



Arms Trade Treaty Monitor

NGO reporting and analysis on the second session of the preparatory committee for the United Nations Conference on the Arms Trade Treaty, 28 February–4 March 2011

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Drafting Table

Dr. Robert Zuber | Global Action to Prevent War

There is a maxim of successful legislation of any kind that you draft laws for your skeptics, not for your supporters, and in such a manner that ambiguity can be minimized, penalties are made proportionate and an independent assessment of potential non-compliance can be ensured.

There are considerable differences to be noted between national legislation and treaties such as the ATT, including the consensus requirement, and perhaps even the degree of difficulty in amending treaties once adopted. But as we move closer to formal negotiations on an ATT, there are also valid lessons from legal drafting that can profitably be integrated into formal treaty negotiations.

One of these lessons is that diplomats should continue towards formal negotiations with a

clear and lively sense of what treaty skeptics need to gain in order to overcome obstacles – more and less legitimate – that stand in the way of eventual final agreement. If it is possible to provide some measure of satisfaction to skeptics before negotiations commence, the chances of their engagement in the process and its aftermath are that much greater. Assuming the skepticism comes from some place of genuine national interest, there is value in taking additional time to address it at this stage.

Whether working out legislation or treaties, the most skillful negotiators are often intensely sensitive to dissonance. Those who can remain attentive to rhetorical criticism without succumbing to defensiveness or indifference are demonstrating the highest levels of negotiating leadership. We feel that Ambassador Moritan --

in part by virtue of his fearlessness in serving as a 'lightning rod' for the process through the 'non papers' he has produced, shared and amended -- has exhibited precisely this kind of leadership.

For the rest of us, it would probably be wise to schedule a bit more time with those who disagree with our ATT positions. As Pakistan reminded delegates in the last hours of this Prep Com, "lockstep can easily lead to misstep." Of course, it would be unfair to accuse any of the principle participants -- including NGOs -- of suggesting treaty parameters that are not subject to negotiation. Holding convictions does not necessarily imply closing off discussion pathways. And most delegates understand the need to keep walking a tightrope of sorts between avoidance of needless ambiguity and ensuring that treaty processes and outcomes are

as encompassing as possible. To help make this tightrope less daunting, many delegations now seem to be coming around to the view that some structure will be needed to ensure the transparency and accountability that can legitimate an ATT regime in the eyes of both governments and the global public.

At some point to be determined, the issue will be less about airing differences than about having diplomats decide how differences will be adjudicated in the name of producing a formal, actionable treaty. But we are still at a phase where divergent views over scope, parameters and structure are fair game and perhaps even healthy if the final treaty is to be implemented with enthusiasm by as many states parties as possible.

Nobody Said It Would Be Easy

Daniel Mack | Instituto Sou da Paz, Brazil

The international community has failed the Libyan people. More specifically, international arms control agreements-- or the lack thereof -- have failed entire societies in North Africa and the Middle East in recent weeks. Those events have proven the extreme urgency of having robust legally-binding controls on the international trade of all conventional arms and their ammunition.

It is not often that draft papers in the expansive basements of the UN have such clear, raw connection to real life, current events. This week, during the ATT PrepCom, the horrible images of violence across an entire region were in the minds of civil society and governments alike, as we wondered how arms -- including internal security equipment -- could have been legally exported to a regime that would use such disproportionate force on its own citizens.

Had a robust and effective ATT already existed, it is quite possible that families across that region would not be mourning the loss of so

many non-violent protesters, persons who were demanding nothing but basic human freedoms before being brutally murdered or injured. In this sense, any delays to the culmination of this ATT process are utterly unacceptable; 2012 is already too late for too many.

To deliver on its promise as an instrument with "teeth" that can save lives and prevent such future massacres, the treaty's language and implementation mechanisms must be very strong. Of course, strong and effective treaty text is not easy to develop, let alone to agree and eventually implement. Nothing worthwhile is easy.

This week, we have heard a few states concerned about treaty aspects that would be "burdensome" to report on or "difficult" to implement. I must say, if I used such retorts when asked to perform a complex but clearly feasible task, I would be in trouble with my boss. The ultimate bosses of civil society and governments -- the citizens of our countries --

surely would agree: a robust ATT will be difficult to construct, but it is the only acceptable option.

Will the logistical efforts needed to monitor post-export control and tracking of small arms ammunition be complex? Yes, of course. Is it impossible in all cases? Absolutely not. And before the proverbial baby is chucked with the bathwater, it may be wise to focus on the fact that a case-by-case export control assessment on whether to sell ammunition, backed by strong and transparent criteria, is among the easier decisions to take. If the inclusion of ammunition is to fail during negotiations on scope and implementation, it must be only after herculean efforts by supportive states and NGOs, not by giving up prematurely.

Attempting to establish strong language is a first step for such efforts. For example, current

language in an introductory paragraph to the parameters will serve no humanitarian effect whatsoever. The triple weakening of "should", "as appropriate" and "take into consideration" amounts to a "feel free to ignore" formula that would allow any case-by-case risk assessment to result in the approval of any transfer - no matter how dire the human rights, development or systemic violence situation the presence of these arms would cause.

As these terms and other normally "cold" technical concepts were brought to life during the week, as we all relate the very real implications of their definitions and applications, we must ensure that the entirety of the ATT text -- and its implementation mechanisms -- protect the people who now appear to have been failed by our current policies.

The Beauty of the Business

Salvatore Russo-Tiesi | Global Action to Prevent War

The encouraging manner in which the 2nd ATT PrepCom commenced seems to leave the international community optimistic about the creation of an arms trade treaty. Looking forward, the questions that must be tackled in the July PrepCom involve substance and implementation details.

What we have witnessed this week is an immense towards greater "safety" for the international community. Granted, a considerable amount of differences still exist between nations involved in this rigorous process. There is much debate about the exact wording of the treaty. The scope, criteria, and parameters in the treaty are also contested by many of the states. However, as mentioned previously, this does not take away from both the significant progress made as well as the optimistic atmosphere. In fact, I would argue this week portrays the beauty of this business.

The beauty lies in the ability of diplomats and nations all over the world to temporarily

consider the health of the international community over that of their country. This coherence allows for the passing of international regulations, much like the Arms Trade Treaty, for the betterment of the world. I am confident this end result will prevail once again. Until then, let us appreciate this roller coaster of a ride.

As the United Kingdom delegate so graciously stated in his final address, diplomacy is a unique business. Diplomats do not choose this profession for the money and travel (most do not experience anything more than airport terminals and hotel facilities on their business trips). The calling comes from a patriotic sentiment to advance the overall well being of one's country. The fascinating part is how so many different diplomats and countries can come to consensual agreements, while keeping the well-being of their country on the forefront. Calling to mind our personal lives, I am sure all of us can recall countless times when a group decision seemed virtually impossible to make. Whether the

decision is what movie to see, where to catch dinner, or what to watch on TV, the bigger the group the harder it is to come to a unified decision. There is an undeniable complexity in deciding what exactly is to go into a legally binding treaty involving almost two hundred countries. The fact that after two rather short Preparatory Committee meetings the international community can attain the agreement and success it has to this point is astounding. The optimism and the overall coherence after this week are remarkable achievements. The nations, in particular their respective Ambassadors and Diplomats, deserve praise.

Sure, Pakistan claims we are still missing the big picture and Iran stated that we have overambitious goals and must remain grounded before it is too late. Yes, Egypt is confident that the wording is inadequate, we are not paying attention to the rights of importing states, and we are assuming things that history does not back up. However, these are small ripples in the ocean. Of all the nations in the process and all the possible issues that could arise, these are, for the most part, the main concerns. There is the beauty of the business. This is an excellent reason for a toast at the Millennium Hotel.

It's a Wrap

Ben Murphy | Oxfam Australia

It's Friday afternoon at the United Nations in New York, and I'm sitting in a room with a few hundred delegates from around the world. We've just finished the second 'Preparatory Committees' - there's one more to come before the final negotiating conference in 2012 that we hope will result in the first truly international, legally binding Arms Trade Treaty (ATT).

So what has changed during this week, and what has been achieved? Here's my run-down of some of the week's high and low.

It was a fascinating week, with governments from every part of the globe providing their views on what the final treaty should look like. It's going to be a mammoth task for the Chair of the Negotiations, Roberto Moritan of Argentina, to pull together the range of comments and delicately balance the various views of states. Whilst the majority of States seem to be heading towards agreement on a comprehensive set of issues, the negotiations have been punctuated by a number of not-insignificant points of disagreement, particularly those voiced by a small, but vocal group of skeptics.

So what has changed during this week, and what

has been achieved?

Moritan's papers:

Most significantly, Ambassador Moritan has produced a series of new papers that set out a draft framework for the treaty as a whole, and draft language on the following sections of the treaty ([Reaching Critical Will has the document](#))

- Principles
- Goals and objectives
- Scope (type of equipment and types of transfers covered)
- Criteria for assessing a transfer of arms
- International cooperation and assistance mechanisms, to assist states in fulfilling their obligations under the new treaty

What do we think?

The papers are generally strong, and contain many elements championed by the Control Arms Coalition as essential to an effective and robust ATT - see the official response and Q&A about the meeting at www.controlarms.org. In particular, the draft text includes specific criteria considering the human rights, international humanitarian law and sustainable development impacts when authorizing a transfer of arms. Additionally, ammunition, which several states including the United States have opposed, is still

in the scope. Whilst victim assistance seems under threat, a specific reference is still in the papers and several states have made specific references to the importance of addressing the needs of victims through the UN system, national organizations, and aid programs or through NGOs.

Of great concern to advocates are the questions around the viability of including transfers of technology, and arms manufacturing technology in the Treaty. Excluding this would provide a major loophole in the treaty due to ever-growing number of new producers of various types of arms and ammunition around the world. There is also a worrying absence of mentions of the need to include non-military weapons, munitions and armaments used by internal security forces, as evidenced in the latest brutal human rights crackdown in North Africa and the Middle East.

New countries, new issues:

We saw the emergence of some interesting new issues and some new key players in the room. Bahrain, speaking on behalf of the Arab Group, for the first time acknowledged the importance of human rights and the fact that conventional weapons have been used for the killing of civilians and the destruction of homes in its region. However, they also expressed concern that if there is a strict human rights rule to govern decisions of arms transfers, it could be politicized. The world's two most significant emerging powers, India and China, elaborated on their positions more than ever before. Worryingly, they are both calling for a narrow scope of the treaty. India raised some pertinent points around feasibility and implementation, and China expressed cautious support for the inclusion of human rights, as long as it will not be used politically and will only apply to the specific conventions each country has signed.

A win for development:

There were also some real wins for those of us who want to see an ATT that will reduce the humanitarian and development impacts of the irresponsible arms trade, with strong language

still included in Moritan's paper. For the first time, we also heard a strong intervention linking the ATT to the gendered impacts of conflict and armed violence. As an Australian, I felt proud that it was in fact my country leading the charge, with the Australian delegation calling for donors and recipient states to allocate assistance to address the impacts of armed conflict on women in accordance with UN Security Council Resolutions on women, peace and security. What's more, this intervention was supported by a variety of countries including Trinidad and Tobago, the United Kingdom, Papua New Guinea on behalf of the Pacific Islands and Norway. This morning, Trinidad and Tobago reasserted the importance of this issue, stating that it would support any and all references to the gendered impacts of armed violence and conflict.

What's next? We'll meet again.

The next and final PrepCom will begin on July 11th, 2011 and will focus on the issue of implementation – the framework for making sure that states can turn their treaty obligations into practice. What I've enjoyed most about this week is that it gives us a much clearer frame of reference in order to plan over the next critical 18 months until the final conference.

What's most obvious is that a broader range of states than before are getting serious about the ATT, and all states have been thinking in far more detail about what they would, and would not, like to see in an ATT. Whilst not all of the positions put forward reflect what us advocates want to see in the final Treaty, the discussion does put us in a much better position to see where the gaps are, and where we need to provoke more detailed debate, contribute technical solutions and expertise, and build political will where it is currently most lacking.

The task ahead is massive, but the PrepCom this week has reassured me of where we, as advocates for a strong and enforceable ATT, need to go, what we need to do, and where we need to be - when we meet again.... in July.

See You in July

Katherine Prizeman | Global Action to Prevent War

There was a distinct sense of optimism around the room of the second preparatory committee for an arms trade treaty. After final interventions by Member States related to the Chair's most recent draft paper, the Chair, Ambassador Roberto Moritan, joined delegations in expressing enthusiasm and excitement for the third PrepCom that is to take place in New York in July. As for the second PrepCom, on the whole, delegations seemed to view this past week's meetings as a positive step towards a final arms trade treaty. Perhaps even more importantly, delegations recognized that in order to proceed there must be a minimal level of consensus and cooperation. The delegate of Iran stated that despite the very wide range of diverse views, a commitment to sincere cooperation is vital to this preparatory work towards final formulation of an ATT. In the same vein, the delegate of Pakistan stressed that it is vital that all Member States listen both to those who agree with them as well as those who do not.

As the delegate of Nigeria stated, "It is time to go back to the drawing board and build on these negotiations." Going back to the drawing board requires Member States to take the central issues discussed throughout the week back to their capitals to determine how their positions may be reformulated for the sake of international consensus and for the best and most expedient outcome to an arms trade treaty.

From the discussions this week, it is abundantly clear that the central questions that must be answered in the next PrepCom are:

- Whether the future ATT will be strictly a treaty to regulate the legal trade of conventional arms or a broader agreement seeking to identify and address illicit trade as well
- If there should be inclusion of small arms, light weapons, and ammunition in the scope

- How to define 'transfer' as opposed to other relevant activities covered under the treaty
- Where, if at all, there should be references to international human rights and humanitarian law, which could include mention of armed violence, poverty reduction, victims' assistance, gender, and development
- How to safeguard territorial integrity, states' right to self-defense, and political independence
- How expansively international cooperation and assistance will be accounted for—whether limited only to that which directly relates to arms transfer or as wide as to include training, stockpile management, and technological transfers
- How to integrate definitions that are apolitical and based on already-established language as found in previous UN documents

Answering these very weighty questions will be no small feat. However, there will need to be compromises made by all delegations in order to enter final status negotiations and bring to fruition an ATT.

There seems to be genuine consensus among Member States that there is a true need for an ATT. There has been wide regional participation in these discussions from CARICOM, the Arab Group, the EU, and the Group of Like-Minded States, which illustrates the global interest in moving this process forward. Even the most hesitant of states have expressed interest in completing some form of an arms trade treaty. This fact should not be underestimated, but rather, should be celebrated and used as encouragement for future work on an ATT. The July 2011 PrepCom must answer a slew of difficult questions such that the 2012 negotiations can move efficiently and productively towards final treaty language. Under the very able leadership of Ambassador

Moritan, this is possible. However, the delegates to the next PrepCom must be diligent about working out answers to these aforementioned

questions so that a treaty begins to take form towards 2012 ratification.

States Take 'Big Steps' Towards ATT

Baffour Amoa | Control Arms Coalition

This week, governments took a big step towards the establishment of a robust treaty to regulate the international arms trade. Despite serious efforts by some states to derail or weaken the process, we are now beginning to see a principled treaty take shape.

“Events in the Middle East and North Africa have reminded governments that they cannot continue to operate like in the old days. They have a responsibility to ensure that any weapon, ammunition or equipment will not be used against innocent civilians. The Arms Trade Treaty under negotiations will ensure this by requiring governments to refuse transfers of conventional arms if there is a substantial risk of serious human rights violations, war crimes or terrorist acts.

We have to keep up the pressure on States until the next round of negotiations in July 2011 to make sure they come prepared and willing to agree strong provisions on the implementation of the treaty.

What has been achieved this week (March 2011)? Has there been any significant movement on the Text?

Draft rules proposed to underpin the treaty are reflected in a paper by Chairman Ambassador Roberto Garcia Moritan and include the criteria for making decisions on international arms transfers, and also what arms should be included in the scope of the Treaty.

The draft papers reflect the view of most States that, when the treaty is established, it should regulate the transfers of a wide range of conventional arms including tanks, missiles, artillery, small arms, light weapons, munitions

and military vehicles, aircraft and helicopters.

NGOs welcome the support from States around the world for an ATT that will prevent arms transfers that undermine the recipient country's development. It is important for States to seize the opportunity that the ATT presents to develop an instrument that brings together humanitarian, human rights, and poverty reduction efforts with trade regulation. What NGOs are arguing is that States shall not authorize transfer of conventional arms if there is a substantial risk that those conventional arms would seriously impair poverty reduction and socio-economic development or seriously hamper the sustainable development of the recipient state. That part of the draft is comprehensive in its reach and **explicit** recognition of the wide-ranging impacts of the arms trade on development and poverty reduction.

What do you see as a worrying trend in the negotiations?

While many states have been supportive of a broad range of arms to be regulated for international transfers in the scope of an ATT, some European and North American states have recently been backtracking on some arms.

For example, the United States and Canada have raised questions about the viability of including transfers of technology in the Treaty because of concerns about putting restrictions on dual-use goods (i.e. night-vision goggles or technology to guided-missiles).

Another key problem in the existing draft highlighted by the Control Arms alliance (also by visiting retired generals from Pakistan and

France as well as an ex-UK police officer) is the absence of controls on non-military weapons, munitions and armaments used by internal security forces – as shown in the latest brutal human rights crackdown in North Africa and the Middle East.

Which States made the most progress? Were Arab States a factor this week in terms of bringing fresh support to an ATT?

Bahrain, speaking on behalf of the Arab Group, for the first time acknowledged the importance of human rights and the fact that conventional weapons have been used for the killing of civilians and the destruction of homes in its region. However, they also expressed concern that if there is a strict human rights rule to govern decisions of arms transfers it could be politicized. Russia, China and Pakistan were amongst a few other states expressing reservations about rules based on international human rights and humanitarian law.

At the moment, the draft text for the ATT contains two rules requiring States to not authorize transfers of arms if there is a substantial risk that the arms would *"be used to commit or facilitate serious violations" of international humanitarian law or international human rights law.*

What's the Chinese position now?

Many have been waiting for China, a significant arms exporter and one of the 5 permanent members of the UN Security Council, to reveal its position on the ATT. This week they expressed cautious support for the inclusion of

human rights, as long as it will not be used politically and only apply to the specific conventions each country has signed up.

Furthermore, China came out strongly against the inclusion of small arms and light weapons in the ATT, arguing that any expansion of scope beyond the 7 categories in the UN Conventional Arms Register (UNCAR) should be viewed with extreme caution. This is extremely concerning, given China's expanding influence in Africa, where small arms and light weapons are the weapon of choice in most of the deadly conflicts ravaging the continent.

Their position was countered by detailed interventions from across the world - including many African states, the European Union, Australia and New Zealand, Asian, Caribbean and Central and South America States - reinforcing their support for a treaty including small arms, light weapons and all types of ammunition.

The Treaty will be agreed "by consensus" - Is this an issue right now in the talks? What about later?

Many States mentioned in their interventions that they feel reassured by the process due to the consensus rule. While this has not been an issue during the Prep Com, it could be a problem during the final negotiating conference in 2012 as it could give every country the power of veto.

We must be vigilant so as to prevent a small minority from potentially crushing the aspirations of the majority of States for a robust ATT.