



Control Arms Coalition NGO Speeches for the Final Diplomatic
Conference on the ATT

March 2013

Presentation by Allison Pytlak, Control Arms

Excellencies,

In the eight months since the July 2012 Diplomatic Conference failed to reach agreement on an Arms Trade Treaty, more than 325,000 people have lost their lives to armed violence. From Mali to Syria, from the DRC to Guatemala, the arms trade is out of control, and the cost is paid in human lives.

The Control Arms coalition has over 100 member organizations working in 120 countries, and present in this Conference with over 150 campaigners.

Our message is clear. The world needs an Arms Trade Treaty. But not just any Treaty. It needs a Treaty that recognises the human cost of the under-regulated trade, including that of the survivors of armed conflict and armed violence.

It must be a strong ATT, not one agreed as a lowest common denominator. It must have the highest common international standards, not the easiest compromises. It must be a treaty with teeth that will make a difference on the ground, not an overly-compromised one agreed for the sake of political convenience.

A strong treaty is one that includes all conventional arms, ammunition, and parts and components – and all types of arms transfers.

A strong treaty must have robust criteria which will prevent arms transfers where there is a substantial risk they will be used in violations of international human rights and international humanitarian law.

A strong treaty must have implementation mechanisms that are clear and include public reporting.

Strong treaties set high international standards. Strong treaties affect the behaviours of all states, even non-signatories. Strong treaties make a difference over the long-term.

History has shown that treaties are incredibly difficult to strengthen over time, whether by means of amendments, new protocols or otherwise. Amendments can take decades to achieve, and tend to require the same degree of political will and global momentum as did the original agreement – a tall order.

We welcome the President's revised Non-paper presented yesterday. It represents progress and has served to clarify and tighten the language used in most instances, removing much if not all equivocal language in the draft. We especially commend the deletion of former Article 23, and the improvements to the articles on Conferences of States Parties, the Secretariat and other Final Provisions.

While the revised Non-paper generally moves in the right direction, it has nevertheless missed the opportunity to entirely bring the draft text up to fully reflect existing international legal obligations – especially true of new Articles 3.2 (formerly 5.2), 4.1 and 4.3 (the old 3.1 and 3.3).

In many articles and passages, the current draft, if unchanged, would undermine current international law and practices rather than ameliorating them. For example, current Articles 3.2, 4.3 and 5.1 are simply untenable.

So, we call on you to have courage. To make the changes based not on what is easy but on what is right – and desperately needed. Not within these walls, but outside in the real world. Our message to you is this: you have one chance, please get it right.

Presentation by Geoffrey L. Duke, IANSA

I am from South Sudan. A country which, like many in my continent, has suffered from armed violence and conflict. We need this treaty urgently. And we need it to cover ALL the arms that affect us, not just some of them.

Article 2.1 of the new draft specifies that only arms that fall under the seven categories of major offensive conventional weapons covered by the UN Register of Conventional Arms, plus small arms and light weapons are included. This list is based on a Cold War-era transparency mechanism that ignores many types of equipment at the heart of many of today's conflicts.

Anything less than "all conventional arms" will simply not meet the ATT's Object and Purpose. Small caliber artillery systems, armored vehicles, military aircraft and helicopters not tagged as combat or attack, and unmanned aerial attack vehicles (or drones), and many others must all be included.

A change to the chapeau of Article 2.1 would make it clear that the treaty applies to all conventional arms. It is neither necessary nor desirable to set out an exhaustive list of weapons to which the treaty would apply given that this could exclude future developments in the field of conventional weapons.

This "future-proofing" is essential given rapid advances in technology, for example in terms of nanotechnology and artificial-intelligence systems, which raise the prospect of an ATT incapable of controlling future weapons that might already be in development.

The vast majority of States over the course of the ATT process have themselves argued that the current scope is too narrow. The very small minority arguing for exclusions to Scope should not be allowed to impose their concerns – generally stemming from resistance to transparency and reporting – and cripple the international standards for decision-making on arms transfers.

These omissions are further exacerbated by the absence of "ammunition or munitions" and "parts and components" from Article 2.1.

Ammunition is the fuel of conflict. Its control must be at the heart of any Treaty that proposes to restrict the access of warlords, tyrants and criminals to the tools of destruction. Effective controls on ammunition would impact a conflict far faster than controls on the weapons they serve. Applying lesser controls to ammunition than to other conventional arms is a betrayal of those whose lives are blighted by its easy availability. We know it can be done; it is done today, including by those who would claim it is too difficult.

Without bullets, the guns fall silent. They must be included. 69 countries have already demanded ammunition in scope through the group statement read by Ghana, and more have since agreed. Many of these countries are situated in or near zones of conflict and know better than anyone how important this truly is.

The exclusion of parts and components from Treaty Scope is also intensely problematic. This trade is of huge significance in today's international arms markets, and becoming more so. It is critical to the 'future proofing' of the Treaty. As with ammunition, properly controlling parts and components may more rapidly grind killing machines to a halt. Vehicles, vessels and aircraft once exported can last for decades, but only if there is a ready supply of parts and spares to keep them operational. And as the overwhelming majority of states on record have said, parts and components should be included in Treaty Scope.

Lastly, on Article 2.3, despite the clearer language in the President's March 20 draft, the term "transfer" remains inadequately defined. It can still be understood as applying only to the commercial trade in arms, thereby leaving out government loans, gifts and military assistance programs. Even if trade is interpreted to include non-commercial activities, the narrow definition of activities included would exclude a transfer, loan or lease 'in-country' e.g. equipment left after a military exercise or peace-keeping operation, as this may not constitute an import or an export.

The current scope of the treaty has clearly been crafted so as to accommodate the positions of a select few states. The Scope of this instrument must be written by the majority, not the privileged few. I urge you to remember this, as well as the plight of the aged, the women, the children, and all of those living and dying, every day, under the shadow of the gun.

Presentation by Salil Shetty, Secretary General of Amnesty International

Thank you Mr. President.

Amnesty International, in partnership with the Control Arms Coalition, has been working for years to urge the international community to adopt a strong, effective and comprehensive Arms Trade Treaty.

We are driven by the desire to stop the irresponsible trade in arms that fuel conflicts and civil unrest in which civilians suffer.

For more than two decades we have documented how civilians are targeted or subjected to indiscriminate attacks.

Men and sometimes boys are killed simply on the assumption that they will become combatants – often solely on the basis of their ethnicity. Women and girls are subjected to violence, often sexual violence, because those who are committing these crimes think they can destroy morale by attacking women. Children are forced into active participation in armed conflict.

It is crucial that you seize this opportunity to adopt a strong, effective and comprehensive Arms Trade Treaty that will stop the flow of arms to those who would commit these abuses.

We understand the economic and political interests in arms transfers and the right of all states to self defence as articulated in the UN Charter. But neither economic interest nor the right of self defence can justify authorizing transfers of arms and ammunitions where there is a substantial likelihood that they will be used to commit atrocities.

I want to focus on Articles 4 and 5, which define when an arms transfer is prohibited.

The difference between, and hence the complementarity, of Articles 4 and 5 of the draft text is the level of knowledge that exists at the time the transfer is being considered.

Article 4 establishes a form of “strict liability” whereby if a State *knows* that a proposed transfer will violate the law it is prohibited from authorising that transfer. I am specifically using the language of “knows” – not the language currently in the draft of “for the purpose of” as the latter requires specific intent. Knowledge should be sufficient to prohibit a transfer.

Article 4.1 is when there is an existing UN arms embargo.

Article 4.2 is when there is an existing prohibition such as a convention on illicit trafficking.

But it is Article 4.3 that is crucial to achieving the aims of the Arms Trade Treaty. It must clearly articulate an absolute prohibition on arms transfers where the transferring state has knowledge that the arms would be used to aid or assist or facilitate genocide, crimes against humanity or war crimes as well as serious violations of human rights.

In short, this is the key element of ensuring that no state may directly transfers arms or allow brokers working within the state's jurisdiction to transfer arms when the state *knows* that those arms will be used to commit atrocities.

Some delegates have questioned the inclusion of human rights language and references to war crimes in Article 4.3. Let's be clear – if states are not required to act unless the number of deaths rises to the level of a crime against humanity, then this treaty is no stronger than an arms embargo. (For example, in Syria the UN did not recognize crimes against humanity in that conflict until the civilian death toll topped 3,500).

If you – the states negotiating this treaty – do not commit to drafting and adopting a treaty that *prevents* atrocities – then you will have failed to seize this historic opportunity to save lives and prevent suffering.

Turning now to Article 5:

There will be situations in which states simply do not know how the arms being transferred will be used.

Article 5 is intended to establish criteria against which states must assess the risk of arms transfers being used irresponsibly.

Thus it makes sense for there to be a parallel construction between Article 4.3. (when states know) and Article 5.2 (what a state should act with due diligence to find out). Under 5.2, states must assess whether there is a substantial risk that the transfer will be used to commit atrocities. We strongly prefer that the threshold of substantial risk be incorporated rather than the language of “overriding”.

Therefore Article 5.2 must incorporate criteria to assess whether a covered transfer would be substantially likely to be used to commit or facilitate a serious violation of international humanitarian law or a serious violation of international human rights law.

Amnesty International and the Control Arms Coalition urge you to adopt language in both Article 4 and Article 5 that is fully complementary and that addresss the driving force behind this treaty – namely to ensure that there are no arms for atrocities.

Thank you

Presentation by Deepayan Basu Ray, Oxfam

Mr President,

In all corners of the world, armed violence and human rights abuses continue to claim the lives of thousands, and destroy the livelihoods of millions. This continues unabated, day in and day out, because there are no binding rules on the global arms trade.

As a result, the rules by which governments decide whether or not to authorize arms transfers are the very heart of the Arms Trade Treaty. These criteria are about identifying serious risks of the misuse of arms, and ensuring that such transfers are prevented.

The existing structure and content of the Criteria – or the National Assessments section of the President’s March 20 Non-paper – includes some essential elements, such as recognizing the importance of human rights and international humanitarian law. However, there are a number of areas where the Criteria must be significantly strengthened in order for the treaty to save lives and protect people.

In Article 5.1 the requirement to assess whether a proposed export would contribute to or undermine peace and security does not carry with it a consequence. In other words, if the assessment concludes that it would undermine peace and security, there is no corresponding obligation to reject the transfer.

This raises the threshold for denial too high – to the point where only the most extreme cases would be stopped, because all other transfers could be deemed to be contributing positively to peace and security. As such, the requirement to assess the impacts on peace and security should be removed from this section, or balanced by the obligation to refuse a transfer when the risk of **undermining** peace and security is substantial.

Regarding 5.2., we believe that the distinction made between obligatory criteria for human rights, humanitarian law, and terrorism and the additional concerns such as diversion, gender-based violence, organized crime, corruption, and socio-economic development (in Article 5.6) is entirely arbitrary.

Each of these risk-factors has a strong basis in international law. And each of these additional concerns has a daily impact on the lives of millions of people around the world. Thousands of women and children are raped and abused at gunpoint each year. Corruption and bribery associated with the arms trade syphon millions of dollars each year from public purses. The flood of arms and ammunition contribute to wreak havoc on long-term socio-economic development and poverty reduction initiatives. The World Bank has recently noted that no fragile or conflict affected state will reach a single millennium development goal by 2015.

By splitting these risks into two categories the criteria risks relegating binding obligations under international law to voluntary considerations.

A substantial risk of diversion must also be specified as grounds for refusing an authorization.

Without this, one of the core concerns of the ATT stands to be undermined, despite enjoying widespread support to be treated as a binding obligation.

Given the above, we have four specific proposals to strengthen the text of (new) Article 5.

Firstly, all the risks in the criteria should be placed together in one comprehensive list under Article 5.2. In principle, this would ensure that the most commonly occurring negative consequences associated with arms transfers are considered before a decision to transfer arms is reached. In practice, this gives export licensing officers a clear set of risks to assess, and is consistent with existing best practice such as the ECOWAS Convention, the Wasenmaar Arrangement, and the EU Common Position, amongst others.

Secondly, there needs to be an introduction of further language to reflect a proper risk assessment on armed violence. This is not only essential, but an 'umbrella concept' to some of its equally important sub-items such as gender-based violence and violence against children. This omission is glaring, considering that the 2011 Global Burden of Armed Violence Report estimated that armed violence accounts for some 70% of all deaths as a result of arms.

Thirdly, as discussed earlier, an assessment of whether or not a transfer could undermine peace or security should be added into 5.2 – or balanced with a consequence in 5.1 itself.

And fourthly, we urge you to amend the text of the criteria on gender-based violence, corruption, and socio-economic development. These criteria require nuanced and informed text if they are to command consensus and be effective in preventing unacceptable consequences of arms transfers.

The existing language in the draft Treaty does not capture these nuances, and instead creates ambiguities that compromise the premise of these risk assessments. A number of suggestions have been made from the floor [by countries like Mexico, Ghana, Costa Rica, Switzerland, Iceland, and the UK] to improve the text, and we see these as positive contributions.

In addition, the concept of overriding risk simply introduces far too high a threshold for refusing arms transfers, has no basis in international law, and should be replaced instead with 'substantial risk'.

The Oxford Dictionary defines the concept of "overriding" as something that is "more important than any other consideration". In the context of the ATT, overriding could be read to mean that a potential positive contribution to peace and security is the consideration which is more important than any other. With this formulation, export licensing officers will have to perform a balancing act between peace and security, on the one hand, and the risk of violations of human rights and international humanitarian law on the other. This approach is unacceptable, and problematic in at least two ways.

Firstly, the very nature of arms transfers is such that they take place in the context of peace and security concerns - thus potentially creating a situation where only the very extreme cases of violations of human rights and international humanitarian law would override contributions to

peace.

Secondly, the ATT must not establish a scenario whereby the primacy of international human rights law and international humanitarian law can be trumped by another consideration.

If these elements are addressed, Mr. President, the Arms Trade Treaty will truly be a worthwhile endeavor. It will change the rules of the game for the better, and protect the lives and livelihoods of millions around the world.

However, in order to accomplish this, Mr. President, these rules need to be comprehensive and they need be clear. But most of all, they must not undermine adherence to existing international legal obligations.

Presentation by Daniel Mack, Instituto Sou da Paz, Brazil

Mr President,

It is unmistakable that Implementation is key to the effectiveness of the ATT.

Implementation of the future Treaty will determine its long-term success and, therefore, its potential for real impact on the ground to prevent the deadly consequences of the unregulated and irresponsible arms trade. A Treaty without consistent, obligatory and transparent implementation practices will not be effective.

Most problematic of the draft's implementation provisions is the "defence cooperation clause" and the reference to "obligations undertaken with regard to other instruments", which could permit states parties to circumvent obligations of the ATT by categorizing arms transfers as taking place as part of such an agreement. The assertions within new Article 3.2 that the implementation of the ATT shall not prejudice obligations and relations to other instruments and cannot be cited as grounds for avoiding contractual obligations under defence cooperation agreements, undermines the entirety of the Treaty.

These references should be deleted, as state parties must be held accountable for ALL provisions and obligations regardless of other agreements. We believe the clear majority of states see this as a problem, and want this changed.

Furthermore, Article 6.4 currently establishes that once an authorization has been issued a state party "may suspend or revoke" the authorization if new information becomes available that would justify reassessment. It is absolutely fundamental to ensure that authorizations remain current; in some cases an authorization could be issued a long time before the actual transfer during which the circumstances surrounding the end-user might have radically altered. Therefore, states parties must be obliged to revoke authorizations should new information arise that the transfer would represent a breach of Treaty obligations.

It is essential that the ATT clearly lays out the rights and responsibilities for ALL states involved in transfers, and not just exporters.

Articles on import, brokering, and transshipment are generally weak, voluntary and limited in application. The qualifier "where necessary" weakens the strength of provision 7.2, on imports. It requires that importers "...shall put in place adequate measures that will allow them, where necessary, to monitor and control imports of items covered by the scope of the Treaty." However, it is unclear what this would constitute and it is obviously deficient in the strength of this accountability. The obligation to regulate and control import must be strengthened to ensure accountability of the importer and end-user by including, for example, clear and unequivocal requirements to prevent diversion and unauthorized re-export, including end-user certification. Information exchange between exporting and importing States must be made obligatory.

The Articles on brokering and transit/transshipment are important for detailing the responsibilities of *all* states involved in *all* types of transfers and, at the very least, these types of

transfers must be covered in separate sections. In particular, Article 9 on brokering requires that states parties take “appropriate measures” to control brokering taking place under its jurisdiction. The details of these “measures” are lacking. The obligations and regulations to control import, brokering, and transshipment must specify concrete actions and include obligatory written authorizations; moreover, there must be an obligation on States to take action against shipments when it is clear that they have not been authorized by a State Party in accordance with the treaty.

The section on reporting and recordkeeping has no provision requiring that states make reports and records available in the public domain. We need public reporting, not secret reporting.

Article 10.3 includes the provision that ‘reports may exclude commercially sensitive or national security information’ but does not give any indication as to what this information might include. This means that States could exclude any or all information by citing these reasons, thereby undermining current best practices regarding transparency in international arms transfers. As such, this clause should be removed from the text; at a minimum, it should be amended to specify exactly what information could be excluded so as to prevent this being used as a get-out clause that enables States to withhold any or all information.

Lastly, Article 10.4 requires States to keep records for a minimum of 10 years. This is inadequate. Most conventional arms have a working lifetime that can span several decades, during which time they can be re-transferred many times. States should be required to keep records indefinitely, as has been proposed by my own country, Brazil, or at very least for a minimum of 20 years.

Finally, the text regarding Enforcement should be amended so as to include a requirement that States introduce all necessary legislative, administrative and other measures to enforce the treaty, including the imposition of penal and administrative sanctions.

The sections on implementation are of particular importance given the conceptual framework and structure of the ATT, as it will be driven primarily by national implementation responsibilities of internationally agreed minimum standards. Closing the aforementioned serious gaps in the implementation provisions is vitally important to the success of the Treaty.

As Allison said at the beginning, let me repeat at the end. We call on you to have courage. To make the changes based not on what is easy but on what is right – and desperately needed. Not within these walls, but outside in the real world. Our message to you is this: you have one chance, please get it right.