

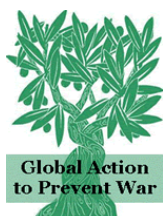
ARMS TRADE TREATY MONITOR

Civil society perspectives
on the Arms Trade Treaty
negotiation process

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The failure of consensus

Ray Acheson and Beatrice Fihn | *Reaching Critical Will of WILPF*

The events of Thursday evening mark the second time that governments have failed to adopt the Arms Trade Treaty (ATT) by consensus.

Drama erupted on the last day of the final UN Conference on the ATT when Iran, the Democratic People's Republic of Korea (DPRK), and Syria objected to the adoption of the treaty text. After a period of confusion and consultations, the three states reiterated their intention to block its adoption, citing among other things the text's imbalance between importers and exporters and the failure of the text to incorporate their proposals.

Later on in the evening, several other countries indicated they would not support the adoption of the current text—though they had not joined Iran, DPRK, and Syria in blocking it. These countries included Bolivia, Cuba, Indonesia, and Venezuela. In addition, Armenia, Algeria, Belarus, India, Nicaragua, Pakistan, Russia, and Sudan, as well as the Arab Group, expressed serious reservations about the text.

The delegation of Mexico, in an attempt to salvage the conference, declared that there is no definition of consensus inside the UN and encouraged the President to proceed with adoption of the text without a vote. A number of states supported this proposal, but the governments of Russia and Iran objected. Other states such as China and India also opposed any “manipulation of the rules of procedure.” The President ruled that consensus had not been reached and thus the treaty could not be adopted.

The Liberian representative, lamenting for the victims of armed conflict, said the

UN had become a victim of its own rules of procedure.

Indeed, some in civil society as well as governments have repeatedly warned that blind faith in, and strict interpretation of the consensus rule has badly damaged UN-affiliated disarmament and arms control processes.

The abuse of the rule of consensus by a handful of states has played a significant role in preventing progress on reducing the human suffering caused by weapons. The failure to adopt an Arms Trade Treaty is just the latest example of this.

The last multilateral treaty on weapons that was adopted by consensus within the UN was the Chemical Weapons Convention in 1992. Since then, the international community has failed over and over again to adopt treaties with this rule.

The abuse of the consensus rule has led to the paralysis in the Conference on Disarmament, which has failed to even start negotiations on disarmament for over fifteen years, let alone complete any treaties. And if agreements have been reached, it has led to lowest common denominator outcomes, like the United Nations Programme of Action on small arms and light weapons (UNPoA), which while establishing some important precedents, was undermined by the demands of a few skeptical states for weaker provisions and a non-legally-binding status. As a result, the review cycle of the UNPoA is often composed of merely a reiteration of support for the existing framework rather than serious evaluation of its practical implementation and identification of areas of possible improvement and future development.

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The failure of consensus, cont'd

The rule of consensus in the ATT process meant that the countries pushing for a strong treaty made several compromises during negotiations in order to bring more skeptical states on board. Thus the treaty text contains substantial limitations and loopholes. Its scope is very narrow, providing only for consideration of a limited number of weapon systems and transfer activities. Its provisions covering ammunition, munitions, parts, and components are not comprehensive and it does not provide for any increased transparency in the international arms trade. There are risks that, without proper interpretation and implementation, the treaty could actually legitimize rather than stigmatize irresponsible transfers. See ATT Monitor 6.9 for a comprehensive overview of these flaws.

However, the treaty does require exporting states to assess the risk that the weapons will be used or diverted for the use of committing violations of human rights or IHL, for committing or facilitating acts of gender-based violence or violence against children, or for contributing to terrorism or transnational organized crime.

The ATT process has set new norms against transferring arms, and the treaty must now be implemented in accordance with the strongest possible interpretation of its provisions in order to adequately contribute to reducing human suffering.

But the ATT process also highlighted once again the failure of consensus.

While some governments argue that the rule of consensus protects their security interests, it in fact functions to undermine the security of the majority—both governments and peoples—that must rely on the rule of law rather than the balance of terror to protect them.

This state of affairs negates a basic principle of the UN and especially its General Assembly—the sovereign equality of states—by allowing the interest of one or a handful of states to trump the interests of all the others. The proper exercise of sovereign choice is when a state decides whether or not to ratify an international agreement, not in being allowed to prevent that agreement from ever being achieved.

In stark contrast to the failures of the consensus rule, significant achievements such as the Mine Ban Treaty (1997) and the Convention on Cluster Munitions (2008) have been made when avoiding such rules. These treaties have banned a specific category of weapons and created strong norms of behaviour among the international community. Despite not being negotiated by consensus and

not yet having yet reached universal adherence, these treaties have led to a virtual halt or at least a significant decrease in the global trade in the weapons they banned, even among states that still refuse to officially join the treaty.

Unanimous agreements are important goals, but cannot be pre-conditions that prevent all progress. Given the plethora of current disarmament and arms control challenges demanding urgent action, UN processes operating by consensus must evolve or they will eventually—soon—become obsolete.

The opportunity to adopt the ATT has not yet been lost. Kenya on behalf of Argentina, Australia, Costa Rica, Finland, Japan, Mexico, New Zealand, Nigeria, Norway, the United Kingdom, and the United States introduced a draft resolution to forward the draft text to the General Assembly for adoption. The draft resolution calls for the General Assembly to adopt the ATT, requests the Secretary-General to open it for signature on 3 June 2013, and calls upon states to consider signing and ratifying the treaty.

The General Assembly will convene a meeting on 2 April, to which the President of the negotiating conference is to report. It is anticipated that the General Assembly resolution circulated by Kenya will be considered at that meeting.

As Nigeria's delegation said last night, the Arms Trade Treaty is an opportunity for "enhancing the rule of law against the rule of the gun." A handful of countries should no longer be allowed to hold back the rest of the international community in tackling some of the most dramatic problems of our age. The failure to adopt an Arms Trade Treaty shows that the international community could do better by avoiding the rule of consensus and should refrain from putting such conditions on any future disarmament and arms control negotiations.

This article draws upon a civil society presentation on disarmament machinery and consensus, which was drafted by Reaching Critical Will and supported by a large number of NGOs and was delivered to the UN General Assembly First Committee in October 2012. •

**THE FINAL EDITION OF THE ATT
MONITOR WILL BE OUT ON
WEDNESDAY, 3 APRIL 2013**

News in Brief

Katherine Prizeman | *Global Action to Prevent War*

Action taken on the draft arms trade treaty text

- DPRK, Iran, and Syria “objected” to the adoption of the “draft decision as contained in the text.”
- Ambassador Woolcott suspended the meeting for consultations with those states that objected. Iran and DPRK raised their flags when the question was put forth whether or not there was consensus.
- After consultations, Iran reiterated that it objected to the adoption of the draft, explaining that this meant, “There is no consensus” as the text can be blocked “by those states that have strong objections.”
- The DPRK reiterated that it was blocking the draft decision stating, “This ATT is not balanced and is not consensual.”
- Syria formally objected to the adoption of the text and said its national concerns “were not taken into consideration” and it could not be part of “an artificial consensus.”
- Iran cited omissions of its national demands—a prohibition of transfer to those states that engage in acts of aggression and references to the principle of the right to self-determination and territorial integrity.
- The DPRK called the text “risky” and said it could be politically abused, particularly with regards to the references to arms embargoes and the human rights provisions.
- Syria recalled 7 proposals that it said were ignored in the text, including a reference to states under foreign occupation, a prohibition against transfers to non-state actors, an article of relevant definitions, and a reference to crimes of aggression.
- The DPRK, Iran, and Syria also said that the text remained imbalanced and served to protect the rights and interest of exporting states.
- Syria called for “more time for work and negotiations in a serious manner” on an ATT that would provide balance, equality, and justice among member states.
- Consultations were also held to amend the conference report. The adopted report of the Conference stated, “At the conference’s 17th meeting on 28 March, the President proposed for the Conference’s adoption, by consensus, A/CONF.217/2013/L.3, to which a draft text of the arms trade treaty was annexed. The President concluded that, in accordance with rule 33 of the rules of procedure, there was no consensus and the draft decision was not adopted.”

Reaction to blocking of consensus and issues of procedure

- Mexico said the overwhelming majority of states present were ready to adopt the text and that it should be adopted without a vote, “in the understanding that there is no definition of what consensus is in the United Nations.”
- Botswana, Chile, Colombia, Costa Rica, ECOWAS, El Salvador, Guatemala, Japan, Madagascar, Nigeria, Papua New Guinea, Paraguay, Peru, South Sudan, and Tanzania supported the Mexican proposal.
- Chile said the “general sense of the room” indicated there was consensus.
- Costa Rica said that with “a view to the purposes and interest of the international community” the conference should proceed to adoption.
- Russia strongly opposed the Mexican proposal and called it an “unacceptable manipulation of consensus” and a “colossal danger to international relations.”
- Sudan supported Russia’s position on consensus.

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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, cont'd

- Syria said there was a legal definition of consensus that was accepted by all diplomats and any attempted procedural maneuvering cannot reconcile points of view.
- India said that the implication that there is no understanding of consensus is grave and that the concept was well understood and operated in disarmament negotiations.
- China reiterated its support for consensus and said it was “disturbed” by the atmosphere of the room noting that states cannot violate the rules of procedure and “jeopardize good multilateral tradition.”
- Venezuela criticized the “artificial deadlines” set in negotiating, which prevented in-depth discussions necessary to reach consensus.
- France called the block a “deplorable decision” by three sanctioned states that continue to “deny international law.”
- Liberia said it was “a sad day for the UN” as it became a “victim of its own rules of procedure.”

Proposal to bring the current text to the General Assembly

- Kenya, on behalf of Argentina, Australia, Costa Rica, Japan, Kenya, Mexico, New Zealand, Nigeria, Norway, the UK, and the US, pledged to send a letter to the Secretary-General requesting the draft text be brought to the General Assembly for adoption and be opened for signature on 3 June 2013.
- 32 states explicitly supported the Kenyan proposal to take the text to the General Assembly for a vote: Argentina, Australia, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, El Salvador, Finland, Germany, Guatemala, Ireland, Italy, Japan, Kenya, Liberia, Madagascar, Mexico, Netherlands, New Zealand, Nigeria, Norway, Paraguay, Papua New Guinea, Rwanda, South Sudan, Spain, Sweden, Tanzania, United Kingdom, United States, and Uruguay.
- CARICOM and Morocco called for consensual adoption of the text in the GA.
- Seven states stated that they would not support the adoption of the current text, including Bolivia (would reserve the right to make a final decision), Cuba, DPRK, Indonesia, Iran, Syria, and Venezuela.
- The Arab Group, Armenia, Algeria, Belarus, India, Nicaragua, Pakistan, Russia, and Sudan expressed serious

reservations over the text and indicated a re-evaluation of next steps would have to be taken.

Comments on substance of the draft text

- ECOWAS expressed concern over the scope of the Treaty, the lack of reference to unauthorized end users, and the retention of “overriding risk” and defence cooperation agreements.
- Morocco identified shortfalls in the text particularly in the principles section.
- India said the text falls short of expectations to produce “a clear, balanced, implementable Treaty able to attract universal acceptance.”
- India said the text did not reflect many of its proposals—references to non-state actors and acts of terrorism and a balance between exporters and importers.
- India said it would evaluate the text from its perspective as an importer state and would make sure it does not affect any defence cooperation agreements it has entered into.
- Pakistan said it would “reassess the final product in greater detail” and that the text’s shortcomings included a failure to reference arms production, a strong accountability mechanism for exporters, and a section on definitions.
- The Arab Group said the text does not take into account its demands including a principle of the alienable right of self-determination for peoples under foreign occupation, a technical cooperation fund supported by the major exporting states, and an arbitration mechanism.
- Russia underscored its remaining issues with the text, which include the lack of a prohibition against the transfer of arms to non-state actors and ambiguity in coverage of humanitarian issues, particularly article 6(3).
- Armenia said it did not support the elevation of diversion to a separate article.
- Cuba said the lack of a prohibition to non-authorized users is a critical omission that undermines the treaty and hampers effectiveness and that principles must be in the operative section of the text. •

Distance runner

Dr. Robert Zuber | Global Action to Prevent War

Let us be clear about this: the Arms Trade Treaty (ATT) that will soon to come to pass is historic, but not necessarily epic. Ambassador Woolcott and his team (including the diplomats who chaired thematic consultations) did a masterful job of staying true to their mandate—a treaty with some robustness crafted in accordance with consensus provisions. We're all tired, but we're not nearly done yet, and for reasons beyond the blocking of consensus that we witnessed yesterday.

The results of this treaty process are akin to a tie in football. There are no bragging rights and no one in their right mind (save perhaps for a few large or suspicious states that drew many red lines and had most or all of them all ultimately met) can be completely satisfied with the outcome. This has been such an expensive process—in funding, in political capital, in damaged relationships, in so much unfinished business elsewhere in the UN system—that frankly it is hard to see how the result has justified those costs up until now.

Moreover, we can expect that a number of states will find a way, before or after Tuesday, to create distance from this treaty. Some are already making plans to exploit loopholes in the text, of which there are still too many. Some have dramatically created distance in formal plenary. Others will do so through national legislative processes. Some have already made it clear, at least implicitly, that as hard as they have fought to eliminate provisions that they see as technically weak, politically unfair, or otherwise risky, they have little intention of abiding by the treaty anyway. There are many 'exit' signs for this process, all clearly marked, and a number of states are opting to keep them firmly in their sights.

For the states (hopefully many) that decide to make this treaty epic as well as historic, there is distance to consider of another kind—the 'distance' that separates the paper treaty from a viable, transparent, reliable culture of implementation. This is a point that we have made over and over, and we will continue to do so with every willing diplomatic ear we can find. The covenant that many of us made with victims of diverted transfers must be honored to the best of our ability. This has some relationship to ratification, but more to the development of meaningful avenues for sharing capacity, information, best practices and a wide range of other services between and among states. Of course this implies a commitment to organizing and supporting structures that can leverage and 'house' robust capacity engagements.

There are times when this treaty process has reminded me of a marathon runner who made insufficient preparations for the race and ended up setting off towards the finish line in dress shoes and a sports coat. These choices might be sufficient for the starting gate, but they offer less and less functionality as the race proceeds.

I fear we are not properly dressed to run this race. We haven't thought through (indeed in some instances we have refused to think through) the long term implications of an historic ATT that needs to become an epic contribution to ending diverted and irresponsible transfers. Perhaps the Disarmament Commission in April can explore some 'options for epic'. The more diplomats are able to think through the implications of this treaty in as many forums as possible, the sooner our culture on transfers will match our aspiration to end diversion once and for all. •



Reaching Critical Will

