

## **Tuning the Strings**

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Dr. Robert Zuber | Global Action to Prevent War

(Preview Edition)

It has been over six months since delegates last gathered at the UN to discuss core elements to be included in a final Arms Trade Treaty. Over these intervening months, governments reviewed their positions on scope and structure, diplomats attended strategy sessions in Boston, Montevideo, and elsewhere, and NGOs described pathways to progress on key elements that can help make the ATT as reliable as it is groundbreaking.

Our own organizational efforts are directed towards questions of structure—finances and monitoring—needed to make the ATT sufficiently robust to flag and deter illicit transfers. But this PrepCom is not so much about structural issues as about scope and elements, and we endorse efforts by IANSA, Control Arms, and others to bring clarity and urgency to those discussions.

We also endorse efforts to broaden the scope of civil society participation in this ATT process. We recognize that it will take much more than the collected expertise gathered around the UN to ensure a treaty that is clear, transparent, implemented in good faith, and capable of being carefully and accurately monitored. There are talents and networks in abundance within diverse global regions, and those voices must be present—or at the very least represented with the greatest of care—to ensure continuous, robust advocacy in all areas of the world where arms transfers can easily get off the straight and narrow track.

Finally, given our broad mandate, we are also preparing for what we (and others) feel are important and complementary gatherings of potential allies in efforts to ensure transparent transfers that respect human rights. The ATT process overlaps with both the Commission on the Status of Women (CSW) and the Special Committee on Peacekeeping Operations. While this CSW will focus on education and training, strong connections are being made to initiatives to promote women's participation in efforts to regulate arms transfers and end the illicit arms trade. And while the Committee will focus on a broad range of peacekeeping concerns, protection of civilians will be a core agenda item, protection which is jeopardized by the existence of so many diverted or otherwise ill-begotten weapons.

The ATT is a complex process and efforts must be made to carefully 'tune the strings' and arrive at a treaty that can both achieve consensus and enable the important work of regulating the global arms trade. But the ATT is also part of larger security system with diverse players, complementary interests and urgent expectations. As we all work together to refine and build support for an ATT, we should not lose sight of the other issue interests and resources that can complement our immediate efforts and help ensure our long-term success.

## **A Thematic Overview**

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Katherine Prizeman | Global Action to Prevent War

(Day 1)

The opening session of the second Arms Trade Treaty Preparatory Committee, chaired by Ambassador Moritan of Argentina, addressed the first of three major issue areas to be covered throughout this week of deliberations. Ambassador Moritan, prior to the February 28<sup>th</sup> opening, circulated three non-papers to Member States addressing scope, parameters, and international cooperation, respectively. Monday's session focused primarily on the first of these issues: scope. Member States engaged in a discussion of which weapons should be included under a future arms trade treaty. The United Kingdom's statement affirmed the intent to create a floor rather than a ceiling, such that the ATT may organically evolve as deemed appropriate by Member States.

The goal of treaty was debated throughout the day with states expressing both their aspirations and concerns. The French delegation identified dual goals for an ATT: to prevent illicit trade by keeping conventional arms out of the hands of terrorist and non- state actors, as well as regulate legal arms transfers. Mexico made clear that an ATT is not an arms prohibition treaty. Other delegations, including the Arab Group represented by the delegate from Bahrain, chose to identify the single goal of an ATT of regulating legal arms transfers. Bahrain made clear that 'politicizing' human rights as an excuse to intervene in internal affairs of another country is unacceptable. The delegations of Indonesia, Egypt, Iran, and China were particularly concerned with potential threats to territorial sovereignty in this context, and affirmed 'the inalienable right of self-defense' as enshrined in Article 51 of the UN Charter. In contrast, Norway stated that it takes a humanitarian perspective on the ATT seeking to limit international humanitarian law and international human rights law violations.

Definitions of basic terms, including 'imports,' 'exports' and 'transfers,' were also examined. Several Member States called for more precision in the Chair's definitions as found in the first non-paper. The definition of exports was explored whereby several states, such as Norway and New Zealand, explained that 'export' referred to both physical movement as well as the transfer of title and control. Transportation also emerged as an issue of concern whereby some delegations, including Denmark, sought to identify ways for the treaty to include this item.

The scope discussion placed emphasis on the 7 + 1 + 1 approach of weapons to be covered under an ATT. Antigua and Barbuda, representing CARICOM, expressed support for this approach. This includes the seven categories of the existing UN Conventional Arms Register as well as small arms and light weapons (SALW) and ammunition. The majority of states made deemed it appropriate that all conventional weapons, as well as SALW, should be included under the treaty. Egypt, however, stated that small arms should not be included under an ATT as there is already a Program of Action on Small Arms, and other states expressed concern about the complicating factors of including ammunition. Many other Member States, including Senegal, Belize and Kenya, made the argument that inclusion of ammunition is vital as ammunition is what essentially gives guns their lethality. The Swiss delegate stated that all ammunition of the weapons covered under the treaty must also be duly covered "full stop."

More controversial discussions centered on the inclusion of parts and components, technology, and research and development (R & D). There was concern over excluding parts and components in that the transfer of such creates opportunities for the importing party to assemble weapons in their territory. Trinidad and Tobago explained that the inclusion of parts and components is necessary to avoid loopholes. Hungary, representing the European Union, was also in favor of including parts and component in the scope. The United States expressed concern over discussion of technology transfers and R & D noting that their inclusion would be difficult to define precisely in a final treaty. The US referred to parts and components and technology as “tricky propositions.” Hunting rifles and antique weapons also received attention at various points during the discussion. The Mexican delegate expressed apprehension over their proposed exception explaining that such weapons could easily be refitted for more lethal purposes.

Other themes to emerge throughout the first plenary were ‘exceptions’ and the role of existing arms embargoes. The Chair's non-paper presented a list of exceptions of weapons that would lie outside of the treaty's scope. Some states sought the complete elimination of such exceptions including Costa Rica, which called for the widest scope possible referring to a 'positive responsibility' required of Member States, while others (including the French) reserved support for including at least some of the weapons on the list of exceptions. In addition, the issue of Security Council embargoes was cited by the Indonesian delegate explaining that an ATT must prohibit breaches of UN Security Council, regional and sub-regional arms embargoes.

There was also a relative consensus among a sub-group of Member States, including Cuba and the African Group that illicit arms trade transfers remain as severe hindrances to socio-economic development and poverty reduction. The Nigerian delegate, speaking on behalf of the African Group, stated that development is an absolute priority for Africa so that an ATT, which contributes to development, is welcomed. South Africa also spoke of a “view to the development impact.” The ‘development dividend’ of an ATT provides further motivation for many states to complete negotiations.

## **Bullet Points**

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Dr. Robert Zuber | Global Action to Prevent War

(Day 1)

Monday’s discussion at the ATT Prep Com , motivated in large measure by three ‘non-papers’ presented by Ambassador Moritan, reiterated some familiar positions and provided new evidence that, with few exceptions, diplomats are committed to pushing towards the finish line on a formal ATT.

Of course, what that ‘finish line’ looks like is still somewhat up for grabs. Delegates took seriously Costa Rica’s call for ‘positive responsibility’ and the tone in the room was largely supportive. Nevertheless, discussions on scope – both weapons and activities – made it clear that consensus is still a bit beyond the horizon. Perhaps the most contentious issue of the day was not about the inclusion of small arms and light weapons in the treaty -- as had been the case in earlier sessions -- but the inclusion of ammunition.

A compelling case was made by several delegations that the exclusion of ammunition from the list of items to be included in an ATT makes little sense, given that any modern weaponry – including that diverted to non-state actors or through diversion or corruption – is rendered useless in the absence of serviceable ammunition. As the CARICOM statement put it, “without bullets, guns are irrelevant.” Moreover, given that the ATT will not prohibit legitimate transfers between sovereign state parties, there seems to be no immediate purpose for excluding ammunition from regulation altogether, unless the delegates believe that states themselves are fully able to guarantee the end of weapons diversion and the ammunition that, as Belize put it, “imbues weapons with their destructive force.”

But there are legitimate concerns about ammunition in an ATT, one of which relates to reporting obligations under a treaty, especially for smaller states, obligations which are likely to increase with the inclusion of ammunition. Both Australia and New Zealand acknowledged the problem directly and suggested that ammunition could carry with it different criteria of ‘risk assessment’ that would serve to reduce reporting burdens while preserving regulation.

Also, the more weapons-related categories included in an ATT, the greater the perceived need for some non-state structure that can referee transfers and raise red flags in instances where such transfers are ripe for diversion or abuse. The inclusion of ammunition (and any related structural requirements) might jeopardize an otherwise achievable treaty consensus, a point that Egypt and others seemed to make.

But some sort of structure beyond states seems appropriate, especially in efforts to regulate ammunition, given that it has broad application to existing weapons, not only to the most modern, up-to-date ones. As the German delegation noted, ammunition and weapons are “twins,” though not entirely identical ones. Newly minted weapons may well displace existing stocks and even provide incentives for resale to non-state actors. But older weapons can also be upgraded and ammunition reinvests these weapons with fully lethal potential. If such weapons become also prime candidates for diversion or resale, unregulated ammunition can easily turn limited destructive instruments into a major security problem for states.

The US stated that an ATT should merely provide guidance to states on transfers without any independent oversight authority. The irony for some delegates in this instance is that the country with the strongest voice on ‘terrorism’ is also resolute in rejecting any non-state structure that could flag transfers that have the potential to lead to abuse by or diversion to non-state actors. Examples already come to mind of transfers-related situations overseen only by states that can easily threaten security and compromise existing human rights and international law obligations. Such examples will be shared in the days and months to come. In the best of worlds, doors to a structure adequate to the ambition of this ATT will stay open.

## **Floors and ceilings**

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Jessica Erdman | Global Action to Prevent War

(Day 2)

The hopeful buzz around the Arms Trade Treaty (ATT) has provided many with optimism about the eventual ratification of the ATT. However, there exists a fundamental disagreement about the nature of the ATT—is the ATT to be a “floor” or a “ceiling”? Proponents of creating a “floor” argue that the ATT should be written with minimum standards, and simply exist as a bare minimum by which states can expand upon in their national capacities, while their counterparts wish to create an all-encompassing, truly universal treaty. Is there any room for compromise?

Before delving yet again into a zero-sum style of deliberations about floors and ceilings, we must take a step back and analyze the ATT's role in the international community. We need an ATT because such an instrument is absent in the international community—by filling a gap in international law, and thus protecting civilians through regulation of arms trade. The conversation is not about whether gender, education, and human security are relevant, but rather, how to effectively include these linkages without over-reaching or politicizing the issues.

However, human rights, genocide, and crimes against humanity are inherently political issues. The concern that these issues may be politicized is legitimate, but not a strong enough argument to conclude that we should simply forget about their inclusion. Many delegations have addressed the recent and relevant Security Council resolution 1970 as an example of what the ATT can and should aim to achieve—ensuring the human security of civilians is upheld in humanitarian crises, while providing a clear course of action to do so.

Member states must continue to strive to define the scope and parameters of an ATT—one that does not, of course, impede upon state's rights as written in Article 51 of the UN Charter, but find a way to balance the necessity of an ATT with their security needs. Thus far, the zero-sum rhetoric of security vs. an arms trade treaty has not proven to be conducive to the debate. There exists a space between the floor and ceiling—essentially, a compromise. However, a compromise cannot be formed until we re-evaluate the manner in which we see an ATT.

As the debate moves forward to discussions on international cooperation and framework for implementation, the question of floors and ceilings will undoubtedly re-appear. However, we cannot afford to continue to analyze, vis-à-vis, whether development, economics, human rights, or gender are important enough to be considered in tandem with the ATT. Instead, we must pursue self-reflective and vigorous debate on the ATT, with the knowledge that the ATT's unique and unprecedented role as a needed instrument to prevent human suffering.

### **Articles of interest**

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Dr. Robert Zuber | Global Action to Prevent War

(Day 2)

Consistent with other ATT preparatory sessions, diplomats have had to wrestle long and hard with what Tuesday's CARICOM statement identified as the balance between the right of states to acquire arms and the various legal obligations – human rights, humanitarian UN Charter-based, and more – that constitute valuable criteria by which arms transfers are determined to be legitimate or not.

As we know for our work on civilian protection and ‘responsibility to protect,’ sovereignty and territorial integrity are major issues of concern for states. Many smaller states have experiences with seemingly benign UN tools and resolutions being employed as a pretext for intervention in domestic affairs. There is considerable resistance to giving the Security Council or any other UN-authorized body additional authority to intrude in the internal matters of governments, including on arms transfers.

Over the past two days, several delegations have reinforced the need to respect sovereignty, citing Article 51 of the UN Charter as the basis for states’ rights to acquire arms in accordance with self-defense and other legitimate security interests. **We do not challenge this right**, but do believe that it has a context in international relations that is not always enhanced by virtue of an imprecise application of Article 51. The Article is worded as follows:

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

The Article clearly recognizes a right to self-defense in cases of immanent attack. However the way that states often invoke this right to ‘self-defense,’ which has achieved almost customary usage in discussions like the ATT, is actually more arbitrary and less contextual than that granted by this Article.

Our preference, reflected in numerous UN resolutions on disarmament, is for states to pursue their legitimate security interests – including arms transfers -- based on the principle of *undiminished security at the lowest possible level of armaments*. But we acknowledge that there is no standard definition of ‘lowest possible’ on which nations have agreed. Moreover, the Article appears to strengthen the hand of the Council in security matters in ways that would actually appear to compromise rather than broaden sovereignty.

Since the ATT does not seek to prohibit legitimate arms transfers between states, there is no particular need to define clearly in this context notions of ‘legitimate self-defense’ or ‘undiminished security.’ But Article 51 is probably not the most appropriate citation to underscore the right to self-defining, self-defense or to any other subjective notions of ‘sufficiency’ in the security area. On Tuesday, many delegates to the ATT wisely called for more precise definitions of key terms related to criteria and parameters for legitimate arms transfers. We respectfully request the same clarity on the use of Article 51.

### **Assisting and implementing: a symbiotic relationship**

Katherine Prizeman | Global Action to Prevent War

(Day 3)

Wednesday's ATT discussions centered upon the issue of international cooperation and assistance. As such, there was much emphasis on the necessity of assisting states in making an arms trade treaty implementable. Most Member States accepted the notion that if an ATT is to be successfully put into action, adequate assistance provisions must be included in the treaty language. There were caveats, of course, in which some Member States sought to clarify, limit, or redefine what is meant by assistance. The United States was the most explicit in its limitation of the term by choosing to define international assistance as only that which is directly related to arms transfer, which excludes technological transfers and other more peripheral modes of assistance. Contrastingly, the most liberal interpretation of "assistance" was touted by several small, developing states, including Papua New Guinea representing 11 Pacific small island states. Other states expressed support for provisions of international cooperation and assistance, including CARICOM, which underscored the critical role of the international community in assistance, including technical assistance, personnel training, and stockpile management. The European Union, represented by Hungary, called for exchange of information as to facilitate national assessment of transfers, while the Chinese delegation went so far as to call cooperation and assistance an "obligation".

While this positive view of assistance, albeit varying levels of assistance, was shared by many delegations, there were those who expressed ambivalence in accepting an assistance provision without further clarity as to where this 'cooperation' would lie. The Egyptian delegate posed the question, "Is it international cooperation to promote adherence to the treaty or for treaty implementation?" It seems that these two forms of assistance are indivisible insofar as adherence to the treaty, for many states will require cooperation and assistance from the larger international community in order to implement the treaty. Adherence and implementation are really different sides of the same coin, so to speak. Furthermore, implementation is a prerequisite for adherence, while genuine adherence to the treaty cannot be accomplished without proper implementation.

The issue of incentives, for both states needing assistance as well as those providing it arose during the conversation. The delegation of the Islamic Republic of Iran noted that offering assistance to states would undoubtedly encourage developing countries to join the treaty and effectively implement it. Likewise, Trinidad and Tobago noted that assistance would enable the full realization of the treaty for all signatories, which would thus have a positive impact on those providing the assistance. From a practical standpoint, these arguments perhaps carry the most weight. Incentivizing an ATT for both assisting and assisted Member States will serve to better control the global arms trade through wider participation. One of greatest benefits of the UN system is its universal representation on which its strength and legitimacy are also largely based.

Beyond technical assistance, information transfers, and scientific exchange, it is important to focus on national capacity-building as the long-term goal for state parties. As was pointed out by the delegation of Japan, the most important assistance that could be provided is national capacity-building in developing laws, regulations, and enforcement agencies. Such capacity-building provides the bridge between discrete acts of assistance to the insurance of practical and sustainable treaty implementation. At this nascent stage of discussions, it is appropriate to discuss how international cooperation and assistance is to be defined in a broad context with perhaps only passing mention of longer-term goals of structure and long-standing implementation. However, in looking ahead, it is imperative that Member States take steps

forward with an eye towards greater international assistance and cooperation through next steps. These would include, as already identified by a few delegations, identification of a national liaison and point of contact, adoption of a national action plan, and establishment of an international Secretariat to monitor implementation of the treaty.

Agreement on a global arms trade treaty will require some degree of cooperation and assistance from which there are many levels to choose. The range varies from the sharing of discrete pieces of information to the establishment of an international Secretariat. Nonetheless, no matter a Member State's stand on the degree of assistance required, explicit provisions addressing such assistance must be part of the final treaty language.

## **Giving circles**

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Dr. Robert Zuber | Global Action to Prevent War

(Day 3)

The topic of the day at the ATT was cooperation and assistance, a theme that resonates as much with persons outside the UN system as inside it. Helping to 'level the playing field' among states and peoples is considered by many to be one of the cardinal priorities of the UN system. That states were willing to take up issues of capacity assistance to help other members fulfill their implementation responsibilities under a formal ATT was most welcome. As Australia noted, some states will need lots of help on treaty implementation, especially if their existing controls over weapons transfers lack fundamental robustness and clarity. The CARICOM statement provided a fairly robust listing of capacity-related issues for which assistance might be required in some instances, including customs and security controls, detection equipment and stockpile management. Papua New Guinea added to this list the need for common reporting formats and options for regionally based reporting to supplement national efforts.

There are many places to seek and find capacity assistance—including UN agencies and civil society organizations—but states have the resources and the experience to make a huge difference to states that are sincere about their treaty commitments as well as their resolve to end illicit transfers by means of diversion, corruption or other means. That so many states reaffirmed this fundamental requirement of a successful treaty, even if many also pulled back from affirming any mandatory obligation (such as that suggested by Indonesia and Tanzania) to provide such assistance, was a start towards providing a framework that is reliable for states that are resolved to make real progress on transfers.

Capacity assistance of a largely technical nature was only one of the forms of support mentioned during the session. CARICOM and others also called for 'information exchanges' to ensure that 'best practices' on arms transfers are made available to guide national efforts and highlighted the need for a 'dispute resolution regime' that can help to sort out competing claims on transfers, both between buyers and sellers and between governments and the formal requirements under an ATT. There were also discussions on 'victim assistance' which evoked a mixed response from delegations, with Norway making what we feel is a useful proposal to place victims of weapons-related violence into the language of the treaty as a clear element of the rationale pushing delegates forward towards a formal treaty.

All of the ‘assistance’ language raised again questions of structure. How will donors and recipients get together to identify and respond to legitimate, treaty-related needs? How will best practices and the most helpful information and resources be identified and distributed? How will disputed claims on arms transfers, including ‘red flags’ on the potential for diversion, be adjudicated? How do we help ensure that reporting obligations are met in an accurate and timely manner?

Clearly it is not enough to leave these matters to individual states. A number of statements, including those by Brazil, the European Union, New Zealand and the United States, affirmed the need for some sort of secretariat structure to handle these and related tasks. The likelihood of such a structure is difficult to determine and the scope of such a structure once the need for it has passed the test of consensus is equally unclear. But the fact that so many states recognize the problems that structural insufficiency might cause regarding the implementation of a treaty is a very positive development.

As these issues get debated further, there is a ‘cultural’ question to answer as well. What do donors and recipients owe each other? In our view, there must be a healthy symbiosis between the capacity gaps that states need to fill and the resources available from donors to fill them. States seeking resources must, as CARICOM noted, do as much for themselves as possible. Thus, donors are in the position of filling gaps not underwriting entire programs. This is in keeping with the desire of Switzerland that recipient and donor states work out capacity need together. Part of that is working out which states will do what and how external aid can best be used to fill the most pressing needs.

As noted by Trinidad and Tobago, cooperation makes demands on givers and receivers. The regulatory coherence envisioned under an ATT will only fulfill its potential as states recognize their responsibilities to be both donors and recipients. All states have some capacity to share, some with wise perspectives, others with educational materials, best practices or strategies on transfers that can help other states and regional bodies create more robust, transparent standards and more efficient implementation protocols. Sharing what you have and negotiating for what you don’t is the essence of cooperation that turns assistance into partnership.

## **Size matters**

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Dr. Robert Zuber | Global Action to Prevent War

(Day 5)

One of the pressing matters throughout this Prep Com is the matter of how states who sincerely seek to be in compliance with future ATT obligations can find the resources to do so. How does a small or potentially fragile state divert sufficient resources to create viable national action plans to assure legal transfers and eliminate diversion and corruption opportunities relative to their arms purchases?

In a similar vein, this Prep Com has reminded many participants of the wide capacity gaps that separate missions. On more than a couple of occasions this week I playfully chided diplomats who had not been able to occupy their assigned ATT seats for a particular session. And on most

of those same occasions, I was reminded by diplomats – especially from smaller missions – of the many responsibilities that they must discharge in a week as hectic as this one has been around the UN. Between CSW, CSD and ATT, the North Lawn Building has felt a bit like the central Mumbai train station, diplomats and others trying to find food and other resources before they run out and making snap judgments about whether gender, development or arms trade problems are most deserving of their immediate attention.

Mission size, indeed, constitutes one of the fundamental inequities of our UN system. Each fall, we find diplomats assigned to two and even three GA committees struggling not only to make appearances and cast votes, but to master the often complex issues on which their votes depend. There is obviously not ever going to be a ‘cap’ imposed on mission size, but small size constitutes an extra burden that makes it more difficult for missions to weigh in on important issues facing the global community, not to mention those that directly impact their own societies.

This ATT has certainly been attentive to reporting demands and other capacity challenges that face smaller countries. And as we noted yesterday, there has also been broad recognition of the need for states to provide capacity as well as receive it. In today’s discussion, there was a new wrinkle, first implied by Ambassador Moritan in his quite sensible call for more practical, less abstract comments from delegates, and later applied to the issue of ammunition by the US and later by the UK and others. The wrinkle is that states endorsing a ‘controversial’ point on scope or parameters should help provide a practical blueprint for how to move forward with their proposal.

While we don’t see the inclusion of ammunition in the scope of an ATT as particularly ‘controversial,’ there is some wisdom in insisting that if a state (or group of states) wants to arrive at a particular destination, then some energy should be put into providing directions. It is the presence of ‘directions’ that turns an aspirational destination into an achievable one. But this reasonable request has several key caveats. First, given the current lack of robustness around discussions of structure, one could easily make the case that presentations from almost all missions have been much ‘heavier’ on aspirations than on directions. Second, what constitutes ‘controversial’ for purposes of blueprints varies dramatically from state to state, as other contributors to this Monitor have made clear. And third, given that some of the ATT country ‘teams’ are larger than some mission staffs, it is probably too much to insist that all proposals emanating from states come attached to such blueprints, at least at this particular time.

There are ways for smaller states to be heard in practical ways on arms trade issues. They can participate more robustly in forums such as the Group of Interested States process. They can (as many do) blend their voices more effectively into regional statements that clarify and magnify intent. And they can work more closely with civil society, government or UN experts to ensure that key issues and opportunities are clarified prior to sessions such as the ATT Prep Com. But all of this takes time and some of it mostly draws unwanted attention to the burdens of limited staff resources that many missions labor under.

The UN and its disarmament machinery are on the cusp of substantial and welcome gains on multiple fronts, from arms trade to weapons of mass destruction free zones. The common thread is that these are all matters of great technical sophistication requiring considerable building of

trust and political will within and among states. If the larger states are as keen on successful implementation as they have stated, more practical attention must be given to capacity imbalances that impede fluency on technical, trust-building and political affairs. States that are unable to participate as full partners in these deliberations are less likely candidates for a robust and enthusiastic implementation of ATT obligations.

## **Philosophical differences**

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Katherine Prizeman | Global Action to Prevent War

(Day 5)

As the 2<sup>nd</sup> PrepCom comes to a close this afternoon, it is time to recognize the indispensability of coming to a consensus on the central purpose of a future arms trade treaty. As evidenced by discussions Thursday morning, there is a fundamental difference in philosophy in this regard among many of the delegations. This is a contention that will remain at the heart of future ATT negotiations both during the July PrepCom and the 2012 conference. In order to successfully move 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 be rendered meaningless. No consensus can be reached on the details if consensus on the central objective remains elusive.

The divergent opinions were illustrated by the interventions of a myriad of delegations. The United States made clear that the objective of an ATT is not to prevent loss of human life, but strictly for the regulation of legitimate transfer of arms. The prevention of death and human suffering could very well be a welcomed by-product of a successful conventional arms regulation treaty, but it surely is not its objective. The US delegate stated that it is impossible to legislate human behavior, but, rather, an ATT would create an environment of greater transparency to better reveal illicit behaviors. Contrastingly, Pakistan chose to expand the view of an ATT’s purpose to include the regulation and control of arms as well as the prevention of war, promotion of peace and security, encouragement of disarmament and non-proliferation through supply-side restraints, and the preservation of regional peace and security. The Australian delegation spoke of maintaining a humanitarian perspective in a future ATT with explicit reference to the impact of armed conflict on human suffering, safety, security, and sustainable development. Also discussed was the significance of development and its relationship to the ATT. An arms trade treaty would facilitate more peaceful and secure conditions conducive to national development goals.

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 entrance-into-force. Therefore, it is necessary that the discussions and consultations that will follow this PrepCom genuinely hone in on these differences and seek a realistic and pragmatic solution to this philosophical difference of 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, merely rhetorical or not, will surely impact the pace and success of negotiations.

As the Nigerian delegate put it, “At the end you start thinking about the beginning.” As the end of the PrepCom draws upon us, it is necessary to think about the beginning and determine a clear consensus on what the central objective of a future ATT should be.

## **Moving toward a substantive debate**

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Jessica Erdman | Global Action to Prevent War

(Day 5)

Thursday's debate commenced with the introduction of a Draft Paper by the Chairman, which provided delegations with the opportunity to move away from abstract discussions, and towards a practical future. All delegations expressed their gratitude for the document, which served as a culmination of the debate thus far. Discussion ranged from the abstract to specific and included previous questions addressed by the Preparatory Committee: ammunition, transfers, the responsibility of receiving states, and the impact on developing countries. The most apparent changes in the new Draft Paper, as compared to the July paper, include the combining of the terms “ammunition” and “munitions,” and the usage of the word “assessments,” as an action to be taken by states considering whether to transfer arms.

The Pakistani delegation re-affirmed their support for the inclusion of states' inherent right to self-defense and sovereignty, as addressed under “Principles.” However, New Zealand reminded states of “other responsibilities in such situations” that extend beyond Article 51. The French delegation welcomed the Chairman's decision to include language in the “Criteria” such as genocide, international humanitarian law, international law, genocide, crimes against humanity, and war crimes, and suggested such definitions be based on already-established universal documents outside of the treaty. However, the Indonesian delegation critiqued this decision, arguing that such references were too broad.

With regard to the “Scope” section of the document, the Colombian, Mexican, Norwegian and Swedish delegations questioned the removal of military explosives, reiterating their importance as a weapon with dire consequences. The Swiss delegation called for more clarity in the “Scope,” wondering whether hand grenades fell under the items listed. While some states called for *more* to be included in the “Scope,” the U.S delegation expressed their position against any inclusion of ammunition in the treaty. Debate over the terms “ammunitions” and “munitions” was also reignited, with delegations such as Malawi and Peru that felt ammunition was not only important, but also *imperative* to an effective ATT.

Other delegations were worried over the possible non-objectivity written into the “Criteria” section of the document. The Ecuadorian delegation wondered who would assess the criteria when determining if a transfer of arms would be detrimental to socioeconomic development. Both Cuba and Brazil indicated that an arms treaty should not discriminate against developing countries that wished to acquire new technologies. The illicit use of arms by non-state actors by way of diversion was also deemed to be necessary for inclusion in the treaty as Argentina, Colombia, Mexico, and Peru pointed out. Similarly, Zimbabwe pushed for a treaty that would not allow arms to fall into the hands of those who violate International Humanitarian Law.

The topic for Thursday's debate, implementation, was also addressed by several delegations. The Japanese delegation worried that the language in the treaty with regards to evaluation and

assessment of transactions might prove to be a barrier, while Tanzania questioned the consequences of non-compliance with the treaty. The Nigerian and the Trinidad and Tobago delegations suggested the creation of a dedicated Secretariat to be put in place, which could serve as a solution to such problems.

Civil society presented their views on oft-debated topics, such as the inclusion of "Criteria" that references socio-economic development, as well as the topic of ammunition. NGO representatives from Amnesty International, Morocco and Safer World called for a comprehensive and broad scope in the treaty. Safer World argued that to not include ammunition in the ATT was taking a step backwards. Amnesty International pointed out the contemporary relevance of an ATT, such as the situation in the some countries in the Middle East. Oxfam linked the notion of security to development, arguing that conventional arms can have a serious impact on development. IANSA reminded state of the individuals and communities who have suffered as a result of unregulated arms.

If, as the United Kingdom delegation stated, "nothing is agreed until everything is agreed," we have a long journey ahead. Delegations' vast points of views on topics varying from definitions to technology exposed a continuing, fundamentally unanswered question: what should an Arms Trade Treaty *be*? The Chairman's Draft Proposal attempted to close the gap between the abstract and reality, but with a wide array of viewpoints on nearly every topic, much substantive negotiation remains for July 2011.

### **Drafting table**

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Dr. Robert Zuber | Global Action to Prevent War

(Final Edition)

There is a maxim of successful legislation of any kind that you draft laws for your skeptics, not for your supporters, and in such a manner that ambiguity can be minimized, penalties are made proportionate and an independent assessment of potential non-compliance can be ensured.

There are considerable differences to be noted between national legislation and treaties such as the ATT, including the consensus requirement, and perhaps even the degree of difficulty in amending treaties once adopted. But as we move closer to formal negotiations on an ATT, there are also valid lessons from legal drafting that can profitably be integrated into formal treaty negotiations.

One of these lessons is that diplomats should continue towards formal negotiations with a clear and lively sense of what treaty skeptics need to gain in order to overcome obstacles – more and less legitimate – that stand in the way of eventual final agreement. If it is possible to provide some measure of satisfaction to skeptics before negotiations commence, the chances of their engagement in the process and its aftermath are that much greater. Assuming the skepticism comes from some place of genuine national interest, there is value in taking additional time to address it at this stage.

Whether working out legislation or treaties, the most skillful negotiators are often intensely sensitive to dissonance. Those who can remain attentive to rhetorical criticism without

succumbing to defensiveness or indifference are demonstrating the highest levels of negotiating leadership. We feel that Ambassador Moritan -- in part by virtue of his fearlessness in serving as a 'lightning rod' for the process through the 'non papers' he has produced, shared and amended - has exhibited precisely this kind of leadership.

For the rest of us, it would probably be wise to schedule a bit more time with those who disagree with our ATT positions. As Pakistan reminded delegates in the last hours of this Prep Com, "lockstep can easily lead to misstep." Of course, it would be unfair to accuse any of the principle participants -- including NGOs -- of suggesting treaty parameters that are not subject to negotiation. Holding convictions does not necessarily imply closing off discussion pathways. And most delegates understand the need to keep walking a tightrope of sorts between avoidance of needless ambiguity and ensuring that treaty processes and outcomes are as encompassing as possible. To help make this tightrope less daunting, many delegations now seem to be coming around to the view that some structure will be needed to ensure the transparency and accountability that can legitimate an ATT regime in the eyes of both governments and the global public.

At some point to be determined, the issue will be less about airing differences than about having diplomats decide how differences will be adjudicated in the name of producing a formal, actionable treaty. But we are still at a phase where divergent views over scope, parameters and structure are fair game and perhaps even healthy if the final treaty is to be implemented with enthusiasm by as many states parties as possible.

### **The beauty of the business**

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Salvatore Russo-Tiesi | Global Action to Prevent War

(Final edition)

The encouraging manner in which the 2<sup>nd</sup> ATT Prepcom commenced seems to leave the international community optimistic about the creation of an Arms Treaty. Looking forward, the questions that must be tackled in July regard substance and implementation details of this historical accord.

What we have witnessed this week is an immense stride in the spreading the presence of "safety" in the international community. Granted, a considerable amount of differences still exist between nations involved in this rigorous process. There is much debate about the exact wording of the treaty. The scope, criteria, and elements in the treaty are also contested by many of the nations. However, as mentioned previously, this does not take away from both the significant progress made, as well as the optimistic environment. In fact, I would argue this week portrays the beauty of this business.

The beauty lies in the ability of diplomats and nations all over the world to temporarily consider the health of the international community over that of their country. This coherence allows for the passing of international regulations, much like the Arms Treaty, for the betterment of the world. I am confident this end result will prevail once again. Until then, let us appreciate this roller coaster of a ride.

As the United Kingdom so graciously stated in his final address, diplomacy is a unique business. Diplomats do not choose this profession for the money and travel (most do not experience anything more than airport terminals and hotel facilities on their business trips). The calling comes from a patriotic sentiment to advance the overall well-being of one's country. The fascinating part is how so many different diplomats and countries can come to consensual agreements, while keeping the well-being of their country on the forefront. Calling to mind our personal lives, I am sure all of us can recall countless times when a group decision seemed virtually impossible to make. Whether the decision is what movie to see, where to catch dinner, or what to watch on TV, the bigger the group the harder it is to come to a unified decision. Directly relating this to the UN and this ATT process in particular, the complexity in deciding what is to go into a legally binding treaty involving over one hundred countries is indefinable. The fact that after two rather short Preparatory Committee meetings the international community can attain the agreement and success it has to this point is astounding. The optimism and the overall coherence after this week are remarkable achievements. The nations, in particular their respective Ambassadors and Diplomats, deserve praise.

Sure, Pakistan claims we are still missing the big picture and Iran stated that we have overambitious goals and must remain grounded before it is too late. Yes, Egypt is confident that the wording is inadequate, we are not even paying attention to the rights of importing states, and we are assuming things that history does not back up. However, these are small ripples in the ocean. Of all the nations in the process and all the possible issues that could arise, these are, for the most part, the main concerns. There is the beauty of the business. This is an excellent reason for a toast at the Millennium Hotel.

## **See you in July**

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Katherine Prizeman | Global Action to Prevent War

(Final edition)

There was a distinct sense of optimism around the room of the second preparatory committee for an arms trade treaty. After final interventions by Member States related to the Chair's most recent draft paper, the Chair, Ambassador Roberto Moritan, joined delegations in expressing enthusiasm and excitement for the third PrepCom that is to take place in New York in July. As for the second PrepCom, on the whole, delegations seemed to view this past week's meetings as a positive step towards a final arms trade treaty. Perhaps even more importantly, delegations recognized that in order to proceed there must be a minimal level of consensus and cooperation. The delegate of Iran stated that despite the very wide range of diverse views, a commitment to sincere cooperation is vital to this preparatory work towards final formulation of an ATT. In the same vein, the delegate of Pakistan stressed that it is vital that all Member States listen both to those who agree with them as well as those who do not.

As the delegate of Nigeria stated, "It is time to go back to the drawing board and build on these negotiations." Going back to the drawing board requires Member States to take the central issues discussed throughout the week back to their capitals to determine how their positions may be reformulated for the sake of international consensus and for the best and most expedient outcome to an arms trade treaty.

From the discussions this week, it is abundantly clear that the central questions that must be answered in the next PrepCom are:

- Whether the future ATT will be strictly a treaty to regulate the legal trade of conventional arms or a broader agreement seeking to identify and address illicit trade as well
- If there should be inclusion of small arms, light weapons, and ammunition in the scope
- How to define ‘transfer’ as opposed to other relevant activities covered under the treaty
- Where, if at all, there should be references to international human rights and humanitarian law, which could include mention of armed violence, poverty reduction, victims’ assistance, gender, and development
- How to safeguard territorial integrity, states’ right to self-defense, and political independence
- How expansively international cooperation and assistance will be accounted for—whether limited only to that which directly relates to arms transfer or as wide as to include training, stockpile management, and technological transfers
- How to integrate definitions that are apolitical and based on already-established language as found in previous UN documents

Answering these very weighty questions will be no small feat. However, there will need to be compromises made by all delegations in order to enter final status negotiations and bring to fruition an ATT.

There seems to be genuine consensus among Member States that there is a true need for an ATT. There has been wide regional participation in these discussions from CARICOM, the Arab Group, the EU, and the Group of Like-Minded States, which illustrates the global interest in moving this process forward. Even the most hesitant of states have expressed interest in completing some form of an arms trade treaty. This fact should not be underestimated, but rather, should be celebrated and used as encouragement for future work on an ATT. The July 2011 PrepCom must answer a slew of difficult questions such that the 2012 negotiations can move efficiently and productively towards final treaty language. Under the very able leadership of Ambassador Moritan, this is possible. However, the delegates to the next PrepCom must be diligent about working out answers to these aforementioned questions so that a treaty begins to take form towards 2012 ratification.