

# ARMS TRADE TREATY MONITOR

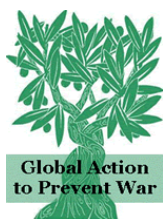
Civil society perspectives  
on the Arms Trade Treaty  
negotiation process

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## Looking to the future of the ATT: shifting attention to implementation

Katherine Prizeman | *Global Action to Prevent War*

After more than a decade of working towards a robust and comprehensive arms trade treaty (ATT), relevant stakeholders can now mark a conclusion to the first step in this process. This was an imperfect process that yielded an imperfect treaty. Nevertheless, the task now is to take what has been adopted and ensure that it has the most effective impact possible so that the human suffering caused by the illicit and unregulated arms trade—the original purpose of and impetus for this process—is prevented to the greatest extent possible.

### Adoption of the treaty text

Last week, delegates to the “Final Diplomatic Conference on the Arms Trade Treaty” were unable to adopt, by consensus, an ATT due to formal objections by the Democratic People’s Republic of Korea (DPRK), Iran, and Syria. But the text was brought to a vote on Tuesday, 2 April through a UN General Assembly (UNGA) resolution sponsored by more than 100 states. An overwhelming majority of UN member states voted in favor of this resolution, thus adopting the ATT text. The final tally was an overwhelming 155 states in favor, 22 abstentions, and three votes against (DPRK, Iran, and Syria). (Angola, which abstained during voting, later switched its vote to in favour.)

The adoption of the ATT at the conclusion of these two weeks, even if it was a few days after the close of the Diplomatic Conference, was surely due in part to the strong leadership and good management of the President of the Conference, Ambassador Peter Woolcott of Australia. Ambassador Woolcott was able to bring forth a text that had enough support to garner easy passage quickly in the UNGA.

However, not all states were satisfied enough with the text to vote in favor of its adoption. After Tuesday’s vote, the so-called “skeptics” reiterated their well-known concerns and opposition to the text, noting substantive omissions and dissatisfaction with the process. The delegations of Belarus, Bolivia, Cuba, DPRK, Ecuador, Egypt, India, Indonesia, Iran, Nicaragua, Russia, Sudan, Syria, and Venezuela were among those that took to the floor to offer explanations of vote (EOV).

Several of these delegations continued to regret the absence of a prohibition against the transfer of arms to unauthorized non-state actors, references to the principle of self-determination of peoples under foreign occupation, an independent section dedicated to definitions, and an accountability mechanism for exporting states. These states also expressed dissatisfaction with the overall imbalance of the text in the favor of exporters and, thereby, the possibility for political manipulation. The Russian delegate reiterated his delegation’s specific concern over the language of article 6(3) related to the knowledge-based test for atrocity crimes. Moreover, the delegations of Ecuador and Pakistan warned against attempts to re-define consensus and the Egyptian and Chinese delegations warned against setting a precedent of forcing a UNGA vote in such processes. Many of these delegations also noted that they would reserve the right to re-examine the text and its possible implementation back in their capitals.

On the other hand, many states expressed robust support for future development of the ATT and its strong implementation, support that will be crucial for the ATT’s future effectiveness. A statement

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*Looking to the future of the ATT, cont'd*

from a diverse group of 98 states, delivered by the delegation of Mexico, noted, “At the beginning of this process we set out to make a real difference in people’s lives. This continues to be our commitment, which we will carry out through the implementation of this Treaty.” Indeed, “making a difference” is the sincere hope of this Treaty. Thus, attention must now shift to implementation. These 98 states also reinforced their commitment to making the Treaty stronger through implementation. In addition, the original “co-authors” of the first ATT resolution in the UNGA—Argentina, Costa Rica, Finland, Japan, Kenya, and the UK—also offered a joint statement noting that adoption of the text is just “one landmark” and the responsibility to support implementation remains.

**Looking back over the process**

The ATT text represents a convergence, albeit a compromised one, of the majority view that the arms industry needs regulation in the form of a legally-binding instrument. Undoubtedly, the text and the process that came before it have represented the emergence of new international norms that the transfer of arms must be denied when there is serious risk of violations of international humanitarian law (IHL), international human rights law (IHRL), and when there is a likelihood that such arms would undermine peace and security. Furthermore, the undertaking of the ATT process has also underscored the need for greater transparency and accountability in the arms trade, bringing it out of the shadows and more prominently in the public domain. It is clear that the ATT writ large has been a worthy endeavor, if flawed, in attempting to consolidate the international drive towards these goals. The treaty has the potential to serve as a useful tool to continue to work towards these goals of reducing risk and increasing some levels of transparency.

Nevertheless, despite the good will of many of the stakeholders that have been dedicated to this process over the last decade, undisputed victory cannot be claimed. The text is not the ideal iteration of what an ATT could be or even the version that the group of 116 states called for in a joint statement during the second week of the Final Conference. These states called for a treaty with a comprehensive scope of items and activities, reflective of existing international legal obligations and norms, and one that enhances transparency and prohibits the transfer of arms when there is “substantial” risk of serious violations of international law, including IHL and IHRL or risk of diversion. Unfortunately, the text’s provisions do not live up to these standards nor fulfill the calls from the vast

majority of the governments, international organizations, and civil society groups. This is, of course, in part due to the tremendous compromising power of consensus.

Indeed, the text that has been adopted is a product of a consensus process whereby progressive states had to compromise to keep certain states “on board” with the final product. Any process that is subject to this constraint will indubitably be forced much closer to the lowest common denominator than the highest aspirations, even if the majority of states support the latter. The ATT process has been no exception, with the concerns and interests of a few states being reflected despite opposition from most other states (in particular, the retention of “overriding risk” and the exclusion of ammunition/munitions and parts and components from the full scope of the treaty).

The question becomes: is the text that has been adopted going to, in practice, not only set norms and goals, but positively change arms transfer policy so that it will make a difference in the lives of those who suffer armed conflict and armed violence? Ultimately, the jury is still out. As many states and civil society representatives have noted, the adoption of a treaty is not a victory in-and-of-itself, but step one of a longer process. The real work of evaluating its impact will have to begin immediately. Therefore, the work of the Conference of States Parties (CSP), the national implementation of treaty obligations, and the ongoing interpretation and implementation of its provisions will be all the more important.

**A final look at the text**

Many significant issues remain unchanged and new ambiguities have been introduced, making the treaty much less reflective of the majority opinion of states and more reflective of minority interests. Nevertheless, positive aspects of the treaty deserve underscoring in terms of looking forward to implementation:

- Ammunitions/munitions, parts, and components are covered by prohibitions and export assessment, and are required to be regulated by national control systems.
- Prohibitions have been set forth that require denial of authorization of transfers if there is knowledge that such arms would be used for the commission of mass atrocity crimes, including genocide and crimes against humanity, as well as war crimes and attacks against civilians.
- Binding criteria for export assessment include if the transfer would undermine peace and security, facilitate serious violations of IHL or IHRL, acts of terrorism, or

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*Looking to the future of the ATT, cont'd*

acts relating to organized transnational crime. Moreover, the text also includes a binding criterion for preventing gender-based violence (GBV). States shall not be permitted to authorize the transfer where there is an “overriding risk” the weapons will be used to commit or facilitate GBV.

- A detailed article on diversion lays forth measures that states parties should take in cooperating with one another in order to address diversion risks and enhance the practice of effective anti-diversion measures.
  - States parties involved in transfers must take measures to prevent diversion of items in the scope.
  - The provisions on international cooperation encourages that states parties jointly support others in investigations, prosecutions, and judicial proceedings in relation to violations of national measures pursuant to the treaty. Likewise, states parties are encouraged to provide assistance in concrete areas related to the arms trade, notably stockpile management, model legislation, and disarmament, demobilization and reintegration programmes (DDR).
  - The CSP has the ability to review implementation of the treaty, including developments in the field of conventional arm as well as to consider issues arising from the interpretation of the treaty. This thus allows, at least in a limited fashion, that the treaty can be adjusted to respond to evolving technological and security advances.
  - Amendments can be adopted, as a “last resort,” by a three-fourths majority should adoption by consensus fail.
- Despite the retention of these positive provisions, some loopholes and weaknesses still remain that will continue to pose challenges in the implementation of the ATT. These weaknesses and loopholes will have to be dealt with, to the greatest extent possible, during the follow-up meetings of the CSP.
- Ammunition/munitions and parts and components are not covered by the obligations under import, brokering, transit or trans-shipment, or reporting.
  - The “floor” of the definitions of the items in the scope is limited to the UN Register of Conventional Arms and “other relevant United Nations instruments” at the time of entry-into-force and, therefore, states can “freeze” definitions established more than two decades prior.
  - Non-commercial activities such as gifts, loans, and leases are not expressly covered under the definition of “transfer.”
  - There is no explicit prohibition against transfers that would violate human rights.
  - Inclusion of the term “overriding risk” ostensibly allows states to proceed with a transfer even if there is substantial risk of violations of IHL or IHRL if there is some other risk (political, economic, or otherwise) is noted to “override” these risks.
  - References to socio-economic development and corrupt practices were dropped from export assessment criteria.
  - When states parties become aware of new information, they are not required to revoke or suspend an authorization, but are merely “encouraged to reassess the authorization” after possible consultations with the importing state.
  - Public reporting is not mandatory and states parties can exclude any information deemed “sensitive” from a national security standpoint from reports to the Secretariat.

**Moving forward**

The time for substantive improvements of the text has passed. In moving forward with the ATT process, attention must shift to implementation and interpretation in order to ensure that the robust provisions that have been adopted are implemented in the best and most consistent way, while those that are still weak are not allowed to limit the overall effectiveness of the Treaty. Indeed, this is only the beginning of evaluating the ATT’s effectiveness.

This was an imperfect process that yielded an imperfect treaty. Nevertheless, the task now is to take what has been adopted and ensure that it has the most effective impact possible on the ground so that the negative consequences of the illicit and unregulated arms trade—the original purpose of and impetus for this process—are limited to the greatest extent possible. As noted by the group of 98 states in its joint statement following adoption of the text, “The hard work starts now. We must secure the rapid entry into force of this historic Treaty and implement it as soon as possible.” •

## News in Brief

Ray Acheson | *Reaching Critical Will of WILPF*

The following is not a comprehensive overview of all interventions but a snapshot of key remarks made during the UNGA meeting on the ATT on 2 April.

### Action on the draft resolution

- 155 countries voted in favour of the resolution.
- Iran, DPRK, and Syria voted against the resolution.
- The following 22 countries abstained: Bahrain, Belarus, Bolivia, China, Cuba, Ecuador, Egypt, Fiji, India, Indonesia, Kuwait, Lao PDR, Myanmar, Nicaragua, Oman, Qatar, Russia, Saudi Arabia, Sri Lanka, Sudan, Swaziland, and Yemen.
- Angola is marked as abstaining on the voting record, but later amended this to an affirmative vote.

### Explanations of vote

- For the most part, those states abstaining on the resolution reiterated their concerns with the text's limitations related to non-state actors and terrorism and its "imbalance" between importers and exporters, among other issues (see *ATT Monitor 6.10* for an overview of these positions).
- For the most part, those states that voted in favour welcomed the text as a contribution to preventing human suffering and strengthening international peace and security. While noting the text's imperfections, most of the supporting states indicated they believe the treaty can make a difference through proper implementation.
- Some states indicated discomfort with the process for adopting the ATT by a vote, including China, Egypt, Ecuador, and Pakistan.
- Pakistan argued that in the practice of UN, consensus is generally understood to mean adoption of a decision without formal objection and vote. It emphasized that "selective interpretation of rules of procedure and departure of working methods do not constitute any precedent for any future treaties" in this field.

### Interpretative statements

- New Zealand argued that the term transfer should be interpreted as including gifts, loans, and leases, as "anything less would undermine the real value" of the treaty.
- New Zealand also argued that transfers of all conventional weapons should be assessed, emphasizing that there can be no justification for excluding any conventional weapons, especially small arms and light weapons, from the treaty's scope.

- Russia said that according to assurances it has received from President of the conference, the term "knowledge" in article 6(3) suggests full conviction of the existence of the consequence being considered and that for the Russian text this should be translated as "possess reliable knowledge".

- Switzerland said its understanding of 6(3)'s reference to "other war crimes as defined by international agreements to which is a Party" encompasses serious violations of common article 3, war crimes defined in the 1977 additional protocols, the Rome Statute, and other frameworks.

- New Zealand and Ireland agreed with this interpretation.

- Switzerland also noted that rules of customary international law remain fully applicable to all states irrespective of this treaty.

- Norway said that article 6 prohibits transfers that would violate the exporting state party's relevant international obligations under international agreements to which it is a party, which clearly include human rights agreements.

- New Zealand said it will interpret "overriding" risk in 7(3) as "substantial" risk.

- Liechtenstein noted that the term "overriding" is translated in the French text as "preponderant," in Spanish as "manifest," and in Russian as "significant". Thus, Liechtenstein argued, this addresses concerns that other interests could be weighed against the negative consequences outlined in 7(1).

- Iceland noted that article 7(4) makes preventing gender-based violence (GBV) a binding provision in the treaty. It means states shall not authorize transfers where there is a risk of GBV or violence against children when it constitutes one of the negative consequences of article 7(1) and that states are required to act with due diligence to ensure that the arms transfer would not be diverted to non-state actors such as militias that commit acts of GBV or violence against children.

- New Zealand said there is no justification for withholding any information related to arms transfers on the basis of commercial sensitivity or national security.

## The ATT: a start to challenging the status quo

Ray Acheson | *Reaching Critical Will of WILPF*

The adoption of the first ever Arms Trade Treaty (ATT) is being billed by many governments and civil society organizations as an historic event. And indeed it is. This marks the first time that the General Assembly has adopted legally-binding rules to regulate international transfers of conventional weapons. The ATT is also the first treaty to recognize the links between the international arms trade and gender-based violence. Both of these firsts signify meaningful advancement for international humanitarian law (IHL), human rights, and peace and security. However, the treaty's deficiencies mean that it could be susceptible to manipulation and abuse by those who want to continue profiting from the arms trade. To ensure that the text adopted on 2 April makes a difference in practice, governments, civil society, and the United Nations, as they begin to implement and interpret the treaty, must avoid legitimizing the international arms trade and irresponsible transfers.

While the final text is stronger than previous drafts, it still contains substantial limitations and loopholes. Its scope is narrow, providing only for consideration of a limited number of weapon systems and transfer activities. It does not legally obligate states to increase transparency in the international arms trade and even allows them to keep some information secret. The treaty's use of the term "overriding risk" in its export assessment section suggests that other interests could "override" compliance with IHL, human rights law, or conventions related to terrorism and transnational organized crime. See *ATT Monitor 6.9* for more examples of the treaty's limitations and loopholes.

Despite these shortcomings that may prevent the treaty from effectively preventing human suffering, many governments voted in favour of the treaty nonetheless because they saw it as first step towards better regulation of the \$70 billion arms trade.

In a joint statement, 98 states acknowledged that the final text "does not fully meet everyone's expectations," but argued that the treaty can be made stronger and adapted to future developments through its implementation. Uruguay described the ATT as a "regime in development" and Ireland said it is a "living treaty". In this spirit, several delegations also delivered interpretative statements after the text's adoption.

For example, Liechtenstein and New Zealand said they would interpret "overriding" as "substantive" in article 7. (Liechtenstein also noted that the term "overriding" in article 7 is translated in the French text as "preponderant,"

in Spanish as "manifest," and in Russian as "significant," underscoring that this term poses linguistic problems as well as substantive ones.) The joint statement delivered by Mexico also made it clear that the majority of states will interpret article 7 to mean that no arms transfers will be authorized if they will potentially lead to negative consequences, such as serious violations of human rights or international humanitarian law. (See the News in Brief on page 4 for more examples of interpretative statements.)

However, not all states were prepared to accept the text as is. Of the 25 states that did not vote in favour, many criticized the text for not prohibiting arms transfers to either unauthorized or allnon-state actors. Others complained the treaty did not adequately address terrorism.

Most of all, though, the non-supporters cited a "lack of balance" between the obligations and rights of exporting and importing states. Such imbalance, from their perspective, is most visible in the export assessment and prohibition sections. Exporting parties are required to assess the risk that the weapons will facilitate violations of international law, including human rights law or IHL. But, as some states complained, the treaty does not reciprocally address concerns that major exporters themselves sometimes use arms to engage in violations of human rights. In addition, arms transfers are not prohibited to states engaged in foreign occupation or acts of aggression—to many of the abstaining Arab states in particular, this is another indication of the treaty's inequity between the strong and the weak.

Several delegations also argued that the treaty does not address the problems of overproduction and overaccumulation of conventional weapons. Bolivia argued that the ATT text "favours the industry that lives off of the production of weapons" and that "priority has been given to profit over human suffering".

Bolivia's concerns, shared by Egypt, Nicaragua, Venezuela, and others, are not unfounded. Some of the major arms producing and exporting countries have already suggested that this treaty will not affect their export process. They do not see the ATT as an instrument that could be used to diminish their arms sales or to affect their own acquisition or accumulation of weapons. They view the treaty as a tool to bring the rest of the world up to "their standards".

But the *raison d'être* behind the ATT is that "their standards" are unacceptable. The failure of the status quo to protect human life and prevent death and destruction

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### *The ATT: a start to challenging the status quo, cont'd*

is why states decided to negotiate this treaty, and why civil society decided to engage with this process. And changing the status quo is why robust interpretation and effective implementation of the treaty are so important.

All states that transfer and acquire weapons must be held to account. States parties, international organizations, and civil society must work collectively to make sure that the practice and policies of *all* governments are transformed by the provisions of this treaty. We must look beyond the divisions between powerful and weak, exporter and importer, and look holistically at the international arms trade.

These negotiations had as their immediate backdrop civil war in Syria, Mali, and the DRC; military interven-

tions in Libya and Mali; armed conflict between Israel and the occupied Palestinian territories; and more. A longer perspective brings in to view countless other conflicts, interventions, occupations, genocides, and wars, not to mention the daily scourge of armed violence plaguing many countries not in conflict.

The bottom line is that there will still be too much death, destruction, and suffering as a consequence of the overproduction, irresponsible transfer, and misuse of conventional weapons. When major industrial economies rely so much on weapons production and sale, it can hardly be expected that a treaty like the one just adopted can make a decisive impact on these problems. But we have to start somewhere. •



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Reaching Critical Will

