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 the very countries that supplied them. 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 civil wars, brutal occupations, and the illegitimate occupations of East Timor, arms exporters sold the Suharto regime over $4 billion worth of weapons, including counter insurgency aircraft and assault rifles that were used in operations that killed thousands of East Timorese.

In other cases, the international community, and occasionally the arms exporter itself, has suffered ‘blowback’ from its own sale of weapons. In 1993, during the US-led intervention in Somalia, 18 US Rangers were killed in the famous “Black Hawk Down” incident.

If we don’t sell them weapons, somebody else will” is a common refrain among governments who transfer arms to problematic regimes. In the anarchic and ultra-competitive international arms market, governments who take the high road are often penalized for their 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 increase their sales. 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. While the Nobel Laureate’s Code adopted a blanket approach. In other words, under the EU Code, applications for arms export were prohibited by default. The second effort was the International Code of Conduct on the Trade in Nuclear Weapons-Related Items and Material, which established minimum standards applicable to, and adopted by, all exporters. This is the primary goal of the campaign for an international Arms Trade Treaty (ATT).

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 the very countries that supplied them. 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.

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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 taking off, 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 non-aggression 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

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are to be considered individually, and only export applica-
tions for weapons that are themselves likely to be used in
violation of key criteria are to be denied. In contrast, the
Nobel Laureate’s Code prohibits all arms 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 inel-
igible to receive arms under the Nobel Laureates’ Code
reveals why. China, Oman, Egypt, Kuwait, and Saudi
Arabia – live 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
determined dollar value of weapons sales to these states
alone was a whopping $11.3 billion in 2002 – 27 % of the
global arms market.5 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 military 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 Laureate’s 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. The ATT’s purposes are two-fold: to
materialize 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 interna-
tional 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
applications 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
attorney general determined that the transfer is necessary
to achieve a competing policy objective, the transfer is
permitted. The goal is to ensure that sustainable develop-
ment, 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
ATT requires signatory states to be associated with a legally
binding treaty; the UN Register 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 agree-
ments 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
this 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 ATT’s rat-
ification is likely to be long and treacherous. Advocates of
the ATT face two interrelated challenges. First, they must
generate and sustain enough grassroots and govern-
mental 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 gov-
ernment support for an ATT, is essential and will be
extremely difficult. Legally binding international agree-
ments on any subject take years, if not decades, to ratify.
The development of international law requires a commit-
tment to achieving a competing policy objective, and for
example, took ten years just to negotiate. Agreements on
arms transfers are especially vulnerable to delay and derail-
ment 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 would be met with overwhelming resistance
from governments. Instead, support will be built
– one agreement at a time – through actions in region-
al and global fora (e.g. Organization of American States,
Wassenaar Arrangement, etc), including the negotia-
tion of regional, politically binding agreements that
embody the main provisions and goals of the ATT.
After a series of regional and country agreements
support has been established 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 bro-
kers) 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 likeli-
hood that it could be bogged down by legally binding agree-
ments that are too vague or ambiguous. Building and main-
instrumental goals to build, and support for the ATT requires a tremendous
investment of resources – time, money and institutional
prestige. A sudden loss of funding, changes in organiza-
tional priorities, or insufficient progress at the regional
evel can sap organizational commitment to the initiate
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
ATT. When negotiating legally binding treaties, the devil is
in the details. Vague or ambiguous treaty lan-
guage 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
authors on the final draft of the ATT, and thus the 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 civil society signatories. Yet the ATT’s success in
weakening the arms trade “spoiler” governments. Yet as the moral stances 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
the activism of NG0s in the years leading up to the
creation 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.

4 Grimmett, Richard, “International Law in Regards to Arms Transfers, and to Provide a Framework for Addressing Additional Arms Trade Issues in the Future.”
5 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 military vis-à-vis public health and education would further reduce the share of the global arms market available to signatory states.
6 Only four of the EU Code’s 8 criteria prohibit arms transfers outright. The others, used in a way that distinguishes between combatants and civilians;
7 The drawbacks of the “building block” approach is that it draws out the campaign, thereby increasing the likelihood that it could be bogged down by legally binding agreements that are too vague or ambiguous.
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