

EDITORIAL

The Arms Trade Treaty, a new instrument for arms control

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For the second time, this e-review will focus on the Arms Trade Treaty (ATT), adopted by the United Nations in April 2013. This is an indication of how important the ATT may be. Its importance is, above all, symbolic. However, it may also serve to regulate the behaviour of states and — indirectly — private actors, depending on the actual results once the treaty enters into force.

We wished to look at the different, sometimes conflicting, reactions it has provoked among activists, experts and academics, as well as among states and businesses. These reactions range from complete satisfaction to total and instant pessimism, as well as a whole range of intermediate opinions. The truth is that the ATT has generated expectations and controversy from the beginning, from the long and complicated period of gestation of the UN mandate for the negotiations, through to the negotiations themselves on the basis of the mandate finally adopted, with the disappointment of July 2012.

The articles collected here reveal some of these nuances of opinions and expectations. I will therefore limit myself to making a few brief comments on the start of the ratification process for the ATT. I will do so on the basis of one key idea: we are talking about a new instrument of arms control, not an instrument for disarmament, and that implies more limited objectives from the outset. However, some instruments of arms control have in the past produced excellent results. Everything depends, apart from what is laid down in the treaty, on how this is implemented and, above all, how it is interpreted, according to a principle often invoked when discussing international law: anything which is not explicitly forbidden is permitted.

Firstly, we must always bear in mind that arms control instruments are intentionally pragmatic: they seek to reduce the likelihood of war, its scope and the violence which may be used in war. In other words, arms control has one or several of the functions in the following list: 1) to freeze, limit, reduce or eliminate categories or designs of certain weapons; 2) to avoid certain military activities; 3) to regulate the deployment of armed forces; 4) to prohibit transfers of certain important military items; 5) to restrict or prohibit the use of certain weapons; and 6) to create trust through measures of openness and transparency. In this case, the ATT focuses on the fourth function, no more and no less. In short, the ATT will not, under any circumstances, be an instrument for ending the arms trade; it was created with the aim of regulating certain transfers in some specific situations.

Secondly, an empirical, scientific approach obliges us to be aware that currently we only have opinions and conjectures: positions that will have to be proven or refuted by the facts. At the moment, it is not possible to present rational arguments which demonstrate that the ATT will be a success or a failure. Everything will depend on its implementation and, therefore, on the capacity to exercise pressure for as restrictive a regulation as possible. We have to be rigorous with our analysis... but when the time comes: when there are results.

Thirdly, the process of ratification until the coming into force of the treaty is of crucial importance. We must recall that, besides the votes against, there were a significant number of abstentions, above all for the reasons formally given (in the case of the countries of the so called "Bolivarian" alliance) and, very importantly, because at least three of the abstentions came from countries which are very important in the arms trade. If the US does not ratify the ATT, or takes a long time to do so, the balance of power in their parliaments means that many arms exporting countries could remain outside the treaty. There is thus a lot of work to be done.

And fourthly, over the two or three years that may pass until the treaty comes into force (ninety days after having reached

fifty ratifications) a lot of pedagogy and other work has to be done: preparing simple, clear and neutral instruments for the application of the treaty; teaching states to evaluate the causes for prohibitions and restrictions; establishing standards and accepted criteria.

We can not know right now whether the glass is half full or half empty, but we do know that the final result depends on what all of us do from here on.

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IN DEPTH

INTRODUCTION

The Arms Trade Treaty and its effects on the ground

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The recent adoption of the Arms Trade Treaty (ATT)¹, the first treaty on the global trade in conventional arms, has been hailed as an historic moment. After years of discussions and lobbying, on 2 April the 193-nation UN General Assembly approved the treaty with 154 votes in favour, three against (Iran, Syria and North Korea), and 23 abstentions (including China, Russia, and India)².

With the treaty being opened for signature on 3 June, we like to take a moment to critically examine its provisions and to reflect on the likelihood of this treaty, which seeks to regulate the \$70 billion business in conventional arms, really keeping weapons out of the hands of human rights abusers. Is the adopted text strong enough to send out a clear message to arms dealers that

their time is up or will they simply see the new treaty as a “paper tiger”? To what extent will the treaty’s effectiveness be limited if major arms exporters refuse to sign or ratify it? These and many more questions arise.

This edition of Per la Pau / Peace in Progress, following up on a previous edition on Negotiating an Arms Trade Treaty, therefore shifts the attention to the actual effects that the ATT, once entered into force, will have on the ground. We have asked Nicholas Marsh, research fellow at PRIO, to comment on the strengths of the ATT and Barnaby Pace, researcher specialising in corruption and the arms trade, to highlight some of its shortcomings. Sharing her experiences as an arms trafficking investigator, Kathi Lynn Austin, founder and executive director of the Conflict Awareness Project, provides us with “Seven Golden Rules” to ensure the ATT’s life-saving potential. Next, Sarah Parker, senior researcher at Small Arms Survey, explores the relationship between the ATT and the United Nations Programme of Action on Small Arms and Light Weapons. Furthermore, with efforts now going towards securing the 50 ratifications necessary to bring the ATT into force worldwide, Roy Isbister and Kloé Tricot O’Farrell of Saferworld set out which lessons learned from the way in which NGOs contributed to the ATT success should be taken into account in the context of the ongoing campaign for signature, ratification and implementation, as well as other international campaigns.

As always, this edition of Per la Pau / Peace in Progress also includes a list of useful sources to learn more about on the ATT, an Interview, with Jordi Armadans, director of FundiPau as well as the section Platform, with reflections by Richard Moyes (Article 36) on a new campaign focused on the humanitarian impact of nuclear weapons, Gerardo Ríos (Amnesty International, Spain) on human rights abuses by Shell in the Niger Delta, and Ricard González (journalist / political scientist) on the potential for a solution to the Palestinian conflict during Obama’s second term.

ICIP would like to thank all authors for their contributions to this edition of Per la Pau / Peace in Progress.

1. UN doc. A/RES/67/234 B. The full text of the treaty can be found at: [http://www.un.org/disarmament/ATT/docs/ATT_text_\(As_adop- ted_by_the_GA\)-E.pdf](http://www.un.org/disarmament/ATT/docs/ATT_text_(As_adop- ted_by_the_GA)-E.pdf)
2. Due to a confusion regarding the vote by Angola (it was recorded as having abstained, though it had attempted to vote yes) other sources say the actual vote was 155-3-22.

CENTRAL ARTICLES

What has the Arms Trade Treaty done for us?

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When assessing the Arms Trade Treaty (ATT), it is important to consider why we spend so much time working on the arms trade. For me there are three reasons:

- supply of weapons to aggressive parties, including those committing atrocities such as war crimes or violations of human rights;
- corruption, secrecy, power politics and other means by which the trade subverts democracy and the rule of law; and
- diversion of otherwise productive resources to unnecessary military use.

The strengths of the treaty are those facets which ameliorate these problems, or have the potential to do so¹.

The most important strengths of the treaty lie in its ability to prevent the supply of weapons to aggressive governments or other actors. Article 6 contains absolute prohibitions against transfers to parties under embargo, which violate other international agreements the exporter is a party to, and parties which are involved in committing war crimes. These are absolute prohibitions without qualification, and constitute the strongest language in the treaty. Moreover, the provisions are wide ranging. All of Article 6 covers conventional arms and their ammunition and parts. Paragraph 2 contains broad language which prohibits exports by a State “if the transfer would violate its relevant international obligations under international agreements to which it is a Party”. In my opinion, this covers International Human Rights Law and the many pre-existing regional and multilateral arms control agreements (particularly concerning small arms and light weapons). The ATT therefore strengthens international law and the existing web of mostly politically binding conventional arms control regimes².

In addition, Article 7 stipulates that all exports of arms, ammunition or parts not prohibited under Article 6 (see above) should be subject to a risk assessment. Stipulated criteria are that the arms could be used to commit serious violations of human rights, war crimes, gender-based violence, organized crime or more generally undermine peace and security. If there is an ‘an overriding risk’ of these happening then the export should not be authorized. All state parties are therefore required to make an assessment of the risks of a wide range of aggressive uses for arms imports.

Concerning the subversion of democracy and the rule of law, the risk assessments in Article 6 also refer to items exported committing or facilitating “an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.” One hundred and seventy-five states are parties to the UN Convention on Transnational Crime, which includes articles on corruption. The ATT therefore indirectly includes a commitment to assess the risk that the items exported would facilitate corruption, and not to authorise the export if there was an ‘overriding’ risk. This is a step forward in the fight against corruption in the arms trade, as has been recognised by Transparency International³. In addition, Article 15 encourages States to take national measures and cooperate with each other to prevent arms transfers “becoming subject to corrupt practices”.

Secrecy is one aspect of the trade which both undermines public accountability and also allows other nefarious acts to flourish. The ATT includes the first binding global requirement for states to annually share with each other information on their imports and exports of conventional weapons (Article 13). While the required information exchange is not public, there are good reasons to hope that the ATT will significantly improve public reporting. First, States can use the same reporting format as in the existing voluntary UN Register of Conventional Arms. One problem with the UN Register has been a steadily declining number of States submitting reports⁴, but the reporting requirement in the ATT is likely to reverse this trend. Second, the experience of the EU Code of Conduct on arms exports (from 1997) has shown that a private information exchange can relatively quickly assume a norm of public reporting, as States voluntarily publish their reports.

Although the campaign for an Arms Trade Treaty has not focussed on an overall reduction in armaments or military spending, there is good reason to believe that the ATT will help the cause of reducing overall levels of armament. One of the most important achievements of the ATT campaign has been to change the context in which the arms trade has been discussed. A decade or so ago it was depressingly common to hear governments (especially from Eastern Europe and Asia) assert that all aspects of the trade in conventional arms were legitimate and that they themselves were free of all responsibilities once the arms had crossed their borders (the only exception being UN embargoes). It is very evident to me that the ATT campaign has changed the normative environment⁵, with governments that had exported to anyone that could pay now having negotiated a treaty which explicitly focuses upon the responsibilities

of exporters in order to reduce human suffering (Article 1). In years to come this normative aspect may well be seen to have been one of the ATT's greatest strengths. The campaign has to an extent de-legitimized the arms trade. This normative shift, will, I hope, provide a lasting opportunity for success in further campaigns aimed at an overall reduction in the arms trade and in the level of armaments in general.

To conclude, the ATT presents a new opportunity. When signatures and ratifications are complete it is likely that many governments will for the first time be party to a binding agreement which recognises the deleterious effects of the arms trade, as well as their own responsibilities when exporting arms. What is done with that opportunity is now down to the people working with the arms trade. The strengths outlined in this article will only have an effect on the ground if their potential is realized in the way in which the ATT is interpreted and implemented. As stated by the representative of Mexico on the floor of the UN General Assembly after the ATT vote "This is just the beginning, the hard work starts now".

1. This article, as requested by the editors, focuses upon the strengths of the ATT. I shall not mention the weaknesses (of which there are many); space is limited and they are covered in another article in this issue.
2. For an overview of the various regional and multilateral agreements, see: Greene, Owen and Nicholas Marsh. 2012. 'Governance and Small Arms and Light Weapons.' In: Greene, Owen and Nicholas Marsh (eds.) 2012 Small Arms Crime and Conflict Global Governance and the Threat of Armed Violence. London: Routledge.
3. See Transparency International. Undated. Transparency International welcomes historic adoption of UN Arms Trade Treaty (ATT). Accessed 7 May 2013 at: http://www.transparency.org.mk/en/index.php?option=com_content&task=view&id=496&Itemid=30
4. See: Holtom, Paul; Lucie Béraud-Sudreau; and Henning Weber. 2011. Reporting to the United Nations Register of Conventional Arms. SIPRI Fact Sheet. Stockholm: SIPRI.
5. For more on this normative shift, see: McDonald, Glenn. 2013. 'Worth the Paper? The Arms Trade Treaty' Published by e-International Relations, 17 April, Accessed 17 April 2013 at www.e-ir.info/2013/04/17/worth-the-paper-the-arms-trade-treaty/; and Marsh, Nicholas. 2013. 'Arms Trade Treaty, the work has just begun.' NISAT Blog Small Arms Crime and Conflict, 10 April, available via www.nisat.org.

Is the Arms Trade Treaty a failure?

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It is a strange world when anti-arms trade campaigners are against more regulation of the arms trade. However, there are major concerns that a weak treaty will lead to a justification of the status quo and entrenchment of the interests of arms exporters.

A treaty has always been seen as one of the few ways of quickly limiting the arms trade and eliminating gaping holes in arms export control worldwide, with a standardised system being the only kind that could eliminate loopholes and prevent playing one country off against another, moving arms transfers through less regulated regions, lobbying governments or creating a race to the bottom on export laws.

However, a weak treaty does none of these things well. Instead, legalising and legitimating the awful status quo, it will solve nothing and could set real action back by decades.

The most important part of the treaty concerns the risks it considers relevant for prohibiting arms sales and how these risks have to be assessed to make a decision on whether or not to allow the export of arms. The ATT's criteria are whether such exports would contribute to or undermine peace and security; or could be used to commit or facilitate a serious violation of international humanitarian law or human rights law, or an act of terrorism or transnational organised crime. The risk of contributing to or facilitating serious acts of gender-based violence or violence against children is also included.

The standard against which these issues have to be judged to determine whether or not the export should be authorized is if there is an "overriding risk" of any of the negative consequences mentioned.

Each country is left to make its own subjective judgement of where an "overriding risk" exists. Also, it is left to the imagination what other factors the risk is overriding. There is no prohibition on countries considering their political, military or economic factors that might be in favour of allowing a highly risky arms export. Even where there are substantial risks of serious violations space is allowed for countries to argue that the risk is sufficiently mitigated, thereby allowing the exports anyway.

Whilst countries are invited to cooperate in their assessment there is no mechanism to enforce any minimum standard and each country will almost certainly continue their current behaviour, justifying it in exactly the same way they used to, except now adding that it is compliant with the ATT.

The criteria considered are nearly stripped to the bone, only including humanitarian law, human rights, peace and security, and gender-based violence. No mention is made of internal repression, corruption or socio-economic development, to mention a few. The arms trade kills huge numbers through these routes, yet they are not even mentioned.

Key failings in the treaty also include the creation of an exemption for defence cooperation agreements, likely allowing any arms deal to avoid the ATT if it is undertaken between states. Important record keeping and transparency provisions are undermined by the lack of a clear common standard, with states only being encouraged to keep records, not instructed that they must do so in a useful format. Additionally, there are no transparency provisions in place to force states to reveal their activities and decisions to their own citizens. A crucial loophole also exempts ammunition from what record keeping there will be.

A real example of why the treaty will not work is clearly provided by current situations. One of the major rallying calls used in campaigning for the ATT is that Russian arms exports to Syria would be prevented. However, Russia (if they ratify the treaty; they stood aside from the vote) would authorize the exports on the same grounds they do now. Similarly, an effective ATT should prohibit UK arms exports to countries like Saudi Arabia, where an absolute authoritarian government continues to repress its own population and has likely used UK equipment for human rights violations and war crimes in Bahrain and Yemen in recent years. However, the UK will still argue that there is not a clear enough risk to stop exports, that economic and political considerations are more important and that in any case major arms deals to the country take place in state deals that are practically exempt under the ATT. The real attitude of the UK government was shown as while the ATT was being passed in New York, UK Ministers were in Libya – aboard a warship – promoting arms sales in the troubled country.

The treaty has sadly been doomed to fail. There is not yet a groundswell of political opinion opposed to arms exports in the major exporting countries, which have the most political clout. The consensus-based process demanded by the United States meant that the treaty was also likely to be set at the lowest possible standard and that the major arms exporters were not about to allow the implementation of standards higher than those they already have, while some exporters, such as Russia, may refuse to sign or ratify the ATT.

The adoption of the treaty was met with a great deal of self-congratulation, but the support of organisations like Amnesty International and Oxfam for a treaty that will rubber stamp the status quo of the appalling current system will likely disappoint or delude the activists that support the treaty. Some organisations, such as Campaign Against Arms Trade in the UK, have declined to support the treaty. Their reputation may be maintained, but unfortunately activists and politicians are still more likely to ignore their arguments on the incorrect grounds that the ATT has solved the serious problems of the arms trade.

In the eyes of those who see the arms trade as an obstacle to peace the treaty was fundamentally flawed from the start. The pre-ambule to the treaty recognises the “legitimate political, security, economic and commercial interests ... in the international trade in conventional arms.” The UN’s predecessor, the League of Nations’ Covenant was closer to the truth nearly a hundred years ago when it said “the manufacture by private enterprise of munitions and implements of war is open to grave objections.”

Will the Arms Trade Treaty Stop the Next Viktor Bout?

Kathi Lynn Austin

Founder and executive director of the Conflict Awareness Project¹



The tropical beachfront hotel provided the ideal cover for Russian Andrei Kosolapov to launch his arms trafficking enterprise. With views of the aquamarine sea and a bar stocked with whiskey, all he needed was Mauritius government approval of his application for an air operation certificate.

When I interviewed Kosolapov in June 2012 at the White Shell Restaurant and Lounge, he had the aircraft, pilots, shell companies, and corrupt local officials in place. He was just waiting for the official go ahead before he could start smuggling weapons to some of the world’s worst conflict zones: Sudan, Democratic Republic of Congo, or even possibly Syria. He even had a tried and true alibi if he got caught red-handed with the guns: he would claim he was nothing more than a “transporter.”

Kosolapov had learned the tricks of the black market trade from a master, his former boss, Viktor Bout. Commonly referred to as the “Merchant of Death,” Bout had amassed millions from his UN sanctions-busting business and had evaded accountability for nearly two decades by exploiting legal loopholes, inconsistent national laws, and the lack of an international system to regulate the arms dealers operating across national borders. Bout had been able to use the “I’m just a transporter” excuse because so few States had a robust definition of an “arms broker.”

The technical term “arms broker” refers to the weapons middlemen—the support bridge between the suppliers and shooters. Of the four primary actors involved in an international arms deal: supplier, broker, delivery agent, and end-users, only one facilitates this transaction from start to finish—the broker. And since the broker is the central actor using the cover of legitimate business to divert weapons into the illicit trade, this should be the one requiring the strictest regulation.

For law enforcement officials, UN arms experts, and arms trafficking investigators like myself, the Arms Trade Treaty (ATT) held out high hopes for a new international tool that would make it harder for illegal gunrunners to ply their deadly business. But will the adoption of the ATT this past April impede the trafficking kingpins who hope to fill Viktor Bout’s shoes?

The answer to this question lies not in the text of the ATT but in its forceful implementation.

Thanks to strong pressure by civil society and progressive states, the ATT includes a substantial section addressing “diversion,” a classic technique used by criminals to funnel legally purchased weapons into illicit pipelines. But the section of the ATT specifically devoted to brokering is the weakest. That article contains only two water-downed sentences that fall short of creating the compulsory international standard and licensing regime that would have made a significant difference to the tens of thousands that innocently fall victim to conflict.

Out of the 52 countries or so that have legislation on arms brokers, only a few, such as the US, have definitions that contain the full array of middlemen, including for instance the transporters and financiers. Even fewer nations require the registration, licensing, and extraterritorial oversight of these actors. Additionally, without a global watch list, unsuspecting countries will continue to face hardship trying to distinguish rogue operators from legitimate traders.

Advocates cannot simply stand by and allow governments to regulate the brokers as they see fit. As States begin to use the ATT’s guidelines to enact effective legislation, concerted action is needed to address the deficits of the ATT’s sketchy language on arms brokering. What should governments be pressured to do to ensure that illicit arms traffickers do not evade the new global rulebook?

For a start, I recommend these “Seven Golden Rules”:

1. Enact a Comprehensive Definition of Brokering: The definition must be broad enough to cover the wide range of activities in which brokers engage. For instance, it should incorporate transporters, financial agents, insurance providers, and all other facilitators.
2. License and register: National regulations must include the registration of all brokers, even those operating extra-territorially. It should also require the licensing of each international weapons transaction on a case-by-case basis.
3. Verify, verify, and verify: Both exporting and importing States should verify that the brokers involved have been properly registered and licensed and that the arms transferred are checked against the applicable licenses.
4. Take responsibility beyond borders: States must regulate the activities of their nationals both at home and abroad. Without an extra-territorial application, traffickers will simply operate in countries where there is weak regulation or enforcement.
5. Make it a team effort: States should proactively assist each other with the investigations and prosecutions of suspect brokers. Such collaboration will be more effective against nimble traffickers and transnational criminal networks.
6. Record and share: States must maintain adequate records and exchange information regarding the activities of illicit brokers. The ability to flag illegal brokers is a key to holding them accountable.
7. Criminalize and penalize: National laws should classify brokering violations as criminal offense and set adequate penalties for their contravention.

The Arms Trade Treaty is a potential game-changer in the fight against the scourge of illicit arms traffickers. To ensure its life-saving potential, States must go the final distance. They must demonstrate the political will to rise above the weak standard governing brokering within the treaty text. Instead, they should look to emulate nations that already have robust laws on the books to effectively achieve the highest possible international standard. Until then, the legacy of war profiteers such as Viktor Bout will live on.

1. The Conflict Awareness Project is an international non-governmental organization that investigates and brings to justice major arms traffickers, war profiteers and transnational criminal networks that fuel conflict around the world.

The relationship between the UN Programme of Action on Small Arms and the Arms Trade Treaty

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The Arms Trade Treaty (ATT), an international instrument designed to regulate the trade in conventional arms, including small arms and light weapons (SALW) makes a significant contribution to the existing arsenal of international and regional efforts over the past decade or so to address the problems associated with irresponsible arms transfers and small arms proliferation¹. Central among those is the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)², adopted by UN member states in 2001. The aim of this article is to explore the relationship between the ATT and the PoA, including synergies and inconsistencies, and the practical and political impact of their co-existence.

The PoA is a politically (non-legally) binding document that establishes a normative framework for activities to combat the illicit trade in SALW. It covers a broad range of measures that states have agreed to take including: controlling the manufacture of SALW, ensuring they are marked and appropriate records are kept, regulating the international transfer (export, import, transit and brokering) of such arms, and managing state stockpiles. However, the PoA only covers SALW, not other types of conventional arms. In contrast, the ATT covers a broader range of conventional arms³, but only deals with one main control measure: international transfers (export, import, transit or trans-shipment and brokering)⁴. So, in terms of their overlap, both instruments include provisions on the international transfer of SALW.

Not surprisingly, given its exclusive focus on international transfers, many of the ATT provisions are more detailed than their equivalent in the PoA. For example, the PoA includes a commitment on the part of states to 'assess applications for export authorizations', but, aside from a general reference to 'relevant international law' and a specific reference to the risk of the weapons being diverted to the illegal trade, does not specify the sorts of risks states should look out for when deciding whether or not to export SALW⁵. The ATT, on the other hand, includes a list of the potential risks states should and must heed when making an export decision (including whether the arms could be used to commit or facilitate a serious violation of international humanitarian law or human rights law), as well as a detailed process to be followed when making the risk assessment⁶. So the ATT builds on PoA norms governing international transfer controls because its provisions on export licensing are relatively strong.

But there are also ATT provisions that are less comprehensive than their PoA equivalent. For example, while under the PoA states have undertaken to put in place 'adequate laws, regulations, and administrative procedures' over transit⁷, state parties to the ATT have a qualified obligation to 'take appropriate measures to regulate, where necessary and feasible' transit or trans-shipment⁸. With respect to brokering, under the PoA, states have undertaken to develop adequate national legislation or administrative procedures regulating brokers, and this should include registration of brokers, licensing or authorization of brokering transactions as well as appropriate penalties for illicit brokering⁹. Under the ATT, states parties shall take 'measures' to regulate brokering pursuant to their national laws, but this basic obligation is undermined by qualifying language whereby such measures may include requiring brokers to register or obtain written authorization¹⁰.

Worse still, there are provisions in the ATT that take emerging norms backwards. For example, while under the PoA states must keep 'comprehensive and accurate' records on SALW transfers (including export, import and transit) 'for as long as possible' and the International Tracing Instrument¹¹ stipulates such records should be kept indefinitely or for at least 20 years, under the ATT states parties shall keep records of export authorizations or actual exports and are encouraged to keep records of imports and transits 'for a minimum of ten years'¹².

In summary, the ATT helps create benchmarks and elaborates on some of the PoA commitments that lack specificity, including risk assessments associated with exports. It also reinforces certain national-level commitments and turns some of the existing commitments in the PoA into legally binding obligations. Whether the fact that they are now legally binding commitments (for states parties) improves states implementation of these commitments in practice remains to be seen. With respect to ATT provisions that are weaker than their PoA equivalents, the discrepancy could lead to an erosion of existing commitments, or of their relevance, and a lowering of emerging benchmarks for small arms control.

The PoA process also provides some (negative) lessons learned about implementation, including a lack of specificity and benchmarks in the PoA text that make implementation difficult to assess, exacerbated by the absence of a formal follow-up mechanism. Additionally, it took many years and several attempts for an appropriate reporting template to be developed¹³, and detailed guidance on what implementation of each of the PoA commitments requires has also been slow in coming. Hopefully such delays can be avoided in the ATT process.

The ATT has attracted international attention that surpasses that experienced by the PoA, and will almost certainly continue to do so. This may lead to competition for funding and resources for implementation of the two instruments.

There is also a danger that states will prioritize implementation of the ATT over the PoA, either because funding for ATT-related projects is more readily available or because they perceive the ATT as replacing the PoA or somehow rendering it redundant. The latter perception would be to misunderstand the relationship between the two instruments.

In many instances the ATT complements and bolsters the PoA provisions relating to international transfers, but it cannot and should not be viewed as replacing the PoA in its entirety. International transfer controls are but one aspect of the PoA amid a broad range of arms control measures. And for many UN member states, including many that fought to ensure SALW are included in the ATT, the SALW problems they face have less to do with inadequate international transfer controls and more to do with managing and controlling SALW already within their territories. To see them spend scarce resources on establishing elaborate export control systems in the name of ATT compliance, while national priorities may lie elsewhere—addressing leakage from state stockpiles or improving marking and record-keeping practices—would be unfortunate, to say the least.

The adoption of the ATT represents a landmark in multilateral disarmament that has the potential to contribute to strengthening international transfer controls governing conventional arms, including SALW. However, even though the ATT includes SALW in its scope, the PoA remains the most comprehensive, universal framework for small arms control to which all UN member states are and remain committed. Both instruments are needed, but neither will fulfill its stated objectives if not implemented.

1. For a discussion of relevant international and regional instruments see: Parker, S. and Marcus Wilson, A Diplomat's Guide to the UN Small Arms Process. Small Arms Survey, August 2012. <<http://www.smallarmssurvey.org/fileadmin/docs/Q-Handbooks/HB-02-Diplo-Guide/SAS-HB2-Diplomats-Guide.pdf>>
2. UN Document A/CONF.192/15.
3. In addition to SALW, the ATT covers: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers (Article 2(1)), as well as, to a limited extent, ammunition (Article 3) and parts and components (Article 4).
4. ATT, Article 2(2).
5. PoA, II.11.
6. See ATT, Articles 6 and 7.
7. PoA, II.2 and 12.
8. ATT, Article 9.
9. PoA, II.14.
10. ATT, Article 10.
11. The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons—known as the International Tracing Instrument, or ITI—was adopted by UN member states in 2005, focuses on marking, record-keeping and tracing of SALW, and stems from the PoA process.
12. ATT, Article 12.
13. Indeed some involved in the process think the current reporting template still fails to hit the mark.

Lessons learned: How NGOs contributed to the ATT success

Roy Isbister and Kloé Tricot O'Farrell
Saferworld



The adoption of the Arms Trade Treaty (ATT) on 2 April 2013 represents the culmination of nearly 20 years of campaigning by non-governmental organisations (NGOs) for the regulation of the international trade in conventional weapons. From this process many lessons can be learned. While some are obvious – such as the need for technical credibility and the importance of forming alliances – others are less so. This article picks out just a few of these lessons to ensure they are remembered in the context of the ongoing campaign for signature, ratification and implementation, as well as other international campaigns.

First and foremost, in the face of lengthy processes littered with failures, setbacks and disappointments, campaigners must not lose sight of what they want to achieve. The early campaign advocated for an “International Code of Conduct on Arms Transfers”, which failed to get support because it was considered over-ambitious. In response, NGOs recast the concept as an expression of States’ existing obligations under international law. By reformulating the initial package, while remaining loyal to its motivating principles and rationale, they captured the interest of a growing number of States and enabled the ATT process to move forward.

A further critical moment was the failure of the first negotiating conference, the July 2012 ATT Diplomatic Conference (DipCon1), to adopt the draft treaty text (CRP.1). NGOs had warned against the dangers of the 'consensus rule', which governed the ATT process and gave every State the power to block the treaty. In this case, the US calling for more time to review the text doomed DipCon1 to failure. At the time, this was a major disappointment to NGOs. Nonetheless, building on the momentum of DipCon1, civil society groups successfully lobbied before and at the subsequent UN General Assembly First Committee for a resolution that (1) mandated a further Diplomatic Conference (DipCon2), and (2) addressed the key procedural weaknesses of DipCon1 (i.e. the consensus rule and the absence of a follow-up mechanism in the event of no agreement). With DipCon2 set for March 2013, NGOs worked on strengthening CRP.1's provisions and encouraged the President-designate to use it as a base from which to build stronger provisions rather than as a starting point for further compromise. With hindsight, the outcome of DipCon1 was probably for the best, as the text on offer at the end of DipCon2 was stronger than CRP.1. And while DipCon2 also failed to deliver consensus, its final text was adopted by vote in the General Assembly the following week.

Second, NGOs need to identify and engage with "champion" States, working with them as points of leverage to bring the process forward. While the idea of an ATT was at first supported by civil society organisations and several smaller States, it was the UK announcement in support of the idea in 2004, following hard lobbying by civil society, which shifted the campaign into another gear. Subsequently, EU Member States as well as many African and Latin American States followed suit. This drove the project into the UN and on to the General Assembly's agenda, less than two years later.

Third, there are real advantages to seeking achievement of international-campaign goals through the UN where possible. Indeed, the ATT project gained huge credibility and momentum once it reached the UN arena. From that point on, all key players agreed that the UN was the preferred forum for the negotiations. However, the memory of the Ottawa and Oslo processes, and the understanding that negotiation outside the UN could ultimately be an option for the ATT if it ran into the sand in the UN, concentrated minds and helped to keep things moving forward.

The unwieldy UN procedures did nevertheless slow down the adoption of the ATT. When the 2009 General Assembly ATT resolution set out a roadmap to a negotiating conference in 2012, the US insisted it include the aforementioned 'consensus rule'. NGOs and various governments voiced concern that this could paralyse the ATT process and/or produce a lowest-common-denominator outcome, as it has with the Conference on Disarmament, but to no avail. While these fears proved to be somewhat overblown, the consensus rule was a serious brake on progress – having prevented each DipCon from adopting a treaty – and forced supportive States to make compromises with States that have shown little interest in becoming parties to the treaty. However, as noted above, the language of the most recent General Assembly resolution changed the rules of the game. It created a mechanism whereby, if the Conference failed to adopt the ATT by consensus, it could be returned to the General Assembly where it could be adopted by majority vote - which is exactly what happened on 2 April 2013. This may affect future negotiations, in that States seeking to frustrate the will of the overwhelming majority now run the risk of their intransigence being punished – by a shift to a majority-based process – rather than rewarded, as has often been the case.

Finally, providing responses to the numerous challenges of an international campaign requires a broad and well-organised NGO coalition. In 2003, the launch of the Control Arms Campaign in over 100 countries enabled the ATT process to attract a much wider audience. During its decade-long campaign, the Coalition developed into a driving force of the process, both outside and inside the UN. However, working with a large number of partners also requires a delicate balancing act. The Coalition needed a relatively streamlined leadership structure capable of taking decisions and giving direction in what were sometimes fraught and fast-moving environments, while at the same time being inclusive and providing all members opportunities for meaningful engagement. Control Arms struggled constantly to retain this balance, but in the end was able, through its shared expertise, to provide efficient and rapid analytical, legal and technical support to States. At the same time, through its broad engagement, it was able to call on and motivate people in all corners of the world to contribute to delivering a treaty, be it through research, advocacy with governments or public campaigning.

TO LEARN MORE

From the wealth of information that can be found on the Internet about arms trade we have selected some of the most relevant websites, documents, statements, reports and articles from official sources, NGOs, think tanks and other internationally relevant actors. We have also listed a section of regional regulations on arms trade.

You can access the selected webgraphy on the online version of this document:
<http://www.icip-perlapau.cat/e-review/issue-16-may-2013/learn-more-0.htm>

Official documents on the ATT

- Arms Trade Treaty (ATT), text as adopted by the UN General Assembly on 2 April 2013
- Draft report of the Final United Nations Conference on the ATT. (26/03/2013)

Voting results on the ATT

- Voting results of the United Nations resolution 67/234B about the ATT. (02/04/2013)
- Interactive map indicating voting behaviour of the resolution on the ATT (02/04/2013), as well as snap-shots of States' overall positions on key issues concerning the ATT. (by Control Arms)

Statements made during the final ATT Conference (18-28 March 2013)

- Joint statement by the representative of Ghana on behalf of 103 States. (25/03/2013)
- Joint statement by the representative of France on behalf of China, France, the Russian Federation, the United Kingdom and the United States. (18/03/2013)
- Joint statement by the representative of Mexico on behalf of 108 States. (18/03/2013)
- Joint statement by the representative of Peru on behalf of 11 States. (18/03/2013)
- Statements on the adoption of the ATT by the representatives of Brazil (18/03/2013); India (18/03/2013); Israel (18/03/2013); Russian Federation (18/03/2013); Spain (26/03/2013); the United Kingdom (18/03/2013); and the United States (25/03/2013).
- Statements by Control Arms Coalition NGO during the Final Diplomatic Conference on the ATT. (March 2013)
- More statements on the ATT can be found here

Statements of international organizations after the approval of the ATT

- Statements by the United Nations Secretary-General (02/04/2013), the High Representative of the European Union for Foreign Affairs and Security Policy, (02/04/2013), and the Chairperson of the Commission of the African Union (03/04/2013).

Reports and briefing papers by NGOs and peace activists on the regulation of arms trade

- Control Arms report: Finishing the job: Delivering a bullet-proof ATT. (October 2012)
- Control Arms report: Import and Transit Considerations in an ATT: Findings Based on Case Studies of Barbados, Estonia, and Namibia. (March 2012)
- Arms Control Association special report: UN General Assembly Adopts Arms Trade Treaty In Overwhelming Vote. (May 2013)
- Oxfam International briefing paper: Getting it right: The pieces that matter for the ATT. (12/03/2013)
- Oxfam International briefing paper: The final countdown: A historical opportunity to deliver an ATT that saves lives (July 2012)
- CITS, Saferworld and Oxfam International practical guide on the National Implementation of the proposed ATT. (14/07/2010)
- Amnesty International report: No arms for atrocities or abuses: Commit to an effective ATT. (January 2012)
- Amnesty International report: Sudan: No end to violence in Darfur: Arms supplies continue despite ongoing human rights violation. (January 2012)
- WILPF analysis on the ATT: Preventing armed gender based violence: a binding requirement in the new draft ATT text. (28/03/2013)
- WILPF reaction to the adoption of the first ever ATT (02/04/2013)

Papers by research institutes and think tanks on the regulation of arms trade

- PRIO paper: Aiming for control: The need to include ammunition in the ATT. (2013)
- PRIO paper: Progressing Towards an Arms Trade Treaty. (2008)
- SIPRI Update Newsletter (essay): Will the arms trade treaty be stuck in the past? (March 2013)
- SIPRI Arms Trade Treaty Monitor number 6.3. (March 2013)
- SIPRI UNIDIR Resources paper: Implementing the Arms Trade Treaty: Reporting International Arms Transfers. (2012)
- FES New York international policy analysis: From Preparations to Negotiations for an Arms Trade Treaty. (March 2012)
- GRIP report: Le traité sur le commerce des armes: Les enjeux pour 2012. (French) (2011)
- EastWest Institute commentary: EastWest Direct: The UN Arms Trade Treaty. (April 2013)
- Geneva Academy, academy briefing nr. 2: The Draft Arms Trade Treaty. (October 2012)

ICIP materials on the regulation of arms trade

- ICIP policy paper: 2013: A unique opportunity for the Arms Trade Treaty. (December 2012)
- ICIP working paper: New developments of peace research: The impact of recent campaigns on disarmament and human security. (December 2011)
- ICIP Peace in Progress e-review: Negotiating an Arms Trade Treaty (July 2012)
- ICIP Peace in Progress e-review: Disarmament and arms control agenda (December 2009)
- A selection of books and academic articles on arms trade available at the ICIP library can be found here

Regional regulations on arms trade

- Common Position of the Council of the European Union defining common rules governing control of exports of military technology and equipment. (08/12/2008)
- Code of Conduct of the Council of the European Union on arms exports. (05/06/1998)
- Nairobi Protocol for the prevention, control and reduction of small arms and light weapons in the Great Lakes Region and the Horn of Africa. (21/04/2004)
- Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Material. (30/06/2006)
- OSCE Plan of Action on Small Arms and Light Weapons. (26/05/2010)
- Resolution 6625 on Arab Coordination for Combating the Illicit Trade in Small Arms and Light Weapons. (04/03/2006)
- More national, regional and international regulations on arms trade can be found here.
- Draft report of the Final United Nations Conference on the ATT. (26/03/2013)

INTERVIEW

Jordi Armadans, Director of FundiPau (Foundation for Peace)

Javier Alcalde

Researcher, International Catalan Institute for Peace

Jordi Armadans, a political scientist and journalist, is director of the FundiPau (Foundation for Peace), in Barcelona. As a member of the Control Arms coalition he was in New York to follow the ATT negotiations.



Catalonia participated actively in the negotiations for the ATT. Why?

In Catalonia there is a special interest in questions of peace. So despite being a small country with no direct involvement in many political and diplomatic affairs at an international level, we do keep abreast of many different issues. Compared to other larger countries, which have their own state, diplomatic corps, and so on, in Catalonia there was a feeling that the ATT was an important matter and that we had to be involved in it. This participation had two elements: on the one hand, civil society activism, directly involved in the campaign; on the other the aspect related to a centre for research and analysis, which is also very important.

How, specifically, have we contributed to the fact that we now have this treaty?

Basically in three ways. Firstly, promoting awareness, because while we ourselves are very conscious of the problem of the arms trade — of the grave humanitarian impact of the proliferation and lack of control of weapons — the issue is not very widely known: we need more people to become acquainted with this problem, and with the need for something to be done. Secondly, linking with the international network, participating in campaigns, with international activities and protests, as well as participating personally in the diplomatic process. Thirdly, advocacy work, being in contact with the Spanish government to make sure that they're really on the case, that they participate in the diplomatic conferences, etc.

Did you also have contact with the Andorran government?

Andorra is a very small state and their team at the United Nations is snowed under, with millions of processes in which they have to be involved, so there are many things that they are unable to participate in. It is however true that with the information that we passed to them, with the encouragement that we gave them, they did become involved and they added their vote and their presence towards the end of the process. It is something that we are very happy about.

At an institutional level, what was the role of city councils and the Catalan Parliament?

Here we had something really nice that didn't happen in many countries, with an event in June of last year, before the diplomatic conference. The number of NGOs, city councils, the Catalan Parliament... that it was possible to mobilise to publicly express their support for the ATT shows that the information campaign did create more awareness. Thus not only was the issue discussed more in the media, but also the respective governments were obliged to pay more attention to the issue. In this sense, the ATT attracted significant social and institutional support.

What is the relationship between the ATT campaign and previous campaigns?

This is interesting, because it is a very little known fact that probably the oldest previous example of coordination among NGOs is a campaign that started in Spain in 1994, "There are secrets that kill", in which Vicenç Fisas, a person with great leadership abilities and expertise in this area, successfully encouraged NGOs from outside the peace movement to involve themselves: Amnesty International, Intermón (now part of Oxfam), Doctors Without Borders and Greenpeace.

What were the demands of "There are secrets that kill"?

We asked for an end to so much opacity and for there to be more transparency in the Spanish arms trade. The fact that we got very large NGOs working together for an issue such as this was an interesting part of the experience, and something that was subsequently repeated. Thus, there is a continuing thread that comes from way back, and that has also had an influence at an international level.

Going back to the idea with which we started this conversation, do you think that there's consensus among the Catalan political parties about the foreign policy that should be implemented from here?

I think that this special interest we talked about has extended at a social level and in some ways the political actors also draw from and participate in this tradition. In fact, in all the international disarmament processes in which we have participated and where we have asked the Catalan Parliament to get involved, it has done so, and not only that, but also unanimously, including all the parties: with the ATT; with nuclear weapons; with cluster bombs and with small arms. It's important here to note the phenomenon of conscientious objection, by which very many young men in this country refused in different ways to do military service. That has left a residue that makes a lot of people aware that in Catalonia matters of peace have a special importance, which cannot be ignored by any party when it's thinking about what role Catalonia must play on the international stage in the future.

What advantages could public policies for peace bring us? Will we become the Norway of southern Europe?

It's a fact that there are countries that are well off in terms of their economy and human development that have achieved importance in issues of peace, and this has also given them a high profile at a global level; it means that institutions go to these countries to make contacts, set up projects, establish headquarters, etc. Also, if you look towards the future, the issues of peace building, conflict prevention and disarmament are gaining momentum. So the question is this. Is it better for Catalonia to be associated with things that come from the past and are outdated in some aspects, such as militarism and military industries? Or should we become known for what will eventually have to be the future in issues of peace? In this sense, the idea of being the Norway of the south would seem to me very attractive.

PLATFORM

Banning nuclear weapons**Richard Moyes**

Managing Partner, Article 36

The approach of the international community to the existence of nuclear weapons is going through a transformation. The renewed focus on the catastrophic humanitarian consequences that any use of nuclear weapons would cause is bringing together new alliances of states, international organisations and civil society – the latter under the umbrella of the International Campaign to Abolish Nuclear Weapons (ICAN). In these new alliances, forged in abhorrence at the immediate and long-term implications of nuclear weapon detonation, are the foundations of a movement towards a treaty that bans nuclear weapons and provides the framework for their elimination.

The use of a nuclear weapon on a major populated area would immediately kill tens if not hundreds of thousands of people – mothers, fathers and children. Hundreds of thousands more would be alive but injured – in a devastated and toxic environment in which any capacity to assist them would fall far short of overwhelming demand. Beyond the direct effects of blinding light, searing heat, crushing blast pressure, and poisonous radiation, a nuclear detonation would also cripple communications and destroy the infrastructure upon which society depends. Whilst a single nuclear detonation would cause immediate and long term harm on an unacceptable scale, the use of multiple nuclear weapons risks atmospheric changes that would impair global food production, starving people living far from the conflict zone.

On the 4-5th of March 2013, delegates from 127 countries, alongside international organisations and civil society partners of ICAN, met in Oslo (Norway) and focused on these facts. The Chair's summary of the meeting concluded that:

- It is unlikely that any state or international body could address the immediate humanitarian emergency caused by a nuclear weapon detonation in an adequate manner and provide sufficient assistance to those affected. Moreover, it might not be possible to establish such capacities, even if it were attempted.
- The historical experience from the use and testing of nuclear weapons has demonstrated their devastating immediate and long-term effects. While political circumstances have changed, the destructive potential of nuclear weapons remains.
- The effects of a nuclear weapon detonation, irrespective of its cause, will not be constrained by national borders, and will affect states and people in significant ways, regionally as well as globally.

In the context of these conclusions, the Government of Mexico announced that it would hold a follow-up conference to Oslo (probably in early 2014) and other states also indicated a willingness to host further meetings.

Whilst 'further meetings' is not in itself a radical departure from the diplomatic norm, the content, tone and composition of the Oslo meeting were a striking break from the more or less moribund discussions around nuclear weapons that take place elsewhere. The decision by the five nuclear armed states that sit as permanent members of the UN Security Council (the P5) to boycott the meeting opened up the space for other state delegations to recognize that this was a humanitarian issue on which they had a right to speak, and a responsibility to search for solutions. Whilst the P5 boycott is understood to have resulted primarily from the pleadings of France for a collective justification for their non-attendance, the assertions by the UK and others that the Oslo meeting was a 'distraction' seemed callous in light of the subject matter and material being presented. It is hard to believe that detailed consideration of the mechanisms that would cause thousands of deaths and injuries is a distraction from thinking seriously about how we should consider these weapons. Having taken a collective stand against participation in Oslo it is also very unlikely these states will be able to participate in subsequent meetings of this track of work.

Whilst the non-participation of these nuclear armed states may at first sight seem a problem, in fact it benefits the process through the empowerment of other countries – an empowerment that is vital to changing the international rules regarding nuclear weapons. For too long all of the negotiating power has been given to the states that would cling on to these weapons (despite their rhetorical commitments to the contrary). Built on a fact-based consideration of the humanitarian threat that nuclear weapons pose, the boldness of this developing movement comes from its refusal to be held hostage by the nuclear armed states.

The UK-based NGO Article 36 has suggested three key 'framings' for a treaty banning nuclear weapons. First, a treaty banning nuclear weapons would build on rather than contradict existing international instruments on nuclear weapons. It is not a rejection of, or protest against, the progress being made in other fora. Second, such a treaty would also build on, extend and strengthen the existing 'Nuclear Weapon Free Zones', which currently cover some 115 countries. It would not need to be formally dependent on those zones, but would provide an architecture that allows any individual state to participate in this legal rejection of nuclear weapons, even if its neighbours are not yet ready to do the same. Finally, with

treaty prohibitions already in place on chemical and biological weapons, nuclear weapons are the only weapons of mass destruction not yet comprehensively outlawed. Such a process would resolve that anomaly and make nuclear weapons clearly illegal.

Outlawing nuclear weapons – making them illegal – would in turn shape how these weapons are discussed and considered in the world. It would affect how states that are party to such a treaty can invest in or assist nuclear weapons production, storage or use by others. Most importantly, it would further strengthen the stigma against these weapons – changing how the international discussion of these weapons is framed, greatly increasing pressure towards disarmament and reframing current ‘modernization’ decisions taking place in a number of nuclear armed states. It will reaffirm that the international community has not relaxed into an acceptance of the threat these weapons pose but continues to see nuclear weapons as an unacceptable horror in the hands of a few.

In search of a solution to the Palestinian conflict?

Ricard González

Journalist and political scientist



Fa mig any l'atenció del món sencer era copsada per la presa de carrers i places d'una poblaTo distance himself from the previous President, George Bush, the then Senator Barack Obama insisted during the 2008 presidential campaign that bringing peace to the Holy Land would be one of his main goals from his very first day of office. And he kept his promise, moving straight away to relaunch peace talks. However, he was unable to make good on his commitment to bring a more balanced attitude towards the conflict. Netanyahu refused to comply with the condition that he freeze the construction of new settlements. The new US president let him get away with this, thus losing his credibility as a mediator in the eyes of Mahmoud Abbas and ruining the possibility of entering into substantive negotiations concerning the main issues in dispute.

Since then, instead of seeking a conclusive solution, the White House has restricted itself to managing the conflict, aiming to avoid an outbreak of violence. And all this without moving an inch from the traditional US position of unconditional support for the Jewish state – it is not clear whether this position reflects their real view of the conflict or is an exercise in pragmatism. With his political capital rapidly evaporating due to the economic crisis, and under attack from Republicans who accuse him of being lukewarm in his defence of Israel, Obama has often taken a defensive stance on this issue.

Given this situation, the big question is whether during his second term Obama will return to the ambitions of the start of his presidency, and try to go down in history as the person who found the elusive solution to the Middle East conflict. Right now, with Mahmoud Abbas completely lacking in legitimacy, and following the victory of a hawkish Netanyahu in the last Israeli parliamentary elections, the prospects of a peace deal seem to be little more than an illusion.

However, at least in terms of rhetoric, the US president has involved himself in the Israeli-Palestinian imbroglio. Last March, he made his first visit to Israel and the occupied territories since his election in 2008. Amidst renewed vows of eternal friendship between the US and Israel, his visit was well received by the Israeli population. Not only was this reflected in the media, but an opinion poll showed a significant rise among those Israelis who saw the occupant of the White House as an honest broker. Thus, at the beginning of his second term Obama can boast an increase in his political capital within the Jewish state. The same cannot be said, however, of the Palestinian side. The brand new Secretary of State, John Kerry, has also dedicated part of his time since assuming this position — in which he replaced Hillary Clinton — to relaunching peace talks between the Israeli government and the leader of the Palestinian National Authority. The negotiations have been on hold for more than three years due to Netanyahu's rejection of the demand that he freeze the construction of settlements. Given the failure of its previous attempt at negotiations, this time Washington is trying to put aside the issue of settlements, pressurising the Palestinian leaders to begin the talks with yet another concession – despite the fact that, for years, this has been a non-negotiable precondition for the Palestinian leadership.

No one in the region seems to believe that the initiative has any chance of success. This opinion is probably shared by the State Department. The gesture is understood rather as the desire to show that the administration at least

made an attempt, in the belief that, however small it is, the hope that an agreement can be reached will avoid another conflagration like the one which occurred in Gaza at the end of last year.

And just in case the nature of the conflict had not already made it insoluble decades ago, its evolution over recent years has made any solution even more complicated. The gradual rightward shift of the political map in Israel, the bitter divisions among Palestinians, and the growing number of settlers even raise questions as to whether the standard terms of reference for resolving the conflict — on the basis on the creation of two states — are still viable. In fact, support is steadily growing for a single state solution, although this is still a minority viewpoint.

The Arab Spring has also changed the terms of the conflict, and this could lead to its being re-evaluated by the international community. The rise to power of moderate Islamism in Egypt has allowed Hamas to break out of the international isolation imposed by Washington. In this new political situation we will have to see how far the new displays of solidarity with the Palestinians from other Arab countries become a reality, and if that forces Israel to change a strategy which until now has been based on a military approach to the dispute.

Judicial proceedings against Shell: A first step towards compensating the victims

Gerardo Ríos

Coordinator of the Companies team, Amnesty International (Spain)



Since oil was first discovered in the Niger Delta in 1956, its extraction has generated revenue of more than US \$600,000 million. However, it has caused pollution¹ — as a result of poorly maintained infrastructure and occasionally of sabotage or the theft of oil— which has brought the inhabitants of the Delta diseases and the destruction of their livelihoods, plunging the population into increasing poverty. In addition to these human rights violations, which have been faced with protests that have been going on for years, security forces have sometimes responded with excessive use of force, resulting in deaths and injuries (in incidents that have never been clarified and for which the victims have not been compensated). In 1995, Ken Saro Wiwa and eight other Ogoni leaders were arrested, sentenced to death following an unfair trial, and finally executed.

The mark of oil is unmistakable: huge profits for the oil companies, increased revenues for the governments of Nigeria... and poverty for the inhabitants of the Delta. Wealth and power for a few; poverty and criminal abuse for the others. That of Shell is a paradigm example of human rights violations caused by the collusion between multinationals and the Nigerian authorities and it represents a landmark case in the struggle for victims' rights.

Communities are fighting against the violation of their rights. They are seeking compensation for the abuses suffered and that the companies be held to account. They have demanded this before the courts on several occasions. A recent ruling by a Dutch court obliges Shell to financially compensate one of the people affected by a spill, to clean up the area, and to carry out proper maintenance of its facilities, arguing that the company should have prevented the spill. This court case is a small victory for the victims, but it also shows the obstacles faced by the victims of abuses committed by transnational corporations when they try to obtain justice.

The four plaintiffs, fishermen and farmers, had to confront the difficulty of proving that the oil spills were due to operational failures in the infrastructure and not to acts of sabotage, as was argued by Shell. Amnesty International has repeatedly denounced that communities do not have access to independent assessments of the causes of oil spills and that all investigations are directed by the company itself, thereby creating a clear conflict of interest. Thus Shell, the other party to the trial, possesses most of the key documents for the case which, in the view of the plaintiffs, would have been crucial to their claim. In addition, Dutch legal rules require the plaintiff to virtually prove their claim before the court hearings start.

The fact that the claims of three of the four plaintiffs in the same case were not accepted by the court — it being considered that Shell's liability had not been sufficiently proved — makes it clear that while justice is possible, it is extremely difficult to achieve when suing a huge multinational.

The whole judicial process makes it evident that there was a blatant inequality of arms, caused fundamentally by the lack of access for the plaintiff to substantial information on which to base the farmers' defence. Clearly, in any judicial process, there must be strict requirements to provide evidence which supports a claim. However, Amnesty International believes that urgent measures must be taken to establish a level playing field when poor communities judicially confront well resourced companies.

As a positive aspect of the trial, it should be noted that this was the first time a case against Shell was admitted in its home country for crimes committed outside national territory². This decision sets an extraordinarily positive precedent for other victims of abuse by Dutch multinationals.

More recently, the decision of the US Supreme Court in the case of *Kiobel v. Royal Dutch Petroleum Co.* exemplifies one of the obstacles faced by victims: access to justice beyond their frontiers. The plaintiffs — basing their case on the Alien Tort Statute, a United States law of 1789 which made it possible to prosecute crimes committed offshore by international companies — accused Shell of having given support to the security forces which committed acts of violence against the Ogoni.

The Court dismissed the claim, affirming that this law did not apply because the facts had occurred outside the United States. The decision, which the plaintiffs will appeal, and which has been strongly criticised by Amnesty International³ and other organisations, represents an unfortunate change in the interpretation of a law that, until now, survivors of human rights abuses committed around the world had been using to obtain redress. It is a blow for victims and for the defenders of human rights, who now find a new obstacle placed before one of the few routes that existed for bringing companies to justice for events occurred anywhere in the world.

There is currently another case against Shell pending in the British courts⁴. Furthermore, the Court of Justice of the Economic Community of West African States condemned the Nigerian government for the abuses committed by oil companies, obliging the government to hold these companies to account⁵.

These growing court cases show that victims' struggle forces companies to be accountable and to make appropriate reparations, although this is still a very slow process, fraught with difficulties. Some of these cases are small but important victories in the unstoppable struggle for justice.

1. A report by the United Nations Environment Program determined the severity of pollution in the Delta and calculated the initial cost of cleaning up the 6,800 spillages occurred in the last three decades at one billion dollars. Report available at: <http://www.unep.org/newscentre/default.aspx?DocumentID=2649&ArticleID=8827>

2. <http://livewire.amnesty.org/2013/02/01/shells-niger-delta-pollution-the-good-the-bad-and-the-ongoing-quest-for-justice/>

3. <http://www.amnesty.org/en/for-media/press-releases/us-supreme-court-ruling-shell-niger-delta-severely-limits-access-justice-hu>

4. The Bodo community sued the company for oil spills which occurred in 2008 and 2009, demanding compensation for damages and the clean up of their environment. Shell admitted the jurisdiction and the trial began in 2012.

5. <http://www.amnesty.org/en/for-media/press-releases/ground-breaking-ecowas-court-judgment-orders-government-punish-oil-company>

RECOMMENDATIONS

Flames. The impact of self-immolations on Tibetans in exile

<http://bit.ly/16jrR3U>



This audiovisual, which is directed and produced by Namuss Films with the support of ICIP, analyses political and social consequences of the wave of self-immolations that is taking place in Tibet.

Since the first self-immolation in Tibet took place in 2009, this new way of protesting has opened up a new chapter in the conflict with China. The substantive increase in the number of Tibetans who set themselves on fire as a form of protest is also questioning many of the premises with which the Tibetan community in exile aims to find a peaceful solution to the dispute.

The audiovisual is part of a larger project by Namuss Films, supported by ICIP, on the Tibetan conflict and more material will be released in the upcoming months. S.P.

Women, War & Peace

<http://www.peacecloud.org/www.html>



Women's mobilization in civil society is key to ending violence and conflict. With this in mind, Women, War & Peace, a new five-part documentary series, aims to "challenge the conventional wisdom about war", by looking at war through women's eyes.

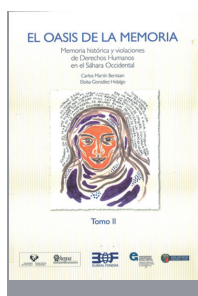
Rather than the oh-so-familiar footage of male soldiers, guns and ammunition Women, War & Peace shows us how women play important roles as witnesses, survivors, peace activists, political negotiators, advocates for justice, and heads of state, in countries affected by violent conflict (including Bosnia, Liberia, Afghanistan and Colombia).

The five films, which have been premiered on public television in North America, place women at the center of a discourse about global security, thereby offering a critically important perspective on war today.

Visit womenwarandpeace.org to learn more about the documentary series and for a "screening kit", which includes discussion material in Arabic, English, French and Spanish, as well as region-specific resources and interviews with leading activists, including Nobel Laureate Leymah Gbowee.

In short, a great new tool to foster education, inspiration, discussion and advocacy. L.v.T.

Carlos Martín Beristain and Eloísa González Hidalgo. El Oasis de la Memoria: memoria Histórica y Violaciones de Derechos en el Sáhara Occidental. Bilbao: Hegoa, 2012. (2 volumes)



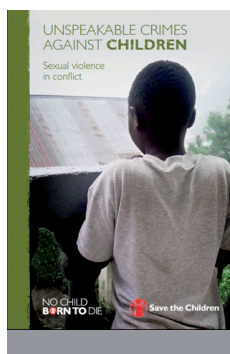
El Oasis de la Memoria is a report about human rights violations suffered by the population of Western Sahara. The report, based on the declarations of 261 victims, discusses issues of historical memory and human rights from the victim's perspective.

The research has been an opportunity to rescue memories and to offer an in-depth examination of the experiences of violence in order to transform pain into something useful for the understanding and appreciation of one's experience. The methodology used is a combination of that of a truth commission and a psychosocial approach centered on victims' experiences. The authors, recognizing that the support by the local people and organizations of Western Sahara has been of key importance, dedicate their report to the victims and surviving Saharawi people.

The report is presented in two volumes. The first volume consists of an analysis of human rights violations, focusing on individual and collective cases during the period 1975-present. This first volume also highlights the way in which violence was inflicted upon the Saharawi people and the mechanisms that made such violence possible. In the second volume the consequences of human rights violations and their impact on different aspects of life (family life, childhood, etc.) are commented upon, as well as the way in which the Saharawi people have dealt with these extreme human rights violations. Moreover, it collects the demands for justice, truth and reparations expressed in the testimonies. The report ends with an epilogue which analyzes the agenda of conflict transformation in Western Sahara from a human rights perspective. E.G.

Unspeakable crimes against children

<http://www.savethechildren.ca/document.doc?id=332>



A recent report by Save the Children, entitled “Unspeakable crimes against children. Sexual violence in Conflict”, warns that children make up the majority of victims of sexual violence in many conflict and post-conflict zones and asks the G8 to take actions, giving concrete examples of how they can help children who are affected.

The report, which was released at the time when G8 foreign ministers met in London with the British foreign secretary, is particularly interesting because of their new figures and testimonies. It shows that despite the difficulties at hand, solutions are available. And it is about time the international community starts recognizing this, because while sexual violence disproportionately affects children, governments are failing to take seriously the scale of sexual abuse against children in conflict.

Another interesting report about ways in which the G8 could change and save children's lives has been published by War Child: “An unwanted truth. Shining a Spotlight on Sexual Violence against Children in Conflict”. L.v.T.

NEWS

ICIP NEWS

Call for nominations for the ICIP Peace in Progress Award 2013

ICIP has announced the call for nominations for the third edition of the ICIP Peace in Progress Award. This prize aims to publicly recognize individuals, entities or institutions that, in an outstanding and extensive manner, have worked and contributed to the promotion and building of peace.

The ICIP Peace in Progress Award consists of public recognition, a sculpture created by the Nobel Peace Prize winner, artist and activist, Adolfo Pérez Esquivel, called Porta del sol, and 4.000 euros. To be considered for the award, nominations must be submitted between April 12 and June 29.

Last March 18th, the ICIP Peace in Progress Award 2012 was granted to five “Madres de Soacha” (Mothers of Soacha) for their fight for peace and human rights in Colombia. With this Award, ICIP wanted to recognize the courage and exemplariness in their claim for truth, justice and repair after the extrajudicial killings of their sons by the Colombian security forces in the so-called “falsos positivos” incidents.

In previous editions, the ICIP Peace in Progress Award recognized the struggle of conscientious objectors and “insubmisos” (people who refuse to do military service or any substitute social work), symbolized in Pepe Beunza (2011), and the Parliament of Catalonia for representing the continuity and legacy of the institutions Pau i Treva and Consolat de Mar.

New ICIP publications and materials

The book **Manual del facilitador. Mètodes, habilitats, actituds i valors** (Home>Publications>Books>Manual del facilitador) has been published as issue 8 of the collection co published by ICIP and Icaria. Written by John Townsend and Paul Donovan, this handbook is a small collection of tricks, tools and techniques for all of those who are faced with the challenge of bringing out the best in people during meetings, team-building sessions, work groups, problem resolutions groups, conflict resolution and training sessions.

The first **report** (Home>Publications>Documents and Reports>Observatori dels llibres de text) to result from the textbook review observatory conducted by ICIP was presented last January 26th and it is designed specifically for professionals in the education sector. The report analyses seven history books used by high school students in 4th of ESO.

ICIP Reports collection has published: **República Democràtica del Congo: un estat de la qüestió**, by Josep Ma. Royo; **Los crímenes de naturaleza sexual en el Derecho Internacional Humanitario**, by Isabel Lirola and Magdalena Martín; and **Transitional Justice Process in Nepal**, by Carlos Fernández Torné. Issue 10 of the Document collection **Les ins-titucions medievals de pau a Catalunya** has also been published. (Home>Publications>Documents and Reports>...)

Within the ICIP Working Papers collection there have been some new publications as well: **Peacetime Violence in el Salvador and Honduras. A Tale of two Countries**, by Rachel Meyer; **Social Media and Political Change: the case of the 2011 revolutions in Tunisia and Egypt**, by Regina Salanova; and **Political Humor as a Confrontational Tool Against the Syrian Regime**, by Blanca Camps-Febrer. (Home>Publications>Working Papers>..)

The second pedagogical guide published by ICIP aims to be a helpful tool for teachers who want to work on the conflict between Israel and Palestina with their students from the photographic exhibition **"Paraules descalces. Dones fent pau"** ("Barefoot words. Women making Peace"). (Home>Resource Bank>Materials>Guia didàctica "Paraules descalces. Dones fent pau")

Two new Policy Papers have been published as well: **War, politics and peacebuilding: thoughts and practical guidelines derived from ancient times** by Daniel Gómez, Toni Naco and Jordi Principal; and **The role of the African Union in Somalia: where to go from here with the AMISOM peace operation?**, by Neus Ramis. (Home>Publications>Policy Papers>...)

And last, but not least, **Issue 8 of the ICIP Bibliographic Dossier**, which includes a specific section entitled "The perception of sovereignty in ongoing conflicts over self-governance, autonomy and statehood" has been published as well. (Home>Library>Thematic Dossiers>ICIP Bibliographic Dossier> Issue 8)

INTERNATIONAL NEWS

Worsening humanitarian situation for Syrian refugees

A recent report by the UN High Commissioner for Refugees (UNHCR) denounces that the humanitarian crisis in Syria is pushing to the limits the health services of Syria's neighboring countries. Over a 1.4 million people have been displaced in the region, with more than a million of them concentrated in three countries (Iraq, Jordan and Lebanon).

There are two main challenges which need to be addressed at this moment. First, the way in which host countries can offer medical treatment to the refugees, taking into account economic difficulties and spare resources. Second, the severe saturation of medical services, which is pushing these countries' health services to the limit.

By the end of April 2013, 1.401.435 Syrian refugees had been registered. This is 30% higher than the number predicted a year ago in the Syria Regional Refugee Response Plan, whereas only 55% of the assigned funding has been received. The amount of refugees received by other countries in the region: 448.370 in Jordan, 441.394 in Lebanon, 313.689 in Turkey, 137.657 in Iraq, and 50.273 in Egypt.

For the complete UNHCR report click [here](#).

The peace process in Turkey moves forward

By the end of March, Abdullah Öcalan, the imprisoned leader of the Kurdistan Workers Party (PKK), publicly called for a cease-fire and withdrawal of its forces from Turkish territory. It is the third ceasefire declaration announced by the PKK since 1999, but there are signs which allow us to be a bit more optimistic this time.

The Turkish Government is preparing legislation that allows Kurds to receive education and public services in their mother language. It has also set up a consultative body of "wise people", including journalists, academics, businessmen, human rights activists, and even actors and singers, to help shape public opinion on the peace process.

The PKK has put an end to the 68-day hunger strike of 682 Kurdish prisoners and nine members of the Turkish Parliament, freed eight Turkish prisoners and, as mentioned above, has given public support to the a cease-fire: "it's the time for guns to be quiet".

The armed conflict between the PKK and the Turkish government has been going on for nearly 30 years now and has caused the death of 35.000 to 45.000 people.

Civil society continues to pursue new challenges

After the succesful campaign on the Arms Trade Treaty, civil society continues to stand up for new challenges. We highlight three international campaigns worth supporting:

Stop Killer Robots: International coalition of NGOs working to ban fully autonomous weapons. The campaign seeks to prohibit taking a human 'out-of-the-loop' with respect to targeting and attack decisions on the battlefield. The Campaign calls for a pre-emptive and comprehensive ban on the development, production, and use of fully autonomous weapons. They claim this could be achieved through new international law, as well as through national laws and other measures. The Catalan NGO La Fundació per la Pau is amongst the members of the coalition.

More information at: <http://www.stopkillerrobots.org>

International Network on Explosive Weapons (INEW): This international network calls for immediate action to prevent human suffering from the use of explosive weapons in populated areas. The coalition members undertake, amongst others, research and advocacy to promote greater understanding of the issue and concrete steps that can be taken to address it. Up to now there are no Catalan NGOs participating in the campaign.

More information at: <http://www.inew.org>

International Campaign to Abolish Nuclear Weapons (ICANW): A global campaign coalition working to mobilize people worldwide to inspire, persuade and pressure their governments to initiate and support negotiations for a treaty banning nuclear weapons. In Spain two organizations are participating in this campaign: the Spanish Medical Association for the prevention of Nuclear War and the Catalan NGO La Fundació per la Pau.

More information at: <http://www.icanw.org>

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