A meaningful ATT is our “overriding” priority
Ray Acheson | Reaching Critical Will of WILPF

During Wednesday’s negotiations on various aspects of the draft arms trade treaty (ATT), delegations discussed two issues that are particularly critical for the effectiveness of the treaty. One is the concept of “overriding” risk in the context of national risk assessments for arms transfers. The other is article 5(2) of the 26 July draft text, which seems to allow states to “contract out” of the ATT by entering into other agreements. The resolution of these issues will largely determine if the treaty is robust and meaningful, or if it is not worth the paper upon which it is written.

“Overriding risk”

The US delegation asserted that “peace and security” considerations could over- ride other criteria in the ATT. It argued that sometimes arms transfers contribute to peace and security. Therefore, the risk of other violations has to be sufficiently high so as to “override” any “benefits” from making the transfer. This position significantly undermines the treaty’s ability to make a meaningful impact on reducing human suffering. It also fundamentally misunderstands the notion of “peace and security”.

Insisting on the phrase “overriding” risk is to insist that one’s other priorities—political, economic, or strategic—take precedence over human lives. The vast majority of delegations that have addressed this issue prefer the term “substantial” risk. As the delegation of Liechtenstein explained, the risk assessment process is about probability. The term “substantial” indicates that if there is a clear risk that the weapons will be used to commit crimes, the transfer shall not be authorized. The term “over- riding,” Liechtenstein argued, suggests that even if there is a 90% likelihood that the weapons will be used to commit such crimes, other, unknown interests could be deemed more important by the exporting state. Basically, it allows exporting states to continue doing whatever they want regardless of the human consequences, rendering meaningless many of the core provisions of the treaty.

Furthermore, the US argument suggests that “peace and security” is determined exclusively by “state” interests. But as the Swedish Section of the Women’s International League for Peace and Freedom noted, “Implying that ‘peace and security’ interests can trump respect for human rights means you have the wrong idea about peace and security.” Indeed, human rights and international law are fundamental to peace and security. They must not be overridden by other, unspecified interests.

“Contracting out”

The second key issue discussed today was article 5(2), which says that the ATT shall not prejudice obligations from other instruments and that it cannot be cited as grounds for voiding contractual obligations under defence cooperation agreements concluded with other states parties.

Since this article first appeared in the draft text last July, the vast majority of states have called for its deletion. On Wednesday alone, CARICOM, the EU, Australia, Iceland, Ireland, Italy, Japan, Liberia, Liechtenstein, Mexico, Netherlands, Norway, Sweden, Switzerland, Turkey, and the UK all called for this article’s revision or deletion. Only a few states support its inclusion. Those that want the clause feel it protects them against biased or manipulative implementation of the ATT. But as the
A meaningful ATT is our “overriding” priority, cont’d

delegation of Liechtenstein eloquently argued, this article is like writing a 25-article treaty and then adding one more article that says, “No, we were just kidding!”

Indeed, as currently worded, article 5(2) makes the ATT subordinate to other international instruments and permits states to contact out of the ATT by signing other agreements. A few delegations argued that this is not the case, arguing that article 24 of the text says that states can only enter into other conventional weapons agreements that are compatible with their ATT obligations. However, if this is indeed the case, then there is no reason for article 5(2) to exist. As it stands now, article 5(2) directly contradicts and undermines article 24. Article 5(2) should thus be deleted, a proposal that most countries speaking on this subject have supported.

On Tuesday, Venezuela’s delegation said that a litmus test must be applied against each article of the treaty. From its perspective, this test should determine whether each article can be applied equally to all states. Such a litmus test is also necessary to ensure that every article of the treaty advances human security and prevents and reduces human suffering. Any article that undermines the core objective of the treaty—to protect human beings from the consequences of the irresponsible and illicit arms trade—must be rejected.
Over the last few days, the Arms Trade Treaty (ATT) negotiators have made significant progress. More than 100 countries supported a statement on Monday that advocated significant strengthening of the July 26th working draft. Even countries that had consistently expressed skepticism about an ATT were presenting suggestions for specific text changes. For the so-called “skeptics”, this was a significant change from their approach during the July negotiating conference, in which they frequently made long rhetorical comments that were largely devoid of specifics. It seemed as though even the skeptics had concluded the ATT train was leaving the station and they had decided to be on board.

As regular readers of the ATT Monitor are aware, one of the most important articles in the prospective ATT addresses the issue of national assessment. It details criteria for assessing the risks involved in a potential arms transfer, and also presents circumstances under which a transfer should not take place. According to the draft text, after considering various issues, such as whether the arms transfer would be used to commit or facilitate a serious violation of international human rights or humanitarian law, if an exporting state finds that there is an “overriding risk” of any of these consequences, the exporter should refuse to authorize the transfer.

Although this section of the text has some weaknesses, it still sets out one of the core principles of an ATT—that countries should not sell arms to a recipient that is likely to use those weapons in violating international human rights and/or humanitarian law. The relevant paragraph states that after considering various issues, such as whether the arms transfer would be used to commit or facilitate a serious violation of international human rights or humanitarian law, if a state finds that there is an “overriding risk” of any of these consequences, the exporter should refuse to authorize the transfer.

One of the most significant weaknesses in the current text is this use of the phrase “overriding risk”. The consequences listed in the national assessment are precisely the circumstances the Treaty should be designed to help prevent. The current language sets an extremely high bar for blocking a sale. In effect, it biases the argument in the direction of approving sales, even if there is significant concern that the weapons will be used in abuses.

Advocates of a strong treaty have proposed changing “overriding risk” to “substantial risk”. On Wednesday, the US delegation voiced its objection to these proposals. During the intervention, US Assistant Secretary of State Coun-
No real transparency, no real treaty
Haley E Adams | NYU Law Students for Human Rights and Reaching Critical Will of WILPF

Through deliberations during the first week of the arms trade treaty (ATT) conference, transparency has become a buzzword, but it is not meaningless jargon: the notion of transparency strikes to core purpose of this Treaty. Without mandatory public reporting, the high common standards sought by states parties will be meaningless, mere words belying a stark and growing reality of irresponsible and illicit arms trade measurable in staggering human costs. This treaty cannot succeed as a binding legal instrument without transparency in its implementation: words ripen into reality through collective compliance and mutual confidence. Mandatory, standardized compliance reporting among states parties is, then, the keystone to an operative set of collectively beneficial arms regulations.

Most states do already submit arms transfer reports to the UN Register of Conventional Arms, and many states—including some of the world’s predominant arms suppliers—already publish significant export data per national policy dictates. The very fact of the ATT negotiations demonstrates that this is not enough. All current reports are voluntary. They are also incomplete: many fail to distinguish between types of weapons, or the nature of the trade, making oversight difficult. Transparency disparities between exporters and importers, furthermore, allow organized crime syndicates to manipulate customs or circuitously route illicit arms through countries with weaker reporting policies.

If the ATT is to possess full force and effect, it must feature standardized, reliable transparency provisions and an independent body to collect and review reports submitted by member states. This independent body could take the form of either a secretariat or another type of expert group: an active body can query inaccurate or mistaken reports, request further submissions, or find information to fill in blanks.

There are many benefits to this approach. Foremost among these is the mutual confidence and security fostered among states parties regarding equal implementation of ATT structures. Standardized, public information also allows for democratic accountability, and reduces the likelihood of diversion.

What, then, is transparency in the context of a strong Arms Trade Treaty? It would necessitate standardized, publicly available annual reports featuring:

- Accurate data regarding the volume, type, and timing of all international arms transfers covered by the ATT; and
- Reporting by importers and exporters alike in order to account for gaps that may indicate diversion

Some states have expressed concerns that mandated transparency might jeopardize legitimate state security interests, or impose costs too high for developing countries. The first fear is ill-founded: it is unlikely, for instance, that terrorist groups would exploit public documentation of state arms flows in order to coordinate attacks.

The fear of administrative costs in reporting is overstated as well: matching capacity-building measures can identify sources of appropriate assistance and enable struggling countries to implement reporting requirements. Moreover, much of the information necessary for adequate transparency is similar to information already routinely gathered by nearly all customs agencies. Finally, failure to report need not be prima facie evidence of treaty noncompliance: there can initially be a grace period as states navigate ATT reporting requirements.

Ultimately, the combined interests of all states parties in a binding ATT outweigh the potential downsides: transparency provides security in equitable implementation and safeguards the interests of the countless human lives jeopardized by irresponsible transfers and illicit diversion. If the treaty is not to be openly implemented and its signatories held accountable to its provisions, of what value is it?
News in Brief
Ray Acheson | Reaching Critical Will of WILPF and Katherine Prizeman | Global Action to Prevent War

The following is not a comprehensive account of all positions or interventions but a snapshot of negotiations from the third day on a few key issues.

Scope

- CARICOM, Burkina Faso, Guatemala, Iceland, Mexico, and Norway, among others, called for ammunition, munitions, and parts and components in the scope.
- Guatemala and Iceland said the scope on activities should be comprehensive.

Prohibitions

- Finland suggested adding violations of human rights and international law to article 3(3).

Criteria

- Morocco said criteria on diversion, gender-based violence, and transnational organized crime should be moved to article 4(2) and that criteria on development and corruption should be moved either to the preamble or to the article 7 on imports.
- Iceland and Ireland reiterated their support for moving gender-based violence to 4(2).
- China, Ecuador, Russia, Malaysia, and Zimbabwe said the references to corrupt practices and development should be deleted.

“Overriding” versus “substantive” risk

- The majority of states speaking on this subject supported using the phrase “substantial” risk in assessing arms transfer requests, including Finland, France, Germany, Ireland, Liechtenstein, Mexico, Nigeria, and Norway, among others.
- USA said overriding must remain because sometimes arms transfers can make a contribution to peace and security, which would be ignored with use of “substantial”.
- Philippines supported retention of “overriding”.

Implementation

- Liberia cautioned against subjecting some of the provisions in the implementation sections to national laws, arguing that these are “claw-back clauses” that undermine the international standards established by the treaty.

Article 5(2)

- Many delegations expressed concern that article 5(2) creates a significant loophole, including among others CARICOM, EU, Australia, Iceland, Ireland, Italy, Japan, Liberia, Liechtenstein, Mexico, Netherlands, Norway, Sweden, Switzerland, Turkey, and UK.
- Belarus, Brazil, India, Indonesia, and Philippines supported maintaining 5(2).

Export/import

- Russia argued the main thrust of these articles must be to prevent diversion and the export of weapons to non-state actors.
- Iran said it agrees states can cancel an authorization due to overriding risk as specified in 6(3) but said this decision must be substantiated by relevant documents.
- Norway said “overriding” should be replaced with “substantial” in 6(3) and “may” with “shall”.
- India said 6(3) should be deleted.

Brokering

- Liberia and Senegal called for strengthening of the provisions on brokers by respectively calling for “appropriate measures” to be replaced with “all necessary measures”; and for mandatory registering of brokers.
- Pakistan called for a provision on illicit brokering.

Reporting and recordkeeping

- Lithuania on behalf of 37 countries delivered a statement calling for reports to be made public.
- Public reporting was also supported individually by EU, Costa Rica, Finland, France, Germany, Ireland, Lithuania, Mexico, Philippines, and Sweden, among others.
- China, DPRK, Iran, Malaysia, and Syria said making reports public should not be mandatory due to sensitivity of some information.
- Cuba and Syria said reporting should be voluntary.
- Egypt said states should have to report on the grounds for transfer denials but also said natures and details of reports should be left up to states.
- Netherlands said reporting on denial authorizations would not be acceptable.
- Brazil, Kenya, and Senegal called for a longer period for recordkeeping, with Senegal suggesting 20 years and Kenya suggesting until the weapons are destroyed.

continued on next page
**News in Brief, cont’d**

**Secretariat**
- In a joint statement, Costa Rica, Dominican Republic, Hungary, Iceland, Ireland, Germany, Liechtenstein, Paraguay, Netherlands, Norway, and Spain issued a proposal to strengthen the secretariat by deleting “within a minimized structure” and adding a provision that it can perform other duties as mandated by the conference of states parties.

**Entry into force**
- Mali suggested 30 ratifications.
- Peru and Spain suggested 36 ratifications.
- Algeria called for 65 ratifications + the major importers and exporters.
- Cuba called for 95 ratifications + the top ten major importers and exporters.
- Ghana said the treaty cannot require specific states to ratify or it will never enter into force.

**Amendments**
- Some delegations said amendments must not be made by consensus, including Ghana, Peru and Norway.
- Cuba said amendments must be by consensus.
- Finland and Germany said states cannot be bound by amendments to which they have not agreed.

**Dispute settlement**
- Norway argued that transfer denials cannot be subject to mandatory dispute settlements.

**Regional integration organizations**
- EU and some of its member states called for regional organizations to be permitted to join the treaty.
- China said it would support all regional organizations except the EU joining the treaty.

**ATT crossword**

**Across**
1. Corruption in the arms trade contributes roughly what percentage of all corruption in global transactions?
4. To pave the way for negotiations, the broad objective of the OEWG was to narrow differences on four areas of an ATT, one of which was ...
5. What item is subject to stricter global trade rules than conventional weapons?
6. Ambassador Moritan chaired the second session of which UN Working Group on an ATT?

**Down**
1. In 2001, a group of (3 words) circulated a Draft Framework Convention on International Arms Transfers.
2. True or false: the ATT will infringe on national gun ownership?
3. How often are 1,500 women, men and children killed by conflict or armed violence?
7. The Chair of the conference will be Ambassador ...
8. On 30 October 2009, UN member states voted in favour of creating an Arms Trade Treaty. How many counties abstained?
Key changes in the new draft text
Katherine Prizeman | Global Action to Prevent War

Preamble
- Article 26 of the UN Charter is directly referenced.
- “Armed” has been added before “conflict” in the reference to the vulnerability of women and children.
- “Voluntary” has been added before “active role of non-governmental organizations and civil society” in furthering the Treaty.

Principles
- Articles of the UN charter are referenced alongside corresponding principles.
- References to the UN Charter, the Universal Declaration of Human Rights, and the Geneva Conventions have been added to the principle of respect for international humanitarian law and human rights.

Article 1 Object and Purpose
- The article has been renamed “Object and Purpose” from “Goals and Objectives”.

Article 2 Scope
- The definition of “transfer” has been changed to “comprising export, import, transit, trans-shipment, and brokering” from a reference to articles 5-9.

Article 3 General Implementation
- This article has been moved from 5 to 3.
- “All appropriate legislative and administrative” has been deleted from paragraph 3.
- A direct reference to Article 2(1) has been added to all references in this section.
- Language in paragraph 6 on diversion has been changed from “may notify the State or States Parties” to “are encouraged to”.

Article 4 Prohibitions
- Has been renamed “Prohibitions” from “Prohibited Transfers”.
- All references to “arms within the scope of the Treaty” are replaced with “arms covered under Article 2(1)”.

Article 5 National Assessment
- The clause “If the export is not prohibited under Article 4” has been added at the beginning of paragraph 1.
- Information sharing by importing states in paragraph 3 has been qualified with “in accordance with Article 7(1)”.

Article 6 Export
- A new paragraph 1 has been added—“Each State Party shall establish and maintain a national control system to regulate the export of conventional arms covered under Article 2(1)”.
- The language on the obligation to conduct national assessments in paragraph 2 has been simplified and changed to explicitly reference application of Articles 4 and 5.
- “Export” has been changed to “authorization” in paragraph 3.
- “Upon request” has been deleted from the reference to information sharing with importing states and placed instead before the reference to transit and trans-shipment state parties.
- “May” has been replaced with “is encouraged to” in paragraph 4.
- The category of “munitions” has been added to the references to ammunition in paragraph 5.

Article 7 Import
- The paragraph 1 reference to national assessment has been changed to directly reference Article 5.

Article 8 Transit or trans-shipment
- This article has been moved before the article on brokering.
- The references to “legislative” and “administrative” have been deleted.
- “…in accordance with international law” has been added to the end of paragraph 1.

Article 9 Brokering
- This article has been placed after the article on transit and trans-shipment.
- “Controls” has been changed to “measures”.
- States parties are now encouraged to maintain records.

Article 10 Record keeping
- The phrase “Each State Party is encouraged to maintain records” has been added to paragraphs 10.2 and 10.3.

Article 11 Reporting
- The word “may” has been replaced with “is encouraged to” in Article 11.1 regarding reporting to the Secretariat on actions taken to address diversion.

continued on next page
Key changes in new draft text, cont’d

Article 12 Enforcement
- The reference to enforcement measures has been qualified with “legislative and other”.

Article 13 International Cooperation
- The qualifier “as appropriate” has been deleted from paragraph 4.

Article 14 International Assistance
- Language in paragraph 3 on the voluntary trust fund has been strengthened to read “A voluntary trust fund is hereby established...”.

Article 15 Conference of States Parties
- The obligations to establish financial rules for the Conference and its subsidiary bodies, in particular to adopt a budget for the financial period until the next ordinary session, have been fleshed out in a new paragraph 3.
- Rules for convening exceptional meetings of the Conference of States Parties, by decision of the Conference or by a 2/3 majority, have been fleshed out in a new para 5.

Article 16 Secretariat
- Sub paragraph 3e has been changed from “…other duties mandated by this Treaty” to those “decided by the Conference of States Parties”.

Article 17 Dispute Settlement
- Arbitration now refers to interpretation or application of the Treaty, rather than its implementation.

Article 18 Amendments
- Amendments are now only applicable to states parties that have deposited an instrument of acceptance.

Article 19 Signature, Ratification, Acceptance Approval or Accession
- “Following its entry into force” has been added to the beginning of paragraph 3

Article 23 Reservations
- The right to formulate a reservation has been qualified with specific time constraints with the language “At the time of signature, ratification, acceptance, approval or accession”.
- The previous Article 23 on “Relations with States not party to this Treaty” has been deleted.

International press and the ATT
Lia Petridis Maiello | Global Action to Prevent War

The final round of the arms trade treaty negotiations has been attracting global attention, expressed by numerous press outlets worldwide, mainstream as well as alternative, signaling a growing and strengthening awareness process throughout the world and revealing a justified sense of urgency. An awareness of the illicit arms trade’s mortal consequences has manifested itself as a comprehensive matter of conscience, a situation that is as a result calling for global provisions now. It also shows the willingness to publicly negotiate and back a legal framework that has the strength and capability to regulate a global, $70 billion business. An idea that was initiated by a group of Nobel peace prize laureates in the mid-1990’s seems to have come to fruition.

The level of awareness demonstrates political will that affects the everyday citizen, who might not be part of a politicized environment via an organization or institution, but has the option to vote, donate, and maybe down the line, organize in a political fashion. Just as diverse in national interest and approach as are member states and civil society, so are media outlets that position themselves as voices in the process.

The Financial Times granted a forum to the foreign ministers of Denmark, Germany, Mexico, The Netherlands, UK, Costa Rica, Argentina, and Finland to call for an effective arms trade treaty, defining the negotiations an “historic opportunity” and appealing to the aspect of “common responsibility.” One paragraph explicitly addresses the fact that the treaty has no intention to “obstruct the legitimate trade in arms.” Furthermore it points out that the treaty is meant to “fully recognize every state’s right to legitimate self-defense.” Additionally, “Neither does the treaty set rules for domestic arms regulation nor laws on the possession of arms; this is categorically a matter for national authorities to determine.”

Despite national sovereignty on domestic arms regulation, the US based National Rifle Association (NRA), which promotes the rights of citizens to bear arms, made it a tradition to claim that the UN is trying to end private gun ownership in the US. This strategy is primarily geared towards fundraising from NRA constituents. Not only has fear proven to be a hot seller, the US Constitution’s second amendment is an extremely sensitive and emotionally charged topic.

UK journalist Karen McVeigh focuses on NRA rhetoric in her story “NRA accused of stirring ‘anti-UN panic’ in campaign against Arms Trade Treaty,” from 17 March 2013 in The Guardian. “For years, the NRA has painted the UN as...”
a bogeyman figure, claiming in its literature and fundraising drives that there is an international conspiracy to ‘grab your guns’. Last July, when negotiations on the Arms Trade Treaty broke down – in part because of US resistance to global regulations on gun sales – the gun lobby group claimed victory for ‘killing the UN ATT.’” Rick Gladstone from the New York Times states in the context of an ATT and the NRA, that in February of this year, the American Bar Association’s Center for Human Rights published a report describing that the ATT, as currently drafted, “did not exceed the scope of American trade statutes that already regulate the import and export of weapons.” Gladstone points out that the study clearly outlines, “U.S. ratification of the treaty would not infringe upon rights guaranteed by the Second Amendment.” In the Huffington Post, UN High Representative for Disarmament Affairs Angela Kane pointed out, “This absurd but often-repeated claim requires a strong rebuttal.”

The German media outlets Deutsche Welle and die tageszeitung focus on the fact that the current ATT text from July last year would undercut not only European, and particularly existing German regulations, as they relate to the arms trade and therefore describe the need of stronger language.

This year’s ATT host country, Australia’s media outlets have been vocally promoting the process back home, at times lending media platforms to civil society. National Director of Amnesty Australia, Claire Mallinson, took the stage with an op-ed piece for The Australian on 18 March. Here she describes the ongoing illegal arms transfers from Russia to the Assad regime in Syria and the failure of the UNSC to impose an arms embargo. Mallinson continues, “This strong evidence and the indiscriminate nature of conflict shows that even with the best of intentions, as it currently stands, Australian organizations and individuals that sell weapons and defense technology have no way of controlling where these devices end up.” Meanwhile Dr. Helen Szoke of Oxfam Australia is urging her government on ABC TV to “help close off any loopholes” in the existing draft.

The African news network AllAfrica named, in the article “Africa: Curbing the Arms Trade?” from 19 March, a few grave obstacles to a “strong treaty without major loopholes.” Firstly there is, “The fact that the five permanent members of the UN Security Council are among the largest exporters of conventional arms,” which impacts decision making and ultimately the strength of a treaty framework. Secondly, the concern that, “In the United States, the powerful National Rifle Association is campaigning against the treaty.” It is a legitimate concern, since the author is referring to a non-profit that, according to the Washington Post, was able to spend $32 million in 2012, lobbying their one and only objective.

Obviously, press coverage often reflects or opposes national interests of individual member states, and therefore might individually pursue/back different levels of regulation or at times lack diversified, technical policy details at all. However, the nearly unanimous, international media echo in favor of a treaty does not only once more put the UN on the map as a global hub for political decision making, but reflects a strong, global concern that reaches far beyond a plea for arms business as usual.
## CALENDAR OF EVENTS

<table>
<thead>
<tr>
<th>Time</th>
<th>What</th>
<th>Where</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>10:00-13:00</td>
<td>Plenary</td>
<td>Conference Room 1</td>
<td>North Lawn Building</td>
</tr>
<tr>
<td>13:15-14:30</td>
<td>Aiming for control: including ammunition in the scope of the Arms Trade Treaty</td>
<td>Conference Room D</td>
<td>North Lawn Building</td>
</tr>
<tr>
<td>13:15-14:30</td>
<td>Quels sont les veritables defies d’un traite fort et efficace</td>
<td>ECOSOC Chamber</td>
<td>North Lawn Building</td>
</tr>
<tr>
<td>15:00-18:00</td>
<td>Plenary and NGO presentations</td>
<td>Conference Room 1</td>
<td>North Lawn Building</td>
</tr>
<tr>
<td>19:00-22:00</td>
<td>Plenary</td>
<td>Conference Room 1</td>
<td>North Lawn Building</td>
</tr>
</tbody>
</table>