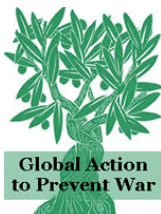


ARMS TRADE TREATY MONITOR

Civil society perspectives on the Arms Trade Treaty negotiation process

26 July 2012
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Editorial: The ATT is needed for saving lives, not profits

Ray Acheson | Reaching Critical Will of WILPF

As delegations negotiating the arms trade treaty (ATT) met behind closed doors on Wednesday, civil society was busy advocating for key changes in the draft text. As it stands, the text is unacceptable to those governments and NGOs demanding a robust treaty that would be an effective tool for preventing the deadly consequences of the poorly regulated international arms trade.

As noted in yesterday's editorial, one of the major problems with the current draft is that it allows arms exporting states to ignore human rights (article 4). They can weigh the risk of human rights violations against what they might perceive as a benefit to "peace and security". This means that governments can continue exporting arms to human rights abusers if they have other economic or political interests at play. This alone is enough to render the treaty worse than useless—as it would provide legal cover to those authorizing irresponsible transfers—but the text has additional problems.

Yesterday's editorial also highlighted some of the problems with the risk assessment process outlined in the treaty. This process is supposed to ensure that licencing authorities and governments investigate to see if the arms under question are likely to be used to commit violations of international humanitarian law (IHL) or international human rights law (IHRL). The current draft text does not mention many of the other crucial elements that must be assessed, such as the risk that the weapons will be used to commit or facilitate acts of gender-based violence or violence against children, or the risk they will be used to undermine peace, security, or development, or of the risk that they might be diverted to the illicit market. Furthermore, the risk assessment process is based entirely on the "view" of the state, thus allowing each government to interpret the risk and the criteria in its own way, without necessarily taking into account information provided by third party sources.

Another problem is that the treaty as currently drafted does not allow states to cancel arms transfer contracts or military cooperation agreements even after the ATT enters into force, regardless of whether not those transfers would violate the treaty (article 6). This undermines the purpose of the treaty and is inconsistent with its other provisions. It provides a giant loophole for states that want to continue selling weapons to governments even when it is known that the weapons will be used to commit violations of IHL or IHRL or even genocide and other crimes.

The scope of the treaty is also much too weak (article 2). Not only does not include ammunition (as was covered in several articles of *ATT Monitor Vol. 5, No. 16*), but it is also far too limited in terms of major weapons systems covered. It includes the seven categories of conventional weapon systems in the UN Register on Conventional Arms, but as several delegations have pointed out, these categories are not broad enough to capture all relevant conventional weapons. These categories also do not include any law enforcement weapons, which are often used to repress and kill civilians during armed conflict. The scope also does not sufficiently provide for regulation of transfers of parts and components, nor at all for relevant technology and equipment. This means that these items, which help maintain or upgrade weapon systems after the initial transfer has been made, will not be regulated by the ATT.

The draft text's measures on regulating arms brokers are likewise completely insufficient. Illicit brokers are often key players in transferring weapons and ammunition "to illegitimate users or destinations, including countries under UN arms embargo and conflict zones," notes Small Arms Survey. Such brokers "rely on a general lack of governmental control and screening over their activities." Article 9 of the draft ATT text merely requires states parties to "take appropriate measures, within national laws and

continued on next page

Editorial, cont'd

regulations,” to control brokering in their jurisdiction. One of the key original demands of for ATT by civil society and many governments is that it tackle the problem of illicit brokering by establishing international standards for holding companies and individuals accountable. Such standards “should include regulating their conduct and holding them liable where breaches of international law have occurred,” suggests Oxfam’s 2010 report, *Brokers Without Borders*. In addition, an ATT “could provide the framework to resolve jurisdictional issues allowing illicit brokers to avoid prosecution and encourage greater cooperation between states to stamp out such activities.”

Many other elements of the draft text need serious work. The goals and objectives of the draft treaty only references preventing diversion of arms to illicit markets or unauthorized end-users through improvement of arms trade regulations (article 1). But this is only one goal of the treaty; the other is supposed to be regulating arms transfers so that the arms are not misused by any end-user, not just illicit ones.

Another big problem is that the terms trade or export are used predominantly in the treaty. The term transfer would be more appropriate in order to capture the full range of potential activities that the ATT should and must cover. The word “trade” in particular is insufficient, as it means that weapons that are transferred as gifts or loans or through military assistance programmes would be exempt from the regulations mandated by the treaty.

The list of criticisms could go on and on. The bottom line is that this draft text is unacceptable. As delegations enter the final rounds of negotiations in this draft treaty, they must take into the account the motivating factor for all of their work: to save lives. This must be put above the desire of the arms manufacturers, brokers, and exporters to make money off of armed violence. The current draft text will not save lives, nor will it reduce the amount of human suffering caused by the poorly regulated arms trade. In fact, the document as currently written would undermine the rule of law, providing loopholes and legal cover for irresponsible arms transfers. It would be better to have no treaty at all than a treaty like that. •

Correction: Dr. Natalie Goldring’s name and the title of her article were misprinted in the Wednesday edition. The title of her article should have been “Simple logic in short supply at the ATT negotiations.”

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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.

Prescription for global health: a strong arms trade treaty

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Unregulated transfer of conventional weapons undermines socioeconomic development, including global health. Each year, hundreds of thousands are killed and millions more maimed from armed violence. Annually, resources and funding that could be spent on public health, poverty reduction, expansion of primary education, the promotion of and equality of women, and environmental sustainability are diverted to manage the care of armed violence victims.

The International Physicians for the Prevention of Nuclear War (IPPNW)'s Aiming for Prevention Campaign¹ has collected multiple "One Bullet Stories"—case studies, following the care of gunshot survivors through their hospital stay to emphasize the costs of a single gunshot injury. The first documented case was of a young boy from the Democratic Republic of Congo who was shot in the face by diamond thieves. His medical care, which included nine hours of surgical time to reconstruct his face, cost US \$6,000. This same amount of money could have been spent to fund one year of primary education for 100 children or full immunizations for 250 children. This doesn't even include the additional indirect costs of ongoing rehabilitation and follow-up care, psychological effects to the victim and his family, and lost wages.

Similarly, in Zambia, a study conducted in 2005 showed that, on average, the care of a single gunshot victim sustaining minor injury cost US \$3,000. During that time period, Zambia's annual per capita health expenditure was US \$18. This is comparable to the health care costs of over 160 Zambians to fund the cost of care for a single gunshot injury.

Another case study from Nepal found that it cost approximately 3 ½ years of a father's salary to provide treatment for his young daughter who had been hit by a stray bullet in a firefight. This was equivalent to the cost needed to fully equip an entire health center for her village.

The overwhelming burden to the health care system by the medical costs of gunshot injuries is not limited to developing nations. A study² conducted on hospital data from Maryland and New York showed that, in 1994, the average cost of hospital care for a single gunshot injury was US \$17,000. Taxpayer money was used to pay nearly 50% of this cost. The authors further estimated the life-long cost of a single hospitalized gunshot injury at US \$35,367 or, overall, US \$2.3 billion per year.

Why should we as health professionals have to choose between providing care for a single gunshot victim instead of providing care for an entire community? Given

the scarcity of resources in much of the developing world, and, in some locations, even in the developed world, this is not an exaggerated dilemma.

Strengthening the necessary requirements of sustainable development directly increase peace and security. As stated by the United Nations Secretary-General Ban Ki-Moon on 3 July 2012, upon the opening of the ATT Diplomatic Conference, "the world is over-armed and peace is under-funded." Last year, US \$1.7 trillion was spent worldwide on the military—equal to US \$249 per person. The US alone spent almost half of this total amount—US \$711 billion. In sub-Saharan Africa, the annual military spending was approximately US \$20 per person. In comparison, the annual health expenditure is US \$24 per person in sub-Saharan Africa.³

Limiting access to firearms has been shown to prevent injuries and reduce societal costs. In a later speech that same day to the press, the UN Secretary-General remarked that the lack of international standards in the trade of conventional weapons "has made it easier for [these weapons] to fuel armed conflict and crime, to commit acts of terror, and to perpetuate political repression and grave human rights violations."

Over 1700 health care professionals from across the world have called for a strong, legally-binding humanitarian-focused Arms Trade Treaty. We are on the frontlines, managing the care of those injured daily by armed violence. Every minute, one person worldwide is killed by conventional weapons. We have a prescription to the UN delegates: it is now time for you to step-up and prevent the unnecessary loss of countless lives. You must commit to a strong ATT to improve the health and future of the world. •

Notes

1. <http://ippnw.org/afp.html>

2. Cook PJ, Lawrence BA, Ludwig J, Miller TR. The medical costs of gunshot injuries in the United States. *JAMA*. 1999; 281(5):447-454.

3. Stockholm International Peace Research Institute. *SIPRI Yearbook 2012: Armaments, Disarmament and International Security*. Solina, Sweden; 2012 (<http://www.sipri.org/yearbook/2012>).

ATT gender debate: out of step with the global community?

Lily Gardener | *Reaching Critical Will of WILPF*

The conventional wisdom that war and peace are of men's domain is no longer valid. It never was true, but as the world witnesses evidence of the contribution of women to practical disarmament and arms control measures carried out at the local, national, regional, and sub-regional levels in the prevention and reduction of armed violence and armed conflict, the role of women becomes more concrete. Women will continue to play a stronger role in promoting disarmament, non-proliferation, and arms control; therefore it is only logical that an Arms Trade Treaty (ATT) includes the dimension of gender.

As many delegations have argued over the course of the ATT negotiations, and has been written repeatedly in the ATT Monitor, the arms trade affects everyone – men, women, boys, and girls – in different ways. This difference must be reflected in the text of any treaty if it is actually meant to be what governments are working towards: a “robust” and “strong” legally-binding agreement. The best way to incorporate the gendered effects of this arms trade is with the inclusion of the term “gender-based violence” (GBV) in the text of the treaty. As noted in other ATT Monitor articles, GBV recognises the broader context and some of the fundamental root causes of the violence. It allows rigorous assessment of the kinds of abuse of power that are perpetrated when small arms and light weapons are unregulated. As stated in Rebecca Gerome and Vanessa Farr's article in yesterday's Monitor, “violence does not happen in a vacuum”. Violence must be considered in the context of the origins and its hierarchical social relation to race, gender, sexuality, and class.

The ATT negotiations have seen many delegates speak about the impact of the arms trade in their countries. As also noted the Gerome and Farr article, statistics show that men account for around 80-90% of homicide victims globally and that GBV disproportionately impacts women and girls. However, there are variations to this across cultures, countries, and regions. Not all victims of GBV are female; men are harassed, beaten, or killed because they fail to conform to a socially acceptable view of masculinity. GBV includes violence against individuals based on their sexual orientation and gender identity. GBV is more likely to occur when the perpetrator is carrying a small arm or light weapon. Yet, this information is useless unless it is applied during the development of policies that can diminish the incidence of GBV. Therefore, anything other than the inclusion of GBV, such as the term “violence against women,” is unacceptable, as it will only reinforce stereotypes of women as weak and childlike rather than recognising the strength of women as active members of communities.

The inclusion of GBV in article 5 in the draft circulated on 24 July is unacceptable. To suggest that optional measures should be taken to avoid GBV, rather than obligating the state party to deny the transfer if there is a risk, is distasteful. Member states must not take steps backwards on this issue. The international community cannot accept anything less in preventing all forms of GBV in the context of the international arms trade. Therefore GBV must be included in all parts of the ATT, namely the Preamble, the Goals and Objectives, and the Criteria sections. •

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.

Not losing sight of objectivity and purpose

Katherine Prizeman | *Global Action to Prevent War*

The compilation text offered by the president of the Arms trade treaty (ATT) conference on Tuesday offers unfortunate gaps in objectivity and makes for a treaty that will provide far too much cover for irresponsible and diverted transfers. The question that has continuously plagued these negotiations is how much and how meaningfully the treaty will change national assessment practice in order to prevent the illicit and irresponsible trade in conventional arms. The lack of common international standards for regulating the international trade in conventional arms must be rectified, but it is not in and of itself enough to warrant adoption of a treaty that does not sufficiently address the humanitarian consequences of the illicit and poorly regulated trade.

Treaty provisions that are not sufficiently objective, particularly those related to risk assessment, and that are not complemented by an adequate implementation structure, will not bring about a legally-binding, effective ATT that must do much more than regulate trade, but will have real impact on the ground for those societies most seriously plagued by armed violence. A mechanism that makes little meaningful difference to national assessments of transfer applications is not worthwhile and could even undermine existing, multilateral norms and mechanisms.

As noted in paragraph 2 of the preamble in the President's text, the UN Charter promotes "the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources" (emphasis added). Moreover, paragraph 7 of the draft preamble recognizes "that development, human rights, and peace and security ... are interlinked and mutually reinforcing." It is essential not to lose sight of these principles in crafting the final treaty text. An ATT will only be as effective as its implementation, particularly in regards to how its obligations affect national assessment of authorizations. Adopting a weak legal mechanism riddled with clauses undermining objectivity in a treaty that does not address the aforementioned linkages and principles would be a serious disappointment.

The President's text offers several glaringly obvious provisions that do not contribute to the legal objectivity that a meaningful ATT requires. Paragraph 4 of article 2 calls for the maintenance of a national control list of the items covered under the scope "as defined on a national basis". Meanwhile, sub-paragraph c of section 2 under article 4 lays forth the criterion "contribute to peace and security," thus representing a serious gap in objectivity.

Unlike the other criteria, which are "negative" factors of assessment, this criterion provides room for states parties to assert that a transfer would somehow (as the basis of this assessment and circumstances to be taken into account are not detailed here) "contribute to peace and security" thus rendering the authorization "legal" under the ATT. Moreover, the entire section on "Additional Obligations" fails to provide the level of legality and objectivity that should be enshrined in the parameters. In particular, diversion and associated corrupt practices should be standalone criterion in the core set of parameters. Eradication of diversion is a central goal and objective of the treaty and should not be only an activity that states "consider taking feasible measures" against once the transfer has already been authorized. Substantial risk of diversion should be an objective, legally-binding criterion that would serve to prohibit a transfer. It is clear that objectivity in scope and criteria are so vital to the successful implementation of the Treaty, that it would be wise to include a provision that prohibits reservations related to these sections, a position supported by Mexico throughout the negotiations.

Finally, article 6, paragraph 2 provides for a serious gap in the legal implementation of the treaty's obligations. The provision states that "this Treaty shall not prejudice previous or future obligations ... and shall not be cited as grounds for voiding contractual obligations under defense cooperation agreements." This provision ostensibly permits a state to authorize an export, even if it has been shown that substantial risk exists related to any of the criteria, if that export has been agreed in a contract. This provision does not even stipulate that such a contract would need to have been signed before entry into force of the ATT.

As negotiations come quickly to a close and a final text is presented for adoption, vigilant attention must be paid now to eradicating provisions that weaken the objectivity and legality of the treaty and fail to contribute to the purpose of the ATT to combat and eradicate illicit and irresponsible transfers in an objective and consistent manner. •

Photo finish

Dr. Robert Zuber | *Global Action to Prevent War*

There will be plenty of urgent appeals and consultations before the clock on this ATT process expires late on Friday. There is still much that could stand to be fixed in the treaty language, including one or two items that have evoked great concern among diplomats and NGOs and that have been highlighted elsewhere in this *Monitor*. There will also be plenty of commentary to follow, and hopefully also assessment of our policies and strategies covering these many long months and years.

For now, the task is finishing the race, getting consensus on the most progressive language we can, and ensuring ample time for national capitals to reflect on what has been accomplished here and whether they can embrace—or at least ‘live with’—the language that has been put before them.

Many people have put a lot of energy into this treaty process and should be honored for those efforts. But we also chose to engage this struggle. And in the context of that struggle we have all made judgment calls that have had diverse—and sometimes dubious—impacts based on content, timing, or even the spirit with which proposals have been advocated.

The FOX news truck has been parked on First Avenue for most of this week, generally the only such truck on the premises. Their ‘fair and balanced’ coverage of the ATT negotiations has been a bit of an eyesore, with a steady stream of ‘experts’ whipping up a frenzy about controversies, both real and imagined. But too often the ‘coverage’ from groups other than the NRA has also lacked nuance and context.

There has been a lot of what I feel has been some generally nonsensical discussion about ‘ethical’ and ‘pragmatic’ positions regarding an ATT. For philosophers and psychologists, pragmatism is not a challenge to ethical principles and practices but rather to idealistic projections of outcomes that are not grounded in careful assessments based on empirical evidence regarding likely alternatives. Pragmatism does not ‘give in’ to negative outcomes, but resists trying to make opera singers out of people who can’t hold a tune.

In life and in policy, the ethical and the pragmatic are inextricably linked. And to avoid being like the parent who rails on about the need for children to be inoculated but fails to make a doctor’s appointment for their own child, our policy—especially at this late stage—must be grounded in a proper regard for the urgent complexities of practices as well as respect for those who seek to work through those complexities. Diplomats will almost without exception need to ‘hold their noses’ in order to get consensus treaty text. Those seeking to advise and influence diplomats at this stage had best have their own Kleenex handy.

There is an advertisement that proclaims, not without some truth, that ‘you don’t get what you deserve, you get what you negotiate.’ The sometimes mind-numbing efforts of diplomats to negotiate a viable treaty under the crushing burdens of consensus are doing what they can to strike an uncomfortable balance between the optimal and the possible. We, on the NGO side, might not entirely like the ensuing balance—indeed some of us might end up walking away instead of moving forward if some existing language is not removed—but we must also underscore that achieving some balance is the only pathway to the looming finish line.

Ethical policy requires more than ideals, but reflection on ideals, their origins and consequences. Ethics also requires willingness to hold up the mirror to our own limitations and inconsistencies and not bury reasonable assessment under an avalanche of idealistic and empirically unrealizable policies.

Our task at this point is not to concern ourselves with running the perfect race, but in getting to the finish line with a text that identifies and addresses the most egregious barriers to a fair and effective treaty and, if that happens, retaining enough good will to keep that text active, allow for its continual improvement, and attend to an array of complementary security concerns. •



Art by Lin Evola

Trade and transfers—getting to the goals

Maj Rørdam Nielsen | *Global Action to Prevent War*

As everyone who has followed the Arms Trade Treaty (ATT) process will know, the devil is in the detail. Five small letters differentiate “trade” from “transfer”. The ATT negotiating conference started out with the Chair’s 3 July 2012 paper, which stated that the treaty should apply to “all international transfers of conventional arms,” including “the transfer of title or control over conventional arms.” The definition of covered activities has since been continuously narrowed. The President’s most recent compilation text stipulates in paragraph 2.B.1 that the covered activities are limited to export, import, brokering, and transit and transshipment.

The draft treaty aims “to establish the highest possible common standards” of trade in conventional arms and “to prevent, combat and eradicate the illicit trade in conventional arms and their diversion to illegal and unauthorized end use”—not least in order to avoid that the international arms trade “contributes to human suffering”. These core goals and objectives only make sense if the treaty contains adequate provisions to achieve the goals in practice and prevents circumvention. Therefore, various delegations, such as those of CARICOM, South Africa, Costa Rica, Mexico, and Kenya, have throughout the negotiation process called for the treaty to apply to “transfers” instead of “trade” and for the criteria risk assessments to be mandatorily applied to all transfers, rather than just “exports”.

To have provisions that can achieve the treaty’s goals requires that all state parties that are in any way involved in an arms transfer have a right and obligation to stop the transfer if it would violate the criteria. This is essential as it is very likely that not all exporters will become parties to the treaty, or they might authorize an irresponsible transfer based on incomplete or inaccurate information. Importers, transit and transshipment states, states that house brokers—including transporting companies—are complicit in this process and they should not be exempt from responsibility. The more states that are responsible for preventing illegal and irresponsible arms transfers, the more difficult such transfers will be. Thus the term “export” should be replaced with “transfer” in articles 4 and 5 of the treaty—or regarding article 5, as Katherine Prizeman’s article in this edition of the ATT Monitor argues, the article better be deleted and the criteria in that section moved to article 4 so that they are captured in the risk assessment process. Throughout the draft text, the definitions of transfer activities are weak. Transport is currently not specifically covered in the treaty, even though transporting states are actively engaged and fi-

nancially invested in arms transfers. Former UN arms trafficking investigator Kathi Lynn Austin, who spoke at a side event last week, has sharply criticized the current article on brokering in the draft treaty. She argued in a press release yesterday that brokering must be defined to include all relevant intermediaries, especially transporters. Further, it should require licensing and registration of arms brokers, she said. Likewise, the research organisations TransArms and the International Peace Information Service earlier this month published a report on arms transports in which they called for the ATT to include provisions requiring registration of arms transport providers within each state party’s territory and requiring authorization requests for all individual arms transports.

To ensure provisions in the ATT that prevent circumvention of the goals means that what would normally be considered “trade” in arms, typically between an exporter and an importer, must be broadened to all transfer activities. The ATT must ensure that it captures activities such as gifts, leases, or loans. Language to the effect of “the transfer of title or control over conventional arms” in the activities section would help close this gap in the treaty text. Getting to the goals of the ATT in order to prevent the tremendous human suffering caused by poorly regulated arms transfers requires closing these significant loopholes. •

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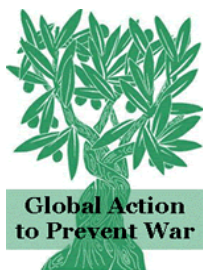
Art by Lin Evola

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