Toolkit for the Arms Trade Treaty

On 28–29 March 2013, UN member states will gather in New York for a second round of negotiation on the Arms Trade Treaty (ATT). The first round of negotiations, held in July 2012, produced a draft treaty text but governments could not agree on its adoption by the end of the month-long meeting. The draft text contains some significant loopholes that would undermine the treaty’s implementation and its ability to make a significant difference in the violence and destruction caused by the arms trade and some governments want to make it even weaker (see the Annex attached to this toolkit). The March negotiations will probably be the last opportunity to make sure the text is strong and meaningful.

Civil society has been pushing for an international treaty to control the arms trade for decades. There are currently no legally-binding international standards for the export, import, or brokering of conventional weapons. WILPF believes that an ATT should not be used to make the arms trade easier. It should be a strong tool that will help protect against violations of international humanitarian law and human rights, including gender-based violence, and that will help reduce armed conflict. A strong ATT could help build the foundations for not just the regulation but also the reduction of the arms trade, along with the reduction of militarism and military spending and the redirection of economic resources. The full WILPF position paper is available online.

This toolkit is for all WILPF Sections and Branches, and other interested civil society groups. It includes background information on the ATT, talking points to be considered when meeting with your national representatives, and materials and resources from WILPF and other NGOs working to achieve a robust ATT. It also includes information about WILPF’s campaign to include gender-based violence in the ATT and the policy paper that WILPF, along with Amnesty International, the IANSA Women’s Network, and Religions for Peace on armed gender-based violence.

Reaching Critical Will, WILPF’s disarmament programme, will monitor the negotiation conference and provide analysis and advocacy. As with the four preparatory committees and the first negotiating conference, RCW will be posting statements and documents online and will coordinate, edit, and contribute a daily newsletter, the ATT Monitor. You can subscribe to receive the ATT Monitor each day during the negotiations.

In peace,

Ray Acheson
Director, Reaching Critical Will
Women’s International League for Peace and Freedom (WILPF)
Background information on the ATT

Since the early 1990s, an active civil society campaign has been promoting the negotiation of a robust, comprehensive, legally-binding treaty to establish standards and restrictions on the international trade in conventional arms. Reaching Critical Will has prepared some background on the history of the UN process and has posted all relevant background documents.

Gender-based violence and the ATT

WILPF is advocating for the inclusion of a specific gender criterion in the ATT. If the ATT is to be an effective legal instrument in regulating the international arms trade, recognition of the potential gendered impacts of international transfers must also be included.

Together with other civil society groups, WILPF issued a Joint Policy Paper on Gender and the Arms Trade Treaty (ATT) and engaged in advocacy on this issue.

WILPF also launched a petition campaign to include armed gender-based violence in the ATT.

We are calling for a specific criterion in the treaty to “require States not to authorize an international transfer of conventional arms where there is a substantial risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence.”

All activists and civil society groups are asked to support this call:

1. You can endorse the call for a criteria – click here >>
2. Lobby your government at national level - See template letter >>
3. Share the campaign and paper with your contacts (by email, facebook, twitter etc).
4. Let us know what you/your section is doing so we can share.

Talking points for meetings with government representatives or for op-eds

All WILPF members are encouraged to meet with their government officials to discuss the ATT. Advocacy at local and national levels is vital to successful negotiations at the international level. By coordinating with WILPF members meeting with their governments to discuss the ATT, Reaching Critical Will is in a much stronger position to engage with governments at the UN.

Some key talking points include:

- WILPF is concerned about some of the major loopholes in the current draft treaty. (See the Annex for details, which you may wish to discuss if you feel comfortable doing so.)

- Strong criteria on international humanitarian law, human rights, sustainable development, and prevention of sexual- and gender-based violence must be at the heart of the ATT.

- Small arms and light weapons and ammunition must be included in the treaty, along with all other categories of conventional weapons.
• Police and internal security equipment should also be included in the treaty. Excluding such items would have serious implications for human rights abuses, such as those witnessed during the Arab Spring.

• The ATT’s criteria must not be restricted only to exports of conventional weapons. The criteria must also apply to imports, transit and transshipment, and brokering.

• The treaty should elaborate specifications for national reports on all arms transfers and should require states to publicly declare this information.

• The ATT should include a gender perspective in its criteria for arms transfers, including by restricting states parties from authorizing an arms transfer where there is a substantial risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence.

• Members of civil society accredited to the ATT process should be allowed as observers throughout all meetings of the negotiating conference, including informal meetings.

If you want more ideas for talking points or for writing an op-ed to your local newspapers, a comprehensive set of requests can be found in WILPF’s position paper. You should also feel free to contact Ray Acheson, RCW Director, with questions.

**Materials and resources**

[Reaching Critical Will’s web pages on the arms trade treaty](#) have lots of background information, papers, primary documents, reporting, analysis, advocacy, and more.

[The UN Office for Disarmament Affairs has an official ATT website](#) with lots of documentation and information about the UN process to negotiate a treaty.

[The Control Arms Campaign](#) has information on past and present campaigns to achieve an ATT.
Annex: Problems with the current draft ATT text

As currently written, the draft ATT could help improve regulation of the international trade in arms, but contains significant loopholes that will undermine the treaty’s implementation and its ability to reduce human suffering.

Article 3(3) forbids a state from authorizing a transfer “for the purpose of facilitating the commission of genocide, crimes against humanity, war crimes constituting grave breaches of the Geneva Conventions of 1949, or serious violations of Common Article 3 of the Geneva Conventions of 1949.” This threshold for prohibiting transfers when faced with these crimes is much too high, as it seems to require specific intent to commit such crimes at the time of purchase. According to the International Committee on the Red Cross, “article 3(3) is very restrictive and is not an accurate reflection of international law.”

Other serious problems can be found in article 4 and the national assessment mechanism for determining whether or not to make arms transfers. Article 4(1) stipulates that when a state party is considering whether or not to authorize an export, it shall assess whether that export “would contribute to or undermine peace or security”. This means that governments can continue exporting arms to human rights abusers if they have other economic or political interests at play. This alone is enough to render the treaty worse than useless, as it would provide legal cover to those authorizing irresponsible transfers.

There is indication in article 4(5) that a risk of violations of international humanitarian law (IHL), international human rights law (IHRL), or terrorism can “override” a potential “contribution” to peace and security; however, a decision-maker could assess that the risk does not override such a “contribution”. This would undermine states’ existing obligation to ensure respect for IHL, among other things. There could be criminal or civil law implications of knowingly authorizing an export while there is a substantial possibility of violations of IHL and IHRL.

Article 4 also permits the possibility of establishing “risk mitigation measures” in order to cultivate the circumstances in which an authorization could be made. However, it does not specify that these measures must be undertaken before the transfer is authorized, which is imperative to ensure that the measures are indeed actually undertaken and that the risk is effectively mitigated.

Article 4 also segregates criteria related to diversion, gender-based violence, violence against children, transnational organized crime, corruption, and development (article 4(6)). Rather than including these in the risk assessment process that can result in a transfer denial, they are in a separate paragraph stipulating that when considering authorizing an export, states parties “shall consider taking feasible measures” to avoid the weapons being used to any of those ends. The text does not indicate what measures this might entail, nor does it make such measures mandatory.

One of the most egregious loopholes is article 5(2), which says that the implementation of the ATT “shall not prejudice obligations undertaken with regard to other instruments.” This paragraph further says that the ATT “shall not be cited as grounds for voiding contractual obligations under defence cooperation agreements concluded by States Parties to this Treaty.” This means that exporters can continue selling weapons to governments even when it is known that the weapons will be used to commit violations of IHL or IHRL or even genocide or other crimes. Governments cannot normally “contract out” of international treaties and must not be allowed to do so with the ATT.
Ammunition is not in the draft treaty’s scope, despite the insistence of the majority of countries. It is only included in the export section in article 6(4), which says that states parties shall establish and maintain a national control system to regulate the export of ammunition. When considering an export of ammunition, states would have to apply the criteria for risk assessment in articles 3 and 4. However, the elements that are included in article 4(6) are specifically excluded, as is also the case for assessments related to export of parts and components (article 6(5)).

In addition, article 23 stipulates that when exporting to non-states parties, states parties “shall apply articles 3 and 4 to all exports of conventional arms within the scope of this Treaty”. As written, this would mean that the risk assessment criteria and the prohibitions would not apply to export of ammunition, parts, or components. This is a major loophole, and it also provides a disincentive to joining the treaty, as it could be easier to obtain ammunition, parts, and components by remaining outside of the treaty. Article 23 should in fact simply say that states that have ratified this treaty should not transfer arms to states that have not ratified the treaty.

The draft treaty also fails in becoming a robust transparency mechanism, as the provisions on reporting and record-keeping no longer require records to be made public. Records are stipulated to include export authorizations or actual exports of arms and, “where feasible,” details of imports, transit, and transshipments of arms. According to the current draft, the reports on exports must be submitted annually to an ATT secretariat, but this is not enough. These records must also be made public, as was provided for in earlier drafts.

The treaty’s “enforcement” mechanisms are still weak. Enforcement in international treaties generally does not refer to national measures. If the term is to be used here it should also include measures for international enforcement mechanisms, such as an appropriate channel for states to challenge transfers that are made despite wide recognition of a substantial risk that it violates the treaty’s criteria or other provisions. If this paragraph is to refer to national enforcement the title should be changed and it should require states parties to criminalize breaches of national law associated with treaty implementation.

There is still no provision for victims’ assistance or even reference to existing obligations in this regard. The draft text’s measures on regulating arms brokers are likewise insufficient. The activities covered in the treaty’s scope are still limited to those related to “trade,” which means that weapons that are transferred as gifts or loans or through military assistance programmes could be exempt from the regulations mandated by the treaty. Furthermore, the term export is often used when the term transfer should be used to avoid loopholes.

These are not all of the problems with the draft. There are many others that need to be addressed, some of which may only be revealed once states parties begin implementing the treaty. Of course, the stipulation that all amendments must be adopted by consensus (rather than also having the option to adopt them by a 2/3 majority, as was the case in the previous draft), provides for very little flexibility in using the amendment process as a means for improving the treaty. Thus it is important to make the text as strong as possible when it is adopted.