



ATT MONITOR

Civil society perspectives on the
Fourth Conference of States Parties
to the Arms Trade Treaty
20-24 August 2018



Reaching Critical Will

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FROM RECOGNITION TO ACTION: MAKING THE ATT WORK

Allison Pytlak | *Reaching Critical Will of WILPF*

Recognition is insufficient without action, said one delegation during the session about Treaty implementation at the Fourth Conference of States Parties (CSP4) to the Arms Trade Treaty (ATT). The words were in reference to how the subject of gender and the ATT's potential to prevent gender-based violence (GBV) is often treated—a lot of recognition of the problem, even more recognition of the ATT's potential to address it, yet very little much tangible action toward doing so. It is proving to be an area where there is insufficient knowledge or experience within the arms control community about how to incorporate consideration of this problem into risk assessment practices, demonstrating the huge gaps that remain between the individuals and communities that work on these issue.

Yet, these words could be applied to other aspects of ATT implementation, a topic that was the focus of discussion during CSP4's second day of deliberations. In fact the ATT was designed in recognition of a shared and borderless challenge that the global community needed to confront—namely, the humanitarian harm and suffering wrought by the unchecked spread of arms. Dozens of statements given during Monday's general debate recognised again and again this problem—sometimes with reference to specific national concerns such as crime, violence, or impact on development, but usually in more general terms—and they also repeated again and again the merits of the ATT and its potential as a solution.

Now we need the action.

This, in theory, should be reflected during the part of CSP4 that considers the topics of implementation and its thematic focus on diversion, universalisation, transparency and reporting, and international cooperation and assistance. Has it?

The plenary session on Tuesday included a report back from the Switzerland, as chair of the Working Group on Effective Treaty

Implementation (WGETI) and the facilitators of its three sub-groups. The sub-groups have focused on Article 5; Articles 6 and 7; and Article 11. From all accounts, the groups have been productive and the overall approach of a working group system is a good one that enables continuous work and dialogue. The experiences from other treaties indicates that this approach will likely lead to more fruitful conferences of states parties. The groups have made proposals for the conference to consider and hopefully adopt; which seems likely to occur given the tone of the session on Tuesday.

However, neither in the WGETI or at CSP4 has there been any meaningful discussion on how Articles 6 and 7 are being applied by states or even more broadly about how concerns stemming from international humanitarian law (IHL) and international human rights law (IHRL) are impacting on arms transfer decisions. This is a dangerous and possibly deliberate oversight in accountability that must be addressed in order to guarantee the Treaty's credibility and more importantly, save the lives that it purports to set out to do.

There has been a lot of emphasis in statements on the efforts that some states parties are making to establish national control systems, or ensure their national laws are up to snuff and in line with Treaty provisions. For many, there are understandable challenges that come along with doing so, relating to technical, financial, and human resource constraints and gaps. The efforts being made to overcome these hurdles are impressive and will hopefully continue to be fostered through support and interaction with other states and experts in civil society.

At the same time, there are other states parties that already have these systems in place. Waiting for the rest of the world to catch up cannot be an excuse or a distraction for acting irresponsibly and not rigorously applying IHL and IHRL considerations in export decisions. Providing support and capacity build-

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The views expressed in this publication are not necessarily those of WILPF or Reaching Critical Will.

Editorial, continued

ing cannot likewise be a smokescreen for decisions and policies that run contrary to ATT obligations.

Returning to gender-based violence, there has not been any reporting back in statements as to how national risk assessments are expanding and changing to consider the risk that a transfer may lead to GBV. Guidance and knowledge-building resources have been developed in the last few years by WILPF and the International Committee of Red Cross (ICRC) that seek to explain what gender-based violence is and its connection to the international arms trade; outline possible indicators to consider or key questions to consider; and sources of information. At the

third Conference of States Parties (CSP3), Ireland put forward a working paper on the subject to help raise its profile amongst states parties. This work is now being expanded on by others including through the launch of a new report at CSP4 on Wednesday. We strongly encourage all conference participants to attend and learn how to move from mere recognition of the problem to action and solutions. •



HOW TO USE THE ARMS TRADE TREATY TO ADDRESS GENDER BASED VIOLENCE

WEDNESDAY 22 AUGUST 2018 | **13:15-14:45** ROOM:MAI

FEATURING

Daire **COURTNEY**
GOVERNMENT OF IRELAND,
CHAIR

Ulf **LINDELL**
GOVERNMENT OF SWEDEN

Verity **COYLE**
CONTROL ARMS


Netta **GOUSSAC** - ICRC

Folade **MUTOTA**
CARIBBEAN COALITION FOR
DEVELOPMENT & THE REDUCTION OF
ARMED VIOLENCE

Allison **PYTLAK**
REACHING CRITICAL WILL

This event will launch Control Arms' Practical Guide to assess the risk of Gender-based Violence under the ATT.

A LIGHT SANDWICH LUNCH
WILL BE PROVIDED


Rialtas na hÉireann
Government of Ireland

control arms



SUMMARY

The general debate continued into Tuesday, with statements largely from signatories and observers, although the time accorded for civil society's general statements was unexpectedly rescheduled for Wednesday in order to make up for lost time. Highlights include:

Universalisation

- Singapore is considering legislative measures to implement the ATT.
- The Philippines updated that it has established a technical working group in its legislature looking at ratification.
- Botswana is on track to deposit its instrument of accession in September.
- Canada said it is committed to its ATT accession, but is currently working to further strengthen its export control regime before completing that process.
- China noted that the ATT has made progress, but many important exporters and importers have yet to accede. It would like the Treaty to progress in order to resolve problems caused by trafficking but these efforts should not prejudice legitimate arms transfers.

Implementation

- Malaysia is in the process of interagency consultations to ensure that legislation is in line with ATT commitments before it completes ratifications. Thailand is similarly preparing its legislation.
- Colombia spoke to creating a "chain of efforts" by considering importers and exporters as separate entities.
- China stated that it has a complete export control system, which is above ATT requirements. It requires end-use certificates, and its approach goes beyond embargoes to look at broader peace and security considerations.
- Fiji condemns any arms transfers that violate or undermine the Treaty.

Development

- Malaysia supports the link between the ATT and the Sustainable Development Goals (SDGs). Colombia would like more focus in this area.

Assistance

- Botswana appreciates the assistance it has received on reporting and technical implementation.
- Fiji welcomes the assistance available to Pacific states to put in place systems and processes.

Following the conclusion of General Debate, the plenary turned its attention to the subject of Treaty implementation. Switzerland, in its capacity as chair of the Working Group on Effective Treaty Implementation (WGETI) presented its report to delegates. The facilitators of the three sub-groups on: Article 5 (Ghana) Articles 6 and 7 (Sweden) and Article 11 (Australia) also presented brief summaries of what had been discussed during meetings, and highlighted relevant proposals for agreement at CSP4 and the way forward, to which states then responded:

- Costa Rica described some national implementation measures, including actions that have led to the confiscation of several thousand weapons, a civil servant training programme, and engagement with private security companies to ensure their compliance.
- The European Union (EU) welcomed the comprehensive guidance documents produced by the group. It said that for many countries, there will be a need for assistance for which the Voluntary Trust Fund (VTF) is critical as the core ATT requirement of establishing national control systems and lists will be a new action for many countries.
- Norway reiterated its points from the General Debate about the overall importance of the working groups. It supports the proposed mandate and lists of priority topics, as well as the attendance of "national relevant experts" from "relevant national institutions".
- Australia appreciates the discussion on national control and export systems that has occurred in the context of other working groups, and supports the relevant documentation put forward by this group.
- South Africa supports continuing to prioritise the same Treaty articles that the Working Group has been examining to date. It endorses the documents proposed by the Chair, noting that any documents put online constitute a "living" list, and are voluntary and optional resources to be used.
- New Zealand supports the conclusions and recommendations of the WGETI report and is pleased that it will continue work on implementation of articles 6 and 7. It has recently passed legislation to enhance its own compliance with the ATT by enacting new brokering legislation. This will come into force in February 2019.

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- Ireland has consistently emphasised the link between the SDGs and the ATT and noted that the explicit message from the joint meeting of the sub-groups on the SDGs is that implementation and application of the ATT contributes to the SDGs without imposing an additional burden.
- Ireland stated that the successful implementation of the gender-based violence (GBV) provisions in the Treaty is a priority for the CSP4, noting that while it is a hard and challenging area of work, this should not be an impediment for states working more closely together to do so. It supports the Chair's proposed documentation, noting like others that they need to be living resources to respond to the changing nature of implementation challenges.
- Belgium supports that working group chairs be nominated as early as possible, and urged a focus on more intersessional work. It is ready to endorse the documents proposed by the sub-group on diversion as well as the list of issues to take up in future, and made a suggestion for the title of the section on transit controls, in the relevant Annex. It feels the welcome pack should not be prescriptive, and only descriptive and that the sub-group on article 5 is the appropriate place for general presentations on national control systems.
- Switzerland welcomes the proposed documentation, and also for the working group to continue focusing on diversion issues beyond this CSP4. It suggests leveraging the expertise of civil society and academia. The sub-group on article 5 is the best place to exchange on national control system development. It may also be useful to exchange about experiences in the implementation of VTF projects.
- The United Kingdom also would like the proposed resources and documents to be open for updating. It would like to continue focusing on developing a repository; strengthening policy level exchanges through tech and policy expert participation; encouraging regional dialogue; and making best use of the expertise available, including civil society and industry.
- Argentina echoed the importance and relevance of engaging with industry. It also supports further international assistance, comprising technical and human resource training. It noted the gaps and deviations between countries with, and those developing, national control systems.
- The Republic of Korea has been incorporating elements of articles 6 and 7 in its export assessment and will look at the suggestions in draft Annex B, where necessary. It reiterated its position that the use of documents proposed will be voluntary in nature. It would like to hear from states parties about their practical application of these documents in risk assessments.
- El Salvador shared that its government is doing a survey of domestic laws with the objective reinforcing the legal framework around arms transfers and control. Its ATT implementation has the support of all governmental agencies and offices.
- Germany referred to a working paper it submitted to the WGETI along with eight other countries. It is still committed to the recommendations put forward there. A thematic side event later this week will be an opportunity to explore methods to prevent diversion after delivery, an area that is under practiced.
- The United Kingdom also would like the proposed resources and documents to be open for updating. It would like to continue focusing on developing a repository; strengthening policy level exchanges through tech and policy expert participation; encouraging regional dialogue; and making best use of the expertise available, including civil society and industry.
- Palestine supports elements in the proposed welcome pack on how to establish national control systems. It is pleased to see that the proposed documents including "fundamental" ones from sources such as the UN, the International Committee of the Red Cross (ICRC), the High Commission for Human Rights, among others.
- Mexico would like to continue work on the articles under review by the WGETI now. It welcomes the uploading of documents onto the website but highlighted that follow-up will be necessary regarding some of the reference documents and annexes. Mexico stated that diversion needs more work. It would like to ramp up its work on the GBV provision, in collaboration with others, including civil society, and monitor statistics more closely to see if there is progress on joint implementation of the SDGs and the ATT.
- Georgia has introduced new legislative tools to regulate the use of dual use goods.

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- The Netherlands feels that diversion should remain on the agenda, and that risk assessments are the most important measure for reducing the risk of it occurring. Information exchange is also important.
- ICRC called on states to strive for the strictest implementation in which transfers with a clear risk of violating international humanitarian law or human rights law must be denied. It encouraged states to share experiences with implementation, which is critical to building legitimacy of the Treaty.
- The Control Arms Coalition feels that progress towards developing systems and structures in states with less capacity could be improved by greater representation from these states in the work in Geneva as well as through outreach and increasing the technical and financial resources available. The coalition noted that it is of great concern that states parties and signatories have transferred arms to countries committing grave violations of human rights.
- Parliamentarians for Global Action took note of the connection between development and the ATT.
- The statement from ASER reflects its belief that the ATT has been shaken to its foundations because of violations of human rights that are taking place; noting that Spain, France, the UK have rejected their international obligations with respect to arms transfers.

Switzerland summarised some common points from the statements:

- Working groups are important and most feel a need to move ahead;
- Conclusions and recommendations from the WGETI should be adopted in the outcome document;
- There is room for improvement with work relating to specific articles;
- States should appoint a new chair early on;
- Suggestions for amendments to the draft Annexes have been made that will be taken into account.

DIVERSION

This year's thematic session focused on the issue of diversion and featured an expert panel moderated by Mr. Yann Hwang of France. His opening remarks spoke to the non-paper that it, in cooperation with other states, had submitted to the working group on this subject. They also re-affirmed the major findings and themes from the Group's discussion and urged substantive discussions in order to progress this issue in the ATT, and saving sensitive issues for discussion in the Wassenaar Arrangement.

The presentation of Ambassador Miguel Ruiz Cabañas of Mexico highlighted the responsibilities of all stakeholders in preventing diversion and the necessity of common standard approaches. Stakeholders include industry as well as government. The discussions at CSP4 and potentially CSP5 are good for sharing best practices, but more cooperation is needed financially, technically, and legally, to enhance institutional capacity and fill gaps and loopholes. The Ambassador made reference to relationships between arms diversion and organised crime, and urged states to work with Mexico and others to have a constant dialogue on this subject within the context of the ATT.

Jonah Leff of Conflict Armament Research presented the organisation's work in monitoring diversion, particularly through its iTrace mechanism. Over 500,000 weapons and ammunitions have been documented through the tool. CAR has just launched its Diversion Digest, based on extensive field data, which suggests that the most common types of diversion are battle-field capture, loss from national custody by undetermined means, and state-sponsored diversion.

Paul Holtom, of the Small Arms Survey, emphasised the importance of diversion prevention measures to take place before diversion. His presentation included many info-graphics that helped to illustrate the various challenges and aspects of the diversion issue. He encouraged states to share measures preventing diversion, especially countries in the export chain that are not "export states".

BG Hery Emma René Randriamiamanana, outlined a case study from Madagascar where diversion rates had quadrupled along with a rise in rates of corruption and illicit trading. It used to donate its ammunition, but now only produces enough for internal use and has improved its marking practices. Madagascar mandates indefinite retention of documents that relate to the movement of weapons.

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Prevention/risk mitigation for diversion and response



Infographic by Small Arms Survey

Ms. Lindall Nixon of the Australian Department of Defence outlined how the arms industry can help with end-use certificate verification noting that it will cooperate if it enhances the chances of getting an export permit. It is important that governments understand the commercial arrangements of exporters, and to engage with industry early on in the process.

A question and answer period took place after the first three speakers had delivered their presentations, and then again at the end. Some, like Spain, the UK, and the Central African Republic, shared information about national measures and policies to prevent diversion. Others asked questions of the panelists. Japan suggested that a mapping of specific diversion cases would be helpful and would like to continue this discussion into the next CSP.

Civil society and international organisations delivered statements on diversion toward the close of the day.

The ICRC welcomed the list of resources and guidance documents prepared by Australia in relation to diversion. It sees a link between Articles 7, and 11, and urged applying diversion prevention measures to ammunition as well as parts and components. The ICRC also stressed the importance of information exchange.

The Control Arms Coalition hoped the reports and recommendations relating to diversion are endorsed. It also hoped for an early start on detailed information sharing of real world risk assessments and experiences with diversion, along with lessons learned for prevention or mitigation measures. Having a control system in place is not a sufficient guard against diversion. The Coalition recommended the following actions: conducting voluntary peer reviews between states of each other's systems and challenges; starting initiatives to pool resources; and providing updates to the Initial Reports.

Nonviolence International Southeast Asia (NISEA) stressed the differences among countries in the region, which means that implementation will take place at different stages for different countries. NISEA urged approaching arms proliferation in the context of development, and destructive internal conflicts occurring in some states. It noted that certain states with stringent controls are undermining efforts through transfers that are clear violations of the Treaty.

ASER pointed out to a lack of transparency and equality in the ATT process and argued that the involvement of NGOs in discussions is beneficial to Treaty implementation. It further stated that the Treaty is vulnerable at the moment, and needs fixing. •

THE GROWING MARKET FOR MILITARY DRONES

Wim Zwijnenburg | PAX

This week at the Fourth Conference of State Parties to the Arms Trade Treaty in Tokyo, PAX will launch their new report “Unmanned Ambitions” on the growing market for military drones. Over the last two decades, both states and non-state actors have increasingly deployed military drones on the battlefield. Military drones have been used initially for collecting information on the battlefield for intelligence collection and support of targeting, but since the introduction of the armed drone in Afghanistan in 2001, they have been used for both close-air support in combat, and targeted killings outside the battlefield against suspected terrorists and armed groups. The latter development made armed drones notorious, as research by human rights organisations and reports by UN Special Rapporteurs indicated that many civilians died or were wounded in these clandestine extrajudicial killings.

Over the last several years, technological developments have boosted the capability of a wide variety of military drones, from large airplane size drone to small, insect type that are used in urban warfare to peek around the corner. While having the potential to minimise civilian casualties due to improved situational awareness, their low cost and perceived low-risks also resulted in increased use on and outside the battlefield. The number of targeted killings by the United States of suspected terrorists in Pakistan, Yemen, and Somalia with drones increased dramatically between 2008 and 2016, without providing transparency on the legal justification.

Over the last five years, more cross-border incidents occurred with military drones that in some occasions resulted in the escalation of lethal force, as was witnessed earlier in 2018 with an Iranian unarmed drone that flew into Israeli airspace, that led to a full-scale military attack on the suspected Iranian launch site in Syria. Other incidents occurred in Iran with both an Israeli and American drones that crash-landed, and similar problems on the borders of India and Pakistan, India and China, and Turkey and Greece.

Without being exhaustive, the PAX report findings show that at least 60 types of military drones in this segment are currently in development and production, in 21 countries, serving a global \$20 billion drone market. This development fits in the wider trend of deploying unmanned systems in- and outside the battlefield, as over 90 states use military drones to gather intelligence, provide targeting information, or use lethal force in strikes against targets. Most of the recent producers have not been exporting their drones, yet

the development signals a growing interest in building cheap, reliable, and easy-to-deploy military drones. This raises the question, who will become the producer of the AK-47 version of the armed drone?

As unmanned systems have also gained popularity for civilian use, controlling the technology of platform and payloads is a serious challenge for global arms export control regimes. This holds especially for the emerging industries in countries not party to these control mechanisms. The rapid development of technology could create a larger gap between practice and policy.

Based on our findings and wider engagement in international discussions on drone use and proliferation, PAX has put forward a set of recommendations that should address the growing concerns over the risks associated with increased use of lethal force with armed drones, in particular for targeted killings, and proliferation of unmanned military systems. PAX urges states to clearly define their legal position on the use of lethal force, in particular outside areas of armed conflict, and work on building a normative and regulatory framework for the use and proliferation. This should address both current and future challenges around military drones and ensure a multilateral process addressing related issues.

In the context of the ATT, Article 17 provides a useful starting point to reflect on the current state of affairs of developments in the field of conventional arms. Within the Working Group on Effective Treaty Implementation and its sub-groups, a set of experts could provide a 5-10 year prognoses on weapon developments and related technologies, including unmanned systems, relevant to the ATT. Such an effort should prevent policy from falling behind practice and help anticipate upcoming challenges on arms export controls that can be discussed at the ATT Review Conferences. Furthermore, states parties to the ATT are encouraged to use the Wassenaar Control list in relations to unmanned systems. •



Side events: Wednesday 22 August

When	What	Where	Who
08:30-09:30	Japan's Security Export Control System	Room KOMOREBI	Japan
08:30-09:30	Arms Transfers to the MENA region	Room HIBIKI	Control Arms
13:00-15:00	EU assistance and cooperation on ATT implementation	Room KOMOREBI	EU/Expertise France, BAFA
13:00-15:00	Transparency and Reporting	Room HIBIKI	SAS, UNIDIR, BAP
13:00-15:00	Launch of: "Assessing the risk of Gender Based Violence under the Arms Trade Treaty", a practical guide	Room MAI	Ireland, Control Arms
13:00-15:00	Tackling Diversion: Examining Options and Avenues for Strengthening End Use/r Controls for Non-Governmental Entities (NGEs) in Conventional Arms Transfers	Room TSUZUMI 3	UNIDIR

