

# Arms Trade Treaty Monitor

Independent views and reports from the Arms Trade Treaty negotiation process

## Time to be concrete

Katherine Prizeman | Global Action to Prevent War

As diplomats and civil society alike prepare for the final preparatory committee in the Arms Trade Treaty (ATT) process, it is important to take note of the origin of consensus in this process: despite difficult and complex political considerations, there is general and widespread support for negotiating an ATT, indicating a majority opinion that arms transfers should operate according to a common set of international standards. How those standards will be negotiated, who will 'monitor' compliance with these standards, and how much latitude will be allowed for more robust and explicit diversion language remains to be seen.

There are many questions remaining, including the most basic of all: what is the goal and objective of such a treaty? Differing answers to this question present a complex challenge for both this PrepCom as well as the July negotiating conference. There is ultimately no philosophical consensus—some advocate for a treaty that can establish strong humanitarian standards for the transfer of conventional weapons that can combat, prevent, and eradicate the illicit transfer of such weapons where they can facilitate destabilizing violations of human rights and international humanitarian law, while others wish to negotiate strictly on the grounds of trade. How a member state characterizes the core objective of a future ATT will likely impact all relevant positions adopted and thus will influence the success of drafting and adopting the treaty. Therefore, it is necessary that participants seek a realistic and pragmatic solution to this philosophical difference of opinion. Without such a harmonization of purpose, ATT negotiations will forever be divided between schools of thought that seem less reconciled in rhetoric than they might actually be in practice.

It is also important to highlight the difficulty of the ATT process in the context of the other security challenges that are to arise in 2012. During a year that is punctuated by many disarmament and arms control challenges—such as the UN Programme of Action on small arms review, the initiation of a new review cycle of the nuclear Non-Proliferation Treaty, and a conference on establishing a Middle East Weapons of Mass Destruction Free Zone—creation of a legally-binding ATT will require some degree of political capital investment, especially in light of the provision of consensus decision-making and acceptance of at least minimal international oversight of national control systems. Large manufacturing states will have to be active and productive participants in the ATT process if the treaty is to have any real impact on the arms trade—both cooperating with the provisions as well as providing international assistance to smaller states for the necessary national implementation capacity. There is an inherent responsibility on the part of the major exporters to negotiate an honest and robust ATT based on the fact that they account for the lion's share of total arms manufactured, and thus in circulation.

As the ATT preparatory phase comes to a close and official negotiations begin, it is important to take into account the following recommendations that will make for a more robust and better implemented treaty over the longer term:

- It is wise to incorporate a concrete review process that establishes regular meetings of the states parties to assess and adjust the ATT to better reflect evolving security circumstances as well as provide opportunities to address items that remain contentious.

**13 February 2012**  
**Vol. 4, No.1**

- 1 | Time to be concrete
- 2 | Getting to negotiations
- 3 | "The imperative" versus "a dividend"
- 3 | No consensus on what consensus means
- 4 | Crunch time
- 5 | Litmus test
- 6 | NGO participation

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

The ATT Monitor is coordinated and edited by the Reaching Critical Will project of the Women's International League for Peace and Freedom in partnership with Global Action to Prevent War, World Council of Churches, and the Control Arms Campaign.

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

More analysis is online at [attmonitor.posterous.com](http://attmonitor.posterous.com)

PDF versions of this and past ATT Monitors are available at [reachingcriticalwill.org](http://reachingcriticalwill.org)

*continued on page 5*



**Reaching Critical Will**  
a project of the Women's International League for Peace and Freedom

**control arms**



**World Council of Churches**



## Getting to negotiations

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

Over the past several years, the UN process to negotiate an arms trade treaty (ATT) has been carried out cautiously and inclusively to ensure that at every turn those participating are comfortable with the process and the goal. As we near the end of this process, to culminate in negotiations this July, the question in this final preparatory committee (PrepCom) becomes not what will be negotiated but how it will be negotiated.

Questions of process and machinery have proved troublesome in the world of disarmament and arms control. The Conference on Disarmament, the UN's permanent forum for such negotiations, has been blocked since 1998. Treaties on antipersonnel landmines and cluster munitions have been negotiated outside of the formal UN context altogether. But the process to develop international standards for the arms trade has so far proceeded smoothly. For this to continue, member states will deal with some of the key procedural issues at this PrepCom.

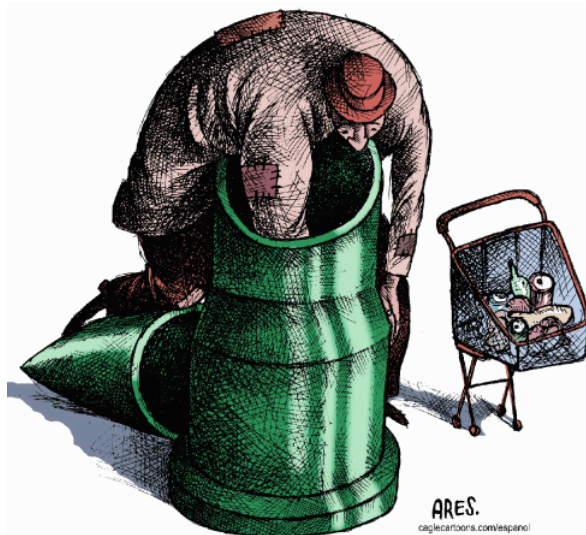
Civil society positions on procedure are likely as diverse as governments'. What NGOs largely seem to agree on is that the Chair's latest draft paper should be used as the basis for negotiations. It is not perfect—certainly, many civil society groups and many governments will be advocating for a much stronger treaty in the months to come. But it provides a solid foundation from which we can move forward.

Transparency will also be an essential element to the continued process. Civil society groups have been involved since before the inception of the treaty process. In the early 1990s, an active civil society campaign began promoting the negotiation of a robust, comprehensive, legally-binding treaty to establish standards and restrictions on the international trade in conventional arms. Nobel Laureates joined together to call for such a treaty. The continued inclusion of civil society in the ATT process will be important throughout this PrepCom and the July negotiations.

The final PrepCom may also address some substantive issues. Many governments and civil society will continue to work for a robust treaty that will be a strong tool for preventing armed conflict, preventing the violation of human rights and international humanitarian law, and seriously reducing the culture and economy of militarism. The global arms trade is now valued at over 50 billion USD per year and global military spending as a whole reached 1.6 trillion USD in 2010. The too-high price of weapons in dollars and human lives is increasingly highlighted by the global economic crisis and austerity measures being implemented around the world. Thus a few elements that must be included in the treaty are:

- Strong criteria on international humanitarian law, human rights, sustainable development, and sexual violence must be at the heart of the ATT.
- The ATT should include a restriction on arms transfer where there is a substantial risk that the export under assessment may be used in acts of sexual or gender-based violence.
- Small arms and light weapons and ammunition must be included in the treaty, along with the other categories of conventional weapons.
- Police and internal security equipment should also be included in the treaty. Excluding such items would have serious implications for human rights abuses.
- The ATT must not be restricted only to exports of conventional weapons. The criteria from transfers must also apply to imports, transit and transshipment, and brokering.
- The treaty should elaborate specifications for national reports on all arms transfers and should require states to publicly declare this information.
- The treaty should also establish an independent implementation support unit (ISU) that could serve as a repository for national reports; review and analyze data in these reports; provide administrative and technical support to states parties' in their efforts to implement the treaty, report, and convene meetings to review implementation; assist with peer review of national implementation systems; help match assistance needs and resources; and even monitor and verify states parties' implementation of and compliance with treaty obligations.

For more details on what the Women's International League for Peace and Freedom is calling for in the arms trade treaty, please see our detailed position available at <http://www.reachingcriticalwill.org/legal/att/WILPF-ATT-position.pdf>. •



## “The imperative” versus “a dividend”

Daniel Mack | Instituto Sou da Paz, Brazil

The battle for the soul of the soon-to-be-negotiated Arms Trade Treaty (ATT) has come down to two competing visions. In one corner, governments calling themselves “pragmatic”, arguing that the ATT should be simple, short and easy to implement—a view often influenced by their respective arms industries. In the other corner, countries and global civil society who believe the July negotiations are a once-in-a-generation opportunity to ensure **the humanitarian imperative** is realized in a major arms regulation agreement.

Conversely, the “pragmatic”—a term that infers others are unrealistic or utopic—believe the ATT can at best provide a **“humanitarian dividend”**. In other words, this is an incremental, minimalist, “things are not that bad” stance claiming the ATT’s main objective is not increased human security, though it would be a welcome, albeit small, by-product. The proponents of the “bare bones” ATT often use terms such as “ambitious” or “aspirational” to describe the camp that is not satisfied with “a little better than the status quo”. To them, the ATT is mostly about regulating trade, creating universal but easily avoidable export control criteria, and providing possibly a modicum more of transparency.

It is no wonder that many proponents of an “ATT lite” have heavy arms exports; industry is not usually fond of any sort of regulation to its trade, which more often than not means smaller profit margins. As with alcohol and tobacco, less lethal but also legal, you won’t see industries begging for more restrictions on their international sales. Perhaps it’s no coincidence that “dividend” is usually used in financial markets...

Governments, on the other hand, are in the business of protecting their citizens. Therefore, the “principled” or “humanitarian-minded” ATT advocates posit that regulating the trade of arms cannot be an end in itself, but rather an effective means to reach essential human security objectives. We all agree the ATT will not come close to “resolving all the ills of the world”—it is not a panacea for armed violence nor for any of the other serious problems it could help tackle. Will it end human rights abuses, corruption and poverty? Will it end human rights abuses, corruption and poverty? Of course not -- but a robust and comprehensive ATT would significantly diminish their prevalence, an outcome both spectacular and possible to achieve.

Would a “lite” ATT be significantly easier to draft and negotiate than the “robust” ATT civil society is calling for? Perhaps; but with ambitious vision, goodwill, cooperation, political capital expenditure, and very long July nights, an ATT that actually matters is within reach for the international community.

From our perspective, that of civil society from Brazil, a country with both thousands of yearly gun homicides and significant arms exports, the choice between these two models is clear: there is no choice. The ATT must handsomely “pay back” the massive investments in time and effort from the overwhelming majority of UN members, as well as in hope from millions of people living under threat and fear of armed violence. •

## No consensus on what consensus means

ATT Legal Response Network

There seems to be little agreement on exactly what “consensus” means. A safe definition would be that consensus has been achieved when most are in favor of a proposal and those not in favor do not feel strongly enough to block the proposal.

In his manual for UN Delegates published in 2011 Ronald A. Walker states: “The view has become very widely held-to the point that it can be said to be now part of customary law-that the Chairman should not declare consensus if a single delegation raises a formal objection to an impending decision.”

He goes on to say: “This view is explicit in several sets of Rules of Procedure adopted in recent decades.”

On the other hand Robbie Sabel in his “Procedure at International Conferences,” published in 2006, states: “Rules of procedure can specify that a conference is obliged to take decisions by consensus, leaving no option for voting; such a rule is rarely adopted. Since there is little incentive to compromise, the outcome of such a conference is very likely to be ‘the least common denominator of agreement’. No treaty-making conference has adopted such a pure form of consensus and it appears unlikely that it will be adopted in the future.”

Alternatives to pure consensus are possible in two areas. First, it can be said that the rule on consensus only applies to substantive and not procedural matters. In the latter case votes can be by majority or 2/3rds.

Second, it can be said that if after strenuous effort consensus was not obtained the conference would proceed to a vote. Examples of this can be found in the 1990 Second UN Conference on the Least Developed Countries; the 1993 UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks; and the 1994 International Conference on Population and Development. •



## Crunch time

Dr. Robert Zuber | Global Action to Prevent War

This last PrepCom before formal negotiations commence later this year on an ATT give delegations one last opportunity to discuss treaty content—scope and parameters—but also to work out protocols that can lead to smoother and more productive negotiations. In this consensus-driven process, skeptical states have been able to voice their discomfort while more overtly supportive states have voiced some of their more ambitious aspirations. At the time that negotiations commence, ambition and discomfort will both evolve to become less about lifting up the ‘optimal’—whether optimal refers to a comprehensive treaty (which we would prefer) or no treaty at all—however that is defined—and more about maximizing the possible.

Along with other civil society groups working on this issue, there are several key items that we believe should be affirmed at a minimum prior to discussions on the framework for negotiations:

- The Chair’s paper should be adopted as the basis for treaty negotiations;
- Small arms and light weapons should be included as part of the scope;
- A robust commitment to treaty review processes should be made so that problems in implementation can be ‘flagged’ and solutions offered to improve treaty effectiveness; and
- A cost-effective structure (ISU) should be adopted that can field ATT-related questions from states and guide the assessment and distribution of capacity support (and possibly in the future share concerns with exporting states about proposed transfers that have a high likelihood of diversion).

Delegations have heard some version of these recommendations many times before and have often expressed support for some or all of them. As we move into this new phase of the ATT process, we know that it is unrealistic to assume that any state will negotiate for—let alone formally ratify—a treaty that is inconsistent with its national interest. However, states participating in UN activities, including resolutions and negotiating sessions, do so in part from a desire to find creative ways to invest pieces of that national interest in discussions on a broader regional and global interest that enhances human security. Most diplomats seek to locate and adopt frameworks for collective security that can also successfully address pressing national security concerns and that can build trust among delegations that will be useful in deliberations on other security issues down the line.

The ATT may not be, as some states have continually reminded us, a disarmament treaty. But this is a treaty process that has collective and important security

implications, not only for states but for communities. The more we can control diversion and its negative implications for criminality, terrorism, and corruption, the better we can guarantee stable transfers in a reliable security environment. As the business of arms transfers becomes more rational and transparent, the closer we will get to achieving a framework from which we can successfully address the sale of weapons most likely to create regional security crises or violate the human rights of populations. The desire to keep the most modern and sophisticated weapons out of the hands of irresponsible users, especially non-state actors and corrupt officials, is an aspiration shared by most states, including some states wary that an ATT can ever establish a genuinely fair and level playing field on transfers.

The issue now is how we move from what we want (or don’t) to what we can successfully and beneficially negotiate. This next and most critical phase will seek to integrate a high regard for the national interest, a willingness to honor states that have invested much effort in bringing this process to its current status, a recognition of the symbiotic relationship between national and global security, and an understanding that states sometimes support things they are not completely sure about in order to win support from other states for things they are more sure about.

There is optimism at headquarters about the ATT process, but also broad based caution from some states and experts because the treaty might seem to over-reach and for others because it might under-perform, at least in its initial iteration. But we remain convinced that there are many reasons to engage in good faith negotiating efforts to bring such a treaty to fruition. Ambassador Moritan and the many diplomats who have engaged this process throughout are skillful and knowledgeable negotiators. But we also hope that there will be opportunities prior to the commencement of formal negotiations for diplomats and civil society representatives to explore together ways to build trusting and actionable consensus on core ATT concerns. •

## Litmus test

Daniel Mack | Instituto Sou da Paz, Brazil

As of the beginning of February, the Arms Trade Treaty (ATT) negotiations in July have an inescapable litmus test: to undoubtedly prevent, under international law, the transfer of arms and ammunition to a regime in the midst of killing thousands of its own people. Incredibly, the enforcement of this seemingly obvious restraint has not been achieved by the Security Council, nor the UN in general, after the overwhelming majority of countries strived in vain for an agreement to stop the senseless bloodshed, ultimately unable to influence a shocking unilateral national decision.

This bare-minimum, of course, is only one of several basic thresholds the ATT must overcome to have significant real-life impact. Another threshold is the need to include in the treaty's scope all conventional weapons and their ammunition, including internal security equipment often used in repression, and all transfers, not only exports. Also, introducing strong decision-making human rights and international humanitarian law (IHL) criteria with a "shall not" clause is vitally important—"taking into account" could be ignored by the very cynic, even in cases of substantial risk of serious violations. To make sure the ATT is effective, mandatory annual national reports should be comprehensive and public, allowing civil society to monitor implementation.

We can draw some lessons from these tragic developments, and the international community's current inability to address them, as the final preparatory committee (PrepCom)'s discussions focus on the rules of procedure for the negotiations in July. First, it has become painfully clear that a handful of countries do not want any real controls on the arms trade. This should inform the discussions regarding "consensus". In other fora, consensus has been used as a veto by individual countries, which has had tragic humanitarian consequences in a body with 15 members. Imagine the pitfalls in a body of 193 members. The wishes of the overwhelming majority of countries—and their citizens—must be protected from the callous humanitarian indifference of the very few.

It is precisely those citizens that the ATT must be designed to protect. Therefore, the ATT negotiating conference must faithfully follow the "open and transparent" prescription from the 2009 General Assembly resolution, and allow full participation of those that have been constructive partners for years but whose demands are not guided by national interests. Allowing civil society as observers in all sessions of the negotiating conference will ensure the legitimacy and transparency of the future ATT, bringing both technical expertise and the views from those affected

by irresponsible arms transfers. Even if the people of certain nations are not represented in these halls, they should be defended nonetheless.

Finally, the fiasco in the UN Security Council also points to the fact that the ATT negotiations will be immensely difficult, and the time available (barely 20 days) is quite short considering the task of negotiating a robust ATT. As such, it is essential that the international community does not squander the enormous efforts expended since 2006—it should make good use, as a basis for negotiations, of the "Chairman's paper". This document, while imperfect, offers the only comprehensive cornerstone available to build a strong ATT upon. The international community cannot afford reverting to a clean slate.

The recent deadlock at the Security Council clearly proves the urgency and necessity for a robust ATT. As an official from the arms exporting nation in the case mentioned above bluntly put it, "we are not violating any international obligations". It is time to change that—and make such immoral deals illegal.

### *Time to be concrete (cont.)*

- It is essential that negotiations on an ATT focus on a structure that can support and even monitor national implementation once a treaty has been adopted. Member states must look realistically at the security, communications, and oversight challenges that lay ahead for treaty implementers. There is no obvious mechanism that currently exists to coordinate ATT-related logistics.
- Even those member states vigorously contending that any ATT should neither encroach on territorial sovereignty nor interfere in the ability of states to conduct arms transfers cannot argue against the dangers of diverting otherwise legally transferred weapons to non-state and illegitimate actors, such as criminal or terrorist elements, as well as through reselling weapons to line the pockets of corrupt officials. Delegations should address diversion directly in formulating a robust treaty that sufficiently highlights, monitors, and addresses all facets of this risk.

Understanding the inherent purpose of the ATT, as well as the broader peace and security context in which it is being negotiated, is important to the process. We hope that the final PrepCom will yield concrete negotiating points for July as well as a strong sense of enthusiasm and commitment from member states that will put diplomats in the strongest and most encouraging position possible for the diplomatic conference. •

## Arms trade treaty requires full and effective NGO participation

ATT Legal Response Network

A strong and effective Arms Trade Treaty (ATT) will help save lives, prevent human rights abuses, and protect the livelihoods of people around the world. This outcome can be achieved only by comprehensive and effective NGO participation throughout a transparent and accountable Treaty negotiation process.

The benefits of full NGO involvement and participation are significant. The negotiation process is complex and underpinned by multi-tiered and competing interests. Effective NGO participation not only will bring public confidence to the process, but also will ensure timely identification of all issues. NGOs bring an invaluable expertise to the negotiating table. NGOs are the organisations dealing directly with the consequences of an irresponsible arms trade. Working both on the ground and on transnational levels, these organisations have available to them first-hand experience of affected communities, rehabilitation attempts and the humanitarian and social issues involved, as well as direct experience in implementing strategy. Their voice represents the witnesses, victims and individuals working with the consequences and human cost of the arms trade.

The 2009 General Assembly ATT Resolution recognised the crucial role of NGOs as a source of expert advice and in holding governments to account. This recognition is not without precedent. The Convention on the Rights of Persons with Disabilities was drafted with considerable input and assistance of NGOs. The International Criminal Court was established with high-level NGO involvement and participation. The Convention on Cluster Munitions was adopted following NGO campaigns for the existence of a Treaty, their efforts during the ensuing negotiation process and finally within the implementation stage itself. The list can go on.

Over the last decade, NGOs have worked closely together to achieve their common goals in developing, ratifying and implementing treaties. In so doing, they provide an effective means of campaigning, creating public awareness and support, as well as vital information exchange. During the 'Ottawa process', the coalition of the International Campaign to Ban Landmines (comprising of some 750-1000 organisations) was deeply embedded in the negotiation process that led to the successful drafting of the Mine Ban Treaty. The ICBL eventually won the Nobel Peace Prize in recognition of its civil society efforts to achieve the Ban. The Framework Convention Alliance, comprised of some 350 organisations, now performs the role of watchdog for the Framework Convention on Tobacco Control (FCTC), having played a key role in obtaining a substantial number of signatories in record time. NGOs now have the right, as Observers, to participate and speak at meetings of the governing body of the FCTC and their involvement in

the Intergovernmental Negotiating Body allows them to participate in drafting and negotiating a Protocol on Illicit Trade of Tobacco Products, as well as preparing proposals on issues identified in the Convention. Most recently, the climate change negotiations have seen NGOs take an active participatory role in the UN negotiations as Observers.

Today, there are established principles and precedent for comprehensive participation of NGOs throughout the UN system and within Treaty negotiations themselves, granting NGOs consultative and Observer status, enabling them to attend plenary and committee meetings, and to make oral and written statements, encouraging their participation in debates and allowing them to receive copies of official documents, address representatives and make comments on draft Conventions.

NGO participation increases the legitimacy of these ATT negotiations. Decisions made behind closed doors, without allowing effective participation from the organisations that work on the front line of the arms trade, will leave any future Treaty without a solid, informed and accountable foundation. Effective NGO participation is the key to a successful outcome. •

