of a full partner in social interaction, which is a consequence of institutionalized patterns of cultural value that determine an actor as unworthy of respect or esteem.<sup>59</sup>

Eriksen took Fraser's assumption further and developed the idea of mutual recognition as global justice. Mutual recognition raises awareness for the issue of unjust treatment in formal procedures meaning that

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<sup>55</sup> Mueller and Druckman, 2014, p. 400.

<sup>56</sup> Albin, 2001; Welch, 2014; Hampson, 1995, p.355f.

<sup>57</sup> Jönsson & Aggestam, 2009, 5f.

<sup>58</sup> Mueller and Druckman, 2014, 402f.

<sup>59</sup> Fraser, 2000, p. 113-4; Honneth, 2004, p. 353-5.

even in a just order and just structures, inequalities and injustice may occur. This also might lead to situations where a one-solutions-fits-all approach is unsuitable in terms of fulfilling the requirements of global justice adequately and successfully. The particular characteristics of an actor, such as a nation's experiences, history and resources, play a crucial role in the hearing process of an actor. Therefore, the process of *due hearing* is particularly crucial to live up to the requirements of global justice. This means that it is not only necessary to hear the concerns of all involved, but also that all concerns have to be considered when finding a just and fair solution. Thus, the uniqueness and particularity of each actor should be taken into consideration and recognized.<sup>60</sup>

*Due hearing* can also be seen as a component of procedural justice, as just negotiations require a broad set of conditions to be perceived as fair and just. Albin<sup>61</sup> defined procedural justice in terms of four principles: **fair representation, fair treatment and fair play, voluntary agreement, and transparency**. Fair representation requires a decision-making process in which a full or balanced representation of all concerned parties and interests are present. The opportunity to give input, be heard and influence the negotiation process is demanded by the principle of fair treatment and fair play. Additionally, negotiation processes have to be conducted in a consistent and impartial manner. A voluntary agreement is based on the freedom of imposition and the freedom of one's own volition. Lastly, transparency consists of an openness and accessibility to all concerned and involved parties during the decision-making process.<sup>62</sup>

The EU would be expected to pursue a fair and just negotiation process and adhere to a behavior according to procedural justice in order to achieve its objective and play a central role in the negotiations on the ATT. Following the analytical framework of Albin that defines procedural justice as fair representation, fair treatment and fair play, voluntary agreement, and transparency, one would expect the EU to be a forerunner in the realization of these components. While all UN Member States were invited to participate at the negotiations towards the ATT, financial resources of the UN Member States vary. Therefore, states are represented but on unequal basis and according to their financial ability. To counter unfair representation, the EU would be expected to promote measures such as representation in regional groups or additional financial support for smaller and poorer UN Member States. Fair treatment and fair play are achieved when all involved parties are heard and their opinion is considered in the debate. Additionally, varying abilities are taken into consideration and negotiations are conducted officially and publicly. To sign a voluntary agreement, the EU would not use coercion or threats as a mean of its strategy and all means of negotiation remain peaceful and open visible. Lastly, the EU can advance a transparent negotiation process by relinquishes backroom deals or unofficial negotiations

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<sup>60</sup> Sjursen, 2017; Eriksen, 2016.

<sup>61</sup> Albin, 2008.

<sup>62</sup> Albin & Druckman, 2014, p. 430.

without all involved parties present. The path to consensus is officially documented and bilateral deals are communicated to other negotiation parties.

### **Bargaining towards recognition?**

Assuming that the EU was a rational actor that engaged in a bargaining approach to achieve the inclusion of its goals to the ATT, one would expect to see bargaining behavior in the negotiations. To entertain a negotiation strategy along the line of a bargaining approach, the EU would need bargaining chips that could be used to persuade other negotiation parties. One chip, as a carrots and stick strategy, was quite simply offering money that the EU could invest in certain countries or give as development aid as opposed of taking away financial support. Another bargaining chip is reminding states of the support that they have or still are receiving as a kind of *quid pro quo*, or a less direct and less pushing alternative, is using the EU's reputation to exercise pressure on the UN Member States to support the EU's position as the "right thing to do".

The definition of preferences occurred in the context of finding a common position among EU Member States in 2008, when the EU Member States defined the rules to govern the control of exports of military technology and equipment.<sup>63</sup> This common position of all EU MS was communicated to the Group of Governmental Experts and the Open-ended Working Group on the ATT, while also the individual views of the EU Member States were submitted.<sup>64</sup> During the PreComs the EU had the opportunity to disseminate its position among the UN membership and at the same time, get an idea of possible allies and areas of conflict.<sup>65</sup> The EU took the change to disseminate its position and learn about the other parties' positions by realizing an outreach strategy. The EU conducted several regional seminars in cooperation with various civil society organizations and the UN Office for Disarmament Affairs to promote and discuss the realization of an ATT.<sup>66</sup> The conduction of the seminars was therefore a measure towards a bargaining approach to acquire as many information as possible on the positions of the various negotiation partners, but also to promote the EU's position in the upcoming negotiations. The EU and its Member States therefore did all possible efforts to receive extensive information on the different positions to be able to plan their negotiation strategy accordingly.

Already at this early point, it became clear that significant disagreement existed concerning the width of the scope, the responsibilities of the exporting and importing countries, the role of non-states actors and terrorist groups, the level of explicitness of the treaty, and the implementation mechanisms. While the EU advocated generally for a large scope and a comprehensive ATT, it also became clear that the EU's Member States consisted of strong arms producing and exporting states, as they opposed victim assistance and voiced their concern for too many responsibilities for the exporting states. The EU

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<sup>63</sup> Council of the EU, 2008, 2008/944/CFSP.

<sup>64</sup> UNGA, 2007, A/62/278 part II; UNGA, 2011, A/66/166/Add.1.

<sup>65</sup> Statements on behalf of the European Union between 12 July 2010 and 13 February 2012: <https://www.un.org/disarmament/convarms/att/2013-conference/2013-att-statements/>.

<sup>66</sup> Council of the EU, 2009, 2009/42/CFSP; EU-1.

claimed that *States Parties shall establish a legal and administrative system that would ensure they could exercise control (...) over transfers of items covered by the scope of an ATT. States Parties should also ensure that infractions of their national control systems are effectively prohibited and associated with sanctions as appropriate.*<sup>67</sup> This meant that the responsibility was not only on the exporting countries but also on the importing countries to ensure that arms are not getting into the wrong hands or used for an illicit purpose.

In addition to the regional seminars, the EU also supported the lobbying efforts of the conference chairs from Argentina, Roberto Garcia Moritan, and Australia, Peter Woolcott, by financing their travels to the different regions. By that, the EU was able to implicitly promote its position and portray itself as a neutral actor that fights for a generally positive outcome. The EU's financial generosity to realize outreach possibilities generated a positive picture of the EU and helped one of the EU's main goals with the Treaty, the advancement of transparency and the inclusion of transparency measures.<sup>68</sup>

In the case of the implementation of the treaty, many developing countries highlighted the need to prioritize the general development of their domestic administrations and authorities. Consequently, the establishment of effective control mechanisms placed a heavy burden on underdeveloped authorities. The EU stressed its extensive experience in supporting countries with the practical implementation of regulations and mechanisms in form of cooperation and assistance. The EU therefore offered the "carrot" of money for the "stick" of effective implementation of the transparency mechanisms and domestic control of arms trade. The carrot of cooperation and assistance was successful for the EU, however, the opposition was limited. Nevertheless, the bargaining approach paid out for the EU in the area of international cooperation and assistance.<sup>69</sup>

While the EU could use its reputation and its financial means to move some areas of the ATT towards its goals, some objectives were not included in the ATT and unsuccessful. The EU did not manage to widen the scope of the Treaty towards including future technologies and ammunition, due to the opposition of some major powers, such as Russia, China and the U.S., that opposed due to different reasons. China was generally opposing the EU due to the EU's weapon embargo on China since 1989.<sup>70</sup> The U.S. was quite reluctant towards an ATT anyway and had opposed the early efforts of the UNGA. Even after coming to terms with the creation of an ATT, the U.S. was carefully blocking all possibilities to undermine the Americans 2<sup>nd</sup> Amendment rights and the interests of the American arms industry.<sup>71</sup> The EU was despite strong efforts unable to be successful with a bargaining approach and had to accept the exclusion of technologies and ammunition from the scope of the Treaty. In this case, it can be

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<sup>67</sup> Panke et al., 2018, p. 161, 171; EU, 5 July 2012, EU Opening statement by Mr. Thomas Mary-Harting.

<sup>68</sup> EU-1.

<sup>69</sup> Panke et al., 2018, p. 155, 174ff; EU-1.

<sup>70</sup> EU-1; Geneva Academy of International Humanitarian Law and Human Rights, 2013, p.12-3.

<sup>71</sup> EU-1.

assumed that the bargaining powers of the EU and its Member States were trumped by the bargaining chips of the U.S. and China.

Another issues that was unsuccessful despite various bargaining efforts, was the possibility for regional organizations to sign and ratify the ATT. This was a very EU specific request, as only the EU had the legal competence to do so. This request was admittedly introduced very late in the negotiations and the EU did not manage to receive a wide attention or support for the claim due to its specificity and irrelevance for the other state parties. In this case, the EU failed to define its preferences at an early stage and lacked the bargaining chips to realize the quest.<sup>72</sup>

While the EU attempted to use a bargaining approach to achieve some of its predefined goals, the support of many issues is only partially explained by the EU using its bargaining strategy. Despite all disagreements, the negotiating parties agreed on a large range of issues, which are not explainable with bargaining power. Additionally, the cases that the EU's bargaining was successful and those which failed are not always clearly traceable towards the existence or lack of sufficiently strong bargaining chips. Therefore, I entertain the approach of procedural justice as an opposing mode of interaction and try to explain the role of the EU in the negotiations towards an ATT.

### **Just negotiations, just outcome?**

An alternative explanation for the EU's role and ability to contribute with its goals to the agreement of the ATT, is the concept of a just negotiation process, namely procedural justice. Assuming that a just and fair process leads to a higher level of agreement and consent among the negotiating parties, fulfilling the requirements of procedural justice will increase the chances to conclude an agreement based on consensus.<sup>73</sup> The concept of procedural justice has according to Albin the requirements of fair representation, fair treatment and fair play, voluntary agreement, and transparency.<sup>74</sup>

Fair representation as the first requirement represents also one of the easier and more straight-forward issues for decision-making processes under the mandate of the UNGA. The UNGA mandated the UN Conference on the ATT and by that, all 193 UN Member States were part of the negotiations. This should in theory also mean that all the observer entities of the UNGA were invited to participate. However, the first days of the first conference on the ATT in 2012 showed that certain disagreement concerning the participation rights of the non-member states, the Holy See and Palestine, existed. The affected non-member states and certain UN member States expressed their dissatisfaction over the exclusion of the full rights to Palestine and the Holy See. The EU, as an observer entity with limited rights, was also supporting the pledge of the Holy See and Palestine, and attempted to generally improve the conditions of observer entities and states.<sup>75</sup> Several states called the incident a manipulation of the

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<sup>72</sup> EU-1; EU, 5 July 2012, EU Opening statement by Mr. Thomas Mary-Harting; UN, 5 July 2012, DC/3364.

<sup>73</sup> Albin, 2001; Welch, 2014; Hampson & Hart, 1995, p.355f.

<sup>74</sup> Albin, 2008

<sup>75</sup> EU-1.

observer status and contradictory to the UN Charter and said that such a politicization of the process was unacceptable to an UN conference. After two days of intense negotiations, a compromise was found, which was acceptable to all, but nevertheless heavily criticized. The compromise consisted of the possibility of Palestine and the Holy See to participate in the negotiations; however, they could not become a state party to the Treaty. *“That could be a disturbing precedent for the future of multilateral treaties with legally binding consequences and which the Holy See was looking forward to joining as a State party.(...) The present arrangements should in no way be misconstrued as a precedent for future conferences, at which the Holy See’s rights must be duly respected.”*<sup>76</sup>

Moving to the issue of fair treatment and fair play, which is significantly more difficult to determine as the fulfillment of this requirement is not as objectively ascertainable as fair participation. Fair treatment and fair play would concern issues, such as all parties being listened to, all concerns being addressed, no informal and exclusive negotiation meetings, no hidden agendas, and so forth. The negotiations towards the ATT is difficult to judge concerning its fairness in treatment and fair play, as different negotiation parties have expressed very different views. While the openness and equality of all involved parties was frequently mentioned in the beginning of the negotiations, claiming that:

*“All States must have an equal opportunity to voice concerns and to address them effectively and they should be on equal footing and be heard with equal attention.”*<sup>77</sup>

*“Direct consultations among States were needed in the Conference in order to ensure a strong sense of ownership by all (...) The treaty (...) should unambiguously provide for the complete and undiluted observance of the inherent rights of all states, on an equal footing, not only to self-defence, but also to their territorial integrity.”*<sup>78</sup>

Contrary to the optimistic and positive statements in the beginning, further along in the negotiation process, the rhetoric had changed significantly, and a divide along the lines of exporting and importing countries was visible.

*The treaty should, moreover, prohibit supplying weapons to non-State parties. He said it was odd (...) that an arms trade treaty should target importer States only, which would be the case if the document allowed for large arms producers to set themselves up as “judges” of importing States. That would mean that justice would target the weak link of the chain, whereas the strongest link would not be held responsible.”*<sup>79</sup>

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<sup>76</sup> UN, 18 March 2013, DC/3420; UN, 3 July, 2012, DC/3362.

<sup>77</sup> UN, 5 July 2012, DC/3364.

<sup>78</sup> UN, 9 July 2012, DC/3366.

<sup>79</sup> UN, 9 July 2012, DC/3366.



*...some interests had been reflected more than others, while some interests had been reflected only symbolically. Some interests had been simply ignored and not reflected at all...<sup>80</sup>*

States disagreed significantly on whether the process was fair and equal, and whether all concerns had been taken into consideration by being reflected in the final agreement. No clear conclusion can be made concerning the realization of fair treatment and fair play. However, the large support of the treaty, 154 votes in favor, provides a hint towards the general perception of the negotiations.

Moving to the issues of voluntary agreement, which is again a relatively clear requirement. The claim that all states entered the ATT voluntarily is substantiated by the fact that several countries abstained or voted against the Treaty.<sup>81</sup> While the grand majority voted in favor, it remained a substantive number of states being opposed and showing this by voting against or abstaining. This shows that states were not forced into accepting the Treaty, while of course, the majority of states decided that the time for further negotiations was over and no more adjustments were conducted.<sup>82</sup> Another argument that speaks for the ATT being a voluntary agreement is the fact that by voting in favor at the UNGA plenary is not sufficient to realize the Treaty. Several steps are necessary to make a treaty become reality; these steps include signing and ratifying the treaty, but also implementing the treaty. In that context, even if states were pressured into the agreement on the ATT, there was plenty of opportunity to change that direction. The U.S., who have signed the ATT but never ratified the Treaty, have recently announced their withdrawal from the agreement.<sup>83</sup> Following this argumentation, I assume that all states have voluntarily agreed on the ATT.

The final requirement for procedural justice is transparency. Interestingly, one of the main goals of the ATT was to bring more regulate arms trade and use transparency to regulate arms trade, but not to limit or prohibit any arms trade. Transparency was one of the main objectives of the EU, which consists of many arms exporting countries, where arms producing companies also had an interest in achieving regulations that would improve international trade and their legal security.<sup>84</sup> The negotiation process itself was transparent in the sense that meeting records and information were provided in the usual manner of the UN. The Chair of the Conference, Ambassadors Moritan and Woolcott, regularly provided all negotiation parties with drafts that reflected the current status of the negotiation. The distribution of drafts of the Treaty prevented any misunderstandings on the outcome of the negotiations and the remaining disagreement. In the final meeting at the UNGA, several countries made remarks on the high level of transparency and openness of the negotiations, which was achieved by the skillful and

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<sup>80</sup> UN, 28 March 2013, DC/3423.

<sup>81</sup> Syria, North Korea and Iran voted against, and further 23 countries abstained during voting procedure.

<sup>82</sup> UN, 28 March 2013, DC/3423.

<sup>83</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-8&chapter=26&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&clang=en);  
[https://www.washingtonpost.com/opinions/2019/04/29/trumps-decision-leave-global-arms-treaty-was-built-an-nra-lie/?noredirect=on&utm\\_term=.cde41676c6f2](https://www.washingtonpost.com/opinions/2019/04/29/trumps-decision-leave-global-arms-treaty-was-built-an-nra-lie/?noredirect=on&utm_term=.cde41676c6f2)

<sup>84</sup> EU-1; Bauer et al, 2014, p.1.

inclusive manner of leadership by the two chairs.<sup>85</sup> Diplomatic negotiations consist generally of many unofficial and informal meetings, where solutions are found and compromises are made. This negotiation style, however, is not advancing transparency. At the negotiations towards the ATT, the chairs were very much involved in providing all involved actors with information on the status and advancement of the draft and the negotiations. Those efforts were supported by the EU through financing outreach activities, such as regional seminars and traveling of the chairs.<sup>86</sup> This led to a high level of transparency and accessibility as even states with less resources were reached and kept informed about the objectives and progress on the Treaty.

As the conclusion, it has been shown that certain issues concerning the procedural justice of the negotiations towards the ATT arose. Despite these issues, the overall process can be described as just and fair, particularly due to the efforts of various actors that worked towards the achievement of procedural justice. Among those actors were the chairs of the two conferences in 2012 and 2013, and also the EU.

### **Conclusion**

The outcome of the ATT negotiations was mixed. The adoption of the ATT at the UNGA was without any doubt a success, as for the first time arms trade was regulated in an international treaty. This means also that the EU's main objective was achieved. The inability to reach consensus and adopt the Treaty at the UN Conference on the ATT, however, was a damaging failure of the international community. Consensus on the ATT would most probably have led to a greater momentum and a higher moral obligation of states to sign, ratify and implement the ATT.<sup>87</sup> The majority of states, who voted in favor of the adoption, spoke of the ATT as a strong, robust and actionable, fair and balanced treaty.<sup>88</sup> At the same time, the ATT was also described in this way:

*The weak will be weakened still further, while the powerful States will see their rights strengthened. The treaty should not be an instrument in the hands of exporting States to take unilateral force majeure measures against importing States parties.*<sup>89</sup>

This leads to the conclusion that the negotiations on the ATT were able to achieve a large unity among UN Member States towards adopting a binding treaty to regulate arms trade internationally. Nevertheless, the international community failed to accommodate all concerns to achieve a consensus and produce a strong signal of unity against illicit trade, conflict and human suffering.

The bargaining approach shows that the EU is able to bargain and reach certain objectives with this negotiation strategy. However, in negotiations that include the so-called big powers and are related to

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<sup>85</sup> UNGA, 2 April 2013, A/67/PV.71 and A/67/PV.72.

<sup>86</sup> EU-1; Council of the EU, 2009, 2009/42/CFSP.

<sup>87</sup> EU-1.

<sup>88</sup> UNGA, 2 April 2013, A/67/PV.71 and A/67/PV.72.

<sup>89</sup> UN, 18 March 2013, DC/3420.

sensitive issues of security and sovereignty, it seems that the EU is only limitedly able to play a central role using a bargaining approach. States are often reluctant to provide a non-state organization with a larger role when it comes to issues of security and sovereignty, and the big powers will in the majority of the cases hold more bargaining chips than the EU is able to. Negotiations at the UNGA, in a multilateral environment, complicate the usage of a bargaining approach in addition. A large amount and wide range of bargaining chips is necessary to be able to persuade all involved actors concerning a specific issue. Particularly in cases with a large opposition and a great range of controversial issues, a bargaining approach seems very cost-intensive and little viable for the EU.

The pursuit of procedural justice, on the other hand, provides a large space of possible involvement for the EU. Many components of procedural justice as fair representation, fair treatment and fair play, voluntary agreement, and transparency are part of the EU's Global Strategy. Engaging in procedural justice possibly not only advances the EU's own objectives, but also provides the EU with more a greater role in multilateral negotiations. By pursuing a negotiation strategy along the lines of procedural justice, the EU does not only avoid being dominated by the larger powers and their stronger bargaining chips, but the Union is also able to enhance its reputation and be perceived as a just and fair actor that can achieve its objective without compromising the aims of others.

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**Interviews:**

EU-1: Interview with EU official 29.04.2019

(Further interviews are schedules after the deadline for the EUSA Denver Conference 2019)