

Informal discussions on the ATT Preparatory Committee

7 July 2010

Summary report

Introduction

With resolution 64/48 of 12 January 2010 the UN General Assembly decided to convene a UN Conference on the Arms Trade Treaty (ATT) to meet in 2012 “to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms.” The resolution also established that the remaining sessions of the Open-ended Working Group – established in 2009 to consider possible elements of an ATT – would function as preparatory sessions for the 2012 Conference.

With a view to contributing to the first two sessions of the ATT Preparatory Committee (Prepcom) – scheduled for 12-23 July 2010 – the Geneva Forum hosted an informal discussion that was held on 7 July and attended by 28 representatives from governments, international and non-governmental organizations.

The meeting focused on two agenda items:

1. Objectives of the Prepcom (including ways to assist the Chair in achieving them); and
2. Scope of an ATT.

A third agenda item, added during the discussions, concerned civil society participation in the work of the Prepcom.

1. Objectives of the Prepcom

A kick-off intervention opened this part, providing a brief outline of the structure and content of the Prepcom sessions, as defined during the broad-based consultations held by the Committee’s Chair – Ambassador Roberto Garcia Moritàn – earlier this year.

From the Chair’s point of view, the primary objective of the Prepcom is to fulfill its mandate of elaborating recommendations to the Conference on elements for an effective and balanced ATT, while maintaining a “spirit of transparency”. It would be the Chair’s preference to delve into substantive issues right at the start of the Prepcom, as well as to facilitate a Member States-driven process. In this sense, the Chair would not himself produce a text to be used as a basis for discussions, but would work based on suggestions made by States.

Ideally, the Prepcom would be able to identify key elements of its recommendations to the Conference by the end of the second session in July, although the details of the process (including at which point a report would be submitted) are still “in evolution”.

The following main points emerged during the ensuing discussion:

a) *Preparatory process and structure of the discussions.* At present, there are two main understandings of how the Preparatory process will unfold. According to the first, the Chair would present, during the second week, a rolling text to which bracketed comments and alternative versions on specific elements would be added. During the following sessions, the Prepcom would then work to debate on and eventually solve conflicting interpretations.

Relating to this point, it was indeed noted that the Chair has encouraged Member States to submit text suggestions (even if their circulation as official committee documents would depend on budgetary considerations).

According to the second interpretation, the Prepcom would elaborate a summary of elements of an ATT that it identified during its discussions in the first week, then would proceed to addressing problematic points, possibly in working group sessions.

As a participant pointed out, “identifying elements” does not necessarily entail “drafting text”; in this sense, the difference between the two approaches is central, as the first would imply the elaboration of a negotiating text as from the second week, while the second would not – at least not in the same form. Indeed, as one participant noted, some written summary of the Prepcom’s results will certainly be produced, which would guide its following work.

In the debate on these differing – although not mutually exclusive – approaches, common views emerged on a few points:

- in order to use the limited available time to the fullest, it was generally deemed important that states would be ready to present detailed positions on specific elements and/or suggestions for treaty text;
- proposals elaborated in multilateral (regional) contexts would be particularly important in this regard. Available information suggests that only the European Union is working on a common position, which will deal with substantive elements;
- The bulk of the negotiations would centre on a limited number of treaty articles, as the decision on what elements should be included is quite uncontroversial (e.g. preamble, review conferences etc.).

b) *Establishing goals.* Some participants stressed the importance of discussing goals of an ATT and asked whether the Chair intends to encourage exploring this point. In reply, it was noted that the drafting of the Preamble is the “natural place” to address this issue. An alternative option would consist in including a treaty article specifically outlining the instrument’s objectives.

2. Scope of an ATT

Another kick-off introduction outlined the following issues relevant to the definition of an ATT scope:

- Would the ATT apply in all times and to all circumstances? In particular, would it contain specific references to situations of armed conflict? If so, what definition of conflict would be used?
- What kind of weapons would the ATT apply to? If all conventional weapons are included, how will the term be defined? Or would the treaty cover the 7+1 categories currently included in the UN Register (UNROCA)? What would be the treatment of transfers of ‘non-lethal’ weapons, or ammunition?
- How would a “transfer” of arms be defined? Would it include only buying and selling, or would it also comprise lease, loan, transit and transfer of title? For instance, the Landmine Convention defines transfers as comprising the physical movement of mines *and* the transfer of control and title over them. Would both elements be necessary also in the definition of transfers under the ATT?
- Would the ATT only apply to states or also to non-state actors? Would it elaborate the definition of criminal responsibility for natural and legal persons?

The brief but rich introduction sparked a lively discussion, which revealed two main approaches to the question of scope. The first would start from a “realistic basis” for scope – represented by the 7 arms categories reported on by States in the UN Register on arms transfers (UNROCA) plus small arms and light weapons; this could later be broadened by Review Conferences.

The second approach would follow the opposite rationale, setting the scope of the ATT to cover all conventional weapons and related ammunition while specifying possible justified exceptions for particular classes of arms (e.g. sporting firearms). According to this view, starting with a “minimalist” approach would doom the process from the start; as the positions of all states on this point are still

unknown, starting with a weak position might entail the risk of missing key opportunities to achieve a strong treaty. On the other hand, it was noted that ‘setting the bar high’ and starting with the broadest possible definition of scope would entail difficult negotiations on the legal definition of “conventional weapons”.

In between these two approaches, it was also pointed out that the UN Register was created with the aim of increasing transparency, which is different – and, to some extent, more limited - than that of an ATT; in this sense, instead of adopting the “narrow” Register scope, it might be more useful to refer to other categorizations of weapons, such as the lists adopted by the Wassenaar Arrangement or the European Union.

Several participants expressed the hope that the treaty would also cover ammunition, parts and components, as well as a definition of transfers that would go beyond import and export (including, for instance, lease, loan and brokering, *inter alia*). Opinions were less defined on the possibility of including dual-use items and some mentioned the need for the ATT to also cover explosives. The need to spell out exceptions was also noted, for instance relating to civilian use weapons (e.g. sporting and hunting firearms) and to intra-state (domestic) transfers.

Finally, the possibility was also raised of trade-offs between transfer criteria and ATT scope: a broad scope might be accepted with narrow transfer criteria or, conversely, broad transfer criteria might be adopted for a narrow scope.

3. Civil society participation

Under “any other business” participants raised and briefly discussed the question of civil society participation in the ATT Prepcom.

The general understanding was that civil society representatives would be excluded only from sessions designated as closed by the Chair. While there was some disagreement on the interpretation of the instances in which a session could be closed, participants generally expressed satisfaction at this structure, deeming it conducive to effective and meaningful civil society participation.

Some pointed out the need to involve industry representatives in the process, and informed participants of their current or planned strategies in this regard. Finally, a few government representatives mentioned that their delegations will include individuals from NGOs.