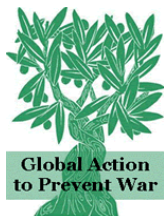


# ARMS TRADE TREATY MONITOR

*Civil society perspectives on the Arms Trade Treaty negotiation process*

**11 July 2012**  
**Vol. 5, No. 6**

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## Dispute settlement and transfer denials

*Katherine Prizeman | Global Action to Prevent War*

During Tuesday's general debate and open main committee meeting on final provisions of an arms trade treaty (ATT), the issue of dispute settlement mechanisms was brought to the fore. This is an important issue for the treaty negotiations is to consider in order to ensure the treaty's ultimate goals can be achieved. Despite the political sensitivity that would inevitably accompany transfer denials reached under the auspices of an ATT, a solid dispute settlement process and information exchange mechanism would provide the opportunity to address the circumstances that led to a denial and ultimately better achieve the goals of an ATT—to reduce human suffering caused by the unregulated trade in arms.

As the general debate continued on Tuesday morning, the delegation of Colombia noted the importance of including a dispute settlement mechanism as well as provisions for information exchange in the ATT. Specifically, Colombia's delegate called for a procedure through which an exporting country, before making a final decision regarding a transfer, can inform the importing country of the decision with reasonable time to provide information "to resolve the legitimate doubts that the exporter may have." Furthermore, the Colombian delegation suggested that the treaty incorporate an information exchange mechanism through which exporting countries notify all states involved with the details of the transit and final destination of the weapons on licenses granted and permissions denied.

There is indeed an incontestable need for transparency in implementing an ATT on the part of all member states through their national decision making authorities. However, in light of the Main Committee II session on final provisions on Tuesday afternoon, it is important to note that the issue of dispute settlement and information exchange regarding transfer denials remains a controversial one. During the third session

of the PrepCom in July 2011, member states expressed concerns over requiring states parties to notify and qualify publicly their decision to deny a transfer. The positions on such a proposal have ranged from states that are against notifications in all forms to states that see merit in this practice but feel greater clarification on those responsibilities is needed.

The Chair's paper from July 2011 proposed that each state party submit annually to the Implementation Support Unit (ISU) a report for the preceding year concerning, inter alia, "details of denied transfers and grounds for their denials, particularly highlighting cases where licensing was granted to previously denied importers." Unfortunately, the more recent Chair's paper from July 2012 no longer specifies that the ISU will serve as a repository for transfer denials, but rather focuses only on facilitating coordination among states parties, conducting outreach activities, and performing technical and administrative duties. Moreover, the new version of the Chair's paper does not specify that records on denials shall be maintained. This is an unfortunate weakening of the text that, if accepted, would seriously impede the process of transparent and consistent information exchange in a clear and codified manner based on concrete treaty text.

While the decisions involving denial of transfers under an ATT will remain a national prerogative (although must be based consistently on binding, robust, and comprehensive criteria), it is essential that the notification and information exchange mechanisms of the ATT enable states parties to address denials in a consistent, transparent, and meaningful manner such that decisions to deny transfer can result in improvement of the circumstances that led to the denial in the first place. •

## News in Brief

Ray Acheson | *Reaching Critical Will*; Katherine Prizeman and Maj Rørdam Nielsen | *Global Action to Prevent War*

The News in Brief is not meant to serve as a comprehensive summary, but is rather a brief overview of new, noteworthy, or elaborated positions or ideas on key aspects of the ATT. For a comprehensive map of government positions, see [armstreaty.org](http://armstreaty.org).

### Plenary

#### Principles

- Montenegro said the ATT will make a real difference to maintenance of international peace and security and respect of human rights and fundamental freedoms.
- Poland said the treaty should be based on “shared values, among which human life and dignity shall take their central place.”

#### Objectives

- Algeria and Bangladesh suggested the treaty is about securing not restricting the arms trade.
- Algeria said the treaty should reduce human suffering linked to the illicit arms trade.
- Ghana said the ATT must regulate the arms trade out of humanitarian concerns and not solely as a trade treaty.
- Iran said the only purpose of an ATT would be to prevent diversion to illicit markets.

#### Criteria

- Algeria argued the treaty should not include human rights or IHL or any other “arbitrary” approaches to regulating the arms trade.
- Philippines called for criteria against money laundering and corruption.
- Sierra Leone said the treaty must bind states to deny arms transfers when the treaty’s criteria are not met.

- Gabon said the treaty should prevent the transfer of weapons that could give rise to sexual violence.
- Ghana said the criteria should take into account gender-based violence, including rape and other forms of sexual violence.
- Sierra Leone said a transfer should be denied if there is a risk it will be used to perpetuate a pattern of gender-based armed violence.

#### Scope: weapons

- Bangladesh and Colombia said the ATT must allow for inclusion of future technologies.
- Gabon said the treaty must include all conventional weapons used by militaries, security forces, police, and the training associated with use of these weapons.
- Peru said the treaty must address the excessive production of ammunition and regulate its sale.

#### Scope: activities

- Algeria said the ATT must prohibit transfers to non-state actors without prior authorization from state, except for national liberation movements struggling against colonialism and foreign occupation.
- Colombia said ATT must prohibit transfers to non-state actors.
- India said ATT must prohibit transfers to terrorists or non-state armed groups.
- Iran said only import and export should be covered, and transit if the transit country’s role “can be defined at the minimum possible level”.

#### Implementation

- Algeria said all denials must be based on proof backed

## ATT MONITOR

11 JULY 2012 | Vol. 5, No. 6

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 Control Arms Campaign. PDF versions of all *ATT Monitors*, along with statements and other documents from the conference, are available at [www.reachingcriticalwill.org](http://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.**

by evidence or reports from official sources.

- Colombia called for a dispute settlement mechanism to give importer an opportunity to respond to concerns about the proposed transfer.
- Colombia said information on marking of weapons and transfers should be processed in a database for an efficient tracking mechanism.

#### *Transparency*

- Colombia called for a mechanism for exporting countries to notify states involved of the details of the transit and final destination of all weapons sold
- Colombia also suggested that exporters should notify import control offices of transit and recipient countries about licences granted and permissions denied.

#### *Reporting*

- Colombia said reporting must be mandatory but must account for capacity of small states.
- Papua New Guinea noted merits of regional reporting but also importance of individual country reporting.

#### *Cooperation and assistance*

- Colombia said cooperation should not just be financial but also refer to exchange of information, experiences, and good practices and transfer of technology.

#### *Victims' assistance*

- Ghana and Tanzania called for the inclusion of victims' assistance.

#### *Other*

- Algeria said treaty cannot just transpose export controls adopted in restricted fora.
- Burkina Faso highlighted the links between an international ATT and efforts to regulate arms at regional, national, and local levels.
- Colombia called for shared responsibility of all parties involved during cycle of life of a weapon from manufacture of destruction.
- Colombia said all weapons, parts, and components in the ATT must be marked at time of manufacture.
- Iran said the treaty must require ratification of 10 major importing and 10 major importing states for entry into force.

### **Main Committee 2: Final provisions**

#### *Entry into force (EIF)*

- Mexico, Colombia, Uruguay, and Peru proposed 30 ratifications for EIF.
- Other delegations called for higher numbers such as Ghana (60), Cuba (no less than 75), France (65), Egypt (97), Algeria (65), Sweden (65), and Iran (97).
- Switzerland called proposals for 65 ratifications "excessive," noting that the only precedent for this is the

Chemical Weapons Convention.

- Egypt called for a provision that would require the P5 states to ratify before EIF.
- Algeria, China, Cuba, and Iran said that major exporters and importers must be among those ratifications necessary for EIF.

#### *Reservations*

- Mexico, Ghana, Ireland, Uruguay, and Colombia stated that reservations should not be allowed in any form.
- Peru agreed that reservations should not be allowed, but, at the very least, should not be allowed for scope and criteria.
- Iran stated that reservations are a national sovereign right, but that such reservations cannot contradict the object and purpose of the treaty.
- Malaysia and Sweden argued that reservation allowance is useful for universality of the treaty.

#### *Amendments*

- Switzerland suggested adoption of amendments by a 2/3 majority and noted that some amendments would require adherence by all states parties such as those related to costs and meetings of states parties.
- Malaysia agreed with CARCIOM that proposals for amendments should not be circulated by the International Support Unit (ISU), but by the depositor of the treaty and related meetings on amendments should be convened by the depositor.
- Iran stated that amendments should be adopted by consensus by states parties.
- Colombia noted that adoption of amendments should use the same method as the means of adoption for the treaty text.

#### *Meetings of states parties/review conferences*

- Cuba noted that in addition to 5-year review conferences proposed in the Chair's paper, states parties should also be able to seek sessions for extraordinary circumstances.
- Malaysia explained that although the 5-year review cycle is acceptable, it should be up to the review conference to decide on Assembly of States Parties meetings whereby there is one initial Assembly to determine rules of procedure.
- Liechtenstein stated that the Assembly of States Parties should provide more detailed explanations on implementation so the treaty isn't "too detailed."
- Colombia called for an Annual Meeting of States Parties that has authority or functions every 3 or 5 years and can update provisions of the treaty in addition to reviewing provisions.

*continued on next page*

## News in Brief cont'd

### Dispute settlement

- Mexico noted that reference to the dispute settlement mechanism in the Chair's 2012 paper is insufficient and should reference a broader packet of resources such as negotiations, inquiry, mediation, conciliation, judicial settlement, regional, or other peaceful means of choice.
- Switzerland and Liechtenstein called for the inclusion of a provision that allows for last resort referral to the ICJ as is standard in international law.
- Ghana called for the formulation of a third-party arbiter capable of mediating.
- France, Italy, and Denmark noted that decisions on transfer authorizations remain under national control and, therefore, disputes arising from specific transfer decisions should not fall under a dispute settlement mechanism. Rather, consultations between states may be appropriate.
- Switzerland stated that differences of interpretations of decision making is simply two countries that have different interpretations of the criteria, which gives rise to a bilateral dispute. Some form of a supranational arbiter of national decisions is, therefore, not appropriate and the dispute settlement mechanism should focus only on obligations of the treaty (provisions under the implementation section).
- The delegations of Egypt, Colombia, and Indonesia noted the importance of a robust dispute settlement mechanism that takes into account the balance between exporter and importer states. Egypt called for a binding dispute settlement mechanism and Colombia proposed settlements and consultations so that it is not "just the authority of exporting states to make decisions." Indonesia noted that, due to different interpretations between importers and exporters, relevant consultations will need to be held to preserve equality.
- Venezuela called for the formation of a "denial committee" to which disputes related to a transfer authorization could be submitted.

### Main Committee 2: International co-operation and assistance

- Australia said that the co-operation section should emphasise exchange on best practises and lessons learnt from implementation. Spain, CARICOM and Switzerland supported this.
- Mexico said that the part of paragraph 1 on cooperation on information related to specific transfers and actors in the Chair's 2012 paper should be part of the implementation section.
- Iraq and Germany noted that there should be provi-

sions on cooperation on arms tracking.

- The US said that it found mutual legal assistance on investigations and proceedings to be important.
- Sweden and CARICOM said that a provision on exchange of experiences with legislation could be included to encourage cooperation, especially among states parties with similar legal systems.

### Nature and principles of assistance

- Germany said that types of assistance could include legislative, institution-building, administrative, and technical assistance.
- South Africa said that a concrete form of technical assistance could be capacity-building in stockpile management.
- Switzerland and Sweden emphasized that assistance be based upon request and including both donor and beneficiary in decision-making.
- Australia said that assistance should be given in line with guiding principles on aid effectiveness.

### Funding of assistance

- Norway said that states in a position to do so should provide assistance, including assistance on legal and technical implementation of treaty. US and Singapore supported this, and said it should be on a voluntary basis.
- Cuba said that all states had a responsibility to engage in assistance but that different levels of development should be taken into account.
- The African Group said that the major exporters should make assistance available.
- Australia said it would contribute 1 million dollar to a multilateral assistance fund. Côte d'Ivoire, CARICOM, and Brazil supported the idea of such a fund.
- Victims' assistance
- Samoa, Norway, Nigeria, Holy See, and Kenya called for victims' assistance to be addressed, as it was not reflected in the Chair's revised paper. Holy See said this was central to the ATT.
- US said that while it had sympathy for the victims, assistance should only be related to international implementation of the treaty.

### National contact points

- Mexico and CARICOM said that a provision for national points of contacts should not appear twice, as it was both in point 7.3 and 9.6 of the Chair's discussion paper.
- Iraq said that there was confusion on whether national contact points should be for national level implementation or international cooperation. Russia said that it thought national contact points should be for the latter only. •



## Side event report: Saferworld report *From Word to Deed*

Emma Rosengren | Swedish Section of the Women's International League for Peace and Freedom

In a side event co-organized by Saferworld and the Ministry for Foreign Affairs of Finland, Saferworld launched its new report *From Word to Deed: Proposals for an effective Arms Trade Treaty implementation regime*. The findings of the report were discussed by a panel chaired by the head of the ATT delegation of Finland, Ambassador Riitta Resch.

Robert Parker, Saferworld's Director of Policy and Communications, emphasized that while the report aims to address certain elements of a successful implementation process for the Arms Trade Treaty (ATT), other aspects are likely to be identified and explored during and after the remaining weeks of the negotiation conference. He also identified key findings of the report, including specific recommendations on reporting; national implementation; information exchange and international co-operation; consultation on implementation and compliance issues; international assistance; and the International Support Unit. In conclusion, the report shows that a robust system of reporting in a transparent manner is essential in order to ensure a successful treaty.

William Malzahn, senior coordinator at the US Office of Conventional Arms Threat Reduction, argued that with the limited time available to negotiate the ATT, it is necessary to aim for a treaty that is not too detailed, rather pinpointing what should be included than specifying how it should be done. For example, since a detailed reporting form would limit the possibility to improve reporting systems in the future, Mr. Malzahn argued that a reporting form should not be developed by this negotiation conference. Furthermore, Mr. Malzahn also argued that the ATT should not be considered to be an arms control or disarmament treaty; that it should not address issues concerning victim assistance; and that it does not need a large secretariat. Instead, he stressed that the ATT should provide a very basic set of principles guiding states when they make decisions about arms transfers.

In contrast, Ambassador Eden Charles, Deputy Permanent Representative of Trinidad and Tobago to the UN in New York, said that a treaty is as strong as its implementation regime, which is why a robust implementation regime needs to be enforced. He also highlighted that details are important, and that a treaty must include enough information to guarantee its implementation. If the ATT does not provide a well thought through implementation regime, its effectiveness will be undermined. According to him, state parties must be required to create national legislation ensuring the implementation of the treaty, and to establish national focal points to ensure an administrative framework. In addition, an international support unit embodied in a secretariat must be founded in the treaty ensuring that reports do not get stuck in a closet—they should be available in order to monitor compliance. Ambassador Charles also spoke about confidence-building measures and about the necessity to give a third party the task to resolve disputes. According to him, the ATT should be detailed enough to ensure common international standards for the trade of all conventional weapons, including small arms and light weapons and ammunition, leaving no loopholes behind.

The important issue of how the ATT could help protect human rights was raised during the Q&A session. Ambassador Charles emphasized that the treaty should include language on human rights violations in general, and specific violations such as gender-based violence in particular. Mr. Malzahn argued that even if treaty criteria are well thought through, there will still be different types of interpretation which means that no objective standards can be guaranteed by the treaty. Mr. Parker stressed that this issue highlights the importance of transparency and reporting, arguing that with a strong implementation regime the treaty can help addressing human rights violations.

See [www.saferworld.org.uk](http://www.saferworld.org.uk) for the report. •

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BULLET  
FIREARMS  
GRENADES  
HANDGUN  
SHELL  
TORPEDOES  
RIFLES  
PISTOLS  
MACHINEGUN

**Side event report: Le Champ d'Application des Matériels***Malin Nilsson | Swedish Section of the Women's International League for Peace and Freedom*

Together with Amnesty International, the Permanent Mission of France to the United Nations organized a side event to discuss issues related to the scope of the Arms Trade Treaty (ATT). The session was chaired by Seydi Gassama, Director of Amnesty International Senegal, and panelists included Jean-Hughes Simon-Michel, Ambassador and French Permanent Representative to the Conference on Disarmament; Georges Guillermou, Action Sécurité Ethique Républicaine (ASER); Sergio Finardi, Transarms; and Oliver Sprague, Amnesty International UK.

Mr. Simon-Michel opened the discussion by declaring that for the ATT to be efficient, its scope needs to be extensive. The ambassador particularly highlighted the need for the treaty to cover small arms and light weapons (SALW) and re-iterated that they are in fact “the real weapons of mass destruction”. Emphasizing that the ATT is not a treaty of interdiction but of regulation, Mr. Simon-Michel concluded that all kinds of arms transfers should be submitted to control.

Mr. Guillermou called for a better balance between law enforcement and human rights. While it is important to make a distinction between warfare and the maintenance of public order, Mr. Guillermou reminded the audience that the same types of weapons that are used in conflict are also used by law enforcement. Education, training, and clear regulations are therefore crucial components in developing responsible and professional police forces that can maintain order while respecting human rights.

According to Mr. Finardi, the ATT should require states to monitor and report on transport services. While the arms supply chain is regulated by many states, there is an urgent need to develop common standards and to achieve uniformity in reporting. Suggesting that such requirements are unlikely to be agreed upon in the coming weeks, Mr. Finardi urged delegates to start discussing the issue as soon as possible. Mr. Finardi also stressed that the issue of transport services is not just a technical issue for specialists to discuss but a crucial component in the protection of human rights.

Finally, Mr. Sprague argued that in order to save lives and uphold the rule of law and human rights, the ATT needs to capture all of the items, equipment, and technology that can be used to violate international law, and all the transactions and supporting activities that allow such transfers to take place. Mr. Sprague was especially concerned over the potential omission of weapons, munitions, and armaments used for internal security and law enforcement operations. As such equipment is often already regulated within national control systems, there is no apparent reason why it should not be included in the ATT. Touching briefly on the scope of transactions, Mr. Sprague called for the ATT to require strict regulation of all forms of international trade, transfers and transactions in conventional weapons including exports, imports, re-exports, transits, transshipments, temporary imports, state-to-state transfers, gifts, sales, loans, leases, and essential services to complete transactions. •



**SECURING WOMEN'S RIGHTS  
AND GENDER EQUALITY IN THE ATT**

**Thursday, 12 July 2012  
1:15–2:30**

Co-sponsored by the Permanent Mission of Finland to the UN,  
Women's International League for Peace and Freedom,  
Amnesty International, and IANSA Women's Network

**Permanent Mission of Finland to the UN  
866 UN Plaza, Suite 222**

*Light lunch will be served*  
Contact: [gabriella@reachingcriticalwill.org](mailto:gabriella@reachingcriticalwill.org)

## Assisted living

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

One of the things that we at Global Action to Prevent War find so encouraging about the UN Programme of Action on small arms and the ‘Matching Needs and Resources’ initiative through the Group of Interested States process is the emphasis on state-to-state assistance on a wide variety of security tasks that help make the world a safer place. From securing borders and drying up stockpiles to creating complementary technologies that allow countries to trace weapons collaboratively, the many ways in which states have cooperated towards reducing illicit arms flows and protecting populations gives us energy and hope.

Needless to say, we are still far from reaching our security goals. If we are going to eventually solve the problems associated with illicit arms, diverted transfers, and

about what states want, not what they are willing to consider (or even contribute) in order to get a treaty finalized. It is in the private negotiating sessions where the real give and take occurs—and where commitments to future cooperation and assistance are either enhanced or undermined.

One of the phrases that we have overheard often this week is ‘we’ll get there.’ We’ll get to a treaty. The questions remaining, of course, relate to the kind of treaty we will have, the possibilities that it opens up in the longer-term for transparent and cooperative efforts to eliminate the diverted trade and, perhaps more importantly, the impact of the negotiations on our collective ‘taste’ for assistance. An ATT is not distinct from other security obligations under discussion at the UN. Nor, as Colombia



other threats to human security, we will need more fora for cooperative exchange, not fewer. And, presuming the wishes of some states to ‘separate’ cooperation and assistance within the treaty, we will then need more opportunities for all governments to share what they have—funding, best practices, technical resources, and more—to help build a sustainable architecture in which weapons that are currently out of control are brought into a viable, reliable, secure framework.

General statements, which tend to be the least nuanced and collaborative of national positions, are also rarely punctuated by concessions. Nor are they often delivered in a spirit of interaction and dialogue with other statements made from the floor. The statements are mostly

intimated in its statement, is an ATT likely to reach its desired goals without firm commitments to ‘assisted living’ by states and other key stakeholders.

The continued existence of the UN is testimony to the recognition—often begrudging—that all states require cooperation and assistance if we are ever to create and maintain a structure that allows us to live in genuine peace and prosperity. An ATT can contribute to these goals, but perhaps its core achievement at the end of this month will not be its legal language, but the preservation and enhancement of the cooperative exchanges needed to translate such language into dependable, effective, and transparent practices on transfers. •

## ATT MONITOR 5.6

### Calendar of events for Wednesday, 11 July 2012

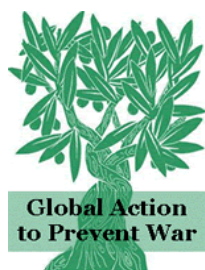
When	What	Where	Who
9:00–10:00	NGO Presentations	Conference Room 1 North Lawn Building	
10:00–11:30	Main Committee 1 (open): Goals and objectives	Conference Room 1 North Lawn Building	
11:30–13:00	Main Committee 2 (closed): Scope	Conference Room 1 North Lawn Building	
13:15–14:45	Inclusion of Parts and Components in an ATT	Conference Room 1 North Lawn Building	ForUM, Permanent Mis- sion of Norway to the UN, Forum for Environment & Development (ForUM) Contact: Siri Luthen siri.luthen@forumfor.no
15:00–18:30	Main Committee 1 (open): Preamble/principles	Conference Room 1 North Lawn Building	
15:00–18:00	Main Committee 2 (closed): Implementation	Conference Room 4 North Lawn Building	

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**WOMEN'S INTERNATIONAL LEAGUE FOR  
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international action network on small arms



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