Editorial: Putting human security right where it belongs
Ray Acheson | Reaching Critical Will of WILPF

States? Corporations? Or human beings? Which should the arms trade treaty (ATT) prioritize? For most of civil society—and many governments—there is one correct answer to this question. But some of the delegations participating in the negotiation process appear to have different opinions. By the end of the month, however, we will either have a treaty that has as its primary objective the prevention of human suffering, or we will not have a treaty worth the paper it’s printed on.

Monday’s plenary and open committee meeting on the preamble and principles of the treaty provided venues for the ongoing debate about the key objective of the future ATT. While the majority of delegations continued to call for a robust treaty that will make a real difference in the lives of people around the world, some delegations expressed other priorities. Some argued that the sovereignty of states is the most important principle for the treaty to uphold (e.g. Venezuela), while a few others argued that the treaty should work to increase the legitimacy of the arms trade (e.g. Germany).

These mark two positions that are incompatible with the pursuit of a treaty that seeks to prevent violations of human rights law, international humanitarian law, armed conflict, armed violence, gender-based violence, sexual violence, terrorism, organized crime, the use or threat of force, foreign occupation, repression of self-determination, overproduction of arms, and/or diversion to unauthorized end-users or the illicit market; or that seeks to facilitate international and regional peace, security, and stability, peaceful settlement of disputes, and/or socioeconomic development.

All governments participating in this conference hold at least some of the above objectives as vital to their interests in the negotiation of an ATT. Yet by prioritizing “state security” over human security or the profits of the arms industry over the lives and livelihoods of human beings, these governments in effect undermine all of these objectives. The only way to prevent arms from being employed as instruments of foreign occupation or as illicit goods, for example, is to ensure that humanitarian interests are at the forefront of the treaty’s principles, objectives, and criteria, and to match them with a robust scope and rigorous implementation mechanisms.

Similarly, one way to help stem the overproduction of arms is to ensure that there are strict criteria for their export, so that arms are not produced and sold without any compelling and legitimate purpose, and to prioritize socioeconomic development over the excessive use of resources for the production of weapons.

In relation to this last point, the UK delegation suggested that the preamble of the ATT include a reference to article 26 of the UN Charter. Citing agreement with the Egyptian delegation’s concerns with excessive military spending, the UK ambassador urged the preamble to call for the “the least diversion for armaments of the world’s human and economic resources.” This is an interesting suggestion coming from one of the five permanent members of the UN Security Council, which has yet to fulfill the mandate of article 26. But it does highlight one of the other key challenges for the ATT: to ensure that the treaty is applied equally in exporting and importing states.

The tension between importers and exporters has been high throughout the ATT negotiation process, but there is no inherent reason for double standards. Every state party must have an equal responsibility in fulfilling the objectives of the treaty. Iceland’s delegation highlighted this joint responsibility in relation specifically to gender-based violence, but it applies to all of the future treaty’s criteria. While different entities play different roles in the arms trade, all must be bound by a collective responsibility to uphold what must be the key objective of the treaty: the preservation of human security and the prevention of human suffering.
Transparency and complementarity
Katherine Prizeman | Global Action to Prevent War

States have continuously called for a transparent and open negotiating process for the ATT, noting the importance of openness while deliberating treaty language. While transparency in negotiation is important, promoting consistent and robust transparency in the full ATT architecture is equally essential. Furthermore, robust transparency in implementing treaty obligations is necessary in order to ensure that the ATT will provide for a ‘value-added’ to already existing mechanisms under UN auspices.

As noted by the delegation of Senegal during the plenary session on Monday morning, the ATT must take into account existing processes, such as the UN Programme of Action on small arms and light weapons (UNPoA); the women, peace, and security framework as laid forth in UN Security Council Resolution 1325; and disarmament, demobilization, and reintegration (DDR) programmes. This ‘value-added’ of the ATT rests, in part, on its legally-binding nature, especially when the treaty is understood as complementary to the UNPoA political (non-legally binding) framework on illicit trade in small arms. If there is not sufficient transparency in ATT obligations, there is a danger that the ATT will become just another ‘framework’ and not fulfill its legally-binding role in complementing other UN processes.

It is important to bear in mind the significance of adopting an ATT that meaningfully contributes value to the existing set of multilateral instruments with particular emphasis on robust transparency measures. During Monday morning’s plenary meeting, some states referred to the need for transparency and accountability under the ATT, but with the additional caveat that relevant transparency measures must strike an “appropriate balance between transparency and national security.” The representative of China explicitly stated, “Clean-cut transparency measures may not suit all.” Likewise, the representative of Belarus agreed that transparency measures must take into account national commercial and security interests. While mindful of the national security dimension, advocating for transparency measures with “strings attached” represents a dangerous potential for undermining the meaningfulness of the ATT by providing potential political cover for future dubious transfers; in essence leaving room for states parties to maintain that national interests or circumstances “prevent them” from remaining fully transparent. While consideration for national security should be incorporated into any multilateral agreement, it cannot and should not be used as a means of diversion from fulfilling ATT obligations. The ATT’s legally-binding status necessitates the highest levels of accountability.

The position that the ATT “should be a confidence-building mechanism and not a sanction mechanism,” as expressed by the delegation of Indonesia, is not sufficient. As previously noted, the ATT must be much more than a confidence-building measure by virtue of its legally-binding status. Transparency in ATT obligations, most especially in transfer authorizations and denials, is not merely a confidence-building measure, but constitutes a legal obligation. In this context, the complementarity between the UNPoA and the ATT underscores the importance of adopting an ATT with strong and transparent obligations. The ATT provides the opportunity to address the lack of accountability in the UNPoA process by dictating, in a legally-binding manner, how states signatories must comply with international transfer standards with a high level of transparency through a clear reporting process on transfers (including denials) and a formal, mandatory monitoring system. Furthermore, in concert with the UNPoA that provides a framework for drying up stockpiles and eliminating weapons in circulation, the ATT has the opportunity to curb human suffering and armed violence that could be caused by new instances of diverted trade in conventional weapons.

While the UNPoA provides an important framework for implementing adequate national laws, regulations, and administrative procedures around illicit trade in small arms, the ATT must not become another political document offering only general guidelines for arms transfer authorizations. The opportunity to craft and adopt a new piece of binding international law with the highest levels of transparency and full complementarity with existing UN activities in the conventional arms field must not be wasted.

SECURING WOMEN’S RIGHTS AND GENDER EQUALITY IN THE ATT

Thursday, 12 July 2012
1:15–2:30

Co-sponsored by the Permanent Mission of Finland to the UN, Women’s International League for Peace and Freedom, Amnesty International, and IANSA Women’s Network

Permanent Mission of Finland to the UN
866 UN Plaza, Suite 222
The French permanent mission to the UN and Le comité catholique contre la faim et pour le développement (CCFD-Terre solidaire) co-hosted a side event on the connection between the arms trade treaty (ATT) and the real opportunities for Africa. Zobel Behalal, CCFD-Terre solidaire, moderated the session, which included Jean-Yves Simon-Michel, chef de la délégation française; Delphine Dijraibe, CSAPR – Tchad; Guy Lamb, Institute for Security Studies; and Anziang Kouadja, délégation de la République de Côte d’Ivoire.

Mr. Simon-Michel argued that the ATT is a “huge opportunity” for the world, but maybe most of all for the African continent where the worst effects of the illegal arms trade are seen. He called for the treaty to included all conventional weapons, including small arms and light weapons (SALW), as well as their ammunitions. SALW kill, displace, and violate the human rights of people as well as threaten regional peace and stability. Therefore, according to Mr. Simon-Michel, a treaty that does not included SALW and address human rights would be meaningless.

Ms. Dijraibe spoke about the effect of illegal weapons in Chad, where they are used to kill, rape, steal, and commit “all kinds of crimes you can not imagine”. She discussed the non-existent regulatory framework, which allows weapons to end up not only in the hands of rebel groups but children as well. She reasoned that in Chad, where 80% of the population lives below the poverty line, increased spending by the government on military budgets to fight armed conflicts is at the detriment of development.

Mr. Lamb discussed corruption in the arms trade. He contended that the arms trade is the most secretive and opaque sector, covered by veils of secrecy. It is under these circumstances that “corruption flourishes”. Corruption takes many forms, the most common being bribes and conflict of interests, often referred to as the “revolving door policy”. This is where military personnel and government officials move between roles as legislators and regulators, and the arms industry. Another form of corruption discussed by Mr. Lamb is popularly known as “off set” arrangements, where deals include “sweeteners,” such as investment in industries. There is also a reciprocal expectation in these kinds of deals. Mr. Lamb argued that this often makes the price higher than if it had been bought as an off-the-shelf product. Mr. Lamb also spoke about a study about brokering that demonstrated that not only do brokers facilitate the flow of arms, but they also increase corruption.

Mr. Kouadja provided background information on Côte d’Ivoire, which acutely suffers the effects of the illegal arms trade. He spoke about a survey of SALW, which showed that in spite of the Economic Community of West African States (ECOWAS) Agreement and the imposition of the embargo, arms continue to flow into the country. Therefore, Mr. Kouadja argued for the importance of a strong ATT, which can be enforced as well as funded.

Making a real impact? Not for victims!

Nerina Cevra | Action on Armed Violence

The UN Secretary General in his speech to the Diplomatic Conference on the Arms Trade Treaty (ATT) has made it clear that an ATT must make a real impact on the lives of people suffering from the consequences of armed violence. Those most directly suffering these consequences are victims of armed violence.

Yet, the new discussion paper issued by the President last week has removed from the treaty the one provision that could have real impact on their lives. It was the provision asking states to commit to greater cooperation in ensuring that victims of armed violence get help in recovering from their injuries.

For every person killed by armed violence, at least ten are injured. Many are left with life-long disabilities, and physical and psychological traumas prevent them from reclaiming their lives and contributing to their communities. If this treaty is to be true to its humanitarian potential, and genuinely seeks to make a real impact in the lives of people victimized by armed violence, it must include recognition of the rights of victims of armed violence and states’ commitment to assist in their recovery and inclusion in society. It should not be an illusory reference in the preamble, but a concrete commitment in the operative part of the treaty.

The consequences of proliferation of weapons due to lack of comprehensive controls are felt most dearly by the victims of armed violence. This treaty is a step forward at addressing these unacceptable consequences. It must stay true to its purpose and not trade the needs of victims for political compromises.

For suggested language go to: aoav.org.uk

Contact: Nerina Cevra, ncevra@aoav.org.uk
News in Brief
Ray Acheson | Reaching Critical Will of WILPF and Katherine Prizeman | Global Action to Prevent War

The News in Brief is not meant to serve as a comprehensive summary, but is rather a brief overview of new, noteworthy, or elaborated positions or ideas on key aspects of the ATT. For a comprehensive map of government positions, see armstreaty.org. These points only come from open meetings of the conference.

Plenary
Goals and objectives
• China said the objective of an ATT is “to prevent and combat illicit trade and maintain global and regional stability by regulating arms trade.”
• Germany argued the ATT “will be instrumental in rendering more legitimacy, more security and more responsibility to the international trade in arms.”
• Germany also argued that states have a responsibility to ensure the “proper use” of arms—i.e. “not in a way that is inconsistent” with human rights and IHL.
• Indonesia said treaty should be a confidence-building mechanism, not a sanction mechanism.
• Ireland called for an ATT that will contribute to the goals of the UN Charter, peace and security, human rights, and IHL, and that underlines states’ responsibilities in these regard.
• Pakistan argued that any ATT must address both the supply and demand sides of the arms trade and called for the treaty to address the “interplay of commercial, political and strategic considerations of the major producers”.
• Republic of Korea said gender-based violence resulting from the irresponsible and illicit arms trade should be addressed through the ATT.
• Switzerland said the treaty “must lead to a clear reduction of human suffering resulting from armed violence.”

Criteria
• ECOWAS, Germany, Ireland, PIF, called for robust criteria on a comprehensive range issues including human rights, IHL, peace and security, development, crime, terrorism, etc.
• Iceland argued that it is vital for the ATT to contain a specific gender-based violence criterion. Iceland specified that the treaty should require states “to not allow 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.”
• Indonesia said if human rights are incorporated in the criteria, importing states must have equal opportunity to define “serious and systematic violations of human rights” and these provisions must be implemented consistently and equally to all states parties. Indonesia called for the establishment of an independent advisory group endorsed by states parties in this regard.
• Ireland said the impact of arms transfers on gender-based violence, including sexual violence in conflict, should be fully taken into account in decision-making.
• Italy said the ATT should impose an automatic ban against transfers in violation of UN arms embargoes or at risk of violating IHL or human rights law.
• Viet Nam called for the criteria to include the principles of non-use or -threat of force in international relations and of peaceful settlement of disputes.
• Viet Nam said the assessment of transfers should also include consideration of potential consequences of a transfer denial in terms of states’ ability to exercise self-defence and meet security needs.

Scope: weapons
• ECOWAS said that since UN General Assembly resolution 64/48 did not exclude any conventional weapons from the mandate to negotiate an ATT, the treaty should include everything except WMD.
• Pacific Islands Forum (PIF) said components and technology specially designed or modified to manufacture conventional weapons should be considered for inclusion in the treaty.
• PIF rejected exclusion of hunting or sporting firearms for treaty though noted that travel across borders with these weapons for specific purposes should not be subject to an ATT’s rule regarding transfers.
• Pakistan argued the UN Register categories of weapons are already subject to end-user procedures and it is SALW that requires regulation now.
• Viet Nam called for the criteria to include the principles of non-use or -threat of force in international relations and of peaceful settlement of disputes.
• Viet Nam said the assessment of transfers should also include consideration of potential consequences of a transfer denial in terms of states’ ability to exercise self-defence and meet security needs.

Scope: activities
• ECOWAS and Viet Nam said transfers to non-state actors should be prohibited unless explicitly authorized by a state authority.
• Germany called for differentiation in national control systems among different types of activities that “foresee comprehensive measures to secure reliable knowledge of end-user and end-user in the country of final destination.”
• Syria said the treaty should prohibit transfers to non-state parties regardless of the reason.

Implementation
• Iceland said national authorities should enforce an effective licencing system backed by adequate sanctions.
• Indonesia called for a consultation mechanism to set-
tle disputes that stem from dissenting interpretations of the criteria.

• Ireland called for robust monitoring and enforcement mechanisms.

• PIF outlined exporting and importing states’ responsibilities to be: assessing arms transfers and authorizing them only when they meet the treaty’s parameters (exporter); taking measures to ensure that imports are not illegally diverted (importer); curbing or deterring risk of diversion and ensuring transparency (transit/transshipment states).

• Viet Nam argued the treaty should not provide specific, detailed regulations but general guidelines for the framework and mechanism of implementation.

Transparency/reporting

• Ireland suggested an information-sharing mechanism including approvals and denials but not individual applications.

• Morocco called for the development of mechanisms for oversight and transparency.

Assistance

• Niger said the international assistance provided for in implementation of the treaty should be consistent with other forms of assistance provided in areas such as fighting against terrorism, drug trafficking, transnational organized crime, and poverty.

Entry into force

• Italy suggested 60 ratifications for EIF; or a time-bound EIF mechanism so as to not allow the withholding of some states prevent the treaty from being enacted by others.

Chair’s paper

• ECOWAS recommended the conference endorse the Chair’s paper as a basis for negotiations.

• Iceland said the Chair’s paper of 2011 is a good basis for negotiations.

• Russia said it is useful as food for thought but not as a basis for serious negotiations and not as a prototype for an international treaty.

Civil society

• Niger supported close involvement of civil society and NGOs in the decision-making process.

Other

• DPRK said the treaty is in danger of legally consolidating inequalities between exporter and importer states if it does not address arms production.

• Pakistan argued that the lack of success in regulating arms so far has been the pursuit of a partial approach, i.e. “the attempt to separate the motivations for arms production from the controls of their trade”; failure to address the causes that propel the arms trade; and the lack of full implementation of existing commitments and obligations.

• Pakistan argued that the rise in military spending and increased trade in arms necessitates adequate restraints in arms production.

• Senegal called for synergy with UN Security Council 1325, DDR programmes, and the UNPoA on small arms.

• Syria argued that only importing states will be targeted by the ATT if it allows for the large producers and exporters to set themselves up as judges of importer state practices in areas such as human rights or sustainable development.

Main Committee I: Preamble and principles

General preambular comments

• Australia, Japan, Mexico, Netherlands, and UK noted the redundancy present in the preambular section of the Chairman’s 2012 paper and suggested combining paragraphs 2 and 5 (references to the illicit trade in conventional arms and the need to prevent diversion of such weapons) and 4 and 6 (reference to the absence of agreed global standards for the international transfer of conventional arms and the associated problems relating to the unregulated trade).

• Indonesia stated the preamble should reference the problem of the unregulated trade in conventional arms, the risk of diversion, and strike a fair balance between the interests of importers and exporters, noting that the treaty should not generate political conditionals.

• The UK suggested an addition to the Chair’s paper that reads, “Recognizing that the promotion of international peace and security should involve the least diversion of human and economic resources for armaments,” based on article 26 of the UN Charter.

• India stated that the reference to “commonly agreed global standards” should remain in the preamble rather than goals and objectives.

• Ireland suggested the addition of the statement, “Disarmament and arms control are necessary for maintenance of international peace and security.”

References to adopting more restrictive policies than those provided for in the Treaty

• Japan welcomed paragraph 9 from the Chairman’s 2012 Paper, “Emphasizing that States Parties may adopt more restrictive measures than those provided in the Arms Trade Treaty.”

• The UK supported a change to paragraph 9 by noting

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Importing trouble
Maj Rørdam Nielsen and Dr. Robert Zuber | Global Action to Prevent War

The statement presented at the ATT negotiating conference by the Egyptian Ambassador last Thursday was obscured a bit by participation issues centered on Palestine and the Holy See. But it raised important questions that deserve more attention from diplomats and commentators, including the following:

“Will the outcome tilt the balance further in favor of major arms producers at the expense of importing states by giving them added tools to further consolidate their practices in the context of exiting export control regimes, often seen as discriminatory and often politicized?”

The solution to this ‘politicization’ of arms transfer policy, according to the Egyptian delegation, is to provide importers with a “phased appeal mechanism against political abuse”.

It is not clear from the statement itself what Egypt specifically has in mind. Clearly Egypt (and other states) are concerned that the ATT is in danger of becoming an ‘exporters’ treaty’ (all of the prohibitions listed in the Chair’s paper, for instance, are geared towards exporting states) with few responsibilities accruing to importing states, but with even less text that underscores the capability of non-producing states to purchase weapons free of ‘political’ considerations by the exporting powers. This for some states would include the decision by exporting states to unilaterally deny transfers based on the belief that the proposed importers should instead put their limited funds into social development.

There is at this point a clear imbalance in the treaty language, focusing primarily on the responsibilities of weapons producing states to create national laws to ensure that transferred weapons are not diverted into criminality or used to abuse human rights. Importing states have their own responsibilities as well such as timely reporting on transfers and designating national focal points. They might also be reasonably required to create legal structures that can guarantee only authorized use of imported weapons as well as mechanisms for punishing those who pervert such use. But the importing states do not possess the capacity to guarantee their own ‘security’ through locally produced armaments. In this sense, they are dependent on unilateral decisions by exporting states regarding their ‘fitness’ to receive arms.

It seems unreasonable that major arms producers would ever agree to a treaty that required them to sell weapons to states whose policies are inconsistent with their own national interests. There is no presumption to sell. However, non-discriminatory transactions are a fundamental aspect of commerce in many of the major arms producing states. In the US, for instance, we don’t check religious or political identification in the supermarket check-out line before allowing customers to swipe their credit card. If upholding the right of legitimate self-defense is as inalienable for importing states as exporting ones, then it seems reasonable that access to the weapons that ostensibly (if erroneously in our view) guarantee that security be somehow recognized.

Should the treaty negotiators take up the question of how a state not under an embargo or threatening mass atrocities can promote its security when some or all major arms exporters threaten to refuse them sale? The legitimate threat of diversion would hopefully be sufficient to deny sale, but what if a ‘finding’ of diversion is politically motivated rather than based on relevant data? Should there be no recourse for states facing such discrimination at the point of sale?

As an organization that is committed to reducing levels of armament and spending on armaments, Global Action to Prevent War is very uneasy about advocating for some version of the Egyptian proposal for an ‘appeal mechanism’ to facilitate arms flows to non-producing states. We know that many states have been wary of supporting an ISU with independent authority to ‘flag’ transfers with high diversion potential, and they would surely be uneasy as well with a proposal to invest the ISU with the authority to determine and highlight a ‘political motive’ for denying a particular arms transfer. However, such a denial would seem to be ‘out of line’ with the underlying national security logic governing so much of the ATT discussion, though clearly this is not as critical matter as approving a transfer into an environment where diversion potential was known to be high.

However, the consequences of un-remediated politicization of transfers might be more serious still: a robust and renewed interest in the weapons ‘black market’; a commitment to capture and renovate a portion of the millions of illicit weapons in circulation worldwide; or even efforts to create national weapons industries or legalize ‘cottage’ industries that produce weapons from parts. The politicization of weapon sales could lead to a proliferation of arms industries and pursuits that would create new headaches for both treaty implementation and regional/sub-regional peace and security. If weapons are ‘necessary’ for national security, a contention we do not support but that many states do, then states will find ways to get those weapons, legitimately or illegitimately, treaty or no treaty. We must not clumsily provide incentives for states to take their business outside of more formal, transparent options.

Part of the reason that NGOs and many states push for humanitarian dimensions to this treaty is that we need to

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News in Brief, cont’d

that “States Parties have the right to adopt more restrictive measures...”
• India disagreed and stated it is a state’s prerogative to see the ATT as a ‘floor,’ and such a reference should not be reflected in the preamble.

Victims’ assistance
• Mexico noted its support for the reference to victims’ assistance in the preamble of the Chairman’s 2012 Paper.
• CARICOM called for the addition of ‘armed violence’ to the reference to victims’ assistance in paragraph 9.
• The UK expressed its support for a reference to victims’ assistance in the preamble, arguing that it would be more appropriate there than in the operative part of the treaty.

Gender-based violence
• Finland expressed support for a separate paragraph recognizing gender-based violence in the preamble.
• The UK stated its support for reference to the fact that the ATT will have positive role in tackling armed and gender-based violence.
• Ireland supported the addition of sexual violence in conflict to the list of problems related to the unregulated trade in conventional arms.

Self-determination, territorial integrity, self-defense
• Ecuador stated the need to reference the right to self-determination, non-interference, and the right to be free from colonial oppression or foreign occupation.
• India, Indonesia, and Syria called for an unambiguous reference to territorial integrity.
• Iran proposed the addition of the statement: “Arms trade within states and international transfers shall not be restricted or denied in any manner as a result of the implementation of this Treaty and nothing in this Treaty will prevent peoples under occupation to realize their inalienable right to self-determination.”
• Mexico argued that paragraph three of the principles, stating, “Believing it necessary for States to acquire conventional arms ...” should be replaced with “Recognizing that States acquire conventional arms ...”

Miscellaneous
• Costa Rica called for the addition of paragraph 8 from the Chairman’s 2011 paper, which highlights the obligation of states to comply with all Security Council decisions.
• India and Iran noted that the principles must reflect the obligations of all states—importer, exporters, and transit states.
• Mexico and the EU called for a ‘non-selective’ treatment of and reference to the principles of the UN Charter.

Importing trouble, cont’d

avoid immersion in discussions focused only on the security implications of transfers and not also on the insecurity implications. Amidst the robust assertions of national interest, we must be reminded of the wide-scale violence and social insecurity that transferred weapons—licit and illicit—make possible. If the ATT process is not designed to scale back or even eliminate such weapons—and sadly it seems unlikely to be so designed—a final treaty must at least be fair in its application in order to win broad support. Failure to at least attempt to accommodate the security interests of importing states (and de-politicized transfers would appear to be relevant here) might inadvertently complicate other UN-backed efforts to eliminate existing stockpiles of illicit weapons, curb street-level violence (especially against women), secure borders, inspect harbors, spread dependable technologies for marking and tracing small arms and light weapons, and address a range of other critical security concerns.

ATT Monitor
10 July 2012 | Vol. 5, No. 5

The Arms Trade Treaty Monitor is coordinated, edited, and published by the Reaching Critical Will project of the Women’s International League for Peace and Freedom (WILPF) in partnership with Global Action to Prevent War, World Council of Churches, and the International Action Network on Small Arms (IANSA).

All views expressed in this publication are solely those of the contributing authors and do not necessarily reflect the positions of the supporting organizations.
## Calendar of events for Tuesday, 10 July 2012

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<td>10:00–11:30</td>
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<td>11:30–13:00</td>
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<td>11:00–13:00</td>
<td>Launch of Safeworld report: “From Word to Deed: Proposals for an effective implementation regime”</td>
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<td>Safeworld, Ministry for Foreign Affairs of Finland</td>
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<td>13:15–14:45</td>
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<td>Permanent Mission of France to the UN and Amnesty International</td>
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<td>15:00–16:30</td>
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