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ATT update

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A global Arms Trade Treaty remains tantalisingly close, but still out of reach.

The Arms Trade Treaty (ATT) negotiations at the United Nations in July marked the culmination of years of work by governments and civil society (notably the Control Arms coalition). Although the conference ended without the agreement of a Treaty, the negotiations progressed further than many expected, giving us hope that a reasonable treaty could emerge within the next year.

Roberto García Moritán (Argentina) (second from right), President of the UN Conference on an Arms Trade Treaty, addresses the opening session of Conference. July 2012 ©ESKINDER DEBEBE/UN PHOTO

A MARATHON BATTLE

In 2003, the Control Arms Campaign was launched in 70 countries by Amnesty International, Oxfam, the International Action Network on Small Arms, Saferworld and others to bolster support for an ATT. Three years later, the Control Arms Campaign handed over a million-strong global photo petition to United Nations Secretary-General Kofi Annan, which led to the tabling of the resolution 'Towards an Arms Trade Treaty'.

In 2007, 100 states submitted their views to the UN Secretary-General's ATT consultation, with a majority in favour of an ATT. The next year, after a Group of Experts examined the 'feasibility, scope and parameters' of an ATT, an overwhelming majority of states voted to take the treaty to the next stage.

In 2009, states voted 153 to 1 to begin formal negotiations. From 2010 to 2012, four Preparatory Committee Meetings were held. Final negotiations took place from July 2 to 27, 2012.

FINAL NEGOTIATIONS ENDED WITHOUT AN AGREEMENT

The month of negotiations was characterised by arduous, 18-hour days for the delegates, and ended in a roller-coaster of a final week. The draft delivered on the morning of Tuesday 24 July was weak in almost all respects. Two days later, a new draft text was released. Despite some serious flaws, it was a significant improvement. There was a growing sense that few if any states would block this text and that Friday might actually deliver a treaty.

However, on the final day, the United States stated that there were still too many items that needed further consideration and were beyond immediate resolution. Russia and North Korea, thus emboldened, raised similar protestations.

The US's reversal was disappointing. The text had already been crafted, and in some cases weakened, to accommodate US concerns. It became clear that, in an election year, President Barack Obama was not willing to risk his re-election prospects on an ATT that might prove unpopular with voters.

"DISAPPOINTED BUT NOT DISCOURAGED"

Although in the end several states supported the US line, many observers felt that if the US hadn't been first to break ranks, nobody else would have. In fact, Member States came very close to agreeing a text.

The US action produced notable anger and determination. Within half an hour, 90 "disappointed but not discouraged" Member States signed a statement calling for the UN to renew its push towards a treaty as quickly as possible.

There is reason to be optimistic that we will end up with a worthwhile treaty, as long as we keep up the momentum. The US will also need to be pressured to show leadership and prioritise the needs of those at the sharp end of the under-regulated and irresponsible trade in arms over its domestic electoral politics.

The three articles in this update reflect the personal views of the authors based on their experience as observers at the ATT Conference. In the first article, Prof Xia Liping regards the ATT Conference as a new foundation for further fight. He blames the US for the inability to reach an agreement and points out China's positive role and the importance of NGOs. In the second article, Prof Leng Xinyu highlights the tension between realist and liberal values, with the security of vulnerable states caught in between. In the final article, Dr Dai Ying focuses on the debate over ammunition in the negotiations. She believes the inclusion of ammunition is fundamental for an effective ATT.

To read the draft treaty text, go to:
www.saferworld.org.uk/ATT-draft-text

UN ARMS TRADE TREATY CONFERENCE: A SETBACK OR A NEW FOUNDATION ON WHICH TO STRIVE FOR A ROBUST ATT?

BY PROF XIA LIPING

On 27 July 2012 at the United Nations (UN) headquarters in New York, after spending four weeks in negotiation, delegations from more than 170 countries around the world failed to agree on an Arms Trade Treaty (ATT) that would regulate the international trade of the more than $60 billion defence industry.

In my personal view, and drawing on the direct experience of spending one week as an observer to the UN Arms Trade Treaty Conference at the invitation of Saferworld, I can come to some overall conclusions:

The United States has been – and will continue to be – one of the major obstacles to the ATT. This is mainly due to its domestic politics. Not only did the United States not play a leading role during the ATT negotiations that people had hoped for, but it also holds responsibility for the inability of the negotiation conference to reach a decision on 27 July: On the final day of negotiations, the United States (and then Russia) stated that there was not in fact enough time left for them to clarify and resolve issues they had with the draft treaty. This amounted to preventing a successful outcome being agreed. Although the United States – the world's biggest arms trader accounting for over 40 percent of global conventional arms transfers – reversed its policy after President Barack Obama took office and decided in 2009 to support the idea of an ATT, in the election year of 2012 neither the Republicans nor the Democrats have any interest in touching the subject of gun control.

According to Gallup and other pollsters, Americans have grown less supportive of strengthening gun laws in the United States over the last two decades. In 1990, for instance, Gallup found that 78 percent of Americans favoured stricter gun control laws, while 19 percent favoured less strict or unchanged gun laws. By 2011, only 44 percent favoured more gun control, while a majority of 54 percent wanted looser regulations. Even after the tragic mass shooting at a movie theatre with 12 people killed and 58 injured in Colorado on 20 July, both President Obama and Mitt Romney, the Republican presidential candidate, refused to discuss tighter controls in the immediate aftermath of the shooting. Gun control activists said the Colorado shootings should be a wake-up call, but many Americans' views on guns appear not to be swayed by such individual tragedies. In early July 2012, the National Rifle Association (NRA) pledged to fight the proposed ATT if it were to threaten the Second Amendment sovereignty. Gun rights advocates called on millions of gun owners to contact their senators in opposition to the treaty. Even though the ATT would have no bearing over domestic gun ownership in America, it is clear that domestic politics had a bearing on the United States' last minute obstruction to the passing of the treaty.

Most UN Member States have supported the agreement of a strong treaty. Following the United States' surprise announcement on 27 July, in very short order, 90 other Member States signed up to a collective statement in which they demonstrated their strong commitment to a robust ATT through stating overwhelming international support for the final Chairman's draft and calling for the process to continue.

China has played a positive and responsible role during the ATT conference. The Chinese delegation actively participated in the negotiations, insisting on China's own principles but, at the same time, staying flexible and progressive in line with most other states on some issues due to considerations of national interest and common interests of human beings. China supported the inclusion of all kinds of weapons – including small arms – in the ATT and did not try to block the inclusion of language on international human rights law and international humanitarian law. Furthermore, China put forward

some constructive proposals together with some of the other delegations. Some of the media accusations that it was China (together with the United States and Russia) that prevented the treaty's final agreement need to be corrected: China did not block the draft treaty. In fact, China should be praised for its positive role during the negotiations.

Non-governmental organizations (NGOs) became one of the most important factors in the push forward for an ATT. Representatives of NGOs such as Saferworld, Oxfam, and others dedicated to regulating the arms trade were very active in New York in July. Advocates and experts had done a lot of work to contact State delegates during the sessions and to provide their insights on how to affect the flow of weapons. Their enthusiasm and persistent efforts encouraged many UN member States' delegations.

Although many people have been disappointed at the failure of reaching a final agreement during the ATT Conference and even regarded it as a setback, I prefer to regard it as a new foundation for further fight. There is already considerable common ground and a level of consensus was reached over the shape and much of the content of a Treaty. The final draft treaty that was the outcome of four weeks discussion will be used as the basis for pursuing an ATT through the UN First Committee/General Assembly process. The international community should make a great effort to fight for a UN General Assembly vote on the ATT and a two-thirds majority adoption by the end of the year.

THE ATT CONFERENCE FAILED: WHAT CAN THE WORLD DO?

BY PROF LENG XINYU

Humanitarian crises continue in the world. One of the most important reasons underlying this is that there is no international legal regime regulating and governing the sales of arms. With the global economy declining, people might think that the international sale of arms might have decreased since the financial crisis of 2008. However, in stark contrast to such expectations, statistics show that the arms trade has increased drastically, especially between traditional large exporters and receiving states. Perhaps the depressing realities of the world shown in the Hollywood film Lord of War repeatedly occurred in the thoughts of various diplomats, UN and NGO staff in New York at the start of a diplomatic conference that sought to gain consensus on a UN treaty regulating the international arms trade. Ironically, the permanent members of the UN Security Council are the largest exporters of arms, as also foretold by the film several years ago.

"I'm not so optimistic that an ATT will be reached towards the end of this month." "But there should be a legally binding ATT." The above two sentences are from a dialogue between the author and one of his colleagues, held when the author was about to leave New York after a week of observing the negotiations. This gloominess towards the conference was unfortunately envisaged. Right at the beginning, the issue of Palestinian credentials as a state became the first impediment confronted by the meeting, demonstrating that even basic commonalties for the foundation of an ATT could not be easily reached.

Although the Palestinian issue was a pure procedural question, the conference tried hard and spent two days dealing with it. Hot debates opened and developed from the first round of general statements on participating states' respective positions. If one had just sat in the conference hall and listened to the positions of various states, one would have realized how difficult it would be to ease the myriads of contradictory opinions amongst them.

LIBERALISM AND REALISM

Notions of Hans Morgenthau and Woodrow Wilson are always competing. And the ATT conference might be one of the most vivid, if not one of the best, examples to illustrate the tension between realism and liberalism. For example, whether ammunition should be governed by the ATT became an issue during the conference. However, as pointed out by one African diplomat, it was really ridiculous to talk about this question. With simple, firm but reasonable logic he asked how arms would open fire without the corresponding ammunition.

Apparently, the interests of giant powers and small states diverged to a great extent. Liberalism is always persuasive and even giant powers like the United States cannot deny the moral values behind it. However, as a common Chinese saying suggests, the reality is far from the good will. After almost one month of negotiations, a US representative declared on the last morning that the current treaty draft was unacceptable. Washington's explanation for its standing was the vagueness of wording in the final draft and its failure to protect sovereign states' right to regulate guns domestically. The harsh words of Washington made all diplomats in the room realize that what had occurred over the past month of negotiations was a game. The United States' position was echoed by the Russian Federation, which made a de facto but decisive proclamation that the game was over, and even the final efforts made by some key states could not reverse the unfortunate destiny of the Treaty. As commented by one NGO staff, since Secretary of State Clinton's team insisted from the outset that the ATT must be agreed on a basis of consensus, it sounded

reasonable that Washington used this technical strategy in the final phase as the last excuse.

AN ATT IS STILL REQUIRED

The international community endeavoured but failed to reach a legally-binding treaty governing the global arms trade, which leaves room for discussion of a simple question: who is destroying or sabotaging international peace and security? Humanitarian crises occur in parts of the Middle East and Africa year after year. However, binding rules on the transfer of arms have failed to emerge out of water.

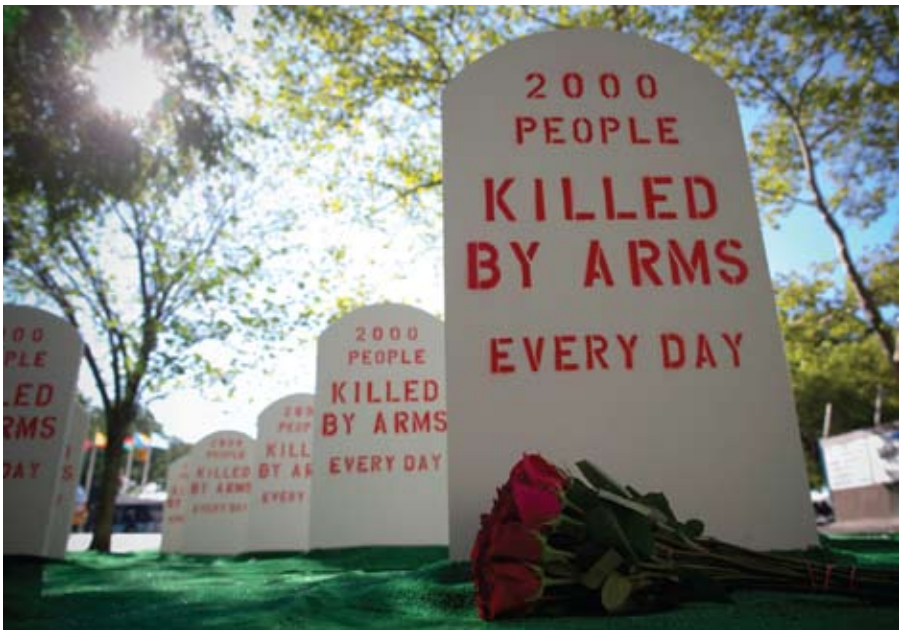
The underlying but unstated question is who provided to those offenders the means to break the elementary rules? Needless to say, the unregulated arms trade system did.

continued

THE ATT CONFERENCE FAILED *continued*

Commentators might argue that International Humanitarian Law (IHL) – a bundle of rules originating from Sir Henry Dunant's personal efforts to ameliorate the suffering of war victims more than 150 years ago – are still applicable in all categories of armed conflicts, regardless of whether it is of international or non-international nature. Legal scholars might further this opinion by arguing that International Law has spiralled into the contemporary stage where the offenders of core crimes of international law should be prosecuted and should assume their individual responsibilities.

The Geneva Conventions of 1949, as well as their Additional Protocols of 1977, provide an "extradition or prosecution" regime to deny safe heaven to war crime offenders. However, IHL merely provides a legal sanction system for unlawful use of weapons. IHL is merely a set of rules prohibiting grave violations. The underlying but unstated question is who provided to those offenders the means to break the elementary rules? Needless to say, the unregulated arms trade system did.



A mock graveyard was set up by campaigners for the Control Arms coalition next to the United Nations building in New York. July 2012 © REUTERS

However, the positive development is that China is not focusing as expected only on its own commercial priorities, but is instead seeking to gain more support with regards to moral values.

MORAL VALUES AND SMART POWER

The world is fumbling in the darkness for a feasible solution. The international community is nevertheless happy to embrace the change in China's position with regards to the ATT. Some NGOs predicted that China might be a conservative participant in the negotiating conference. However, the Chinese delegation did not in the end insist that human rights issues be excluded from the list of criteria. This is in contrast to its position during the preparatory conferences before July 2012, when China argued that human rights issues and humanitarian issues are always too highly politicalized and so should not be included in an ATT. Although European states might welcome this change in China's position, no such substantial steps are predicted to be made by the European Union (EU) with regards to lifting the arms embargo on China, a policy adhered to in principle for more than two decades but seemingly more and more meaningless as time goes on. However, the positive development is that China is not focusing as expected only on its own commercial priorities, but is instead seeking to gain more support with regards to moral values. This is perhaps a type of soft competitiveness that is more honest than Secretary Clinton's "Smart Power" policy.

The reason behind it is simple: rules and even the process to formulate rules are complicated, but the foundation of these rules is based on a common sense that no giant power can deny.

Although giant powers always have more say in formulating new rules of international law, and are more able to boycott any rule that might be disadvantageous to them, international law should not and will not lose its colour of moral values. The closing of the ATT conference might have left room for the United States' domestic politics, especially in connection with the upcoming presidential election. However, plenty of critical remarks are the proof that morality does have pressure on international politics. The reason behind it is simple: rules and even the process to formulate rules are complicated, but the foundation of these rules is based on a common sense that no giant power can deny. The United States, China and Russia have the capacity to compete for the next two or more decades. This competition is not a simple question of the distribution of power. The one with the most moral support will be the one that leads.

OPTIONS VERSUS OBLIGATIONS: THE DEBATE ON AMMUNITION IN THE ARMS TRADE TREATY NEGOTIATIONS

BY DR DAI YING

After two years of vigorous preparation in the Preparatory Committee (PrepCom) meetings at the United Nations, 193 Member States met in New York again for the Diplomatic Conference of the Arms Trade Treaty (ATT) in July 2012. They tried to agree on the first legally-binding instrument to regulate the global arms trade on the basis of consensus. Unfortunately, the historic treaty, aiming to establish common international standards for the transfer of conventional arms, failed after four weeks of intense negotiations. When the United States voiced its opposition to the final draft treaty on the final day of the negotiating conference, it argued that more time was required to deal with unresolved issues. This statement effectively ended the negotiations.

Many unresolved issues, especially with regard to disagreements on scope and criteria, contributed to the failure to agree on a treaty. As one of the key sources of contention, the inclusion of ammunition in the scope of the treaty dominated the discussion of the Diplomatic Conference and was a critical issue for the United States. Calls for the inclusion of ammunition were made by the majority of delegations from Africa, Latin America, the Caribbean, and other states which are most affected by gun violence and most impacted on by the uncontrolled flow of ammunition. However, others did not place high priority to this issue and arguments were presented on how difficult or costly it would be to regulate the international transfer in ammunition.

Compromises and various changes to treaty text were made on this hot issue throughout the four weeks of negotiation in an attempt to balance the views and interests of different Member States. As a result, ammunition was either included or left out of the scope of ATT in the following four crucial documents during the Diplomatic Conference.

1) 3 July: Chairman's discussion paper The first discussion paper, provided by the Chairman as a base for negotiations on 3 July, suggested that ammunition should be covered in the scope. In response, the United States reaffirmed its opposition to the inclusion of ammunition, stating that it "will do little or nothing to achieve the goals of the treaty". The United States also argued that ammunition is consumable and not markable. The Philippines supported the inclusion of ammunition, but stated that if included, developing countries must have assistance with reporting and implementation of the treaty. Vietnam suggested that ammunition was too diverse, complex and open to interpretation and so should not be included. Meanwhile, Nigeria argued passionately for its inclusion, asking, "What are weapons without ammunition?" Among the states that commented on the substantive content of the treaty, 12 made explicit reference to the need to include ammunition, four were opposed, and one wanted more discussion.

2) 13 July: proposed elements of provision on scope paper By the second week, the negotiations were divided into two separate committees. The Chairman of Main Committee Two, which was examining scope, circulated a proposed treaty text related to scope on 13 July. This paper did not use the word "ammunition" in the text; however, it included ammunition into category i) "Munitions for the categories as listed above [referring to an above list (a–h) listing different categories of weapons] and military explosive devices".

Many states asked for the inclusion of language on ammunition to be used instead of, or in addition to, "munitions". On the other hand, the proposed additional wording of category i) was consistently opposed by Canada, India, Cuba, China, France, Philippines, Indonesia, Japan and Iran. The United States restated its position on deleting

every item listed after h) small arms and light weapons, and that it would not feel compelled to restate this position again within the debate.

3) 24 July: second draft treaty text A new draft treaty text was issued by the Chairman on 24 July. The majority of states, especially African states, expressed their concern at the absence of ammunition in its scope. Côte d'Ivoire, on behalf of the Economic Community of West African States (ECOWAS), stated that any treaty without reference to ammunition would be very hard or impossible to accept. In contrast, the United States stated that it continued "to believe that the reference to munitions does not belong in the treaty". Australia said it would have liked to see ammunition included in the treaty text, but "understood" why it was not included. China said that it was unlikely that a consensus could be found on the issue of ammunition and as such we "may as well abandon our efforts" now.

4) 26 July: Final draft of the Arms Trade Treaty Submitted before the last day of the conference, the final draft ATT text made some major changes to the provisions relating to ammunition, moving reference to it under Article 6: Exports.

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OPTIONS VERSUS OBLIGATIONS *continued*

Some states, mostly European, accepted this as a means of compromise as it meant that language on ammunition was included but simply not under the section on scope. However, a number of mostly African states wanted to see it explicitly come under Article 2: Scope. They stated that their delegation did not have a mandate to agree to any Treaty without ammunition referred to under this section. A Working Group on ammunition continued their discussions on this controversial issue up until the last moment. However, there was no consensus. While some continued to argue that the best way to achieve consensus would be to deal with the issue under Article 6, other delegates could only agree to this very reluctantly while others still continued to oppose any reference at all to ammunition in the treaty.

Ammunition has to be an integral part of the scope of an ATT, with ECOWAS correctly arguing that to exclude ammunition would constitute a step backwards in promoting peace and security on the African continent.

CONCLUSION

The debate on ammunition in the ATT will continue and it will decide the success or failure of the Treaty. Therefore, additional flexibility and efforts are needed in future negotiations. Ammunition has to be an integral part of the scope of an ATT, with ECOWAS correctly arguing that to exclude ammunition would constitute a step backwards in promoting peace and security on the African continent. It is proving to be difficult; however, the inclusion of ammunition is fundamental for an ATT that can effectively contribute to human security.

AUTHOR BIOGRAPHIES

Prof Xia Liping is Dean and Professor of School of Political Science & International Relations at Tongji University, Shanghai. He is also Vice President of the Shanghai Institute for International Strategic Studies (SIISS). Prof Xia holds a PhD. in world history from the East China Normal University. He specializes in global governance, Asian security, nuclear nonproliferation and China's foreign strategy.

Prof Leng Xinyu is Associate Professor of Law School, China University of Political Science & Law. Prof Leng holds a PhD and an LLM from Law School, Renmin University. His research interests include International Criminal Law, Investment Protection Regime in High Political Risk or Conflict-hit Areas, and International Humanitarian Law

Dr Dai Ying is an independent researcher. She attained her PhD at Tsinghua University in 2011, and is currently based at the University of Texas at Austin. Her research interests span a broad range of arms control issues, but focus in particular on conventional arms control. Her work seeks a better understanding of how conventional arms control is negotiated by states, and the role civil society plays in the process of these real-world negotiations. She is conducting new research into the role of NGOs, especially African NGOs, in the ATT process.

The information and views set out in this update are those of the author/s and do not necessarily reflect the official views and positions of Saferworld.

ABOUT THE ATT UPDATE

The *ATT Update*, co-published biannually by Saferworld and the School of Political Science at Tongji University, examines issues surrounding conventional arms and tracks international efforts to regulate the global transfer of these weapons under the UN Arms Trade Treaty (ATT) process. As a platform for Chinese experts, academics and students to exchange views and analyses, we welcome all comments and ideas for submission.

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Saferworld
The Grayston Centre
28 Charles Square
London N1 6HT, UK

Phone: +44 (0)20 7324 4646
Fax: +44 (0)20 7324 4647
Email: general@saferworld.org.uk
Web: www.saferworld.org.uk

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