



Reaching Critical Will

a project of the Women's International League for Peace and Freedom

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WILPF's position on the international arms trade treaty

The Women's International League for Peace and Freedom (WILPF) welcomes international efforts to negotiate a legally-binding arms trade treaty (ATT) at the UN. We note with distress that the global arms trade is now valued at over 50 billion USD per year and that global military spending as a whole reached 1.6 trillion USD in 2010. Above all else, weapons are tools of violence and repression by those that use them and tools of financial gain by those who make and sell them. Conventional arms, especially those transferred without regulation, continue to kill or maim civilians; violate human rights; facilitate sexual violence and trafficking; obstruct economic and social development, including through the loss of livelihood; impede post-conflict rehabilitation and reconstruction; delay or prevent the return of refugees and internally displaced persons; negatively impact on national and international peace-building and humanitarian assistance efforts; and have other severe consequences that can persist for many years.

In this context, WILPF believes that an ATT should not merely be used as a procedural authorization of arms transfers. It should be a strong tool with the primary purpose of preventing armed conflict, preventing the violation of human rights and international humanitarian law, and seriously reducing the culture and economy of militarism.

A strong ATT can help build the foundations for not just the regulation but also the *reduction* of the arms trade, along with the reduction of militarism throughout politics and society, reduction of military spending, and redirection of economic resources. It would help realize the mandate of article 26 of the UN Charter, which demands "the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources" through "the establishment of a system for the regulation of armaments." Article 26 goes beyond the regulation of the arms *trade* to the regulation of armaments themselves and commands a redirection of military expenditure to establish non-militarized means of international and national security.

The following position paper lays out WILPF's recommendations for the ATT's scope in terms of the range of armaments and activities to be covered, the criteria on which arms transfer decisions should be based, and mechanisms for implementation and compliance.

The Women's International League for Peace and Freedom is the oldest women's peace organization in the world and has special consultative status with ECOSOC. Its projects Reaching Critical Will and PeaceWomen promote disarmament and demilitarization and women, peace, and security at the United Nations and through WILPF's national sections.

Scope

The ATT should cover the following **types of armaments**:

- all conventional weapon systems and armaments as well as small arms and light weapons, including not only those specifically designed for offensive combat operations but all types of military, security, and police weaponry, military data-processing and communication systems, and military equipment for transport and other purposes, including unmanned aerial vehicles;
- ammunition, including bombs, torpedoes, grenades, rockets, mines, missiles, depth charges, pyrotechnic devices, and sub-munitions such as bomblets, noting that weapons without ammunition are useless;
- components, expertise, and equipment essential for the production, maintenance, and use of the above; and
- dual-use items that can have a significant military, security, and police application.

The ATT should cover the following **types of activities**:

- import;
- export;
- re-export;
- temporary transfer;
- transshipment (from one carrier to another);
- transit between an exporting and importing state;
- state-to-state transfers;
- state-to-private end-user transfers;
- commercial sales;
- leases;
- transfers of licensed foreign arms production and technology;
- loans or gifts or aid or any other form of transfer of material goods;
- brokering;
- provision of technical assistance, training, maintenance, and upgrades;
- transport, freight forwarding, and storage; and
- financing.

A note on ammunition

As argued in the report [Small, but lethal](#) by the Peace Research Institute Oslo, “Ammunition must be constantly restocked for armed actors to be operable, unlike a lot of weaponry which can be reused indefinitely, but only given a steady supply of ammunition.” Weapons without ammunition are useless. Excluding ammunition from the arms trade treaty would, as PRIO asserts, constitute a “failure to respond to basic concerns for the humanitarian impact of conventional arms proliferation.”

Criteria

The ATT should include express prohibitions on transfer of arms that:

- are likely to be used for serious violations of international humanitarian law or human rights violations;
- are likely to be used to commit acts of genocide or crimes against humanity;
- facilitate sexual- or gender-based violence;
- have an impact that would clearly undermine sustainable socio-economic development, poverty reduction, or environmental standards;
- involve the excessive and unaccountable allocation of human and economic resources to armaments;
- involve corrupt practices;
- contribute to the excessive and destabilizing accumulation of arms;
- provoke or exacerbate armed conflict;
- undermine peacebuilding or post-conflict reconstruction efforts;
- facilitate trafficking’
- facilitate violent crime, or be used for the commission of organized crime;
- facilitate terrorist attacks;
- adversely affect regional security or stability;
- contravene other international, regional, or sub-regional commitments or decisions, or agreements on non-proliferation, small arms, arms control, and disarmament to which states involved in the transfer are party;
- violate binding resolutions of the UN Security Council, such as those imposing arms embargoes;
- violate the UN Charter and customary law rules relating to the use of force;
- are of a nature to cause superfluous injury or unnecessary suffering;
- are incapable of distinguishing between combatants and civilians; or
- risk being diverted for one of the above outcomes.

A note on international humanitarian law (IHL)

In a guide on [Applying international humanitarian law to arms transfer decisions](#), the International Committee of the Red Cross (ICRC) notes, “When a State transfers military weapons or equipment, it is providing the recipient with the means to engage in armed conflict—the conduct of which is regulated by international humanitarian law (IHL).” The ATT must therefore ensure that arms transfer decisions consider whether or not the recipient is likely to respect IHL and that transfers are not authorized if there is a clear risk that the arms will be used to commit violations of this law.

Based on recommendations from the ICRC, WILPF calls for the following IHL-specific criteria to be included in an ATT:

- record of compliance with international law governing the conduct of armed conflict, including IHL;

- assessment of risk of perpetration of war crimes, crimes against humanity, violations of IHL and/or human rights, breaches of the 1949 Geneva Conventions or their Additional Protocols of 1977;
- record of compliance with international human rights law;
- existence of accountable authority structures to ensure respect for IHL and human rights law and capacity to ensure that the arms transferred are used in a manner consistent with IHL and human rights law; and
- record of the prevention of the recruitment and participation of children into the armed forces or armed groups.

A note on human rights law

As Amnesty International emphasizes in its report on [Applying human rights standards to arms transfer decisions](#), “All states have obligations under international human rights law applicable to transfers of conventional arms.” The report also correctly notes that “the use of conventional arms could result in the perpetuation of serious violations of a spectrum of human rights, including civil, cultural, economic, political and social rights, and rights relating to women, children, minority and indigenous groups.”

Applying human rights law to arms transfer decisions is necessary in order to prevent human rights violations or abuses. A preventative approach “would aim to prevent arms transfers where there is a clear risk that a particular group, such as the security forces, will use those arms for serious violations or abuses of human rights.” Amnesty argues that this approach creates opportunities for constructive dialogue between potential exporting and importing states, through which “preventative or remedial measures could be discussed and implemented as a prerequisite for decisions regarding particular arms transfers.”

WILPF agrees that in order for human rights criteria to be applied in an effective and fair manner, the assessment process for arms transfer decisions must:

- apply to *all* transfer authorizations to *all* countries, without distinction;
- include a *case-by-case assessment* of each application for an arms transfer decision;
- use objective, verifiable, and detailed information from credible and reliable sources on the nature of the arms/ammunition, the intended recipient, the likely uses, the route, all those involved in the transfer; and the risk of diversion;
- use up to date information on human rights standards and violations; and
- include an assessment of the recipient state’s respect for international human rights law in relation to those rights likely to be impacted, taking into account the following indicators:
 - the formal commitments made by a state to relevant international and regional human rights instruments;
 - the implementation record of the state of its human rights obligations through national policy and practices;
 - the state’s legal, judicial, and administrative measures necessary for the respect and promotion of its human rights obligations;

- the state's governmental infrastructure and its capacity to implement and ensure respect for human rights obligations and to bring human rights violators to justice and provide remedy and reparation to victims; and
- the degree of the state's cooperation with international and regional human rights mechanisms.

A note on sustainable development

Sustainable socio-economic development is seriously undermined by armed conflict, arms trafficking, militarism and military spending, and irresponsible arms transfers. As the 2009 report [*Applying sustainable development to arms transfers*](#) decisions by Oxfam International asserts, the right to self-defence enshrined in the UN Charter must be balanced with other obligations in the Charter, including the promotion of "higher standards of living, full employment and conditions of economic and social progress and development." State obligations to sustainable development are contained in a variety of international treaties and agreements, and there are already existing criteria on sustainable development in regards to arms transfers, such as the UN Guidelines for International Arms Transfers (1996) and several multilateral and regional agreements.

In order for states parties to identify whether or not a specific arms transfer poses a risk to sustainable development, WILPF argues that arms transfer decisions should be based on an assessment of:

- the recipient state's accountable allocation of resources;
- the recipient state's commitment in practice and policy to sustainable development initiatives;
- the recipient state's capacity to ensure that development commitments are implemented through relevant legal, judicial, and administrative apparatus;
- patterns of corruption within the recipient state's governing and administrative institutions;
- levels of armed violence in the recipient state; and
- the specific arms transfer itself, including the nature of the arms being transferred and the stated end-use and end-user.

A note on a gender perspective

Women are uniquely affected by the accumulation of weapons, the arms trade, and armed conflict: weapons facilitate trafficking, forced prostitution, and sexual violence; and they are often used to kill, threaten, or intimidate women in their homes and communities. Many men carry guns as part of their constructed role as "protectors" of women; this masculine concept also impacts policies regarding armament and disarmament. The arms trade is a gendered business: almost all buyers, sellers, and (mis)users are men. This also includes the arms industry, media advertisers for weapons, state weapons producers, private weapons producers, gun dealers, brokers, and transporters. However, women are not just victims: they can also be perpetrators of armed violence and active in the arms

trade, especially in the transfer and trafficking of weapons. Moreover, women are instrumental in designing and implementing arms control or disarmament programmes, arms transfer decisions, peace agreements, and post-conflict reconstruction plans.

The ATT should include a gender perspective in its criteria for arms transfers. Specifically, WILPF urges that an ATT:

- recognize that arms transferred without regulation continue to kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years;
- recognize the need to provide gender-sensitive assistance to victims of arms transferred without regulation and to address the special rights and needs of vulnerable groups;
- bear in mind the Convention on the Elimination of all forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women;
- recognize the involvement of conventional weapons in facilitating violence against women, including sexual and gender-based violence;
- stress that “conflict related sexual violence,” when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, is a serious violation of human rights and international law and significantly exacerbates situations of armed conflict and impedes the restoration of international peace and security. WILPF explicitly affirms in this regard that the regulation and reduction of arms transfers should be designed to help prevent such acts of sexual violence as highlighted in UN Security Council resolutions 1325, 1820, 1888, and 1889;
- require all state parties, with respect to victims of the arms regulated in this treaty in areas under its jurisdiction or control, to, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion;
- encourage all state parties to make every effort to collect reliable, gender disaggregated and relevant data with respect to victims of these weapons;
- demand that state parties not issue a license or authorization where there is a substantial risk that the export under assessment may be used in acts that may constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, noting that rape and other forms of sexual violence can constitute such crimes; and
- demand that state parties shall not issue a license or authorization where there is a substantial risk that the export under assessment may be used in acts of gender based violence as prohibited and defined in the Declaration on the Elimination of Violence against Women.

Implementation and compliance

It is vital that the ATT provide for strong mechanisms to ensure implementation of and compliance with the treaty. This will only be possible through record keeping, reporting, regular meetings of states parties, and the participation of civil society.

To facilitate **implementation** of the treaty, WILPF agrees with the [Control Arms Campaign](#) that states parties will need:

- comprehensive national legislation and systems that criminalize non-compliance and define sanctions and penalties;
- administrative systems for assessing and authorizing/refusing proposed international arms transfers in accordance with provisions of the treaty;
- effective mechanisms, including resources and capacity for monitoring and enforcing compliance of the treaty, including customs, border controls and other enforcement and judicial entities;
- national systems for collation, storage, and retrieval of comprehensive data on international arms transfers and licence authorizations/denials within states parties' jurisdictions; and
- authenticated end-user documentation and follow-up procedures to prevent diversion through verification of lawful delivery, effective stockpile security and authorized end-use.

To help facilitate states parties' implementation of the treaty, WILPF believes the ATT should establish a separate independent implementation support unit (ISU) that could serve as a repository for national reports; review and analyze data in these reports; provide administrative and technical support to states parties' in their efforts to implement the treaty, report, and convene meetings to review implementation; assist with peer review of national implementation systems; and help match assistance needs and resources. If this ISU is to be housed in the United Nations, its mandate to facilitate implementation of the ATT should by no means limit or restrict the UN from promoting and contributing to other principles and tools to regulate the arms trade and advance disarmament.

WILPF also believes that the provision of mechanisms for **technical cooperation and assistance** is necessary to facilitate implementation, including:

- a mechanism or body through which states parties could identify and outline their specific needs or offer specific assistance, in areas such as legislative and administrative procedures; arms transfer control systems; law-enforcement capacity; data management; reporting; prevention of diversion; personnel training; and victim assistance.

An important aspect of ensuring compliance with the treaty is **transparency**. As Amnesty International notes in its 2011 report [Our right to know: transparent reporting under an arms trade treaty](#), the ATT provides an opportunity to address the lack of transparency in

the arms trade by improving the quality and quantity of national reports and providing a comprehensive framework for standardized reporting. Among other things, Amnesty notes, transparency around arms transfer decisions will build confidence and security among states; encourage democratic accountability by national legislatures; allow for public scrutiny of the application and implementation of the ATT; and help prevent diversion of arms to illicit markets. To ensure effective transparent implementation, WILPF urges that the ATT:

- require that all states parties keep records of arms transfers that their national authorities have authorized and that have cleared customs; of all of the information required to issue authorizations or customs clearance; of brokering, transport, and finance; of licenses, permits, or other authorizations; and all information regarding the description of the arms, quantity, value, final destination and end-user, the importing, exporting, and transit states involved, and the names of other companies and individuals involved;
- include a mandatory schedule of public reporting under an agreed framework, through which states parties must be required to provide accurate, comprehensive, and timely information on exports, imports, and other transfers of the weapons systems covered by the treaty, as well as on their implementation of the treaty through national laws and procedures;
- facilitate information sharing and consultations among states parties through multilateral and bilateral mechanisms; and
- provide for a review of the quality and quantity of reporting and a venue for states parties, UN bodies, and civil society to make proposals to improve standards of public reporting.

Finally, in order to ensure **compliance and settlement of disputes**, WILF suggests the ATT:

- establish an independent verification organization with continuous operations for monitoring states parties' implementation of and compliance with treaty obligations;
- affirm the role of civil society and non-governmental organizations in monitoring states parties' implementation of and compliance with treaty obligations;
- provide for the convening of periodic meetings of states parties to review the treaty's effectiveness and to address specific concerns of states parties; and
- establish an appropriate and transparent mechanism for addressing implementation failures, such as referral to the International Court of Justice.