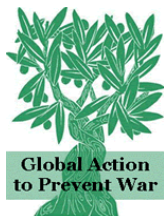


ARMS TRADE TREATY MONITOR

Civil society perspectives on the Arms Trade Treaty negotiation process

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Editorial: Options versus obligations

Ray Acheson | *Reaching Critical Will of WILPF*

On Tuesday morning, the president of the arms trade treaty (ATT) negotiating conference released the first draft consolidated text. Debate on the text ensued in the afternoon. As most delegations argued, the text is much too weak to achieve the goal that motivated this process in the first place: preventing and reducing human suffering caused by armed violence and conflict.

From its preamble to its final provisions, the treaty text is often vague and confusing, providing many loopholes by leaving things open to interpretation. The delegation of Liberia criticized frequent use of phrases such as “to the extent possible,” “where necessary,” and “appropriate measures,” and said governments must be willing to accept the responsibilities that come with a legally-binding treaty. The Mexican delegation likewise argued that it must be clear that the treaty outlines obligations, not options.

In other areas, the language is quite explicit in its provision of loopholes. For example, article 2 on scope only includes munitions as an item that could be regulated “to the extent necessary” to ensure that the national controls on the weapons covered are not circumvented by the export of munitions of those weapons. This essentially translates as, “a state can regulate the export of ammunition if it wants to”.

The Economic Community of West African States (ECOWAS), representing Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo, said that it cannot accept an ATT that does not include munitions and ammunition fully in its scope. The inclusion of ammunition was supported by almost all delegates taking the floor on this issue, except for the United States and China. As Liberian President Ellen Johnson Sirleaf said on 12 July, the ATT must regulate ammunition, “without which guns may be reduced to silence.”

The sections of the draft treaty relating to criteria and authorization of transfers are full of equally large gaps. For example, article 3 says that a state party shall not authorize a transfer “for the purpose of facilitating the commission genocide, crimes against humanity, war crimes constituting grave breaches of the Geneva Conventions of 1949, or serious violations of Common Article 3 of the Geneva Conventions of 1949.” Not only are the references to the specific Geneva Conventions too narrow, but a circumstance in which a state would apply to import arms specifically for the purpose of committing genocide or any of the other crimes listed is a rather high threshold for prohibition. Transfers must be prohibited in the case of *substantial risk* of any of these crimes, just as they should be prohibited for substantial risk of violations of IHL and IHRL.

Violations of IHL and IHRL, however, are only included in the risk assessment process in article 4. As currently written, the risk assessment process would have to somehow balance the risk of violations of IHL, IHRL, or treaties relating to terrorism or transnational organized crime against the weapons’ *potential contribution to peace and security*. To suggest that weapons could contribute to peace bad enough; but to suggest that a risk assessment should weigh a substantial risk of violations of IHL against what the *exporting state views as a benefit* to peace and security—a circumstance which, should be noted, is not defined in this treaty—would gravely undermine states’ existing obligations to ensure respect for IHL.

For the first time, the outcome of the risk assessment process clearly states that if a substantial risk is found, the authorizing state shall not authorize the transfer. This is a good step forward from previous language suggesting “presumptions” against authorizing the transfer. However, article 4 also specifies that the substantial risk would be “in the view of the authorizing State Party”.

continued on next page

Editorial, cont'd

Arguably, this contradicts the requirement for an objective risk assessment, which would presumably be based on multiple sources of information. Furthermore, the requirement to not authorize the transfer is severely compromised by the reference to contributing to peace and security in the list of criteria. To address this problem, Nigeria and Uruguay suggested changing “contribute to peace and security” to “be used to undermine peace and security”.

Then there is the problem with article 5. It references items that should be included in the risk assessment process—the risk of diversion to the illicit market; risk of gender-based violence or violence against children; risk of corruption; and risk of adversely impacting development. Instead, these four criteria are in a paragraph that says when a state party is authorizing an export it “shall consider taking feasible measures, including joint actions with other States involved in the transfer, to avoid the transferred arms” from being used to these ends. The text does not indicate what measures this might entail, nor does it make such measures mandatory. But even more unacceptable is the suggestion that optional measures should be taken to avoid these consequences, rather ob-

ligating the state party to deny the transfer if there is a risk of these consequences occurring. All of these criteria should be fully included in a risk assessment process, the result of which is that if a substantial risk is found, the transfer shall not be authorized.

These are certainly not the only problems with the current draft text. Other articles in this edition of the *ATT Monitor* will address some of problems in more detail; others will be covered in subsequent editions as necessary. But the immediate take-home message is that substantial work must be done in the next three days in order to plug up the holes in this treaty. Speaking at a press briefing on Tuesday, Peter Herby, head of the Arms Unit in the International Committee of the Red Cross (ICRC), said, “All the core provisions of this draft treaty still have major loopholes which will simply ratify the status quo, instead of setting a high international standard that will change state practices and save lives on the ground.” If the treaty were to be adopted as-is, it would not only be a disappointing end to a long process aimed making a real difference in the lives of millions of people around the world but it could also make it more difficult to effect real change in the future. •

ATT cryptoquote *answer from Vol. 5, No. 15*

But the whole point is: nobody should be making a profit by having arms transfers to governments or armed groups that are gonna use them to attack civilians and that's what we're seeing. In this case it's particularly related because the five permanent members of the Security Council plus Germany account for seventy four per cent of all arms deal, but the five permanent members are also charged with maintaining peace and security. So, peace, profit - there's a conflict. – Widney Brown, Global Head of Policy, Amnesty International

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

News in Brief

Katherine Prizeman | *Global Action to Prevent War*

President's consolidated draft text

Preamble

- Nigeria called for the deletion of references to organized crime and terrorism.
- Holy See welcomed the reference to victims' assistance.
- Uruguay welcomed the reference to the role of civil society in the implementation of the treaty.
- Congo called for reference to the role of regional orgs.
- Mexico expressed concern over paragraph 14 and said the ATT should not address national control systems.
- Papua New Guinea said the reference to technology in paragraph 16 is inconsistent with the scope.

Principles

- China said that if the principle of non-interference is not included, it will not be flexible on the inclusion of any references to international humanitarian law and international human rights law.
- Algeria and Palestine called for a principle related to the right of self-determination, especially for peoples under foreign occupation.
- Ecuador and Viet Nam said the principles should be "re-worked" and include the principles of territorial integrity and non-interference.
- Iran expressed discontent over the omission of the principle of the inherent right of each state to produce, import, and export conventional arms.

Scope (Article 2)

- The US reiterated its position that ammunition does not belong in the treaty and called for the anti-circumvention clauses to have their own section.
- ECOWAS, CARICOM, DRC, France, Guatemala, Iceland, Ireland, Kenya, Liberia, Netherlands, Norway, Sierra Leone, and Uganda called for the scope to include ammunition and munitions.
- ECOWAS said it was not prepared to support a treaty that excluded munitions.
- China said because of the serious degree of disagreement over ammunition, the effort to include it should be abandoned.
- Congo stated that inclusion of ammunition may not be possible, but it would be possible to say that "this Treaty also concerns the munitions of these weapons that are referenced above" after paragraph 1.
- Australia said it would have liked to have seen full reference to ammunition, but understands the difficulty of the issue.
- Tanzania said ammunition should be included as long as they are marked.
- Mexico noted the absence of the particular munitions

of grenades, military shells, and mines.

- Palestine said UAVs should be included alongside with combat aircraft in sub-paragraph d.

Prohibitions (Article 3)

- Mali, Niger, Cuba, Syria, and Zimbabwe called for the inclusion of a specific prohibition of transfers of arms to non-state, unauthorized actors.
- Syria called for a prohibition of transfers to "occupying powers on foreign lands".
- Palestine called for the insertion of "and their additional protocols" to paragraph 3 after reference to the Geneva Conventions.
- Uruguay called for the deletion of "for the purpose of" in sub-paragraph 3.

National assessment (Article 4)

- Nigeria and Uruguay called for a re-wording of sub-paragraph 2c. Nigeria proposed the language, "be used to undermine the peace and security of the importing state or for diversion to unauthorized end users".
- New Zealand expressed concern over title of article 4.

Additional obligations (Article 5)

- Uganda and Niger "reserved their right" under the obligation in sub-paragraph d and Niger noted it impinged on the sovereign right of states to determine their priorities.
- Ecuador stated that sub-paragraphs c and d are "highly subjective".
- Holy See reiterated its position that the language in 5b was "ambiguous" and "vague".
- Iceland said paragraph 1 was "weak" and expressed desire for stronger language for the chapeau.
- Zimbabwe said article 5 impinges on the sovereign rights of states.

Other

- Liberia noted that the text represents a "consistent watering down," offering the example of replacing "shall" with "may".
- Mexico and CARICOM said the text is still slanted too much towards exporters.
- Kenya called for a substitution of all references to "trade" with "transfer" as gifts and loans would not be covered under the former.
- CARICOM said they could not accept a formulation of 65 ratifications for EIF.
- Liechtenstein said the articles on criteria and implementation still lack clarity and do not make clear what the obligations for states parties are.
- USA and Venezuela said amendments should be adopted by consensus, not a 2/3 majority. •

Implementation and an ISU worthy of resources

Katherine Prizeman | *Global Action to Prevent War*

The latest compilation draft text offered by the President of the arms trade treaty (ATT) conference is an attempt to incorporate the various proposals from the previous three weeks of deliberations into treaty language and lead the way to final adoption this Friday. The sections on implementation are of particular importance, as implementation will be driven primarily by national responsibilities. Closing gaps in the implementation provisions is thus vitally important to the success of the treaty.

The provisions related to “General Implementation” cover the basic concerns of applying the treaty in a “consistent, objective, non-discriminatory manner” as well as taking the “appropriate legislative and administrative measures necessary to implement the provisions of this Treaty.” A welcome addition to this section is the reference under article 6, paragraph 6 stating that if diversion is detected, states parties “shall notify the State or States Parties that could be affected by such diversion.” This provision could help directly address the consequences of diversion to non-authorized end-users, which will be critical for achieving the treaty’s objectives.

An alarming addition in this section, however, is article 6, paragraph 2 that states, “This Treaty shall not be cited as grounds for voiding contractual obligations under defense cooperation agreements concluded by States Parties to this Treaty.” This provision, therefore, would allow states parties to continue to transfer arms to “honor” contracts without due deference to changing political and security circumstances in the receiving state. As noted by the delegation of Liechtenstein on Tuesday afternoon, this is a serious loophole.

The division of implementation provisions governing export, import, brokering, and transit and transshipment is an important component of this text. It is essential that the treaty does not become only the responsibility of exporting states, but rather, the text must lay out the responsibilities for all states involved in arms transfers. Although the qualifier “where necessary” weakens the strength of the provision, article 8, paragraph 2 on imports does provide for some measure of accountability for importing states (although not enough). It requires that importers “shall put in place adequate measures that will allow them, where necessary, to monitor and control imports of items covered by the scope of the Treaty.” However, caveats such as “where necessary” mean the provision is somewhat weak; moreover, there is no indication of recourse to further action or accountability in the circumstance where a transit state disagrees with an export state on the terms or legitimacy of the transfer.

Although the provisions are qualified by national discretion regarding “feasibility” and “necessity,” the articles on brokering and transit and transshipment are important elements for detailing the responsibilities of all states involved in all types of arms transfers and, at the very least, these types of transfers are covered in separate sections. In particular, article 9 on brokering requires that states parties take “appropriate measures” to control brokering taking place under its jurisdiction. Nonetheless, the details of these “measures” are obviously lacking, which means their application will vary widely among states parties. Given how important brokering is to the arms transfer process, it is imperative that stronger measures on regulating brokers be mandatory in the ATT.

The sections on reporting and enforcement has room for improvement as well, as it is riddled with qualifiers such as “as appropriate” and “where feasible”. The text stipulates that records be kept for a minimum of ten years “or consistent with other international commitments applicable to the State Party.” Article 11, paragraph 3, notes that states parties “may report” to the Implementation Support Unit (ISU) on an annual basis regarding actions taken to address diversion, but the text does mandate that within the first year of entry into force, the state party must submit a report to other states parties on “relevant activities undertaken in order to implement this Treaty”.

The text also stipulates that states parties submit annually to the ISU a report concerning the “authorization or actual transfer of items included in Article 2, paragraph A1,” which will be made public by the ISU. Public records are a good step towards greater transparency in the international arms trade. However, the provision on “enforcement” in article 12 refers only to the adoption of national legislation and the vague reference to “appropriate national measures”. Enforcement is not generally used in treaties to refer to national measures. If the term is to be used here it should also include measures for international enforcement mechanisms, such as an appropriate channel for states to challenge transfers that are made despite there being wide recognition of a substantial risk that it violates the treaty’s criteria or other provisions.

Meanwhile, the section related to the ISU provides for a “minimized structure” with “adequate staff” to “assist States Parties in its implementation.” This short section lays out the tasks to be assigned to the ISU, which are administrative, logistical, and technical. It does not include more substantive provisions related to objective oversight of national implementation, let alone the authority to ‘flag’ potentially illicit transfers. This implies very little

independent functioning. Over the course of the last three weeks, member states have outlined positions on the nature of the proposed ISU as well as its financing and it seems that this latest draft text reflects these dual concerns by underscoring that the ISU will hold only administrative and technical responsibilities in a very nominal structure.

While member states have rightly questioned the funding sources for an ISU, the text does note that the “core costs” would be funded by states parties, as opposed to allocating funding from the regular UN budget, which would imply that such a structure would be housed under the UN Office for Disarmament Affairs. Some delegations have advocated for this intra-UN structure, but such a structure might be inappropriately placed in an office not mandated to specifically deal with arms transfers and without the ability to provide the objective implementation oversight that an ISU should provide.

Despite a limited scope for the proposed ISU, the current text does take into account the possibility for an incremental increase in its tasks. Article 13, paragraph 3e notes the ISU shall “Perform other duties as mandated by the Conference of States Parties.” Likewise, Article 21, sub-paragraph 2d, notes that the Assembly of States Parties shall “Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of the Treaty.” These are important provisions that grant flexibility to the ISU’s future functions so that it can adjust to changing security circumstances. This is a position of incrementalism that has been advocated by several delegations, including the EU, Germany, Sweden, France, and Kenya.

Furthermore, given the complexities of the ATT, specifically regarding its unique fusion of regulation of trade with a view towards addressing humanitarian concerns, the ISU should provide substantive support to assist states parties in implementing and navigating these complexities. In this context, and given its role in collecting and housing state reports, a useful contribution of the ISU could be, as suggested by the Uruguay delegation last week, the compilation and distribution of data and trend analysis of arms transfers given. The ISU should not be used merely for circulating information, but should also provide information. As the Ghanaian delegation affirmed, the ISU should not merely be a “post office”.

As noted by others throughout this process, implementation will be key to the effectiveness of the ATT. The ability of an ISU to provide oversight and sufficient enforcement of implementation obligations must be assessed not only in the immediate future, but (hopefully) in many meetings of states parties in the years to follow. •

Great escape

Dr. Robert Zuber | Global Action to Prevent War

One of the significant concerns of Global Action to Prevent War (GAPW), as well as of many other NGOs and delegations, is the desire by some states for a treaty with numerous ‘escape clauses’ by which governments can claim national interest as a rationale for suspending otherwise binding criteria that sanction—or deny—arms transfers.

It has often been said that you craft treaties not for your friends but for the skeptics. And generally what skeptics require is assurances that obligations and benefits are spread evenly, that (in the case of an ATT) a treaty does not inadvertently reinforce advantages for arms producing states beyond those they already enjoy in a robust arms market that literally defies the global economic slowdown that has affected virtually every other industry.

Skeptics (and some NGOs echo this particular concern) also seek assurances that textual loopholes have been thought through carefully and then closed to the greatest extent possible.

This often proves to be a harder task than it might seem. Often, loopholes do not become apparent until vigorous implementation ensues. Even with the experience in the negotiating room and even assuming good faith efforts to comply fully with treaty obligations, loopholes appear at the strangest times and in unforeseen ways. Part of why GAPW advocates for robust review conferences and other oversight mechanisms is to highlight and address these loopholes once they are recognized as such.

In this context, it is important to note that treaties generally have two basic sorts of loopholes—those related to the text of the statute itself and those related to the implementation of treaty provisions. Again, the reason that GAPW has advocated for a strong implementation support unit (ISU) and other, complementary mechanisms is because we recognize that the temptations will be great—regardless of the strength of approved treaty text—to sacrifice compliance to national interest.

It is important that approved text be as free of ‘escape routes’ as possible. But even a ‘tight’ treaty without sufficient enforcement and oversight is likely to create a structure of obligations with many loopholes—some of which we can predict but others of which we haven’t yet foreseen.

We are most of the way through July and many issues remain before consensus can be assured. We hope that some of that consensus relates to the need to close loopholes within the statute and assure a process to stay one step ahead of the ‘escape routes’ that are almost certain to appear at a later stage. •

Simple logic in short supply at the ATT negotiations

Dr. Natalie Goldring

Simple logic suggests that ammunition should be treated in the same manner as all other items covered by the prospective Arms Trade Treaty (ATT). Ammunition is not a separate case; it's what makes these weapons deadly in the first place. Without ammunition, a weapon can be a club, but its killing capacity is markedly diminished.

Unfortunately, simple logic is not always in control at this conference. For example, the most recent version of the ATT conference president's text, released on Tuesday, does not include ammunition in the main list of covered items. Instead, it is under a separate section, which reads that,

Each State Party shall establish and maintain a national control system to regulate the export of munitions to the extent necessary to ensure that national controls on the export of the conventional arms covered by Paragraph A1 (a)-(h) are not circumvented by the export of munitions for those conventional arms.

The current draft language is obscure and indirect. As delegates repeatedly said Tuesday afternoon, ammunition must be included if the ATT is to be robust.

The treaty would have the most comprehensive coverage if ammunition and munitions were returned to the main list of items covered by the treaty. Exporters and importers alike would be responsible for controlling the ammunition they transferred or received.

There are admittedly challenges associated with attempting to trace the flows of ammunition over its useful lifetime. But even attempting to do so would help encour-

age governments to develop increased capacity to track the weapons and associated materiel leaving or entering their countries.

A compromise measure would be to require suppliers to control and monitor the initial export of ammunition. This would help establish the principle that international transfers of ammunition are worthy of regulation. The transfers that governments choose to track and measure in the ATT should be those they consider most important and/or most dangerous. It simply does not make sense to exclude ammunition from that list.

Some governments claim that it is impossible to control ammunition. Yet major suppliers, such as the United States, include ammunition in their list of controlled items, which are in fact tracked on export from the USA.

Fully including ammunition would also decrease one limitation of the proposed ATT, which is that it is almost entirely forward looking. It aims to establish systems to help control future transfers, rather than to control the hundreds of millions of weapons already in circulation around the world. Controlling ammunition could help control the weapons that are already in circulation and are responsible for the estimated 750,000 deaths per year globally that result from armed violence.

Arguments for setting high standards are compelling. The prospective ATT is presumably intended to last for generations. As a result, it should not be written to apply only to today's circumstances and capabilities. Instead, the treaty must also be aspirational. It should have some standards that are achievable in the near future, while also setting standards that will require longer periods of time and/or more resources for their implementation. Controlling ammunition exports is achievable now. Taking the more ambitious step of including ammunition in the core list of items covered by the treaty would show a commitment to continuing to develop the treaty over time, to ensure that it covers all types of international transfers of all types of weapons. •

Natalie Goldring is a senior fellow with the Security Studies Program at Georgetown University. She also represents the Acronym Institute for Disarmament Diplomacy at the United Nations on conventional weapons and arms trade issues.



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Why would states leave ammunition out of the ATT?

Hector Guerra | IANSA Survivors' Network

It is hard to believe that anyone, with the knowledge that of the 12 billion pieces of ammunition that are produced every year, large amounts of them feed all forms of armed violence, would not want to regulate the international movement of such items. Regulation of ammunition would undoubtedly have a direct impact on the ways in which the international community works to prevent diversion into the illicit market and the commission of atrocities.

Yet, less than three days from the end of negotiations, the latest draft paper presented at the arms trade treaty (ATT) conference has excluded ammunition, thus producing a major loophole for the resulting treaty. Over the four meetings of the Preparatory Committee and during the first three weeks of the Diplomatic Conference, calls for the inclusion of these items have been made by the majority of delegations from Africa, Latin America, and the Caribbean, representing the states most affected by gun violence and most impacted by the uncontrolled flow of ammunition. It has been continuously repeated that it is the bullets that kill, and that, according to Nigeria, “a weapon is only a weapon when there is ammunition inserted” (statement at the February-March 2011 Prep-Com). Previous draft texts presented by the President of the conference included ammunition and munitions—although the one from earlier in this conference already presented the issue in a partial way. Perhaps even worse is the fact that along with ammunition, munitions in general have been left out of the scope. When we speak about munitions, we talk about all sorts of military explosives, from hand grenades to rockets, landmines, and artillery shells.

In the first session of the day after the member states had time to analyze and consult on the draft, many States took the floor and firmly reacted to the limited scope proposed, including Nigeria, Uruguay, Côte d'Ivoire, Norway, Liberia, Guatemala, Morocco, the Netherlands, DRC, Niger, Congo, Mexico, Sierra Leone, Zambia, Kenya, , Tanzania, Germany, Iceland, and CARICOM.

Certainly, arguments have been presented on how difficult or costly it is to regulate the transfers in ammunition and munitions, but as the South African delegation mentioned, “The argument that the death, injury and suffering caused by ammunition, particularly to civilians in armed conflict and in the use of illicit small arms and light weapons, by far outweigh such administrative concerns” (statement at the February-March 2011 Prep-Com, 2011/03/01). Or as the Norwegian delegation put it, “An ATT that does not cover ammunition will not be the strong and robust treaty that the General Assembly resolution has mandated us to negotiate. We need to include small arms and light weapons as well as ammunition if we are to achieve the goals and objectives set out in that resolution” (ATT Diplomatic Conference, 2012/07/03).

We are in the final hours of the Diplomatic Conference, and one of the issues that has led to the promotion of an ATT as a way to prevent atrocities is in danger of disappearing from the final text in spite of knowledge, humanism, and reason. Ammunition and munitions have to be an integral part of the scope of the treaty in tandem with small arms and light weapons. •

Contact: survivors@iansa.org

T J K X L L R Z D G Q Q H P V
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 T T V H E L Z T L V D E Z O U
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COMBATANTS
 HUMANSECURITY
 INTERNALLY
 DISPLACED
 PERSONS
 MANDATE
 PROLIFERATION
 SECURITY
 TRAUMA
 VICTIM

Why the term “gender-based violence” must be used

Rebecca Gerome, IANSA Women’s Network; Vanessa Farr, WILPF; with inputs from Maria Butler, PeaceWomen

The Holy See and a few other states have questioned the use of the terms “gender” and “gender-based violence” and claimed that there is no agreed legal definition of the term. However, as France stated on Friday, the terms “gender,” “gender-based violence,” and “gender-based discrimination” have become very well established within the UN and within national and international legal instruments within the last decade. The examples are numerous. They include UN Security Council resolutions and UN General Assembly resolutions, such as the 2008 General Assembly resolution (A/RES/62/134), which urges states “to take special measures to protect women and girls from gender-based violence, in particular rape and other forms of sexual violence.”

UN agreed definitions and references to gender and gender-based violence

The UN Secretary-General defined **gender** in his 2002 report Women, Peace and Security as: “the socially constructed roles as ascribed to women and men, as opposed to biological and physical characteristics. Gender roles vary according to socio-economic, political and cultural contexts, and are affected by other factors, including age, race, class and ethnicity. Gender roles are learned and are changeable.”

The Human Rights Council and the Office of the High Commissioner for Human Rights have also referred to gender-based violence on numerous occasions. The United Nations Commission on Human Rights in resolution 1994/45, adopted in 1994, called for the “elimination of all forms of gender-based violence in the family, within the general community and where perpetrated or condoned by the State”. In Paragraph 18 of the Vienna Declaration of 1993, the World Conference on Human Rights stated that the eradication of all forms of discrimination on grounds of sex is a priority objective of the international community. Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated” (A/CONF.157/23). As far back as the Beijing Declaration (1995), states agreed to “adopt and commit ourselves as Governments to implement the following Platform for Action, ensuring that a gender perspectives reflected in all our policies and programmes.”

The UN Inter-Agency Steering Committee defined **gender-based violence** in 2005 in its Guidelines for Gender-based violence interventions in humanitarian settings as an umbrella term for any harmful act that is

perpetrated against a person’s will based on socially-ascribed (gender) differences between males and females. Acts of GBV violate a number of human rights principles enshrined in international instruments. Globally, GBV has a disproportionate impact on women and girls, due to their subordinate status in society and their increased vulnerability to violence. GBV varies across cultures, countries, and regions. This does not mean that all victims of gender-based violence are female. The surrounding circumstances where men are victims of sexual violence could be a man being harassed, beaten, or killed because he does not conform to the mainstream view of masculinity accepted by society. GBV includes violence against individuals based on their sexual orientation and gender identity. Numerous studies have shown how GBV is facilitated when the perpetrator is carrying a small arm or light weapon: whether male or female, people are far less likely to try to fight back when threatened with sexual violence at gunpoint than if other weapons are used.

Why is it important to refer to gender and gender-based violence?

The term “gender-based violence” recognises the broader context and some of the fundamental root causes of the violence. It allows us to offer a nuanced assessment of the kinds of abuse of power that are perpetrated when SALW are uncontrolled. This type of violence does not happen in a vacuum. The term “violence against women and children” overlooks the realities of inequality, oppression, and systematic violence. Moreover, it reinforces stereotypes of women as weak and childlike rather than recognising their strength as activists against personal and community-based violence. Most problematically, it prevents proper analysis and response to the fact that the vast majority of victims and perpetrators of gun violence in the world today are men. Because such language subtly reinforces prejudices that are culturally and socially embedded, manifestations of gendered violence continue to be accepted, tolerated, or justified—with impunity as the norm. Such violence does not always serve isolated or individual purposes. It originates in and sustains hierarchical social relations of race, gender, sexuality, and class. Globally, men account for around 80-90% of homicide victims, while women are affected in more invisible ways, which include rape, threats, intimidation and domestic violence at gunpoint.

“Where there is poverty there is armed violence. Where there are guns there is poverty,” said Michèle Pepe, a member of the IANSA Women’s Network from Côte d’Ivoire, to packed room at a side event on 20 July. Young

men in Côte d'Ivoire share common problems with young men in many parts of the world. Disempowered in every way, they face high levels of unemployment, combined with insufficient education resources, lack of investment, and easy availability of guns. Their power resides in readily available small arms and the capacity for lethality they confer. Guns have become the only way for them to subsist and assert their manhood and the legal system in the country is overwhelmed and unable to effectively sanction them. Their guns are increasingly being used to exert power over women. Rapes of women in Côte d'Ivoire are increasing at an alarming rate. The association of guns, masculinity, violence, and power creates a deadly cocktail for both men and women.

How the ATT can help prevent gender-based violence

For purposes of the Treaty preamble, goals and objectives, and criteria, the broader language of gender-based violence should be used. The term “gender-based violence” acknowledges the gender dimensions of armed violence, from the perspective of both perpetrators and victims.

At least 61 states have made statements in favor of the inclusion of GBV in the ATT criteria so far this month. These include Norway, Finland, Lithuania, Ireland, Iceland, Samoa, Gabon, Zambia, Malawi, Kenya, Sweden, Spain, Italy, Liechtenstein, Luxembourg, Uruguay, Portugal, Mexico, Korea, UK, France, Tanzania, Turkey, Peru, South Sudan, DRC, Djibouti, Somalia, Uganda, Switzerland, as well as the countries of the Caribbean Community (CARICOM) and the Economic Community of West African States (ECOWAS). It is important that the term remains “gender-based violence”.

The draft circulated on 24 July contains gender-based violence in article 5, yet the language as it stands is too weak to be acceptable. Either “gender-based violence” must be included in article 4, or the language of Article 5 must be significantly strengthened so that it contains a clear obligation not to transfer arms where there is a risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence. It cannot simply be just an element to “consider” without any obligations attached, as this weakens the human rights provisions in article 4. Although we continue to believe “gender-based violence” should be explicit in the criteria of the ATT, it would be preferable to entirely delete the mention of “gender-based violence” in article 5, if the language is to remain the same. Gender-based violence would be implicitly covered under the criteria on international human

rights law and international humanitarian law. It would then be of utmost importance that the term “gender-based violence” be included at the very least in the preamble, as well as in the goals and objectives of the treaty.

The preamble now only refers to “women and children” in paragraph 12. Not only is this formulation unhelpful, it is also inaccurate, and it represents a clear step backwards. Men, women, and children are all affected in situations of conflict and armed violence. In fact, as mentioned previously, men are the primary victims of gun homicide and serious injury. In the preamble, instead of emphasizing the vulnerability of women, it would be more effective and more accurate to emphasize their key role in conflict prevention and resolution, arms control, and peacebuilding.

Agreed language could be drawn from UN General Assembly Resolution 66/130, 65/283 and 65/69 and UN Security Council Resolutions on Women, Peace and Security (SCR 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010)) such as: “*Reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding*” and “*Recognizing the importance of the full and effective participation of women at all levels, at all stages and in all aspects of the peaceful settlement of disputes, conflict prevention and resolution*” (A/RES/65/283 preamble text). Furthermore, UNGA resolution 65/69 on “Women, disarmament, non-proliferation, and arms control” recognizes “*the valuable contribution of women to practical disarmament measures carried out at the local, national, regional and subregional levels in the prevention and reduction of armed violence and armed conflict, and in promoting disarmament, non-proliferation and arms control.*” Any or all of these texts could be referenced or drawn upon in the ATT preamble.

Finally, if the preamble of the ATT is to be consistent and comprehensive, it should include language recognizing the gender dimensions of the arms trade. For example, “recognizing the gendered dimensions and impacts of the arms trade, particularly gender-based violence, including rape and other forms of sexual violence, and further emphasizing and reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding and arms control”. Member States must not take steps backward given the gravity and urgency of preventing all forms of gender-based violence in the context of the international arms trade.

For more information, or to discuss the ideas presented in this paper in detail, please see www.reachingcriticalwill.org; www.peacewomen.org; www.iansa-women.org •

Why we need a legally-binding, gender-responsive ATT

Michèle Pepe | IANSA Women's Network; Ivorian section of the West African Action Network on small arms

I would like to share with you how small arms are affecting women in Côte d'Ivoire and to tell you what we are doing about the problem. I will tell you how an Arms Trade Treaty can support the implementation of CEDAW and UN Security Council Resolutions on women, peace and security.

Gender equality, security and economic empowerment are linked. Where there is poverty there is armed violence. Where there are guns there is poverty. It is a vicious cycle. Weapons directly prevent women from realizing our rights. They aggravate the discrimination we face.

I am from Côte d'Ivoire, and I know this personally because pro-government and rebel forces have raped and sexually assaulted hundreds of women and girls. Because the perpetrators continue to hold guns it is impossible for us to get justice. Impunity is one of our biggest challenges.

After the election crisis, sexual violence at gunpoint is being committed by all sectors of society, no longer limited to the armed forces. Outside of Abidjan, carjacking, and the rape of passengers is increasing. Easily available arms and lack of control from national authorities make this criminal violence possible. Every case we know about is the story of a woman or girl directly affected by discrimination maintained by small arms.

Côte d'Ivoire already has a thirteen twenty-five National Action Plan, but as you can see it is not being implemented. There is little political space for women. There

are only six women ministers out of a total of forty and only six women Members of Parliament out of two hundred and fifty two.

Women's groups are working on CEDAW and thirteen twenty-five, but they are limited to grassroots. A major problem is that local community activism cannot influence power and decision-making. This means our expertise is overlooked. Women's political marginalization makes it difficult for us to hold the government responsible for failing to protect us.

We cannot collect data on arms transfers. Systems to control the traffic of guns are not efficient. International arms dealers have ways to get around national laws to supply arms to anyone who wants them. No arms brokers or traffickers have been brought to justice. We want the irresponsible arms trade to end.

As you can see the lack of international and national laws governing the arms trade is creating conflict cycles. This is why we need a legally binding gender-responsive ATT: to make CEDAW and thirteen twenty-five real and achievement of the Millennium Development Goals possible.

Women of Africa are making safer homes, communities and countries. We are experts in highlighting local and national issues on small arms and women. Disarmament, arms control, peace and security processes must reflect our voices. •

SUGGESTED TREATY LANGUAGE ON GENDER-BASED VIOLENCE DRAFTED BY IANSA WOMEN'S NETWORK AND WILPF

- The **preamble** of the ATT should include comprehensive language such as "recognizing the gendered dimensions and impacts of the arms trade, particularly gender-based violence including rape and other forms of sexual violence, and further emphasizing and reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding and arms control".
- The **criteria** should require states not to allow an international transfer of conventional arms where there is a substantial risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence.
- The **goals and objectives** of the ATT should ensure that the international arms trade does not contribute to and facilitate human suffering, including gender-based violence and all other serious violations of international human rights law and international humanitarian law.

Statement of CEDAW on the need for a gender perspective in the ATT

Adopted by the Committee on the Elimination of Discrimination against Women (CEDAW) on 24 July 2012

The Committee on the Elimination of Discrimination against Women (the “Committee”) recalls that the Preamble of the Convention on the Elimination Of All Forms of Discrimination Against Women (“the Convention”) emphasizes the specific factors relating to armed conflict which hinder the enjoyment of substantive equality for women and reiterates the necessity for general and complete disarmament.

The Committee recalls that gender-based violence against women is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men. The Convention guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and on a basis of equality with men.

The Committee welcomes international efforts to negotiate a legally-binding Arms Trade Treaty (ATT) at the United Nations and recalls that the arms trade has specific gender dimensions and direct links to discrimination and gender-based violence against women with far-reaching implications for efforts to consolidate peace, security, gender equality and to secure development. The Committee urges Member States to recognize the potential gendered impacts of international transfers of arms especially illicit arms as women are disproportionately affected by armed gender-based violence.

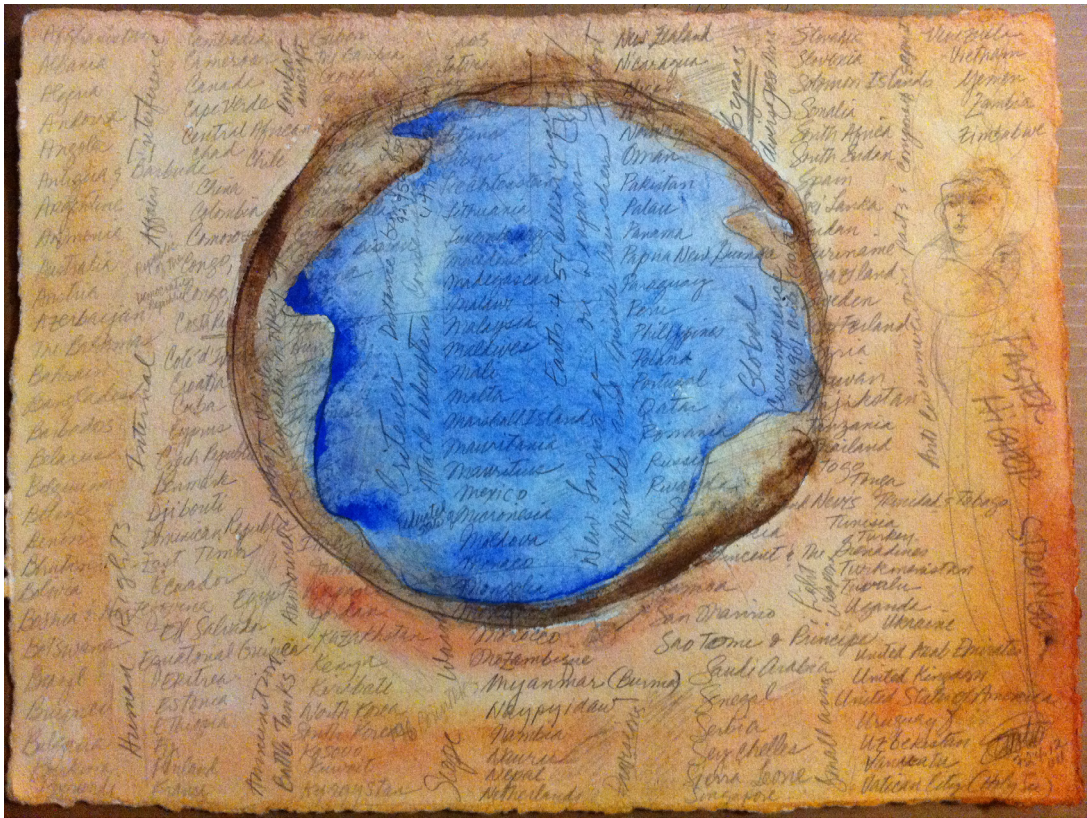
Whether in conflict or post-conflict situations, conventional arms, especially small arms, including diverted arms from the legal trade, can have a direct or indirect effect on women as victims of conflict-related sexual violence, as victims of domestic violence and also as protestors or actors in resistance movements. In times of conflict, women are increasingly deliberately targeted for and subjected to various forms of violence and abuse ranging from arbitrary killings, torture and mutilation, sexual and gender-based violence, and these forms of violence persists even after the cessation of hostilities. The proliferation of arms and ammunition perpetuate and facilitate these atrocities.

To tackle violations of women’s human rights during conflict and promote participation in post-conflict reconstruction and policy making, actions must focus on prevention of conflict and all forms of violence. Such conflict prevention includes robust and effective regulation of the arms trade (ATT) as well as appropriate control over the circulation of existing and often illicit small arms.

The Committee urges that the ATT not merely focus on the procedural authorization of arms transfers. A strong ATT should have as its primary purpose the prevention of human suffering especially among women and children, caused by the proliferation and illicit trade of arms and ammunition so as to contribute to the development of more sustainable and stable security sectors.

The Committee urges that language to prevent gender-based violence against women including rape and other forms of sexual violence through the control of arms and restrictions on international transfers, be included in all three parts of the ATT, namely the Preamble, the Goals and Objectives and the Criteria section.

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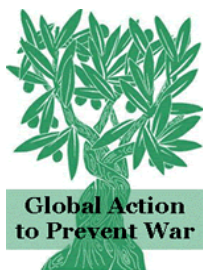
Art by Lin Evola

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