

A stylized world map composed of a grid of grey dots, with several dots highlighted in red to represent specific countries or regions.

From Preparations to Negotiations for an Arms Trade Treaty

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- Despite difficult and complex political considerations, there is general support for negotiating an Arms Trade Treaty (ATT), set to commence in July 2012, indicating a majority opinion that arms transfers should operate according to a common set of international standards.
- During a year that is punctuated by many disarmament and arms control challenges, creation of a legally-binding ATT will require some degree of political capital investment, most especially in light of the provision of consensus decision-making in order to gain acceptance of at least minimal international oversight of national control systems.
- As the prominent actors and regional blocs in the ATT debate begin to coalesce around clearer negotiating lines concerning the still-contentious issues of scope, parameters and criteria, as well as implementation and international assistance, critical questions must be addressed regarding the ultimate objective of such a treaty. Some states advocate for a treaty establishing strong humanitarian standards with an emphasis on the non-proliferation of weapons and ending diversion of weapons transfers to non-state actors, while others wish to negotiate strictly from a trade and commerce perspective.
- It is important to distinguish between what the immediate future of the ATT will hold and opportunities for subsequent revisions. Several recommendations are likely to increase the chances of negotiating a robust ATT – establishing a solid review process beyond July 2012, incorporating strong implementation capacity, and underscoring the importance of diversion and the effects of illicit transfers on civilian populations.



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1. Overview and Context

The political discussion surrounding the proposed Arms Trade Treaty (ATT) is wrought with contentions and disagreements, although there is general consensus that greater control over the unregulated international arms trade is both a viable initiative and an important security concern. General support for an ATT, independent of diverse opinions expressed regarding the strength, scope, breadth and implementation of treaty provisions, is indicative of the majority opinion that arms transfers should be carried out according to some common set of international standards. Most states – especially the major exporters and manufacturers of arms – have national export control systems that governments claim already adequately address issues associated with international arms transfers, including humanitarian and strategic implications. Nevertheless, the call for an ATT is based on the assertion that many such national systems remain inadequate because of inconsistencies in implementation and corresponding loopholes that have been exploited by illicit arms traffickers.

The proposed ATT had its genesis in July 2006 when Argentina, Australia, Costa Rica, Finland, Japan, Kenya, and the United Kingdom presented a draft resolution entitled, »Towards an arms trade treaty: establishing common international standards for the import, export, and transfer of conventional arms«. The resolution was adopted by the UN General Assembly (GA) in October, with only the United States casting a negative vote. The resolution established a Group of Governmental Experts (GGE) to examine the feasibility of an ATT as well as invited the views of member states on such a treaty to be submitted to the Secretary-General.¹ The GGE met three times over the course of 2008, from February through August, adopting a final report by consensus.² The general recommendation called for continued discussion of prospects for an ATT within the UN GA framework of universal membership in an open and transparent manner. The 2008 session of the GA First Committee, which deals with disarmament, adopted a new resolution that established an Open-Ended Working Group (OEWG) to meet six times in one-week sessions between 2009 and 2011 to identify consensus points for a potential treaty. The subsequent GA session in 2009 adopted a resolu-

tion to convene a 4-week Negotiating Conference for an ATT in 2012 to formulate a legally-binding instrument for »the highest possible international standards for the transfer of conventional arms«. ³ As part of the lead-up to the Conference, four sessions of a preparatory committee were established to provide recommendations to the Negotiating Conference. Such preparatory committees have been held in July 2010, February 2011, July 2011 with the final committee held in February 2012 to discuss the logistical parameters of the Negotiating Conference in July 2012.

At the adoption of the 2009 resolution establishing the 4-week Negotiating Conference, language »on the basis of consensus« was included and ultimately adopted, ostensibly to promote universal participation. The United States was a major proponent of the consensus rule and conditioned US support for the negotiations on the provision of consensus decision-making. The limitations of the consensus provision are clear – it is often likely that consensus brings about a »lowest common denominator« scenario in which any state can function as a spoiler and prevent movement forward based on any individual provision. The chair of the ATT process, Ambassador Roberto García Moritán of Argentina, has been able to keep the consensus rule from derailing the preparatory process by tying negotiations carefully to the Chair's Papers drafted under his own authority. Nonetheless, the consensus rule will unavoidably come to bear during the Negotiating Conference when the authority of negotiating texts will move from the Chair to all member states. Discussion on the issue of consensus came to the forefront during the fourth and last preparatory committee (February 2012) when delegations sought to more clearly define its terms prior to the start of official negotiations in July. There is currently no agreement on its use as some states, such as the US and EU, want consensus applied to only adoption of the final document, while others such as CARICOM want a process that »strives for consensus« in a broad sense, but without denoting official unanimity on any individual element or stage of the treaty. Furthermore, there is still a question as to whether »consensus« will be interpreted as unanimity or absence of formal objections. As indicated during the final preparatory committee, many delegations maintain that the original resolution calling for the ATT is far from definitive on the interpretation of consensus and leaves room for further discussion.

1. See A/C.1/61/L.55 (2006).

2. See A/63/334 (2008).

3. See A/C.1/64/L.38/Rev.1 (2009)

Also adding complexity is the fact that the treaty is not just a political framework, but a legally-binding instrument. It is clear that the creation of a legally-binding ATT will require some investment of political capital, especially if large manufacturers in powerful countries are to accept some measure of international oversight on national control systems for exports and imports. Large manufacturing states must be active and productive participants in the ATT process if the treaty is to have any real impact on the arms trade – both cooperating with the provisions as well as providing international assistance to smaller states to build the necessary national implementation capacity. There is an inherent responsibility on the part of the major exporters to negotiate an honest and robust ATT based on the fact that they account for the lion's share of total arms manufactured, and thus in circulation, worldwide. Many advocates of a robust treaty hope that it is more than a means to facilitate the conduct of the arms industry, but rather an instrument that represents a real ›game changer‹ with provisions to end unauthorized or diverted transfers and thereby limit or even prevent human suffering.

The coming year is punctuated with many challenges for the UN disarmament machinery and negotiators, including the continued stalemate in the Conference on Disarmament, the Review Conference of the UN Programme of Action (UNPoA) on Small Arms, and the Conference on a Middle East Weapons of Mass Destruction Free Zone endorsed by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Although some states are reluctant to talk about the proposed ATT as a »disarmament« instrument *per se*, it is hoped that this treaty will have implications for improved arms controls and the prevention of diversion of weapons into the hands of possible human rights abusers, criminals, and terrorists. Assuming that the final treaty includes small arms and light weapons (SALWs) in its scope, as many hope it will, the ATT would be seen as an important complement to the UNPoA process. Although the UNPoA is a framework instrument that is not legally-binding, it provides for benchmarks to address the illicit trade in SALWs and thus remains a particularly significant instrument. It is worth noting the close calendar proximity between the UNPoA and ATT processes and its likely effects. The UNPoA Review Conference that is to take place at the end of August, at the very least, will be affected by the tenor of the ATT discussion as many of the same diplomats will be responsible for covering both processes and could suffer from both

›negotiating fatigue‹ and frustration (which will only increase if the ATT process fails). Many delegations also see the ATT as a complement to the small arms process and would undoubtedly formulate their positions on the UNPoA with the ATT clearly on their minds. Whether the ATT will have a positive or negative effect is still in question. In particular, the question whether or not small arms will be included in the scope of an ATT will have an effect on the UNPoA process as there are many delegations that would consider the absence of small arms a ›deal breaker‹ on the effectiveness of an ATT.

To return to an earlier question, what is the goal and objective of such a treaty? There is ultimately no philosophical consensus – some advocate for a treaty that can establish strong humanitarian standards for the transfer of conventional weapons that can combat, prevent, and eradicate the illicit transfer of such weapons and their diversion into the illegal market where they can facilitate destabilizing violations of human rights and international humanitarian law, while others wish to negotiate strictly on the grounds of trade and commerce. Nonetheless, a view to GA Resolution 64/48 illustrates that the link between an ATT and global peace and security, not just economically motivated trade policy, was desired by states at the time of adoption insofar as Paragraph 3 states, »Recognizing that the absence of commonly agreed international standards for the transfer of conventional arms that address, inter alia, the problems relating to the unregulated trade of conventional arms and their diversion to the illicit market is a contributory factor to armed conflict, the displacement of people, organized crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development«. As such, those delegations that continue to advocate for a strict ›commerce‹ treaty find many dedicated opponents unwilling to accept this interpretation.

2. Primary Issue Areas

Scope

The discussion of what types of weapons and activities will be covered under an ATT has yielded several issues that remain unresolved. During the second preparatory committee discussions in July 2011, many groupings of states, such as the Africa Union, European Union, and

the Caribbean Community (CARICOM), expressed support for a comprehensive scope under the rubric of the 7+1+1 formulation – the seven categories of conventional weapons included in the UN Register – battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers – as well as SALWs and ammunition. The EU, Costa Rica and others advocated for a more encompassing scope to include munitions and components, as well as the facilities and equipment essential to the manufacture of these weapons. A standard argument in favor of the inclusion of ammunition has been that without bullets, a gun is rendered useless. The SALWs debate centers on varying interpretations of the interconnectedness between the proposed ATT and the UNPoA. The Egyptian delegation, for instance, has explained that the ATT's scope should not include SALWs as the ATT is not the appropriate forum for addressing trade in these weapons given the role and purpose of the UNPoA. Contrastingly, the African Union position hinges on the inclusion of SALWs as this type of weapon wreaks the most havoc within its region as compared to the seven categories in the Register.

Activities to be included under an ATT have also been subject to debate. Positions vary from the most basic – import and export only – to the more complex that also includes: transit, transshipment, brokering, transfer of technology, manufacturing under foreign license, gifts, loans, leases, research and development, and financing. Brokering has received particular attention due to the lack of a universally accepted definition. It appears it will be difficult to include brokering in the scope given this definitional vagueness. As discussed during the previous ATT preparations, what constitutes ›brokering activities‹ has not been agreed upon. Some states operate with a broad definition that includes instances where an individual or company supplies arms which they possess but where the transfer is not covered by the state's export control legislation. Other states operate more narrowly on the act of mediation and exclude activities in which an individual or company owns the arms being transferred. Brokering could potentially cover a broad range of activities such as indicating business opportunities to another party, introducing relevant parties, assisting parties in arranging or facilitating contracts or agreements, assisting parties in obtaining documentation, or assisting in payment processes. Other differences of opinion exist regarding the definition of legal and illegal brokering ac-

tivities. Some states wish to address only that which is considered an unauthorized transaction by a third party and believe an inextricable link between brokering and corruption is unfair since legitimate arms transfers often rely on arms brokers to arrange and facilitate sales. The question also remains if brokers should be regulated in the same manner as exporters. The Chairman's Paper from March 2011 defined brokering succinctly as »the facilitation by an intermediary who brings together relevant parties and arranges or facilitates potential transaction of conventional arms in return for some form of benefit, whether financial or otherwise«. Some states had argued for simplifying the definition of brokering and expanding its coverage to all weapons in the scope of the ATT as the first version of the Chairman's Draft Paper from February 2011 had previously referred only to SALWs.

Some states are also hesitant to include technology transfer for fear of limiting the positive economic implications of information exchange associated with the arms trade. Additionally, one of the first tasks of the negotiators in July will be to precisely define ›transfer‹ in the context of other activities given the primary importance of transfers as the basis for establishing an ATT. The dangers of a lack of precision in defining the relevant terms will likely cause some states to withhold support, at least temporarily, for the treaty at large. Contrastingly, it could also be argued that some vagueness is oftentimes desired and helpful for finding a consensus-based outcome.

Parameters and Criteria

Like scope, and arguably in an even more contentious spirit, the criteria that states would apply in determining whether or not an arms transfer will be authorized are still subject to debate. Nevertheless, some activities, such as restrictions of transfers to non-state actors and compliance with UN Security Council arms embargoes and sanctions are widely accepted as appropriate. Criteria involving references to human rights protection, genocide prevention, socio-economic development, and poverty eradication do not enjoy as much agreement at present.

It is becoming clear that the criteria must not be so strict as to limit trade and discourage support for an ATT nor too lax as to invite divergent interpretations of treaty responsibilities based on political motives. Striking this balance has proven to be a difficult and still unfinished

task. Advocates of comprehensive criteria explain that such criteria will operate under a preventative approach to combat illegal or irresponsible arms transfers by identifying when there is sufficient and reliable information to indicate a risk of diversion and misuse. This is starkly different, as explained during the February 2011 preparatory committee by the Costa Rican delegate, from a punitive approach which would prohibit states from carrying out transfers when the exporters or importers have a dubious record when it comes to human rights or armed violence. This controversy ultimately rests on whether the criteria adopted in the ATT will lend themselves to potential misapplication or manipulation.

Keeping a strong emphasis on diversion risks remains one of the core tasks towards curbing the illicit arms trade. For many ATT advocates, diversion is at the heart of our responsibility. Addressing this issue will require special attention to the practice of diverting arms from authorized end-users to non-state and unauthorized parties who may use such weapons for criminal, corrupt, and abusive purposes. It is often in this indirect, and sometimes unintentional, manner that the arms trade becomes harmful to civilian populations. Despite this general understanding, the strength of final treaty language on this issue is very much in doubt. The Chair's Paper from July 2011 notes, »A State Party *shall* not authorize a transfer of conventional arms if there is a substantial risk that those conventional arms would« undermine peace and security in various forms such as to commit violations of international human rights law. One major question for advocates of a strong humanitarian instrument in the ATT is whether the words »shall not« will be changed to »should not«, which inherently alters this responsibility from obligation to suggestion, and clearly dilutes its impact.

Implementation and International Assistance

How the provisions of a future ATT will be implemented is of vital importance to the process. Robust structure is in many ways as important to treaty effectiveness as broad scope. One proposal in the Chair's most recent Paper includes the establishment of an Implementation Support Unit (ISU) that could serve as a repository for national reports, provide administrative and technical support for states, help match needs and resources for implementation support, and convene review and assessment sessions. Some states have even suggested

giving the ISU verification responsibility to help »flag« potentially illicit transfers. Other states have been very vocal against any such ISU that would have so-called »policing« powers or a verification mandate. Proposals for any support unit, however, will need to take into account the financial and human resources needed as well as the desire by a number of states to minimize ATT bureaucracy. Financial support for such an ISU is still contentious and, in general, delegations seem unwilling to commit to additional funding that is outside of the regular UN budget. It would, therefore, be a show of good faith for delegations that are serious about practical implementation to commit to such a structure and its needed financing even if that will need to come from outside the regular budget. At a minimum, an agreement on a global ATT will require some degree of cooperation and assistance from the sharing of information to coordination of reporting. Technical, material, legal and financial assistance will be required in some form for many states to be able to put in place the border controls, verification systems, and record keeping provisions under which many of the larger states already operate.

In the end, implementing the ATT's provisions will ultimately become largely a national responsibility and it seems that the large arms manufacturing states would prefer it this way. The United States, for instance, has made clear that national implementation of such a treaty should not be subject to international regulation. The US delegation explained during the 2011 GA First Committee that such decisions are strictly a national prerogative, although a legal requirement of all member states to regulate transfers at the national level is appropriate and welcome. How that »requirement« would have force in the absence of verifying structure and the inability of an ATT to directly impact national implementation is not entirely clear.

3. Main Actors and Summary Positions

Main Actors

At this point, a number of prominent actors in the ATT debate and their negotiating positions have emerged (see Table 1). Moreover, there has also been a trend in regionalizing ATT positions. For instance, the EU has presented a common and coordinated position, while the African Union is currently in the process of formulating its own strategy for SALWs and the ATT. Regional positions have

become critical to the process as the flow of weapons across borders is undeniably a regional challenge that requires a strong regional response. Control systems, information exchange, arms tracing, and border coordination are all shared responsibilities that will require robust regional capacity-building and viable cooperation. As such, states have recognized the need for regional discussion and, at least broadly, for agreement on the primary negotiating points. Likewise, regional coordination has become beneficial to the process in terms of facilitating information sharing and the evaluation and sharing of best practices. Nonetheless, there is a basic understanding among states that implementing the future ATT will ultimately remain with state authorities and be subject to national-level decision making. As such, states have often coalesced around a regional position while maintaining the innate flexibility of national decision making authority.

As is the case with any diverse grouping, interested civil society organizations (CSOs) are not functioning as one homogeneous stakeholder in the ATT process. CSOs have served different functions in the ATT preparations such as monitoring the daily functioning of ATT-related meetings – primarily Reaching Critical Will of the Women’s International League for Peace and Freedom and Global Action to Prevent War – as well as advocating for more treaty robustness led by the Control Arms Coalition (including members Oxfam International, International Action Network against Small Arms, Amnesty International, Saferworld, Project Ploughshares and many others). Groups are also putting efforts into preferred elements of a proposed ATT, such as victims’ assistance, conflict prevention, or implementation structure.

As we approach formal negotiations, fundamental differences in philosophy still remain among many delegations. Moving forward, however, delegations must find a way to come to a minimal consensus on the purpose and ultimate objective of an ATT. Otherwise, negotiating the details of the treaty – such as how to define a »transfer«, whether ammunition will be included in the scope, or how strong the reference to corruption will be – will remain elusive at best. How a member state characterizes the core objective of a future ATT will likely impact all relevant positions adopted regarding the treaty and thus will influence the success of drafting and adopting the treaty as well as its future entry-into-force. Therefore, it is necessary that the upcoming negotiations and related consultations seek a realistic and pragmatic solution to this philosophical difference of

Table 1: Stakeholders and Negotiating Positions

Stakeholder	Summary Position
United States	<ul style="list-style-type: none"> ■ The ATT is a trade treaty that seeks to regulate the international arms trade and is not a disarmament instrument ■ The ATT should not focus on illegal activities as they are already illicit and need no further illegality, but instead on responsible decision-making criteria ■ »Consensus« refers to adoption of the final document
Russia	<ul style="list-style-type: none"> ■ Interpretation of the ATT is narrower than some states have advocated for. Rather than wider humanitarian or disarmament goals, the ATT’s main purpose is to cut off the channels of illicit arms trafficking
European Union	<ul style="list-style-type: none"> ■ The legal trade in conventional arms should be regulated by a global, legally-binding ATT that would establish common international standards for import, export, and transfer ■ »Consensus« refers to adoption of the final document
CARICOM	<ul style="list-style-type: none"> ■ The ATT should adopt the 7+1+1 formulation including all parts and components and the development of a comprehensive legal regime to regulate the trade in conventional weapons, of which small arms and light weapons are integral components, and would assist in addressing the proliferation of the illicit trade in these armaments ■ States must carry out in good faith the obligation to assist states that lack the capacity to implement their obligations ■ »Consensus« refers broadly to the process, not the final document
Non-Aligned Movement	<ul style="list-style-type: none"> ■ Any ATT must respect the principle of sovereignty and the right to self-defense and the UNPoA remains the primary framework for addressing the illicit trade in SALWs
Civil Society	<ul style="list-style-type: none"> ■ There is a broad consensus on the main points of advocacy. The ATT must be robust and fully implementable to include a comprehensive scope, victims’ assistance, primary attention on diversion, and provisions and structure to facilitate international cooperation and assistance that will ultimately stop transfers of arms and ammunition that fuel conflict, poverty, and serious violations of human rights and international humanitarian law.

opinion. Without such a harmonization of purpose, the ATT negotiations will forever be divided between schools of thought that seem less reconciled than they might actually be. Such differences, rhetorical or substantive, will surely impact the pace and success of negotiations.

Unresolved Matters

The most contentious issues generally lie in aspects of the proposed ATT that would make it much broader than merely an instrument to regulate commerce of conventional weapons. There is little disagreement that the world needs better international standards for trade in conventional weapons. However, how encompassing these standards will ultimately be invites debate. Core concerns for many states and NGOs encompass the inclusion of SALWs and ammunition in the scope, a robust implementation and oversight framework to both regulate and support states parties, and victims assistance.

As noted earlier, some delegations are hesitant to include any ›humanitarian‹ or ›disarmament‹ language. Supporters of this argument explain that the objective of an ATT is not to prevent loss of human life or curb human suffering. Such positive humanitarian effects would be by-products of an environment of greater transparency that more effectively chronicles and highlights illicit behavior, an environment that could well be enhanced by an ATT. On a different end of the spectrum are those delegations, as well as the overwhelming majority of civil society groups, wishing to maintain a strong humanitarian perspective with explicit reference to the impact of armed violence on human suffering, safety, security, and development. Also debated has been the expansion of the ATT's purpose to include control of arms as well as their regulation, encouragement of disarmament and non-proliferation through supply-side restraints, and encouraging other efforts to preserve regional peace and security. Additionally, there is general agreement that some international cooperation and assistance will be required for adequate implementation of the ATT. But through which financial means, how rigorous the controls will be, and in which organizational form oversight of transfers are carried out, are all questions that are still pending.

Some delegations have reiterated their support for addressing illicit trade in SALWs exclusively through the UNPoA without having to establish another instrument.

Indicative of this hesitation, the Iranian delegation noted in their 2011 First Committee statement that while the major problem of developing countries is the illicit trade in SALWs, some countries ›try to imply‹ that the main problem comes from the seven categories of the UN Register on Conventional Arms. Iran has argued that states should focus on the problem of SALWs and work constructively within the UNPoA as the proposed ATT is not the ›real solution‹ to the weapons-related problems faced by developing countries. Nonetheless, some regional blocs, especially CARICOM and the Africa Group, have invested a lot of negotiating energy in pushing for inclusion of SALWs in the scope of the ATT, perhaps even more vigorously than they have pushed for the inclusion of ammunition.

Inclusion of victims' assistance and reliable, robust verification monitoring will undoubtedly be difficult to achieve in the treaty in light of the consensus rule constraints. While acknowledging that such functions are best fulfilled by states, some non-governmental organizations (NGOs) and members of civil society have begun to envisage a role for NGOs to provide some core, ATT-related functions outside of the official process of negotiations at UN Headquarters. For instance, a discussion is now underway focusing on ways to create a structure to promote victims' assistance if governments fail to include such assistance provisions in the ATT. Likewise, in the absence of an official treaty mandate for monitoring and verification, NGOs interested in a strong and robust ATT have considered alternate ways to fill this role in order to reinforce treaty obligations. Models of ›civil society monitoring‹ have already seen some success through the Landmine and Cluster Munitions Monitor.

4. Recommendations

The hope is that the treaty negotiated in July 2012 will be both sufficiently robust and just the first iteration of a number of improved versions in subsequent years. Ambassador Moritán's most recent Chair's Paper from 14 July 2011 is an ambitious and far-reaching document. Few expect that all the possible provisions in the Chair's Paper that could be included in an ATT will appear in the first treaty iteration. Nonetheless, the Chair's Paper is generally perceived as well positioned to give birth to refined, consensual treaty language, albeit with quite a bit of diplomatic wrangling still to come. Ambassador Moritán has provided a solid canvas with the needed shapes,

colors, and materials. The task now is for member states to exert a sufficient degree of fluidity and creativity to refine the ›canvas‹ and make the final product as universally ›attractive‹ as possible. A number of recommendations are likely to increase the chances for negotiating a robust ATT with the greatest chances of formal adoption.

Push for a Solid Review Process

Similar to the evolutionary process of the International Criminal Court (ICC), the ATT will most likely require sequential refinement under the auspices of a regular cycle of review conferences. The ICC process began somewhat slowly with limited international support, but has since developed into a robust instrument utilized by the global community, including states that are not official signatories to the Rome Statute. The ATT may also have a similar evolution in which states must commit to a process of making treaty revisions well beyond July 2012, most likely in stages. It is important to incorporate a concrete review process that establishes regular meetings of states parties to assess and adjust the ATT to better reflect evolving security circumstances. Such a process would also provide opportunities to make the treaty stronger – hopefully to include some or all of the proposed provisions that still remain contentious and perhaps are too difficult to include in the initial treaty.

Advocate for Strong Implementation Capacity and Monitoring

It is essential that negotiations on an ATT focus on a structure that can support and even monitor national implementation once a treaty has been adopted. Member states must look realistically at the security, communications, and oversight challenges that lay ahead for treaty implementers, allocating appropriate funding for an international secretariat, ISU, or other suitable structure. There is no obvious mechanism that currently exists to coordinate ATT-related logistics. However, some structure must (sooner than later) be put into place to coordinate international assistance, monitor international transfers and, most importantly, ›flag‹ transfers that have a high probability of being diverted for illicit uses. At a minimum, any established ISU should perform such monitoring as well as facilitate capacity support and information exchange. As a corollary, if governments are unable to

endorse creation of such capacity, civil society has a role to play in creating possible support structures to assist in handling these very significant ATT-related functions.

Underscore the Importance of Diversion

Even those member states that vigorously contend that any ATT should neither encroach on territorial sovereignty nor interfere in the ability of states to conduct arms transfers cannot argue against the dangers of diverting otherwise legally transferred weapons to non-state and illegitimate actors, such as criminal or terrorist elements, including the reselling of weapons to line the pockets of corrupt officials. Delegations should address diversion directly in formulating a robust treaty that sufficiently highlights, monitors, and addresses all facets of this risk.

5. Conclusion

The ATT should be viewed as a floor, not a ceiling, for the regulation of the arms trade. States should be encouraged to adopt stricter standards of verification to the greatest degree possible and progressive states, along with NGOs, should push states to go beyond the consensus-driven standards adopted in the treaty. Moreover, any ATT must not be used as an excuse for the UN to limit or curtail its advocacy for better controls of illicit small arms, or for stronger application of international humanitarian and human rights law related to the production or use of armaments. Member states and those invested in promoting a robust ATT should carefully fuse the two objectives of a future ATT: regulating the future trade in conventional weapons but also integrating the recognition of how many weapons – many of them originally legal – have found their way into the illicit market spreading devastating insecurity across nations and regions.

In looking ahead, it is important to distinguish between what the immediate future will hold for the ATT in July 2012 as well as opportunities for expansion and clarification of the treaty in later review cycles. The ultimate aim is a ratified ATT that embraces a scope that includes small arms, a structure that can ›flag‹ potentially illicit transfers and provide capacity support for governments, a robust review process, and a focus on eliminating diversion of transfers and their potential impacts on the human rights of civilian populations.



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