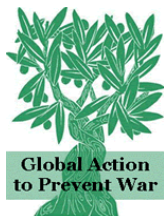


ARMS TRADE TREATY MONITOR

Civil society perspectives on the Arms Trade Treaty negotiation process

17 July 2012
Vol. 5, No. 10

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Editorial: Negotiating an ATT with teeth

Ray Acheson | Reaching Critical Will of WILPF

The criteria for decisions to transfer arms are among the most important elements of the arms trade treaty (ATT). They provide the basis upon which transfers will be regulated. They are also among the most contentious elements, as many governments fear that if the criteria are comprehensive and the requirements for denial are strict, the treaty will inhibit their ability to either sell or import arms. Some exporters and importers have economic and political interests in ensuring that the criteria and resulting obligations are neither comprehensive nor strict.

The draft text on criteria released by the Chair of Main Committee I on Monday morning seemingly addresses the interests of such exporters and importers, which it attempts to balance against the concerns of those who genuinely want a strong treaty that will make a difference in the unfathomable suffering caused by the unregulated arms trade. Unfortunately, the draft text fails in some very serious ways to ensure that the treaty will be able to make such a difference. As currently written, in fact, it could actually undermine the ATT's entire *raison d'être*. Such text, if adopted, would be a step *backwards*.

The draft text prohibits transfers if they are "inconsistent with the goals and objectives and principles of the Treaty". It calls for risk assessment processes to analyze the transfer's potential affect on human rights, international humanitarian law, and other issues. This would appear to mean that if the goals, objectives, and principles of the treaty are sufficiently strong in emphasizing the reduction of human suffering, the treaty should outlaw all transfers that are deemed likely to enhance such suffering. Yet the draft text merely says, "Where substantial risks exist, there shall be an overriding presumption against authorization." This language is substantially weaker than provisions suggested by many delegations, which would stipulate that if the transfer fails to

meet the treaty's criteria, it "shall not be authorized".

If the treaty does not prohibit outright arms transfers when there is risk that the weapons will be used to commit acts of genocide or war crimes or gender-based armed violence, etc., it will not only fail to ensure consistent application of the treaty but could actually undermine attempts to sufficiently regulate arms transfers. In a future in which an ATT with only an "overriding presumption" has entered into force, an exporting state would merely have to demonstrate that it has considered the risk of the transfer in order to be in compliance with the treaty. The state's export licensors could tick the relevant boxes, but they or the ministers responsible for authorizing transfers could allow other political or economic interests to override the findings of the risk assessment. If challenged by another government or civil society groups over making an irresponsible transfer, the exporter would merely have to provide documentation that they undertook a risk assessment, not that they followed its logical conclusions. This would in fact make the treaty *detrimental* to preventing irresponsible arms transfers, as it would provide legal cover to the governments involved in the transfer.

The draft text also introduces a new concept of "mitigation measures", which the competent national authorities of a state party would be required to take. However, the document does not indicate what such measures would include. It also does not indicate if they would have to take place before or after a transfer has been authorized—if there is a possibility of resolving some of the exporting governments' concerns *after* a transfer has occurred, this would seriously curtail the ability of the governments involved in the transfer to ensure that the agreed remedies are properly implemented.

Another issue with the draft text, succinctly highlighted by CARICOM, is that it

continued on next page

Editorial, cont'd

relies exclusively on the decision of the exporting state to determine whether or not a transfer is conducted. There is no right or obligation of states involved in transit or transshipment activities related to the transfer to contribute to the risk assessment or “mitigation measures,” or to have a say in whether or not the transfer is authorized. One of the main concerns from a great number of delegations throughout this conference has been the general lack of balance between exporters and all other states. This is a major problem for those countries that have a stake in regulating the arms trade but are not major producers or exporters of weapons. Transit and transshipment countries need to be involved in making decisions about transfers that will go through their territories in order to ensure weapons are not misused or diverted to illegitimate end-users. They must have a voice in determining whether the transfer is made, as they could provide a more objective and informed understanding of the risks of the transfer than the exporting state. This concern is also relevant to the implementation paper discussed in the afternoon open session; as the delegations of Ecuador and Mexico argued, notification of the authorization of transfers must be made to relevant transit and transshipment states so that they can adequately fulfill their

responsibilities in helping to prevent diversion.

Finally, the draft text is not sufficiently comprehensive in the criteria it lists in the section on risk assessment. It does include serious violations of international human rights law, international humanitarian law, and international criminal law, as well as the undermining of peace, security, and stability; acts of aggression or other breaches of peace; acts of transnational organized crime or terrorism; and risk of diversion. However, it does not include provisions on poverty or socioeconomic development, gender-based armed violence, or armed violence in general. Many delegations have consistently called for the inclusion of these elements; at least fourteen governments have insisted that gender-based armed violence be included as a specific criterion in the treaty. All of these criteria are necessary to ensure that the treaty meets its goal of reducing human suffering.

All of these issues will have to be resolved in order of the ATT to be a truly effective instrument. More importantly, some of these issues could actually undermine the ability of the international community to regulate the arms trade by providing cover for irresponsible transfers. All effort must be made now during the negotiations to prevent this from happening. •

ATT MONITOR

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The *Arms Trade Treaty Monitor* features civil society reporting and analysis on meetings of the UN conference on an Arms Trade Treaty (ATT). It is coordinated, edited, and published 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 International Action Network on Small Arms (IANSA). PDF versions of all *ATT Monitors*, along with statements and other documents from the conference, are available at www.reachingcriticalwill.org.

All views expressed in this publication are solely those of the contributing authors and do not necessarily reflect the positions of the supporting organizations.

ATT cryptoquote: answer from Vol. 5, No. 9 on Monday, 16 July 2012*Puzzles by Lily Gardener | Reaching Critical Will of WILPF*

No definition of sovereignty can include the freedom to enable the violation of human rights, the murder of the innocent, the oppression of the world's neediest and most helpless. No definition of national security or self-defense allows room for such acts. These concepts are thoroughly ingrained in the framework of international law that our world has developed in the past half-century. All the Arms Trade Treaty does is draw the link between enabling these violations, and committing them. It simply fills in the blanks of the promises of the past, in order to address the demands and dangers of this new millennium. - Oscar Arias, 14 February 2012

**ATT wordsearch***Puzzles by Lily Gardener | Reaching Critical Will of WILPF*

P	F	N	N	Y	W	R	Q	F	I	A	Z	Y	Q	F
T	D	O	E	D	Y	P	K	X	F	R	I	R	I	A
C	O	I	I	S	D	Q	K	G	J	M	D	A	B	A
I	T	T	G	P	E	P	Z	P	W	S	E	T	N	G
L	K	A	G	I	P	S	O	J	B	C	S	I	B	B
F	A	G	T	H	A	F	D	A	X	O	T	L	Q	O
N	S	I	G	S	D	K	Y	P	T	N	R	I	T	G
O	Y	T	R	N	P	X	Q	C	R	T	U	M	E	I
C	D	S	J	O	M	Z	Q	D	O	R	C	B	O	O
F	T	E	F	I	W	V	J	L	X	O	T	X	T	W
T	O	V	Z	T	G	K	Z	X	R	L	I	H	P	M
K	L	N	Q	A	G	D	H	W	U	U	O	F	H	V
Z	J	I	U	L	S	N	O	I	T	I	N	U	M	I
X	B	S	C	E	Q	D	V	R	K	Q	G	J	E	J
P	W	T	E	R	R	O	R	I	S	T	F	F	K	I

ARMSCONTROL
CONFLICT
DESTRUCTION
INVESTIGATION
MILITARY
MUNITIONS
RELATIONSHIPS
TERRORIST

News in Brief

Katherine Prizeman | *Global Action to Prevent War and Ray Acheson* | *Reaching Critical Will of WILPF*

Main Committee I: Criteria/Parameters

General comments/changes to Chair's paper

- Venezuela called for the addition of references to “the legitimate right of self defense,” a “state’s ability to face international threats including organized crime,” and “the effect on sub-regional or regional balance of power” when considering the criteria laid forth in paragraph 3.
- Malaysia called for the deletion of the phrase “inconsistent with the goals and objectives and principles of the Treaty” in sections A and B noting that they are unnecessary.

Section A: Prohibitions

- Mexico and CARICOM agreed with the provisions under the prohibitions section, but called for an additional reference to authorization denials when transfers violate national laws of a state party.
- Mexico and Sweden expressed discontent with the language “shall prohibit” and Mexico instead suggested “shall deny.” Sweden noted that “prohibit” implies no assessment is necessary, which is not adequate since such decisions regarding “prohibitions” are not “black and white.”
- Mexico called for a direct reference to violations of international law.
- Switzerland noted its preference for the Section A language from the joint paper from Australia, Japan, Sweden, and Switzerland.

Section B: Risk assessments

- CARICOM and Mexico noted the inconsistency in referring to “exports” in B and called instead for the word “transfer” to be used throughout.
- Malaysia and Sweden said that the reference to “mitigation measures” did not necessarily belong in this section and perhaps could be placed under national implementation, while Switzerland suggested this reference have its own paragraph under ‘Risk assessment’.
- Sweden and Mexico noted that the references to diversion could be combined into one; Sweden said it could be combined with mention of the risk of corruption.
- Liberia reiterated support for a criterion dedicated to gender-based violence.
- Switzerland and Sweden noted the absence of development as a criterion. Sweden said it did not necessarily think it should be a standalone criterion, but should be referenced.
- Mexico and CARICOM called for reference to “consultations” between exporting and importing states.

- Switzerland called for the language “shall deny” in paragraph 5, while CARICOM suggested, “...where substantial risk still exists, the transfer ought not to be permitted.”
- Mexico called for the deletion of “rigorous” from paragraph 3 and “credible” from paragraph 4.
- Sweden noted the absence of armed violence in the criteria and said it was working on “broadly based” language related to this issue.

Main Committee II: Implementation

General comments

- China and India said the text is too specific and should be simpler and less prescriptive.
- France said two points should be added: the possibility of state parties to adopt procedures for control at national, bilateral, or multilateral levels; and the possibility for state parties to adopt measures that go beyond those defined in the treaty.
- Mexico and CARICOM noted this section does not only deal with national implementation, but that some implementation must be at international level, e.g. providing reports based on the treaty to the ISU or notification between states about possible diversion.
- Norway and Italy called for language saying that each state party may refuse, suspend, or revoke any transfer.
- Venezuela and Indonesia said the treaty should say that its provisions shall be implemented in a manner avoiding hampering the right of self-defence of state parties.

National implementation

- UK said the implementation should be non-discriminatory but the word “objective” is inappropriate (paragraph 3).
- Mexico and Germany suggested replacing “objective” with “consistent” in para 3.
- Kenya argued in favour of keeping para 3 as is.
- CARICOM and Germany called for para 4 to deal with “transfers” in order to encapsulate all related activities.
- Singapore said para 4 should use phrase “arms trade” instead of “export, transit or transshipment”.
- Germany said para 4 should say “controlling” instead of “authorizing”.
- CARICOM, France, Germany, Italy, Mexico, and UK said para 5 on voiding contractual obligations is problematic.
- Kenya and India said language “when appropriate” in para 5 may not be suitable.
- UK and Germany asked for clarification on what it would mean to verify the end-user in paras 6, 8, and 10.

- France said para 6 should apply to exports, brokering, and transshipment.
- Mexico and CARICOM questioned what “as requested” refers to in para 6, since it is referring to what is a requirement under the criteria section.
- China, France, and UK said the details of authorizations are for national discretion (para 7).
- Mexico, Kenya, and CARICOM said “upon request” should be deleted from para 7 because it should be mandatory for states to share this information. Kenya also questioned this qualifier.
- Italy argued para 7 should say “may” not “shall” because notification should not be mandatory.
- France said requests for information from exporters on potential authorizations in para 10 causes difficulties.
- China said para 16 on legislation on inspection and seizure is inappropriate.
- Japan suggested adding “where feasible” and “at time of export” to para 16.
- Mexico and CARICOM said penalties noted in para 17 should indicate criminal AND civil.
- Mexico also argued that reference in para 17 “to address breaches of national legislation” suggests that implementation of the treaty might run counter some national norm—but any action contrary to treaty should be a violation of a norm at the national level.
- China said anti-corruption (para 18) has no place in an ATT.

Brokering

- CARICOM said para 11 on brokering should say that controls “shall” include rather than “may” include.
- India called for “less elaborate structure” on brokering.

Transit/transshipment

- China and Mexico asked for clarification regarding what is “necessary and feasible” in para 14 regarding monitor and control of transfers in transit and transshipment states.
- CARICOM called for the removal of “necessary and feasible” in para 14.
- Ecuador argued there is a conflict between paras 12 and 13, wherein para 12 says transit and transshipment states shall monitor and control items but para 13 only says exporting and importing shall exchange information on transfers with transit/transshipment states “where feasible and upon request”. Thus Ecuador said notification should be compulsory.
- Mexico and Kenya queried the term “where necessary” in reference to monitoring transfers of arms in para 12, with Mexico asking when would it NOT be necessary?

- India, Indonesia, Singapore, and Republic of Korea said it is impractical for transit and transshipment states to control all transfers.
- ROK suggested including “triggers” for these states to monitor and control shipments.

Diversion

- China called for language on prohibition of transfer to non-state actors to be added to para 19.
- Mexico said text should make it clear that prevention of diversion is an obligation of all states involved in a transfer, not just the importer.
- Venezuela asked for clarification on what measures should be taken to address situations of divergence.

Reporting and records

- China reiterated the P5 view that reporting should be put under the international cooperation section.
- China, Germany, Japan, and ROK said records should be kept for 10 years.
- Mexico said records should be kept for 20 years.
- CARICOM said records should be kept for 25 years.
- Singapore said record keeping should be a matter for national implementation.
- India said reporting should be voluntary and under parameters of the UN Register.
- China called for balance between transparency and national security concerns in reporting mechanisms.
- UK expressed concern that the reporting requirements were too burdensome.
- Japan said transit states can’t be expected to keep records of ALL transfers so para 23 should specify “authorized” transfers.
- Venezuela suggested replacing para 25 with language from Egypt’s proposal that each state party may refuse or revoke any transfer only when such action is consistent with treaty obligations and the exporting state can document how it did not represent political abuse of the treaty.
- Japan and Germany said all records must be made public.

Criteria and mitigation measures

Katherine Prizeman | *Global Action to Prevent War*

As negotiations continue on the criteria and parameters for the arms trade treaty (ATT), the Chair of Main Committee I issued a paper on Monday morning with suggested text for this section. As has been noted by several delegations, this section is critical for the ATT to be effective. The strength of the criteria, along with the consistency and robustness of their application (limiting loopholes and inconsistency in national risk assessment), will ultimately determine whether or not the ATT will accomplish its goal of preventing, combating, and eradicating the illicit and irresponsible arms trade.

The Chair's paper divides the criteria into two sections—prohibitions under existing international and regional law and national risk assessment—and introduces the concept of “mitigation measures”. This concept is new to the ATT discussion insofar as it had not been addressed during the Preparatory Committee sessions. Thus far, questions regarding what particular measures would be considered or when such measures would be applied (before or after the assessment) have remained unanswered. The reference in the Chair's paper notes only that states parties shall “take mitigation measures to ensure that the export under consideration is consistent with the goals and objectives and the principles of the Treaty.” Given the extremely general nature of this reference, it is plausible that such “measures” could function merely as a “catch-all phrase” for consultations between the exporting and importing states either during or after the authorization assessment.

While the Chair's paper doesn't provide enough detail on what “mitigation measures” would entail, the President's Discussion Paper from 3 July 2012 lays forth a more detailed, but disconcerting, description of “mitigation measures” in the criteria section: “In circumstances where authorization is granted despite the existence of a substantial risk, a State Party shall take precautionary and preventative measures to mitigate such risk, including such things as working with the recipient country, suspending or delaying authorization, seeking further information or clarification regarding the transfer or attaching conditions to the transfer.”

The treatment of “mitigation measures” in the President's paper clearly indicates that such measures would be enacted after an assessment was carried out and a transfer was approved despite the existence of “substantial risk” as evaluated against the preceding criteria. This is a dangerous interpretation of “mitigation measures,” insofar as these measures provide for an insufficient alternative to denying a risky transfer. The ATT should sim-

ply require that states deny transfers if “substantial risk” does, in fact, exist. There is a danger of relying too heavily on such “measures” and detracting from the weight and influence that the criteria should garner as standalone parameters for determining transfer authorizations.

Some delegations, including Malaysia and Sweden, have suggested moving “mitigation measures” to the national implementation section rather than the criteria section. Their argument is that the examination of transactions and the determination of whether or not to undertake mitigation measures is a matter of national discretion. This argument has some validity. If implementation of the treaty's obligations remain entirely under national control, then it would be wise to have a provision for “mitigation measures” in this section so that states parties are required to incorporate into their implementation strategies, prior to authorization, measures ensuring that exporting and importing states have sufficiently consulted each other on the proposed transfer and all relevant information exchanged so that irresponsible transfers are refused and the circumstances that would have led to the denial are identified and reduced.

Nonetheless, if “mitigation measures” are to be included in the criteria section, it is essential that they be clearly detailed and that all vague references to the “goals and objectives of the Treaty” are avoided. Without indicating specific measures to be undertaken and requiring that such measures be pursued before the transfer, the provision for such “measures” will provide for further movement away from the main purpose of the treaty—to develop and adopt universal and international standards for the arms trade. The criteria, and all its related components, including “mitigation measures,” must be clear and concrete as well as capable of being applied universally. For the criteria to function in a prohibitive, legally-binding manner that a robust ATT requires, such “measures” must be illustrated clearly in the text. Moreover, it should be clear how they would ultimately complement the larger scheme of criteria against which potential arms transfers will be assessed. •



INVITATION

Women's Human Rights The Arms Trade Treaty and CEDAW

Friday, 20 July 2012

UN-Women headquarters, 19th Floor Conference Room
(220 East 42nd Street, New York)

From 1:15 to 2:45 pm

Light Lunch will be served

Please RSVP (for access reasons) to: ameer.el.nager@unwomen.org

The panel will discuss important ways in which two treaties-- the Arms Trade Treaty (ATT) and the Convention on the Elimination of All Forms of discrimination against Women (CEDAW) along with the UN Security Council resolution 1325 et al. can work to prevent discrimination and violence against women, particularly in conflict and post-conflict situations.

Speakers include:

- Anne Marie Goetz, Chief Advisor, Peace and Security, UN Women.
- Pramila Patten, CEDAW expert and Chair, Working Group on Women in Conflict and Post-conflict Situations.
- Vanessa Farr, International expert and consultant, Women's International League for Peace and Freedom (WILPF).
- Michèle Olga Pépé, IANSA Women's Network and the West African Action Network on Small Arms (WAANSA)-Cote d'Ivoire / Réseau d'Action sur les Armes Légères d'Afrique de l'Ouest (RASALAO)-Cote d'Ivoire.
- Nicole Ameline, Vice-Chair, CEDAW committee and expert

Co-sponsors International Action Network on Small Arms (IANSA), The International Alliance of Women (IAW), Women's International League for Peace and Freedom (WILPF) and UN Women.

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Calendar of events for Tuesday, 17 July 2012

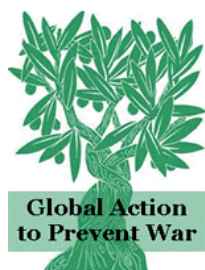
When	What	Where	Who
10:00–11:30	Main Committee 1 (open): Preamble/principles	Conference Room 1 North Lawn Building	
11:30–13:00	Main Committee 2 (closed): Implementation	Conference Room 1 North Lawn Building	
13:15–14:45	EU-UNIDIR regional seminar: Supporting the ATT negotiations	Conference Room 4 North Lawn Building	UNIDIR Contact: Elli Kytömäki ekytomaki@unog.ch
15:00–16:30	Main Committee 1 (closed): Criteria and parameters	Conference Room 1 North Lawn Building	
16:30–18:00	Main Committee 2 (open): Final provisions	Conference Room 1 North Lawn Building	

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Reaching Critical Will

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of Churches**

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