

## USE OUR NUCLEAR WEAPONS, TO CUT A DEAL

by Ivan Oelrich

President Bush, at the National Defense University last February 11, missed a golden opportunity. Instead of building on justifiable concern over the growing danger of nuclear proliferation by attempting to reduce nuclear risks, the world got another “do as I say not as I do” lecture from the United States. Instead of offering to reduce US reliance on nuclear weapons, we instead cling to a nuclear arsenal that we cannot conceivably use while pressing ahead with the development of new classes of nuclear weapons.

While the Non-Proliferation Treaty (NPT) has some disastrous weaknesses, one of its greatest strengths is the grand bargain struck between the nuclear and non-nuclear states. The non-nuclear nations agreed to forego nuclear weapons and, in exchange, the nuclear powers agreed to work toward major reductions in their nuclear arsenals. The United States and Russia have failed utterly to hold up their end of the bargain. Almost two decades after the end of the Cold War, the United States has nearly ten thousand (yes, ten thousand) nuclear warheads deployed, almost all of them many times more powerful than the bomb that destroyed Hiroshima. The Russians have another eight thousand. The Strategic Offense Reduction Treaty (SORT), sometimes called the “Moscow Treaty,” is essentially a gentlemen’s agreement between Russia and the United States which does little that makes a difference, and certainly does not go beyond the limits outlined years ago by Presidents Clinton and Yeltsin for START III. While some weapons will be redefined as “non-deployed,” there are no plans for dismantling large numbers of our nuclear weapons. We will still have thousands.

What possible reason is there for such a massive arsenal? No conceivable enemy has anywhere near enough military or industrial targets to justify so many nuclear weapons. The only motivation for keeping a nuclear stockpile of that size is to shoot at Russian nuclear weapons. And why do the Russians have so many? You guessed it, to shoot at ours. The United States and Russia are locked in a time warp that makes it impossible for either country to abandon its Cold War approach to nuclear weapons.

But the Administration argues that even this obscene excess is inadequate for today’s threats. At a time when it has overwhelming conventional superiority around the

world, the United States wants to aggressively pursue new developments in nuclear weapons, including “bunker busters,” earth-penetrating weapons, and smaller, more “usable” nuclear weapons.

The clear message we are sending the world is that nuclear weapons are not merely legitimate weapons of war, they are, in fact, the key to a nation’s security. And if we hold nuclear weapons in such esteem, of course other nations will want to share their magic. When the President says “America will not permit terrorists and dangerous regimes to threaten us with the world’s most deadly weapons” he obviously thinks it is the regimes, not the weapons that are the problem. But recent history shows that this approach is bankrupt. Some regimes, like Iraq’s, were once friends, then became enemies, while our “friend” Pakistan turns out to be the Wal-Mart of proliferators. Friends and regimes come and go, but the weapons remain.

The irony of the administration’s position is that US security would be greatly enhanced if nuclear weapons suddenly disappeared. We may never see a world free from nuclear weapons, but a world with far fewer would be a much safer place.

This excess inventory is valuable in one respect. Instead of expending it in an atomic salvo launched against some enemy, we can use it to make a dramatic gesture in an effort to strike a new grand bargain: major reductions by us and Russia, a halt to new weapon development, caps on Chinese deployment, and a world committed to aggressively fighting proliferation. If we lead by example, these proposals could actually get international acceptance. If we simply urge other nations to “do as we say,” they may remain pipe dreams.

If we want other countries to stop reaching for nuclear weapons, we have to work toward a world where they, like chemical and biological weapons, are no longer considered legitimate instruments of military power. Together with Russia, we can begin by dismantling ninety percent of our existing arsenals, turning their nuclear material into civilian fuel. We can ratify the Comprehensive Test Ban Treaty. And we can stop efforts to develop even more nuclear weapons. Finally, we have a use for our excess nuclear weapons: getting rid of them is just the grand act that can mobilize the world to end proliferation.

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## RAISING THE BAR: THE CAMPAIGN FOR AN INTERNATIONAL ARMS TRADE TREATY

by Matt Schroeder

In February, a group of 15 non-governmental organizations, including the Federation of American Scientists, assembled in San José, Costa Rica for the annual meeting of the Arms Trade Treaty (ATT) Steering Committee. The campaign to establish an ATT is an ambitious, but critically important, effort to curtail the flow of weapons to regimes that would use them to oppress their own people or attack their neighbors. Restraining the global arms trade is an extraordinarily difficult undertaking, even when the proposed restraints are based upon broadly supported and firmly established principles. With this in mind, the Steering Committee wrestled with several difficult strategic and organizational questions. The following article provides an overview of the ATT campaign and explores some of the challenges that confront its advocates.

### The Problem

Over the past 50 years, arms transfers to abusive and aggressive regimes have contributed to the incalculable suffering of millions of people caught up in the brutality of postmodern warfare, or caught under the boot of tyrants. During Indonesia’s bloody and illegitimate occupation of East Timor, arms exporters sold the Suharto regime over \$4 billion worth of weapons,<sup>1</sup> including counter insurgency aircraft and assault rifles that were used in operations that killed thousands of East Timorese.<sup>2</sup>

In other cases, the international community, and occasionally the arms exporter itself, has suffered ‘blowback’ from weapons sold to unstable or unpopular regimes. When the abusive regime of former Somali dictator Maj. General Mohammed Said Barre fell in 1991, his stockpiles of foreign weapons were plundered by rival factions. These weapons were used by the Somali militias to fight a devastating civil war that tore the country apart and prompted the UN Security Council to authorize a humanitarian intervention. Many of the intervenors themselves were killed during this intervention, including 18 US Rangers who lost their lives in the famous “Black Hawk Down” incident.<sup>3</sup>

If we don’t sell them weapons, somebody else will” is a common refrain among governments who transfer arms to problematic recipients. While morally bankrupt, there is some truth to this argument. In the anarchic and ultra-competitive international arms market, governments who take the high road are often penalized for their



*Former Costa Rican President and Nobel Laureate Oscar Arias (bottom row, third from the left) with the attendees of the 2004 meeting of the Arms Trade Treaty Steering Committee, including FAS Research Associate Matthew Schroeder (fourth row, second from the left).*

conscientiousness, as abusive regimes simply take their lucrative weapons orders elsewhere. Deprived of the revenue from these weapon sales, arms manufacturers in countries with rigorous controls exert pressure on their governments to lower their standards, pointing out the futility – and economic cost – of their high-mindedness. The resulting downward pressure on arms export controls not only discourages exporting countries from raising the bar further but imperils existing standards. Breaking this vicious circle requires a multilateral agreement that establishes minimum standards applicable to, and adopted by, all exporters. This is the primary goal of the campaign for an international Arms Trade Treaty (ATT).

### History and Purpose of the Treaty

The ATT campaign is rooted in two earlier efforts. The first is the campaign for a Code of Conduct on European weapons transfers, which culminated in 1998 with the ratification of the EU Code of Conduct on Arms Exports. At about the same time as the EU Code campaign was gearing up, former Costa Rican President Oscar Arias partnered with other Nobel Laureates to draft an International Code of Conduct on Arms Transfers. The two codes are similar in that they both call on member states to condition arms transfers on the potential recipient’s compliance with a long list of human rights, good governance and nonaggression eligibility criteria. However, the EU Code requires member states to apply these criteria on a case by case basis while the Nobel Laureate’s Code adopted a blanket approach. In other words, under the EU Code, applications for arms export

are to be considered individually, and only export applications for weapons that are themselves likely to be used in violation of key criteria<sup>4</sup> are to be denied. In contrast, the Nobel Laureate's Code prohibits all weapons transfers to states that violate key eligibility criteria.

The EU Code has proven to be a useful mechanism for encouraging restraint among European exporters but - as a regional agreement - it is applicable only to the arms exporters of the European Union. The Nobel Laureate's Code is universally applicable but was also a bit ahead of its time. While many governments support the principles embodied in the Nobel Laureate's Code, too few were willing to adopt the Code's "blanket" approach. A closer look at the list of states that presumably would be ineligible to receive arms under the Nobel Laureates' Code reveals why. China, Oman, Egypt, Kuwait, and Saudi Arabia - five of the 10 biggest importers of arms in the developing world - would all be off limits to signatory states because of their autocratic governments. The combined dollar value of weapons sales to these states alone was a whopping \$11.3 billion in 2002 - 27 % of the global arms market.<sup>5</sup> The Code's restrictions on arms sales to countries that violate human rights, that do not participate in the UN arms registry, and that spend too much money on their militaries vis-à-vis public health and education would further reduce the share of the global arms market available to signatory states.

Realizing that the Nobel Laureates' Code was too far-reaching to be viable in the current international political climate, Dr. Arias' coalition drafted a more modest - but also more politically realistic - international agreement, the Arms Trade Treaty (ATT). The purpose of the treaty is two-fold: to crystallize governments' existing obligations under international human rights and humanitarian law in regards to arms transfers, and to provide a framework for addressing additional arms trade issues in the future.

As spelled out in the ATT, existing international law prohibits governments from transferring arms

- to countries under UN Security Council arms embargoes;
- when the arms in question are incapable of being used in a way that distinguishes between combatants and civilians;
- when such transfers or use of the arms are prohibited under customary international law;
- when the transfers would violate any existing international treaty by which the government is bound; and

- if the arms would be used in breach of the UN charter, used to commit serious violations of human rights or international humanitarian law, or to commit genocide or crimes against humanity.

It is important to note that the ATT has adopted the EU Code's "case by case" approach to arms export licensing. That is, member states would be expected to deny arms export license requests only when the recipient is likely to use the items listed in the license request in ways that violate the above mentioned restrictions.

Signatories to the ATT would also be expected to enact a "presumption against authorization" of arms transfers when the weapons in question are likely to be used to commit violent crimes, or would adversely affect regional stability or sustainable development. This provision would not ban arms transfers in these cases outright; if the government determines that the transfer is necessary to achieve a competing policy objective, the transfer is permitted. The goal is to ensure that sustainable development, regional stability and law enforcement issues factor heavily into decision-making about arms transfers.

Finally, the current draft of the ATT establishes an International Registry of Arms Transfers, which differs from the existing UN Register on Conventional Arms in two important ways. Unlike the UN Register, the reporting requirements associated with the ATT registry would be mandatory, and would require member governments to provide data on small arms and light weapons transfers.

While important, the provisions outlined above address only a few aspects of what is an immensely complex and multifaceted problem. Equally noteworthy is the ATT's role as a framework for negotiating future agreements on other aspects of the arms trade, which would take the form of protocols to the treaty to be adopted after the treaty is ratified.

Awareness of, and support for, the ATT has grown exponentially over the past four years thanks to the many gifted and dedicated lawyers, analysts and activists that have taken it under their collective wing. Especially important is the recent groundswell of grassroots support for the Treaty generated by the Control Arms Campaign, a global initiative spearheaded by Oxfam, Amnesty International and the International Action Network on Small Arms (IANSA). The ATT is the centerpiece of the campaign, which was launched in 70 countries this past October. Since then, 80,000 individuals have expressed their support for the ATT through the campaign's million faces petition.

### The Long Road Ahead....

Even though the ATT would impose few if any new requirements on member states, and is supported by tens of thousands of people world wide, the path to ratification is likely to be long and treacherous. Advocates of the ATT face two interrelated challenges. First, they must generate and sustain enough grassroots and governmental support to put the treaty on the international community's agenda and keep it there for years. Secondly, they must address - delicately yet decisively - important strategic dilemmas.

The Control Arms Campaign has given the grassroots movement for an ATT a much needed shot in the arm. Maintaining this momentum, and converting it into government support for an ATT, is essential and will be extremely difficult. Legally binding international agreements on any subject take years, if not decades, to ratify. The Convention on the Rights of the Child, for example, took ten years just to negotiate. Agreements on arms transfers are especially vulnerable to delay and derailment because governments view arms transfers as an essential tool for advancing key economic, national security and foreign policy objectives. For this reason, most governments are instinctively leery of any externally imposed constraints on their ability to transfer weapons. ATT advocates have concluded that this reluctance can only be overcome gradually, and thus they have chosen to pursue a "building block" approach to a legally binding treaty. The "building block" approach is premised on the assumption that a direct, all-or-nothing push for a legally binding treaty will be met with overwhelming resistance from governments. Instead, support will be built - and government fears allayed - through actions in regional and global fora (e.g. Organization of American States, Wassenaar Arrangement, etc), including the negotiation of regional, politically binding agreements that embody the main provisions and goals of the ATT. Only after a solid foundation of government and grassroots support has been established will the campaign begin its full court press for a legally binding ATT. Additionally this approach will raise awareness of key arms trade issues (e.g. the need for stronger controls on arms brokers) and help build support for other related efforts.

The drawback of the "building block" approach is that it draws out the campaign, thereby increasing the likelihood that it could stall out before a legally binding agreement is achieved. Building and maintaining grassroots and government support for the ATT requires a tremendous investment of resources - time, money and institutional prestige. A sudden loss of funding, changes in organizational priorities, or insufficient progress at the regional level can sap organizational commitment to the initiative

and - worst case scenario - take key organizations out of the game. However, this danger will subside as the campaign grows and more organizations emerge that have the capacity to take up the mantle of leadership.

The second set of challenges confronting advocates of the ATT are several nettlesome strategic/tactical dilemmas, many of which concern the contents and wording of the treaty text itself. When negotiating legally binding treaties, the devil is in the details. Vague or ambiguous treaty language allows governments to sign onto the treaty without making significant changes to their laws or policies.

Determining when and how to address these ambiguities is difficult. To do so now, while NGOs have control over the draft text and the process, would be problematic for several reasons. First, the current draft of the treaty is just that - a draft. Governments will be the ultimate arbiters of the treaty text and thus the final treaty is likely to look very different from the current draft. Furthermore, nailing down all of the fine points of the treaty too early could be counterproductive. Some ambiguity may be necessary for securing the support of potential government and allies, and for avoiding nay saying by potential "spoiler" governments. Yet as the moral stewards of the ATT concept, NGOs have a responsibility to ensure that the final version of the Arms Trade Treaty governments accomplishes its primary objectives. Doing so will require careful monitoring of the government negotiations and close collaboration with "champion" governments that share their goals.

### Conclusion

As the list of arms exporting states grows, competition in the global arms market is likely to intensify. The ATT would help to mitigate the ill-effects of this competition by providing a common set of principles around which the international community could unite, and a framework for devising multilateral solutions to the many difficult problems stemming from the global arms trade.

<sup>1</sup> World Military Expenditures and Arms Transfers (1988 and 1989).

<sup>2</sup> Hartung, William and Jennifer Washburn, "U.S. Arms Transfers to Indonesia 1975 - 1997: Who's Influencing Whom?", *World Policy Institute Issues Brief*, March 1997, available at <http://www.worldpolicy.org/projects/arms/reports/indoarms.html>.

<sup>3</sup> Hartung, William, "Weapons at War", *World Policy Institute Issues Brief*, March 1995, available at <http://www.worldpolicy.org/projects/arms/reports/wawrep.html>.

<sup>4</sup> Only four of the EU Code's 8 criteria prohibit arms transfers outright. The others require states to take into consideration the likely impact of the transfer when considering an export license request.

<sup>5</sup> Grimmett, Richard, *Arms Transfers to Developing Nations, 1995-2002*, Congressional Research Service, 22 September 2003, available at <http://www.fas.org/asmp/resources/govern/crs-r132084.pdf>.

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