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# A FIGHT FOR THE MORAL AND POLITICAL CREDIBILITY OF THE ATT

Ray Acheson | Women's International League for Peace and Freedom

I was recently speaking with someone from a city that has been totally destroyed by bombing and shelling, a city from which millions of people have been displaced and remain struggling with lack of food, water, sanitation, shelter, education, health care, safety, and security. He said he is always flabbergasted when Western governments ask him what they can do to help. "Stop sending the weapons!" he always says. Many of the same countries that ask what they can do to help are giving a few hundred thousand dollars in humanitarian aid while they are also selling millions of dollars' worth of military equipment to those perpetuating the violence and destruction. "It is very simple, really," he said. "They just need to stop the flow of weapons."

This comment came to my mind when attending the side event organised by Control Arms on Thursday about arms transfers to Saudi Arabia in the context of its military operation in Yemen. The grave humanitarian crisis that the bombing and shelling in particular has created in Yemen is undeniable and horrific. War crimes and violations of human rights and international humanitarian law are well documented by the United Nations and every reputable humanitarian aid agency and non-governmental organisation. Even after Saudi Arabia has tried to assuage the governments providing it with virtually unlimited bombs and missiles, saying that it has set up an investigative mechanism and a "no strike list," attacks on civilians and civilian objects continue. At the event, Kristine Beckerle of Mwatana Organization for Human Rights said the Saudi-led coalition keeps hitting sites on its no strike list, including sites with humanitarian markings or where humanitarian agencies have shared their coordinates with the government. "Monitoring this situation is not enough," she said. "Halting arms sales and military support are the only effective means to push real change."

It's in this context that activist groups have launched litigation in several countries against their governments for approving arms licences and

exports to Saudi Arabia. In Belgium, Canada, Italy, and the United Kingdom, among others, coalitions of non-governmental organisations and lawyers are challenging unlawful arms transfers in court. Some have also tried taking on arms companies directly, though that continues to prove difficult as most seem to hide behind government approval to protect them from lawsuits.

Some of the actions taken at the national level are having traction. But the fact that this even has to happen points to what Cesar Jaramillo of Project Ploughshares described as one of the fundamental problems with the ATT—that there is no way to hold states parties to account through any official mechanism. Because of this, there is a growing "rhetoric-compliance gap" in ATT implementation, he argued, in which certain states parties assert they are in full compliance with their obligations while they profit from transferring weapons to war zones.

This gap, as we have raised previously in this newsletter, also relates to another gap, one between major exporter states parties that are profiting off the arms trade and developing states parties that face resource constraints in sending delegates to meetings, fulfilling their reporting obligations, and paying their dues. This issue came to a head on Thursday afternoon, when states discussed matters pertaining to financial contributions to the ATT.

This requires a bit of a wade into the ATT weeds, but the issue it brings to the fore is important, so bear with me.

The ATT management committee has drafted administrative guidelines for the Treaty's sponsorship programme. This programme aims to "maximize the scale and diversity of participation of experts from States in ATT meetings to ensure representative and participatory discourse and decision-making during the meetings and, ultimately, contribute to strengthening

implementation and universalization of the Treaty.” But, the selection criteria drafted by the management committee specifies that “if there are insufficient funds available to sponsor all the applicants that are eligible to be selected for sponsorship following the application of the above considerations, priority will be given to applicants from States who are in compliance with their financial obligations under the ATT.”

This takes us back to the Financial Rules for the Conference of States Parties and Secretariat. Rule 8.1(d) says that any state party that has not paid its assessed contributions to the Treaty for two or more years “shall have its voting rights suspended, not be eligible to nominate a representative as an office-holder, nor become a member of any committee or subsidiary body of the CSP.” Many states parties—primarily Western countries, most of which are arms exporters—want to see this rule applied given the challenges of financial liquidity the ATT is facing. The lack of payment in dues is indeed a significant challenge to the ATT’s operation. But, from the perspective of some states parties and certainly from WILPF’s perspective, the much bigger problem is that arms producing and exporting states parties continue to make arms transfers that violate the ATT’s provisions.

Similar to Wednesday’s discussion over lack of compliance with reporting obligations, the conversation around financial matters really drives home the point that in the ATT there are those who make heaps of money from selling weapons and yet claim they are in full compliance with the Treaty, and those who, mostly due to lack of financial capacity, have not been paying their Treaty dues and thus are in danger of having their rights as states parties stripped from them. Many states from Africa and Latin America took umbrage with this situation on Thursday, calling for deletion of this particular element of the selection criteria for the sponsorship programme and expressing concern with the applicable financial rule. South Africa’s Ambassador Nozipho Mxakato-Diseko argued that non-payment of financial dues is part of a larger issue of inequalities and the ATT should increase support to these states, not reduce it. She asked, “Why do arms manufacturers and exporters want to exclude the ‘weak’ from having the capacity to participate?”

The two-tiered approach to disarmament and arms control treaties is not unique to ATT; delegates who participate in meetings of the nuclear Non-Proliferation Treaty will be familiar with the divide between nuclear-armed states, who spend billions on modernising their arsenals and threaten to destroy the world, and the non-nuclear-armed states who have to implement more and more non-proliferation measures in order to assure the nuclear-armed that they are not trying to acquire nuclear weapons. Of course, with both the ATT and the NPT there are states in the middle—in the ATT, there are developing states or non-exporting states that do pay their dues; in the NPT, there are states that do not possess nuclear weapons but support those that do. And, in the context of the ATT, it would also be interesting to look at which states have not paid their dues and compare it to how much money they are spending on buying weapons.

But the bottom line is, it seems remarkable how these general divisions of “haves” and “have nots” in both treaties have developed. In the NPT context, this has had serious implications for the viability of the Treaty, which is facing a growing crisis in credibility. ATT states parties have the chance now, in these early years of the Treaty’s life, to prevent this from happening. We hope the opportunity is seized by all in order to ensure the ATT’s financial viability, but also its moral and political credibility. We need states parties to pay their dues and submit their reports, but we also need them to stop the sale and transfer of arms that are resulting in the devastation of cities, the environment, and human lives.

## NEWS IN BRIEF

Katrin Geyer and Athena Kerins | Women's International League for Peace and Freedom

*The News in brief is not a comprehensive recording of all statements and positions but attempts to capture key points from discussions.*

### International assistance

#### ATT sponsorship programme

- The ATT Secretariat offered statistics about the sponsorship programme for the period of 2018/2019 based its report to the conference (ATT/CSP5/2019/SEC/530/SponProgRep). It shared that the programme supported 32 participants to attend CSP5, as well as 25 delegates and one guest speaker in the two preparatory meetings earlier this year.
- The Secretariat briefly outlined the application and decision-making processes involved in allocating funding.
- New Zealand and the Netherlands praised the sponsorship programme, saying it ensures a wide range of regional views and worldwide participation. Mexico is happy that the sponsorship programme benefitted states parties, signatories, other states, women, and men relatively equally as their diverse viewpoints will benefit the purpose and objectives of the ATT.
- Jamaica, Benin, Tonga, and Sierra Leone expressed gratitude to the donors to the sponsorship programme and for the support they received through the programme.
- Jamaica encouraged the sponsorship fund to give special consideration to small states and especially small island states.
- The European Union (EU) described its outreach in developing countries to be important for universalisation and implementation.
- South Africa communicated its confidence that the universal benefits of international assistance will become evident moving toward the next states parties meeting.

#### Draft administrative guidelines

- Background information was provided on the draft administrative guidelines found in Annex A of the sponsorship programme report, which highlighted in particular a new paragraph.
- The Netherlands said it supports the draft guidelines but noted that paragraphs 10-13 must remain the same.
- Costa Rica objected to language in Annex A, paragraph 2 in terms of the criteria for sponsorship, saying that the draft administrative guidelines need to have a direct link to ATT implementation, noting that "Not everyone has the same financial capacity and we cannot be as agile as other countries."
- Guatemala said it cannot support language in the guidelines that sets limits on countries becoming beneficiaries of the sponsorship programme, saying that those states who are unable to comply with financial requirements are those in need of assistance.
- New Zealand, the Netherlands, and Ghana expressed support for the adoption of the guidelines.

#### Financial

- The EU renewed its commitment to international assistance and encouraged donations for the sponsorship programme and the Voluntary Trust Fund (VTF) to increase.
- The Netherlands committed to multi-annual contributions until 2021.
- Ghana suggested supporting civil society with sponsorship funds. The president said a discussion was held on this and it was decided that this is not possible until all states parties are strong and well-funded but that the conversation may be reopened in the future.
- Vanuatu said it appreciates the VTF assistance it has received and described progress on the regional level.

- Control Arms urged governments to support its sponsorship fund for civil society, to ensure that those affected by the proliferation and misuse of conventional arms are heard in these meetings. It emphasised that its fund facilitates a diverse and gender-balanced delegation. It thanked Germany and Sweden for their contributions.
- The EU and the Philippines stated their desire to maximise synergies between the ATT, the UN Programme of Action on Small Arms and Light Weapons (UNPoA), and the Sustainable Development Goals (SDGs).

### **Matters pertaining to the Secretariat**

#### *Presentation of report on the ATT Secretariat's activities for the period 2018/2019*

- The ATT Secretariat presented its report (ATT/CSP5/2019/SEC/526/Conf.SecRep) on activities undertaken in the period between CSP4 and CSP5 in the area of financial management.
- These activities, many of which have been coordinated in close coordination with the Management Committee, include the preparation of budget estimates for 2020, the completion of the last phase of its IT improvement project, preparing and issuing invoices to states, updating the status of ATT financial contributions, and finalising the guidelines on the Sponsorship Programme.
- The report also describes activities of the Secretariat related to the VTF and the Sponsorship Programme.

#### *Presentation of report on the ATT Management Committee's activities for the period 2018/2019*

- Côte d'Ivoire, as a member of the Management Committee, presented the Committee's report (ATT/CSP5.MC/2019/MC/527/Conf.Rep).
- Activities since CSP4 include the development of the Committee's programme of work, the provision of oversight on the issuance of invoices, and on the Secretariat's IT project, guidance on the process of notification of states for their outstanding assessed financial contributions, and collaboration with

the Secretariat on the Draft Administrative Guidelines governing the ATT Sponsorship Programme.

- It also developed a draft proposal to address the problems related to financial liquidity to be considered by CSP5, which was discussed in-depth under another agenda item.

#### *Provisional budget estimates for the financial year 2020*

- The Head of the ATT Secretariat presented the 2020 provisional budget (ATT/CSP5.MC/2019/MC/534/Conf.PropFinLiq) in relation to Secretariat costs, noting that CSP-related cost projections would be reviewed under a different agenda item.
- The biggest cost drivers to the budget are staff and website costs. The 2020 budget estimate is USD 5000 less due to improvements of cost estimation guided by experience over time. The Secretariat expressed its gratitude to the host-state of Switzerland for its in-kind contributions.
- Switzerland thanked the ATT Secretariat for its efficient, transparent, and diligent work. It informed that it will renew its in-kind support to the ATT Secretariat and will re-assess in 2021 about on-going support.

### **Matters pertaining to financial contributions**

- The ATT Secretariat presented the status of contributions received. It noted that contributions of each state are calculated on a variety of factors; including the number of states that are states parties, the number of states in attendance at a CSP, the UN scale of assessment, and the ATT scale of effort which refers to the number of scheduled meetings, amount of days of each meeting, anticipated services, etc.
- The Secretariat offered an overview of the contributions received. In the first year, 90 per cent of assessed contributions were paid, while in 2019, it was only 86 per cent. The total deficit currently amounts USD 415,000.
- A representative of the Netherlands, as part of the Management Committee, presented its



report (ATT/CSP5.MC/2019/MC/534/Conf. PropFinLiq) on tasks assigned to it by CSP4 on financial contributions. The Netherlands informed that the document includes many proposals, which participants discussed extensively during informal meetings throughout this year. The Netherlands presented only those options addressing problems related to financial liquidity which might command consensus.

- The first option is more of an administrative nature. It recommends for the Secretariat to close accounts at a later stage than is the current practice. According to the Committee, the financial rules allow for this flexibility.
- The second recommendation suggests that if there are funds left within certain budget lines at the end of a financial year, these funds will be deducted from states' invoices, who pay their assessed contributions, for the next period. The recommendation further includes to roll over these funds over a period of five years so as to prevent exacerbation of financial challenges. If the funds were rolled over all at once, the next financial year would start with a deficit of USD 275,000.
- The Management Committee also proposes to establish a reserve fund sourced from voluntary contributions so to provide liquidity at the start of the year. The fund would not be used to cover arrears. The ATT Secretariat would be responsible for the use of the fund.
- The last recommendation is for the CSP to request the Management Committee to continue monitoring the financial situation, and the effectiveness of measures implemented.
- The Netherlands reminded that changes to meeting participation, as well as the status of states (being either states parties, signatories, or observers) has an impact on invoices and income. It noted that as "one large country" that usually participates is no longer attending, this will cause a shortfall in income.
- The CSP5 President shared that the Management Committee has concluded that any possible sanctions for non-payment should be based on existing financial rules, as adopted in 2016.
- All delegations expressed extreme worry about the current financial situation of the treaty; agreed that universalisation is a high priority and that they want a strong treaty with sufficient cash flow.
- GRULAC said ATT states parties need to approach the issue of financial payments in a respectful and constructive manner, and that any restriction of the rights of states parties is inconsistent and counterproductive to the spirit of the ATT.
- The African Group warned against the ATT becoming an exporters' club and allowing the non-payment issue to undermine universalisation initiatives.
- Ireland said it would prefer to have more time to discuss substantive issues at CSPs but recognises that the financial situation is a serious challenge requiring attention and is also a challenge in other treaty bodies.
- Switzerland feels that decisions taken last year about non-payment have not really had any effect and the reality is that the Treaty's financial situation is worsening.
- The EU said austerity measures of cancelling meetings or reducing staff are not acceptable.

#### *Discussion about the Financial Rules and the Sponsorship Programme*

- EU, Australia, the Netherlands, and Sweden voiced support for enforcing Rule 8.1(d).
- Australia supports suspending rights of states in arrears for two or more years.
- Belgium, Germany, and the Netherlands want to fulfill the rules that are already in place as they had been agreed upon by consensus.
- Ireland called for flexibility in implementing the financial rules.
- GRULAC said that all outstanding contributions should be approached in a constructive matter that factors in national realities.
- The African Group and South Africa emphasised catering to individual circumstance.

- South Africa asserted that states who are unable to make payments require more support, not less, and suggested new states will be hesitant to join if they do not feel that they will be supported.
- South Africa and Costa Rica recommended the removal of paragraph 2 of Annex A of the draft administrative guideline's selection criteria for the sponsorship programme.
- Ghana reminded states parties that 8.1(d) contains a provision allowing the CSP to reinstate the member's voting and nomination rights if the states parties reach a consensus on a payment plan.
- Brazil agreed that article 8.1(d) allows for the disenfranchisement of non-paying states and for payment plan solutions. Brazil proposed that the states parties proactively invite delegations that are struggling to explain their circumstances.
- The President reminded the CSP that of the states who failed to make payment, only one state sought out a payment plan.
- Brazil is opposed to punitive measures as they may have negative impacts on the Treaty's universalisation and legitimacy in developing countries, leading to uneven membership.
- Mexico said we need to know more about the underlying root causes for non-payment.

*Discussion on proposals from the management committee to resolve liquidity issues*

- The EU, Belgium, Finland, UK said the only solution is for states to comply with their financial obligations.
- Ireland welcomed the proposal of the management committee to review the implementation of its proposed solutions.
- The Netherlands noted that the gendered pronoun "he" is used in the Terms of Reference Annex of the Draft Proposal on Financial Liquidity document and recommends it be changed for future use.
- Australia, Ireland, France, Germany, the Netherlands, Switzerland, and the Republic

of Korea support the creation of a voluntary reserve fund, but none believe it is a long-term solution.

- Ireland and the Netherlands favour a rollover fund.
- Switzerland said it would prefer a rollover fund to a mandatory fixed contribution fund but is prepared to endorse either.
- Italy, Japan, and Sweden supported the proposals for financial liquidity proposed by the management committee.
- Italy said it would be useful to specify that credit would be rolled over for a span of five years.
- Japan agreed in principle with management committee's financial liquidity recommendations but did not explicitly endorse it.
- The UK said that the current financial liquidity rules were developed for stability and proposed three amendments to the draft proposal to adapt the paper to the treaty's current financial crisis. France, Finland, Japan, and the Netherlands voiced approval for the UK's and Germany's suggestions. Japan voiced support for the Netherlands' amendments. It was agreed to undertake further informal consultation to update and finalise the proposal document.

**Matters pertaining to the Sixth Conference of States Parties (CSP6)**

*Budget*

- The ATT Secretariat provided an overview of the different items falling under the estimated budget for CSP6, amounting to a total of USD 972,488. No delegation took the floor, indicating support for the proposed budget.

*Venue and date*

- No delegation expressed disagreement to the proposed venue and date for CSP6. It is scheduled for the week of 17 August for five days, at the Centre de Conférences Genève (CICG), in Geneva, Switzerland.

## SIDE EVENT REPORT: LEGAL REVIEW—THE ARMS TRADE TREATY AND YEMEN

Martina Daelli | Women's International League for Peace and Freedom

This side event organised by Control Arms provided an in-depth analysis of some of the current legal reviews concerning arms transfer decisions in four countries (the UK, Canada, Belgium, and Italy). Panelists discussed the implications of such legal challenges for states and the opportunities that domestic legal challenges present for civil society to keep States accountable under the ATT.

Ms. Kristine Beckerle of Mwatana Organisation for Human Rights presented an overview of the conflict in Yemen and of the widely documented human rights and humanitarian impacts of the Saudi-led coalition's bombings on civilian population and on critical infrastructures. She focused on the lack of adequate investigation concerning violations of IHL and IHRL and underlined how arms flows to Saudi Arabia continue despite the high risk of these violations.

Ms. Rosa Curling of Leigh Day law firm, which represents the Campaign Against Arms Trade (CAAT) in litigation against the UK government, described the legal actions and arguments used by CAAT to challenge the UK's arms sales to Saudi Arabia. Given the large body of evidence indicating a pattern of IHL breaches, the Court of Appeal recently found that the UK Secretary of State should have considered such evidence to assess the risks associated with continuing sales to Saudi Arabia and hence quashed the Secretary's decision to continue arms sales. The UK government agreed not to grant new licenses to Saudi Arabia until the Secretary of State makes a new decision.

Mr. Cesar Jaramillo of Project Ploughshares pointed out the gaps between the gold standard enshrined in the ATT and the observable, concrete realities of its implementation. When Canada exported armoured vehicles to Saudi Arabia, a lawsuit was filed against the state because of the risk of diversion to use in Yemen and of the risk that these vehicles be used in crackdowns against Saudi civilians. The case was dismissed because the court concluded that there must be

conclusive evidence of violations to identify a risk and it also recognised wide discretionary power to the government in granting export authorisations. Canada will become a party to the ATT on 17 September and a new lawsuit will be filed by civil society based on the treaty provisions.

Mr. Vincent Letellier of the Cabinet d'avocats B49 presented two cases brought to court in Belgium involving arms sales to Libya and to Saudi Arabia. The first legal challenge brought by NGOs regarding arms sales to Libya in 2009 was ground-breaking to obtain recognition of the legal standing of NGOs in such cases, as well as to tackle issues regarding the rationale and transparency of administrative decisions authorising arms sales. However, a more recent case involving arms sales to Saudi Arabia demonstrated remaining challenges regarding the opacity of authorisation decisions, including due to arguments on business secrecy and strategic interests.

Mr. Francesco Vignarca of Rete italiana per il disarmo (Italian network for disarmament) underlined the importance of UN human rights bodies' reports and reviews, including of the UPR, to put pressure on national governments to follow rules and criteria of domestic and international legislation on arms exports. He presented a legal case challenging arms sales from Italy to Saudi Arabia brought against both the administrative body that granted the authorisation and against the managers of the arms company involved in the case on the basis of criminal complicity principles. Italy suspended licenses to Saudi Arabia and the UAE not only on the base of national legislation but also because of the ATT, the EU Common position, and the numerous UN reports proving IHL and IHRL violations in Yemen. He also underlined the important role of litigation for campaigning and advocacy purposes.



# ATT MONITOR

Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organisation in the world. Reaching Critical Will works for disarmament and the prohibition of many different weapon systems; confronting militarism and military spending; and exposing gendered aspects of the impact of weapons and disarmament processes with a feminist lens. Reaching Critical Will also monitors and analyses international disarmament processes, providing primary resources, reporting, and civil society coordination at various UN-related forums.



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