# **Arms Trade Treaty Monitor**

Independent views and reports from the Arms Trade Treaty negotiations

# 13 July 2011

Page 1 | Better reporting, no more no less

Page 2 | Controversy over denial notifications

Page 3 | Talent pool

Page 4 | More debate on implementation

Page 6 | Looking back to move forward

Page 7 | Activistas, diplomáticos... ¿y los demás? – Demografía de la prepcom3

Page 8 | Highlights from Day 2 in 140 characters or less

Page 10 | Survivors' Declaration









The Arms Trade Treaty Monitor features civil society reporting and analysis on meetings of the UN conference on an Arms Trade Treaty (ATT).

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All views expressed in this publication and corresponding blog, attmonitor.posterous.com, are solely those of the contributing authors and do not necessarily reflect the positions of the supporting organizations.

# Better reporting, no more no less

Cesar Marin | International Action Network on Small Arms

Of the several topics under consideration this week, reporting mechanisms have gained a lot of attention. This is particularly true for statements from states from the global south, even though most of them are supportive of a strong treaty designed to be meaningful for people's security. These states declared in different terms that they might not be willing to engage in "impossible", time-consuming reports on every single transaction involving the weapons and ammunition that may be covered by the an ATT. States indicate that the information requested is far too demanding, and in some cases, ineffective or unused.

The argument is valid. It is understandable that some states fear that they will have to comply with challenging and seemingly "impossible" requirements that an ATT may present.

However, better reporting, the kind that a strong and effective ATT would require, should not be that difficult. It can and should be based on simple, reliable, ongoing methods, based on modern technology. Basic information on the actors involved, the items being transferred and the tracking and verification of its transportation has been shared publicly for years. Such systems only require ways to become operational considering the new criteria that the Arms Trade Treaty will contain.

For such a successful mechanism to be in place, in cases where a mechanism is yet to be built, states should request support to perfect the way they currently report on arms transfers and build upon best practices and the experiences of others.

Of course, this is the kind of task where a genuinely independent and well-structured Implementation Support Unit would be very handy for all.

Reporting is essential for the life of such a treaty. It will not only confirm the willingness of states to apply the provisions of an ATT, increase transparency and the confidence of all actors involved, but also help to assess the level of effectiveness of the ATT.

The focus on better reporting mechanisms should be strengthened and oriented to increase the effective

implementation of the ATT, its legitimacy over time, and its capability to address threats posed by the proliferation of small arms and light weapons and ammunition.

# Controversy over denial notifications

Katherine Prizeman | Global Action to Prevent War

The issue of notification of arms transfer denials has been a hot topic during discussions at the third ATT PrepCom this week. The obligation to notify state parties and possibly others that an arms transfer request has been denied has been widely contested and discussed. Ambassador Moritan's working paper proposed:

Each State Party shall submit annually to the Implementation Support Unit a for preceding the concerning the transfer of arms as detailed in article C1 and C2 above, as well as any new national legislation or other measures used to regulate or control the items and transaction under the Treaty's domain and details of denied transfers and grounds for their denials, particularly highlighting cases where licensing was granted to previously denied importers.

The positions on such a proposal have been ranging from rejection widespread. notification of denial in all forms acknowledgement of merit in this practice but with feeling that greater clarification is needed. The general mood, nonetheless, has been that the choice to grant or deny authorizations rests in national authorities. The European Union made clear that denial decisions are a national responsibility. Germany also pointed out that it does not operate inside a system of 'blacklisting' so would not want to be required to highlight those cases where importers were previously denied. Furthermore, the United States explained that there has never been an obligation for a state to transfer arms to a given recipient insofar as there is no alienable right to receive arms. The United States made reference to 'diplomatic inquiries' concerning transfers that would make diversion and misuse less likely. Norway also called for greater clarification and discussion on the issue of transfer denials. Argentina called for a specific notification model that could be easily followed and shared with others. The Uruguayan delegation offered a positive opinion on notification of denials recognizing that it is a sensitive issue, but affirming that it is an important component to maintain nonetheless. Jamaica also expressed strong support for denial notifications.

There were many delegations that remained unconvinced that notification of denials was either necessary or helpful for an arms trade treaty. The Brazilians warned against paying the way for embargoes and trade restrictions based on such forced information sharing based on notification denials. Likewise, Canada (and others) expressed concern over denial notifications given the confidential nature of such issues related to national security. The Canadian delegation explained that such information sharing should not be required, although transparency is critical to a successful ATT. France explained notification of decision for denial could contain sensitive commercial information and that they would not support of such a provision. Perhaps most vehemently against this provision were the Israeli and Indian delegations. Israel stated that decisions for authorization are an entirely national decision in accordance with national export systems and legislation. Therefore, such decisions should not be subject to international interference of any kind. The Indian delegation went so far as to say that reporting could be useful, but record keeping should be eschewed. Reporting denials, they believe, could easily provide the pretext for politicization of the ATT's implementation.

With the exception of just a few member states, the resounding opinion among

delegations has been that denial for transfers remains a distinctly national prerogative. The suggestion of the United States proves useful in that 'diplomatic inquiries' regarding denials should be an available option when there is reasonable cause of concern over a particular transfer. There is an incontestable need for transparency in implementing an ATT on the part of all member states through their national authorities. However, it is not likely that there will be consensus among states that denials will be required to be reported given the potential sensitive commercial and security information involved.

Australia offered a reasonable alternative, by which there would be a provision in the treaty that affirms that states will do all they can to remain open, transparent, and in communication regarding their authorizations,

but that it is not a requirement to report every transfer denial. Both the European Union and Belgium offered the option of providing aggregate data about denials in national reports rather than information about any specific transfer denial.

It is important to garner as high a level of consensus as possible on this issue. Furthermore, it is important to not overburden states with excessive reporting requirements that would discourage overall enthusiasm and divert resources needed for other critical components of ATT implementation. However, following the reasonable suggestions of Australia, Belgium, the United States and others, we believe that protocols for effective denial notifications can achieve general agreement among the majority of states.

# Talent pool

Dr. Robert Zuber | Global Action to Prevent War

While significant differences continue to exist on the structure that will be available to help guide national response and build national capacity to implement an ATT, it is clear that delegations have taken their PrepCom duties with the utmost seriousness. Delegates have read the Chair's non-paper carefully and the suggestions for amendment that have been made, while daunting in their own right, have reflected a high level of state investment and a willingness of diplomats to do some very challenging homework.

While there have been many suggestions for strengthening national capacity to implement treaty provisions, only the Mexican delegation has raised the possibility of adding a roster of experts to the resources available to interested states in their efforts to regulate licit transfers and eliminate illicit ones.

From our standpoint, there is much merit to this suggestion. We recall only two months ago that a meeting of government experts (MGE), chaired by Ambassador McLay of New Zealand, engaged delegates from diverse global regions in a spirited and learned discussion of preferred options for marking, tracing and record keeping in accordance with the UN Programme of Action on Small Arms

(UNPoA). The balance in the room between diplomats and technical experts helped generate one of the more effective discussions in the disarmament field that we have witnessed in some time, a discussion that not only accomplished considerable progress, but generated optimism regarding prospects for future progress on the UNPoA.

We are not recommending an MGE-style process for the ATT, which would be neither necessary nor workable. The 'balance' in conference room 1 this week is already generating good amounts of cooperation. However, we believe a roster of diversely-situated, regionally-focused, rapidly accessible experts on the technical and legislative requirements for an ATT would greatly contribute to the implementation process in the short and long term. There is both precedence for and experience with such a roster within the UN system.

We recognize that many larger delegations come to meetings, such as this ATT PrepCom, with national colleagues who can provide expertise on key issues and many of these states continue to make expertise available to smaller states to help them solve their own compliance challenges. But we also

recognize that there is significant regionally-based talent—from government and non-government sources—that cannot easily be accessed in New York for PrepCom meetings, but that could be made available to provide regional consultation of a high level with member states.

Indeed, we have had direct experience with some of these regionally-based experts and we believe that they would offer much both within and outside their host regions to help states address the potentially 'excessive burdens' of legislation, reporting, and other demands that would accompany treaty compliance. Moreover, we believe that such experts would have a particularly sensitive eye for both 'best practices' and state-specific implementation challenges that would add considerable value to

efforts to promote common treaty protocols and address illicit transfers.

The challenges of ATT implementation are formidable, with or without the implementation support unit (ISU) structure proposed by the Chair. There is certainly much to work out in terms of authorizing, 'housing,' and utilizing an experts roster. But with many technical obstacles to identifying illicit transfers remaining—national legislation to be brought into harmony with international expectations and a myriad of potential reporting and information sharing obligations—a set of regionally-based experts would surely prove beneficial to both a future ISU and to the negotiating and longer-term implementation needs of many member states.

# More debate on implementation

Ray Acheson | Reaching Critical Will of the Women's International League for Peace and Freedom

On day two of the third arms trade treaty preparatory committee, delegations continued offering comments on the chair's papers on implementation. Debate over the primary objective of the treaty continued to underscore states' suggestions on implementation mechanisms.

The major weapon producing and exporting states articulated a vision of a simple treaty that above all ensures that "commerce" the sale of weapons—is unhindered by stringent transfer criteria or robust treaty implementation measures. To this end, the five permanent members of the UN Security Council (P5: China, France, Russian Federation, United Kingdom, and United States), along with Canada and India, stipulated that the implementation provisions should be "simple, short and easy to implement." Arguing against the inclusion of any specific implementation measures, the P5 said, "Domestic implementation in accordance with national legislation and regulations in line with the obligations that would arise from any possible ATT would be the most practical way to address implementation."

Other states, however, are interested in ensuring that the treaty does not leave room for loopholes that allow weapons to be transferred irresponsibly, where they could be used to commit international humanitarian law or human rights abuses, to exacerbate conflict, or to undermine socioeconomic development. The Mexican delegation argued that the treaty needs to be sufficiently clear in its implementation requirements so as to ensure that there is no doubt about what is expected in national application. Meanwhile, the Egyptian delegation emphasized that common implementation standards are necessary in order to ensure equitable implementation of the treaty.

However, the Egyptian delegation also suggested that the approach to the treaty of listing criteria for arms transfers should be reconsidered, arguing that criteria would be ambiguous, subjective, and unpredictable. Some states are concerned that criteria will allow the treaty to be used as a political tool. They reject, as the Arab Group put it yesterday, "attempts to politicize or employ criteria such as human rights and/or sustainable development ... as a pretext for intervening in internal affairs of other States, or controlling their required means for legitimate self-defense, or issuing classifications and judgments against other countries."

But for many states, and most of civil society, setting standard criteria for arms transfer decisions is the point of the ATT—they

see the treaty as a gauge that all states must use before authorizing an arms transfer, and they argue that this will help improve equitably, as well as human security. The International Committee of the Red Cross (ICRC) suggested that the provision of guidelines for applying transfer criteria and making risk assessments could help avoid subjective implementation. Guidelines can outline indicators "that can be used as a basis for assessing risks, thereby helping to make risk assessments more uniform, predictable and objective," ICRC representative Peter Herby explained in his intervention. "Guidelines can also suggest sources of pertinent and reliable information and provide examples of the serious violations or other negative consequences of the ATT's criteria aim to prevent." The ICRC has already published a practical guide to applying international humanitarian law criteria to arms transfer decisions, and other groups have published guides on applying human rights (Amnesty International) standards development criteria (Oxfam sustainable International).

Many delegations remain emphatic that the ATT should put human security at the forefront of its ambitions. For many states, including the Bahamas, Chile, Colombia, Guatemala, Jamaica, Mexico, Peru, Trinidad and Tobago, and Uruguay, respect for human rights and international humanitarian law "fundamental pillars" of the treaty. Kenya's delegation said that the "value of human life should form basis for the future ATT," while Nigeria's delegation argued that implementation process should highlight the reduction of arms sales and promote "other of societal growth and human development". A variety of states have suggested that the ATT should broach areas of arms production and stockpiling, suggesting that the treaty should not simply be a tool to facilitate the smooth functioning of the arms industry. The African Group argued that the ATT should "enhance regulation of global arms production, stockpiling, and trade among States," while the Arab Group suggested the treaty include provisions for a verification or monitoring system for states producing and exporting arms and that the issues of production and stockpiling should be included in obligatory national reporting. The Iranian delegation asked how the treaty will provide for major arms producing countries to gradually reduce their production.

In this vein, Iran's delegation emphasized that the treaty should not only be a treaty of major arms producing and exporting countries but that it should be balanced in terms of rights and obligations of all states. This type of "balance" is another sticking point for treaty negotiations. Most weapon producing states are emphatic that the ATT should in no way imply an obligation to export arms only if the requesting state appears to meet the criteria set out by the treaty. They argue that arms transfer decisions are a matter of sovereign choice and that all exporting states must be free to apply stricter criteria to their assessments than appears in the final ATT. While recognizing this right, some states have expressed desire for the treaty to include provisions for consultation, mediation, and/or dispute resolution to address transfer denials. The weapons producers largely object; for example, Sweden's delegation said it would have no problem with a dispute settlement mechanism regarding implementation of treaty obligations but would oppose it for transfer decisions, arguing that this would introduce a supranational element to treaty.

As discussions on implementation continue for the rest of this week, and as negotiations begin next year, the varying perspectives of producers and exporters, importers and users, and of citizens of these states will continue to articulate their goals for the treaty. But as the German delegation said, at some point all states are importers or exporters. At some point, we are all users and victims, as well—excessive spending on weapons production and stockpiling in exporting states undermines socioeconomic development there, just as it does in the purchasing states; the use of these weapons can cost life and limb in all countries of the world. In the arms trade, we are all connected. This is why it is imperative for all states to work for the strongest possible treaty.

# Looking back to move forward: sharing experiences on implementing regional arms transfer policies for an arms trade treaty

Since there is no use in reinventing the wheel when it comes to implementing arms transfer policies, it is important to see what the experiences are from past implementation process. When it comes to implementing a future ATT, it will be interesting to see what challenges States faced in the past and what valuable lessons they learned from this. A wide variety of related processes, ranging from the ECOWAS agreements in Western Africa to Eastern European States that signed up to the EU Code of Conduct, are relevant for getting a better understanding of which type of bureaucratic obstacles need to be overcome in implementing arms transfer polices. Topics such as custom controls, reporting mechanisms, information sharing amongst member states and setting up an effective licensing body are just a

short overview of what is needed for an effective arms transfers control system. But it's not only the obstacles that are important to highlight. Moreover, increased cooperation as a result of creating regional arms transfer systems have led to more trust and creditability amongst member states. These benefits (and many others) are important to highlight when it comes showing that it is feasible and realistic to create and implement and ATT. No one ever promised that it will be easy, but at least we can use the wheels used in the past to get this vehicle moving.

IKV Pax Christi (Netherlands) and GRIP (Belgium) will organize a side-event on Thursday July 14 in Room C at 1.15 PM which will be hosted by the Ministry of Foreign Affairs of Poland.







#### Speakers:

Mr. FALKOWSKI, Representative of Poland, Counselor of the Security Policy Department Poland's experience in implementing export control systems

#### **Representative of ECOWAS**

ECOWAS' experience in implementing the ECOWAS Convention on SALW

Mr. Paul PANISCU, Representative of Romania, Director of the Conventional Arms Division Romania's experience in implementing the EU Common Position on Arms Transfers

#### Professor O. GREENE, University of Bradford/Saferworld

Lessons for the ATT from the experience of implementing regional agreements in Asia and Africa

Facilitator: Mrs. Maria Pia Devoto, Association para Politicas Publicas (Argentina)

# Activistas, diplomáticos... ¿y los demás? - Demografía de la prepcom3

Javier Alcade | International Catalan Institute for Peace, @ICIPeace

193 son los estados miembros de Naciones Unidas, todos ellos con la posibilidad de participar en la tercera prepcom del Tratado sobre Comercio de Armas. Además, en Nueva York hay otros 235 asistentes acreditados. De ellos, 140 son los representantes de la sociedad civil, ligados de una manera u otra con la campaña Armas Bajo Control, una cifra que dobla la de las comisiones preparatorias previas.

Por sexos, vemos que en las reuniones de coordinación de las ONG hay más mujeres que hombres. En cambio, en la sala plenaria donde los diplomáticos hacen las declaraciones formales de los estados la gran mayoría son hombres. A nivel lingüístico, en las asambleas generales de la sociedad civil se habla siempre en inglés, aunque hay reuniones regionales en francés y en castellano. Los diplomáticos pueden elegir entre cualquiera de las lenguas oficiales de las Naciones Unidas.

Entre los activistas, el grupo más grande es el europeo, seguido por el africano y el norteamericano. Pero hay gente de todas partes. También víctimas y supervivientes. Se les reconoce fácilmente, porque muchos de ellos van

en silla de ruedas. Son personas con mucho coraje e historias personales duras y emotivas. Su presencia es muy valiosa y el resto de los activistas, y también algunos diplomáticos, los tratan con cariño.

Decíamos al principio que había 140 representantes de la sociedad civil, pero el número total de asistentes acreditados (aparte de los delegados de los gobiernos) es de 235. ¿Quiénes son, pues, los otros 95 que faltan? La verdad es que hay un poco de todo. Por un lado, organizaciones internacionales, como Interpol, el Comité Internacional de la Cruz Roja, UNIDIR v otras agencias de Naciones Unidas. Por otro, el denominado lobby de las armas, liderado por la influyente National Rifle Association y que incluye otras entidades, como la Second Amendment Foundation. También ellos tendrán su espacio y hablarán en la sala, aunque probablemente no lleven a cabo su actividad principal hasta las negociaciones finales del Tratado, en julio de 2012.

NOTE: English version is available at: <a href="http://bit.ly/attdemographics">http://bit.ly/attdemographics</a>

# Highlights from Day 2 in 140 characters or less

Here's day 2 of the #armstreaty Prep Com summed in tweets. Today's star treaty tweeters are @ollysprague @disarmdialogues and @sultanpintos

@annamac33 Day 2 of #armstreaty and they seemed to have sorted the aircon today. No wilting diplomats today

@<u>DisarmDialogues #Belarus</u>: <u>#Armstreaty</u> should be adopted strictly by consensus- must receive support of all member states- no exceptions

@<u>DisarmDialogues #Chile</u>- importance of cooperation and assistance must have special place in <u>#armstreatv</u>, representing 'Group of Like-Minded States'

@<u>JillMorrisFCO</u> P5 make statement supporting efforts to set highest possible common international standards for transfer of conventional weapons <u>#armstreaty</u>

@<u>OllySprague #Russia</u> keen to discuss re-export controls in <u>#armstreaty</u> to curb illicit proliferation of conventional arms

@OllySprague Canada says personal privacy is important to respect in the #armstreaty and should moderate transparency. Anyone know what that means?

@<u>DisarmDialogues #Canada</u> uneasy with notification of denials for <u>#armstransfers</u>-- issue of national security <u>#armstreaty</u>- also for small, lean secretariat

@<u>Hardtstopper</u> Agree RT <u>@OllySprague</u>: sweden says transhipment (where cargo is un & re-loaded leads to illicit arms diversion & needs to be in <u>#armstreaty</u>

@OllySprague Australia wants records in #armstreaty kept for 20 years, rather than the current proposal for 10 so it's consistent with other agreements

<u>@DisarmDialogues #Ecuador</u>- perhaps the implementation support unit for <u>#armstreaty</u> could be placed within the <u>@UNODA</u> using resources already allocated

@<u>DisarmDialogues</u> #<u>Thailand</u>- there should be a comprehensive database and welcomes inclusion of implementation support unit for #<u>armstreaty</u>

@KristnaFreds Sweden emphasizes important role of importers, transit & transshipment countries to make ATT universal, in statement today #Armstreaty

@OllySprague USA say there is a huge difference between an illicit shipment & an unpopular one #armstreaty

@sultanpintos Nigeria is collaborating with Norway in controlling arms. Very strong positive stance on the #armstreaty

@OllySprague Nigeria commit "ECOWAS to join with partners for peace across world to stem this ugly tide". Mixing arms control with poetry! #armstreaty

@sultanpintos Nigeria says they want a practical and transparent implementation. Ready to dialogue with other states, it says. #armstreaty

@OllySprague India says #armstreaty must balance the responsibilities of both exporters and importers.

@<u>DisarmDialogues</u> #<u>Indonesia</u>: Subject of the <u>#armstreaty</u> is states, not individuals- must make this clearer

@<u>OllySprague</u> Indonesia say poverty & sustainable development should not be focus of <u>#armstreaty</u>. But a treaty without a humanitarian focus is pointless.

@<u>DisarmDialogues #Mexico</u>: Transit very important- granting of transfer licenses with the permission of all countries that <u>#arms</u> travel through <u>#armstreaty</u>

@sultanpintos Mexico and USA divergent on the #armstreaty. Yea, remember Mexico is on the receiving end.

@<u>TIdefenceteam</u> Very strong statement on <u>#corruption</u> in <u>#armstreaty</u> by EU, also on behalf of <u>#Turkey</u>, <u>#Albania</u>, <u>#Croatia</u>, <u>#Bosnia</u>, <u>#Serbia</u>, <u>#Ukraine</u> & more

@<u>TIdefenceteam</u> Strong EU statement on why <u>#armstreaty</u> needs to tackle <u>#corruption</u> also on behalf of <u>#Macedonia</u>, <u>#Montenegro</u>, <u>#Iceland</u>, <u>#Moldova</u>

@lukeroughton EU says ISU could aggregate data and provide statistical analysis #armstreaty

@ <u>Hilde</u> w Great Swedish statement re how corruption undermines arms transfer controls, and can lead to over-procurement and diversion #armstreaty

@<u>DisarmDialogues #Germany</u> agrees with <u>#Russia</u> on distinction between exporters and importers- at some point all find themselves on both sides <u>#armstreaty</u>

@<u>DisarmDialogues #Burundi</u>- should establish a support office for <u>#armstreaty</u>, but don't call it a secretariat- should be indpt from 'large contributors'

@<u>DisarmDialogues #UAE</u> worried that support unit for <u>#armstreaty</u> could become way of controlling member states

@LeMoJuste Belgium commends Chair Ambassador Moritan on sense of humour – luckily this was not a reference to his draft paper on #armstreaty provisions

@<u>DisarmDialogues #Zimbabwe</u>- references to <u>#humanrights</u> in <u>#armstreaty</u> should be avoided to prevent against unwanted interference

@OllySprague Guatemala supports an independent flexible implementation support unit (ISU) for #armstreaty

@OllySprague Algeria adds another voice for transhipment! I declare transhipment the most noted missing mechanism in today's **#armstreaty** oscars

@<u>TIdefenceteam</u> <u>#Spain</u> and <u>#Mexico</u> also with strong statements on why <u>#corruption</u> needs to be addressed in an <u>#armstreatv</u>

@OllySprague Zimbabwe the only state to vote no on #armstreaty in heat of moment forgets & aligns with Nigeria to fully support it!

@<u>OllySprague</u> Colombia say international cooperation & assistance is vital to help stares put necessary systems on place to implement #armstreaty

@AmnestyOnline #Norway said at #UN #armstreaty discussion today. "Reporting cannot be a matter of convenience.

@OllySprague Egypt one of only states to want arms brokering removed from #armstreaty. Tough brokering controls key to regulating illicit trade in arms!

@OllySprague Kenya says value of human life should form basis of #armstreaty.

@<u>OllySprague</u> Burundi supports victim assistance in <u>#armstreaty</u> but doesn't like name Implementation Support Unit (ISU).

@OllySprague Norway, one size doesn't fit all for <u>#armstreaty</u> reporting! Means necessary flexibility for certain items

#### SURVIVORS' DECLARATION

Connected by our common experience, we, victims and survivors of armed violence, have come together to join our voices to the calls of the world for an Arms Trade Treaty that will benefit all of humanity;

Disturbed by the consequences of irresponsible international transfers of weapons, which we have born witness to, in our own lives, in our families' lives, and in our communities and countries, on a daily basis;

Motivated by the desire to work together to prevent what has happened to us from continuing to happen to others;

Inspired to see states fulfilling their collective responsibility in being proactive when addressing the humanitarian consequences of the poorly regulated international arms trade, and believing that this is the purpose of the rights and responsibilities of states as articulated in the United Nations Charter;

Certain that victims and survivors must have a voice in this process, it must be recognized that our existence is at the foundation of this negotiation and this treaty's success;

Confident that an Arms Trade Treaty can be finalized with a strength and comprehensiveness which will become more powerful than the force of weapons, more powerful than the pressures of politics, and more powerful than the incentive of profits;

We call on all states participating in the negotiations for an Arms Trade Treaty to:

Ensure that this treaty is comprehensive and effective in preventing future victims by including in its scope all conventional weapons and ammunition, all transfers and all transactions.

Hold states to account in meeting their obligations in the treaty by ensuring the existence of meaningful implementation and enforcement provisions, and commit to transparent and comprehensive reporting.

Work together in the context of international cooperation and assistance, to ensure that those who are willing and committed to implementing a strong and robust treaty have access to support and resources they need to make a comprehensive ATT a reality.

Acknowledge the rights and needs of victims and commit to assist them in recovery and rehabilitation as a fundamental human rights obligation of each state toward its own citizens and our global community's responsibility toward each other.