

Global Arms Control dynamics at the UN

State of preparations for the 2012 negotiations on an Arms Trade Treaty

Thursday, May 26th, 6.00 pm – 8.00 pm

Guiding questions for the dinner discussion: What is the current state of preparations for the negotiations on an ATT? What are the current challenges? Which role should Germany play in the further process?

Current state:

The fact that preparations for negotiations about an ATT take place is already remarkable in itself. The UN General Assembly resolution RES/64/48 (December 2009) in that sense is a landmark document, in which UN member states committed to negotiate a **legally binding treaty** on Arms Trade, while so far most treaties negotiated in this field were only politically binding, like the Wassenaar Arrangement or the UN Program of Action on Small Arms and Light Weapons (UN PoA). At the same time it was noted that the **reliance on the supposed broad consensus of 2005 turned out to be illusive**. Yet, all in all there is a **positive atmosphere** during the ATT preparations in New York and the chair of the ATT Preparatory Committee has constructively structured the debates so far. Additionally it was noted that the **support and pressure by civil society actors** as well as **parliamentarians** from around the world has been important to keep the momentum for ambitious negotiations. While the negotiations are often viewed from a disarmament perspective (especially in the NGO community), it is important to keep in mind that the **core issue of an ATT is to regulate and control legal transfers; it is a trade treaty**. Nevertheless it was undisputed that an ATT can also have a positive impact on illegal transfers.

The last Preparatory Committee in March 2011 showed that three main areas are still controversial: The exact **definition** which **goods** and which **activities** have to be controlled, the **required criteria** to decide on particular transfers and the **questions of implementation** (also see Challenges below). Among the latter, the legal framework, the issue of a control entity and an efficient custom system were highlighted during the discussion. At the same time it was stated that at the moment member states are not yet in the position to talk about implementation and rather need to discuss about the most important elements of the ATT itself.

Challenges:

One of the most obvious challenges for the negotiations results from the character of the treaty, which is intended to be a legally **binding – instead of just politically binding** – instrument. While such legally binding character is important from the perspective of a lot of states, including Germany, it comes with certain problems. The most **serious problem** is rooted in the risk, that states might only agree on **less ambitious provisions** due to its legally binding character. Yet, the counter-argument is, that a tougher but only politically binding agreement, would probably not have any additional impact at all, since there would be no way of enforcing compliance with these more ambitious political provisions. A **legally binding treaty** instead could and **should** also envisage **procedures for enforcing compliance**.

With regard to the different positions of states it was noted, that there is a broad **majority of states that are either fully or predominantly supportive of an ATT**. However, there is a need to address the reservations and legitimate concerns of those states which are still skeptical of an ATT. Three major reasons for **legitimate skepticism** were identified, that have to be addressed in subsequent negotiations:

- For all **producer states, ATT will raise the bar** for exporting weapons.
- Countries want to **retain the option to modernize** and fear that ambitious criteria might be used to block their modernization programs.
- There are doubts and **questions which authority should identify illicit transfers and decide on sanctions**, issues that predominantly originate from a lack of trust in existing institutions capable of taking over these tasks, like the UN Security Council.

The current debate with regard to the next steps in the preparations for an ATT particularly focuses on three dimensions of the ATT: 1.) its scope, 2.) the criteria for transfers, 3.) the question of implementation (which will be at the heart of the next preparatory committee).

- 1.) With regard to the **scope** of the treaty, the discussion showed that while it seems possible that **Small Arms and Light Weapons and perhaps even Ammunition and parts and components** could be covered by such treaty, it would **not** be **all-encompassing**, since sport and hunting weapons would definitively not be included as well as dual-use items.
- 2.) With regard to the issue of **criteria**, the debate predominantly focused on **human rights** and it was undisputed that the **corresponding language has to be in the final treaty**. Yet, the reservations of a certain group of states which are skeptical with regard to that particular point also have to be addressed. In turn it was also discussed **how to balance consideration of the criteria with the "national" interest** that will probably also be referred to in the treaty.
- 3.) With regard to the question of **implementation**, a very instructive **distinction between the legal implementation** on the one hand (i.e. legal ratification) **and practical application** on the other hand (in terms of technical controls, registration etc.) was suggested during the discussion.

One particular aspect mentioned in the discussion was **the need to establish a structure** in the system **to monitor arms trade and look for diversion** of legitimate transfers. Such structure should not only keep records in a register but also "flag the illicit". These tasks **cannot be handled by existing structures** for example at the UN Office for Disarmament Affairs (UN ODA). An adequate system would have to entail provisions **for marking weapons** at the source, a **central register** and a **tracing system** following weapons throughout an entire life-cycle.

The most practical challenge discussed was the issue of **political commitment and awareness**. It was mentioned that discussion about conventional arms control and disarmament has for a long time stood in the shadow of the high profile debate about nuclear disarmament. In practical terms there will be the need to **keep up the momentum of the ATT process in the long intersessional period** after the final Prepcom in July 2011.

So far Germany has played a **very constructive role** in the process, especially by **hosting the "group of interested states"**. It also has – in other forums (BMS) – helped to get over the non-sense discussion about tracing of weapons without discussing the issues of marking and registering, too, which will also be of relevance for the ATT negotiations. It still envisages **quite ambitious criteria for transfers**, including the human rights record of importing states, economic development considerations and compliance with UN security council resolutions.

The German position **favors a broad scope for the treaty, also including Small Arms and Light Weapons**. In addition it wants to **focus the negotiation text on the core issues**, avoiding to start with a text that is already too detailed and complex. Such refinement should only be pursued, once the main issues are agreed upon.

A joint meeting of the parliamentary subcommittees for disarmament, arms control and non-proliferation on the one side and the subcommittee for civil crisis prevention and comprehensive conflict management on the other will be an important occasion to highlight the issue of the ATT negotiations in September 2011. Additionally **there might be valuable insights from Germany's experiences with Arms Control for ATT negotiations when it comes to identify loopholes** that could undermine guidelines and procedures.

With regard to the **European Union** there is a **high level of coordination** amongst EU states which is quite conducive for the negotiations.