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PANEL:

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Panel Discussion

Cédric Poitevin

Good afternoon. I am glad to be chairing the one and only WMD-free session of this conference. The subject of this session is conventional weapons trade and trafficking: we will touch upon this subject, what the EU has been doing, has not been doing, or should be doing. Conventional weapons trade and trafficking is a very broad subject: 2012 should be an important year for conventional weapons, both at the UN and the EU level. At the UN level we will know whether or not we will have an Arms Trade Treaty (ATT), and whether it will be legally binding; at the EU level member states are supposed to fully implement the directive concerning the intra-Community transfer (ICT) of defence and military goods. This year the member states could be reviewing the current position on arms exports, if they wish to do so.

I will give the floor to the three speakers. The first speaker will be Elli Kytomaki from the United Nations Institute for Disarmament Research (UNIDIR), who will speak about the ATT process and the project UNIDIR has been implementing in cooperation with the EU. The second speaker will be Hugh Griffiths, working with SIPRI, who will speak about the implementation of arms embargos. The third speaker will be Tomas Baum, the Director of the Flemish Peace Institute, who will speak about the EU arms export controls.

Elli Kytomaki

I am from UNIDIR in Geneva, where we do research on disarmament and human security issues. I am happy to be able to participate in the discussions here today. Coming from a background of more conventional small-arms control, it is like a trip to a foreign country, but I have enjoyed it. I hope you will enjoy listening to me talking about the ATT that is currently under way at the UN. I realise that in the spirit of the conference I am supposed to be talking specifically about the involvement of the EU in the ATT. However, I come from a UN institute that is implementing a project for the EU, and do not represent the European External Action Service (EEAS); I cannot comment on the internal aspects of the EU's involvement.

I see some familiar faces, which leads me to conclude that some of you are very familiar with what has been happening on the ATT. I suspect some people might enjoy a trip to a new planet, so I thought I would begin with a recap of where we are in the ATT process. Those of you who have been part of the discussions of this proposed treaty know that we have come quite a long way in quite a short period of time within the UN, from the first resolution of the General Assembly in 2006, to the current ongoing meetings of the Preparatory Committee, which will lead us to a full month of negotiations for the ATT this July.

The idea of having some kind of international code of conduct for the transfer of conventional arms is not new: there were attempts at the League of Nations to establish international treaties in this area. Despite this, for decades we have developed agreements and treaties on other types of weapons, from nuclear, to biological, to chemical, but we still lack an international treaty on the conventional arms trade. The time became ripe in the mid-1990s, which is when the idea of an international treaty on the trade of conventional arms was introduced, and it quite quickly gained momentum. First brought to the UN by the UK, the concept has gained wide support in the past six years, with over 150 states, including all EU member states, voting in favour of the three resolutions that we have had so far. At the same time, the years of talks have shown that, when we get into the details of what the future ATT should look like, there are over a hundred views.

Throughout the process the EU has actively supported this idea for a 'legally binding instrument on the highest possible common international standards for the transfer of conventional arms': that is the text that the resolution uses. The EU and the EU support to the initiative is important in the sense that six out of the ten largest arms exporters are EU member states, and EU member states are actively engaged in arms trade, both in the region and with third countries.

The aim of the ATT is to create more effective regulations for the global trade in arms, to increase the predictability, and to level the playing-field, thereby also combating the illicit side of the conventional arms trade. When adopted the ATT will not be a disarmament or arms control treaty, nor purely a trade treaty. In the UN it was fitted into the first committee, resulting in disarmament diplomats being involved in the discussions. The nature of this animal poses challenges to everyone, including the EU, as we will have to look for ways to coordinate and channel responsibilities and action across the different departments and administrative bodies. For example, today I was talking to a colleague about the World Custom Organisation (WCO), which has not been so actively engaged in these discussions, even though if we talk about international trade in arms, the WCO is recording and following developments in this area, and should be more actively involved. There are challenges for the UN and everyone.

At a more general level, the support for an ATT fits quite neatly with the EU's overall approach, which over the last decade has called for effective multilateralism – you will recall the European Security Strategy. Whether that is from human rights, climate change, non-proliferation, or ATT, it has been one of the leading values. For its part, the EU has taken some steps towards this regionally: many of you remember the EU Common Position from 2008, which was the development of the EU code of conduct. While the EU learned lessons through regional coordination, it has realised that the regional approach alone, which we have in different regions, is not sufficient to tackle the global conventional arms trade.

When we expand the scope of instruments from regional to international, the scope of problems and challenges tends to grow. Having observed from the outside, even though they have come a long way in developing common approaches to these issues, forming a unified voice for the EU and constructively contributing to the ATT has not been without effort, given how closely linked the export licence decisions are with national security, economic and political interests. Nevertheless, through this diplomacy and joint statements, the EU has become one of the major motors in the process.

I work on two projects that UNIDIR has been doing for the EU, as part of their external support to the process. In 2009 we started the first project, Promoting Discussion on the ATT, which aimed to encourage the participation of all stakeholders in the discussions, integrate national and regional contributions to the process, and begin to identify the scope and implications of a treaty. With the help of the EU we organised a series of regional meetings focusing on what states and regions across the world felt about an ATT. One of the things that came out strongly was that more dialogue outside the formal process was needed, and that there was a need for more research on these issues.

It was a logical step that the EU renewed its support to the process in 2010 by approving a follow-on project, in which we are engaged now, supporting the ATT negotiations through regional discussions. This involves another series of seminars, concentrating on the actual aspects we will have to deal with next summer, with an added element of supporting states in developing and improving their export control and transfer control practices at a desk or practical level.

These activities are ongoing, with a limited time ahead of us: we are approaching the culmination point. There is only one PrepCom meeting left later this month, and then it is time for the negotiations. The conference in July aims to adopt an international legally binding treaty by consensus. The word 'consensus' was a heavily debated issue in 2009, when the Resolution was adopted to have this conference. The US had voted against the two ATT Resolutions, and the need for consensus was a critical element in getting the US to support the process; by introducing the word consensus, we got the US on board, and they are very actively supporting the treaty. While many would argue that this was necessary to keep the process on the right track, and get P5 behind the initiative, it is probably the single most important factor that will determine our strategies when we look at July and beyond.

During the PrepCom we have had a significant amount of convergence about different national positions, showing that the opportunity to agree on a treaty is within reach. The Chairman of the process, Ambassador Roberto García Moritán of Argentina, has estimated that there is currently 70-80% of common ground between states. He has completed a Chairman's draft paper where he has gathered the ideas, which will be a basis for

discussions in the coming months. It is not the draft treaty text, and it does not have any formal status in the process, but that is currently the basis.

The main issues for discussion are the scope of the treaty, what it would cover, the parameters, the criteria that should be followed when making transfer or licensing decisions, the implementation of the treaty, what it implies, and how these different elements should be practically captured in the treaty. This 'how' part has become quite important over the last months, where we have moved away from discussing what the parameters could or should be, to what language we should use when we talk about them: the 'shall', 'should', or 'take into account'. That is one of the things on which everybody will have to concentrate in the coming months. I am not going to go into the details of scope, parameters, implementation, or the EU's perspectives on these, but there has been active discussion, and I will dig deeper if you want later in the discussions.

Hugh Griffiths

Today I am going to talk about UN arms embargoes, sanctions monitoring, and possible roles for EU institutions and member states. I will begin with a short summary of the important role assigned to arms embargoes and sanctions by the Security Council, as well as the wider international community, and then link that back to the relevance of UN arms embargoes and sanctions monitoring in general to EU strategies, policies, instruments, and regulations. I will spend some time focusing on the tip of the spear for sanctions monitoring, which is the Groups of Experts, sometimes known as the panel of experts, which are attached to the various sanctions committees for which they have been appointed. After talking about some of the difficulties and problems they are increasingly facing, I will revert back to talking about what EU institutions and member states can do, not only from a political perspective, but from the perspective of capacity building and technical support.

The first thing to stress is the absolute central importance that arms embargoes are assigned by the Security Council and the wider international community. To give you a brief overview, arms embargoes have been more or less a permanent feature of the security landscape since 1990; it is a list you are all familiar with, but it is worth reading through it. Over the last 14 years, UN arms embargoes have been applied on the following states or non-state actors, or particular parts or regions within these states: Afghanistan, al-Qaeda, the Taliban, Angola, Côte d'Ivoire, Democratic Republic of Congo (DRC), Eritrea, Ethiopia, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Rwanda, Sierra Leone, Somalia, Sudan, and Yugoslavia. The list of states or actors includes some of the worst conflicts and most problematic non-state actors that we have seen since the beginning of the post-Cold War era. Arms embargoes have been a prominent feature in the peace and security landscape, and in relative terms have been quite frequently applied by the UN Security Council.

At the same time, they are very relevant to the EU, for a number of reasons, not least because UN arms embargoes become EU arms embargoes; they form an important aspect of

European strategies, policies, instruments, and inform EU member state foreign policy making and security policy making. One key role that the Groups of Experts play is to identify the actors, individuals or entities that are later added to a proscribed list, circulated by the UN, which is then adopted by the EU in the form of a Council Regulation or a similar document – it is often known as the asset freeze list. Not only are UN arms embargoes important in terms of EU strategies and policymaking, but the work of the Groups of Experts is, because they play a prominent role in identifying those people who are later sanctioned or have their assets frozen.

The EU has other important arms embargoes of its own, such as those relating to Syria, Uzbekistan, Myanmar, but I am going to focus my time on the work done by the UN, because that is where you find the Groups of Experts. From a research perspective, everyone at this table has used the reports of the UN Groups of Experts in their work, and although this may not be the most important from a global perspective, the research community relies on the reports of the UN Groups of Experts, not just relating to arms flows, but to a range of different things including transportation, financial activities, and flows of illicit raw materials from the DRC. We all rely on the UN Groups of Experts for a lot of the material on illicit trafficking in particular, but also transfers of concern to neighbouring states. A number of EU institutions use the reports by the UN Groups of Experts as their primary resource for writing reports on arms trafficking. The Groups of Experts' reports also inform EU member states and the UN Security Council of what is going on in the field: what arms embargoes are being violated and to what extent.

That is the key aspect of their work, and what I am trying to posit here is just how important their role is, and then contrast it with the level of resources they are afforded to do that work. There are some exceptions; in relative terms, the Group of Experts on Iran and North Korea are relatively well-resourced compared with some of the other Groups of Experts, but they face additional hurdles, namely not being able to enter the countries they are supposed to be monitoring – they currently work out of New York.

The Groups of Experts face particular problems relating to Africa – they are sometimes known as the forgotten embargoes – some of which are political and others are more resource related. The first thing to stress is that members of the Groups of Experts are recruited for between six months and two years: this is not a safe job. It is also a very stressful job: they are not afforded diplomatic passports, for example – no blue passport from the UN system that might help you out in a difficult spot. Making their lives increasingly difficult are the delays in approval of appointments, which tend to hold up their work to a greater extent than ever before. This is not just because two permanent members of the UN Security Council, and some less prominent states in Africa, have begun attempting blocking measures, intimidating members of the panel whose work they feel intrudes on some of the economic activities linked to members of the governing elite.

The UN, being a diplomatic institution, tends to build bridges, promote diplomacy, and paper over any disagreements or gaps. This is not something the Group of Experts does. The Group of Experts acts as a truth-telling organisation; they pursue relatively aggressive investigations relating to arms transfers, but also to the acquisition of relatively profitable commodity flows, which can be linked to the armed forces, state security services, or parallel structures within various governments. Their activities are an anomaly within the UN system, because their reports used to be published as an open source document.

It is important to stress that working for the UN Group of Experts is a challenging stage in one's life; you are under a lot of pressure to deliver and you are flying all over the world, often to dangerous places, pursuing multiple lines of inquiry relating to up to three or four separate investigations. You then have to compile a report after six months or a year, and in some cases these reports run to 300 pages. The latest report on Somalia and Eritrea is 300 pages, which takes a lot of time to edit.

Helping the Groups of Experts is the Sanctions Branch in the UN Secretariat: they do a good job, and are under different forms of pressures, often from states complaining. Even if the complaint is not legitimate, states tend to complain more, because it increases the pressure on the Secretariat.

To give you an idea of scope and size: a state like the DRC or Darfur in Sudan is monitored by between five and seven members of a Panel, previously with some support from consultants, one or two political officers, and somebody within the Secretariat. Overall a team of fewer than ten people is trying to monitor flows in a country the size of the DRC. Nevertheless, their work is very important; they are extremely driven and motivated in most cases.

However, they are facing increasing problems: financial constraints mean that you can read which panels of experts it applies to, but their consultancies have been cut back, so there are fewer consultants being employed. In the case of Côte d'Ivoire and DRC, no more consultants will be employed. The budget cutbacks mean they are not able to travel to New York and have regular team meetings. There is a lack of databases and support on various different kinds of activities: we know this, because over the years they get in contact with SIPRI for information. The UN Groups of Experts are coming under increasing pressure to do more with less, and yet their work is vitally important.

What can the EU do? It is not a case of EU member states not doing anything; in New York, they do, but it is often reactive. They often have to politically support the Groups of Experts in response to pressure from one of two permanent members from the UN Security Council, so their support is reactive rather than proactive. As the European External Action Service grows into its new role, and the work in the field with the delegations takes shape, there is space, both in Brussels and at the political level in New York, but also in the field, to

recognise the work of the Groups of Experts and look at what technical assistance and capacity-building support the EU could provide. There is a whole host of different measures that fit quite neatly with what the EU has done in the past with different partners, and which could be applied to support the work of the Groups of Experts in the field. There are also other measures at a political level, whereby the EU can band together to proactively promote the work of the Groups of Experts.

Tomas Baum

Good afternoon. I am talking about conventional issues, I hope in a not too conventional way. In a consortium of non-proliferation I prefer to speak of undesired proliferation. Export controls are a means to regulate proliferation of weapons or strategic goods. You are always in a place between economy and security, or economic interests and security interests, and sometimes ethical interests. There is a flipside to export control regulation, because if you look at it from the perspective of economic actors, it is a hindrance: a problem, an administrative burden, it is red tape. If you look at it from a security perspective, it is something else. Due to their ambiguous nature, export controls are both controlling and hindering, but also facilitating, because the goods in question are not unproblematic. This logic for export controls applies to both dual use technology and to conventional weapons.

I will speak about conventional armaments and the challenge the proliferation of these poses in specific European contexts. In the European context there are two recent developments: one is the composition already mentioned, and the other is the famous ICT Directive. These are two developments that enhance the stakes for undesired proliferation. My inspiration is a report we [the Flemish Peace Institute] prepared from a conference two years ago, 'The EU Defence Market: Balancing Effectiveness with Responsibility', which was edited by Alyson Bailes and Sara Depauw and is available on our website.

The EU is a very specific actor. In my view, it is a *sui generis* actor, and you have to know the nature of the beast, especially when you talk about security issues. The territorial integrity of Europe is guaranteed by NATO, not by Europe. In my view, this can afford Europe, especially one of its prime agencies, the European Commission, a lack of strategic awareness, because it is not that relevant in conventional issues. That is a strong claim, but I hope to make it clear later on. From a European perspective, when the arms embargo on Libya is relieved, it is not a problem to deliver conventional weapons, because if you have a problem with Libya, you send in NATO: we saw the anti-air missiles were annihilated in a day. In the European perspective of being a trading and economic agency, the conventional strategic awareness is not that relevant, but I have to admit that the ethical dimension of export controls is more strongly developed than in other international actors.

The motivation for export controls used to be twofold: strategic and economic, and I would

now say it is strategic, economic, and ethical. It is convenient to take the UN registry in conventional weapons as a classic locus: tanks, arms, fighter jets, firearms. If you look at the military lists that are applicable – it defines the scope of application of EU regulations in the export controls of conventional weapons – you see that the list is much more exhaustive; for example, intangible technology is included. You have to open up a bit when you talk about the nature of the goods, which implies that you have finished products that you can export to other countries, but you can also have parts of bigger systems that you export, you can have the intangible technology transfer, and you can also deliver capacity. There was a licence granted in Belgium for an ammunitions machine that should be sold to Tanzania to be put 100km from the Congolese border, which could produce seven million Kalashnikov bullets a year. You are not giving a finished product; you are giving a finished product that also enhances capacity for production. The Eurojet Typhoon in the not-too-distant future will also be produced in Saudi Arabia – I do not know what that means for proliferation challenges.

You have the Common Position, and the EU Code of Conduct on Arms Exports, which was not legally binding – it was a very political thing. In 2008, under pressure from NGOs and the European Parliament, the status was enhanced to a legally binding instrument, but you still have to qualify legally binding: it is legally binding, but you cannot go to the European Court of Justice when there is an issue. It is legally binding in the sense that member states have to implement it in some way.

This means that this entire economic area of the EU has some common principles, judicially binding, to guard its borders vis-à-vis third countries. I will not go into the criteria, which are shared criteria.

In 2009 there was an interesting initiative stimulated by the EC: it is a directive that should liberalise and harmonise the defence market in Europe. The argument is simple and convincing: the issuance of export licences in the EU between member states was never refused, so why keep up this expensive administration and red tape? Just get rid of it. The only thing they had to do was convince member states that this was a good idea, and then the idea of rationalising the defence industry and developing this shared European defence industrial base is a very solid argument, instead of everybody doing things for themselves. The Commission was quite successful in convincing the member states of the benefits of such an approach: it was supported by the industry in bigger member states. This need for rationalisation in the defence industry was then supported by two directives; one is that you have to make procurement open and exempt the defence prohibitions or reservations that were made in the past on procurement – they were no longer nationally based, but competitively based in the European context. The other directive was first liberalising and then harmonising export within the EU and going through a system of general licences, where companies do not have to go through the red tape: they can use a licence, and when

they are certified they can trade within the EU.

The stated aim is to enhance capacity. In the rhetoric you find it could also enhance the strategic posture of the EU: the interoperability of troops will, in the long term, be stimulated by this new policy where you get one European defence market. Of course, there is some resistance from member states. I would argue that, next to this stated aim, and next to the capacity building in Europe of a shared defence market and shared defence industrial base, the Commission is always concerned about exports. This is not just for domestic consumption, even if you had the assumption that this European defence market would work for European nations, their member states. With the contemporary crisis, this drive will have export implications for the defence market.

This now becomes very interesting, because what you see in the European context is that the outside border of Europe is governed by a common position, legally binding, though not so legally binding, but the regulation of getting this defence market within the EU is a Regulation Directive, which is hard law. It is hard law to govern the inside – hard law to govern the liberalisation. Companies will be able to enforce their freedom of activity in the EU; vis-à-vis trade with third countries, it will be a common position, political declaration, and criteria.

My guess is that member states – which is the nature of the European beast that I described before – will always make the decision on the actual exports. In that sense, the guarantees, pressures, uniformity and harmonisation have to be taken into account. The strategic dimension of this European project – of creating one defence market, of sending it to the rest of the world, and setting it up with the implication of sending it to the rest of the world – has not been taken into account. There are challenges: hard law versus soft law, and a different regulatory frame of mind that member states have to implement. You could expect something from the EEAS. It is one agency in the EU that can play a role in getting this balance right, because they will be confronted with the external dimensions of what is being sent out. Another challenge is a coherent internal implementation, because I do not think that Germany, the UK, and France will be so open about these new possibilities as smaller member states will be that have no say in external foreign policy. If one gets to a common denominator, especially vis-à-vis export to third countries, it will be the lowest common denominator, because we have to guarantee a level playing field for the industry, from a European Commission perspective.

There is an antidote to the risk: informed public debate. There should be a much stronger role not only for the European Parliament but also for national parliaments in monitoring these activities. The Conventional Arms Exports (COARM) reporting could allow for informed public debate, and could be done in a much more efficient, more correct, and more uniform way. My argument is there are very good new developments in the EU, but that they increase the risks when it concerns the

proliferation of conventional weapons.

Questions and Answers

Cédric Poitevin

The three presentations were clearly connected: the first focused on one forthcoming international treaty, and the two other presentations focused on the challenges of implementation, both at the level of the UN and the EU, in two different fields.

Prof. Ben Tonra, Jean Monnet Chair of European Foreign Security and Defence Policy, University College Dublin

To the first speaker: were any lessons learned in terms of this current process, or its substance, from earlier exercises, both in terms of cluster munitions and land mines? Is there a learning process that goes on in terms of the process you are engaged in now? To the last speaker: the dangers are under-specified in your presentation, in terms of creation of a single market, defence industries, and the risk for proliferation. Bearing in mind the great variety in terms of national parliamentary capacity to supervise some of this, and bearing in mind the European Parliament's limitations, where are you going to see that public debate coming from? Could you specifically reference the role of NGOs in respect of that?

Dr Liviu Muresan, Executive President, EURISC Foundation, Romania

I propose to introduce the Arab Spring into the discussion, and the problems of arms transfer, not only trade. We have an embargo for the authorities, but we have the moral duty to support the new non-state actors, opposition, and so on. After some time, Catherine Ashton wrote in the *International Tribune* today that the EU is no longer a spectator; it has to support on the ground the commitments to democracy. This is related to Tomas' presentation: how do we make it work? There were lessons learned in Libya. We helped, and now we have 53 registered military commandments on the ground fighting each other, and we have problems making the system work. At the same time we have Syria: the new opposition sending messages that they are desperate, they need something, in front of a professional regular army. What is the legal and moral framework?

We are living in a period of crisis, and the arms transfer is in a period of crisis. The winner in this crisis is organised crime. Inside the EU, organised crime is not increasing, but the arms are used for controlling territories. At the end of the crisis there will be a new map of organised crime in Europe and around it, and arms will play a role in consolidating the power of different groups. What is your opinion?

The private security companies and private military forces have begun the process of privatising security, and we have not yet put standards of public and private cooperation in

this field on the ground. We have to make common denominator regulations: we cannot postpone these problems any more, because then we could have the Blackwater failure.

Dr Patrick McCarthy, Coordinator, International Small Arms Control Standards, United Nations Coordinating Action on Small Arms (CASA) Mechanism

I work with the UN Coordinating Project to Develop International Small Arms Control Standards, which we will be launching later this year. Elli, could you comment on the President Designate, Ambassador Moritán's approach to the ATT preparatory process so far, which he described at the end of the last preparatory committee meeting as being, 'a process of gathering all the ingredients in one place before moving into the kitchen', the kitchen being the negotiation coming up this summer. If you look at the document that is there now, it is a very encouraging document, because it includes everything that was ever brought up during any of the preparatory meetings. It includes within its scope small arms and light weapons, and the criteria to be taken into account before deciding on exports, development and humanitarian considerations. It is a very comprehensive document. How is that going to play out in the negotiations, particularly considering that these negotiations will be based on consensus? It is better to have these elements in the document before negotiations begin – I agree with that – but what will be the process for taking any of those elements out? Would it require consensus to remove any of those elements from that document? Some general comments on that would be useful.

Will the ATT, in your opinion, contain any guidance or commitments whatsoever? Will it contain any commitments with regard to the kinds of control mechanisms that states would have to have in place at the domestic level in order to comply with the new treaty? For example, will it provide any guidance on the types of authorisations that are required before export? The sequencing of authorisations when it comes to import authorisations, export authorisations, transit authorisations: will there be any more technical content, or will the scope remain at the level of normative guidance with regard to criteria to be taken into account?

Hugh, regarding the Groups of Experts on monitoring UN sanctions, you gave a very good overview of the challenges faced by these groups and the constraints with which they are faced. I would assume that the expertise required by these experts is very similar across the board. If they are concerned with monitoring violation of sanctions, I would assume the types of investigations that need to be carried out would be similar across countries. Could you comment on whether that is the case, or is specific regional expertise required depending on which country is being studied? Is there a roster of such experts that is built up and maintained by the UN, which would facilitate and speed up the putting together of these Groups of Experts? If not, what are some of your suggestions for streamlining this process: making it possible to set up these Groups more quickly, and supporting them in a

sufficient way, for example, through a dedicated UN trust fund that could be set up in advance? Are there any proposals for making this system more effective?

Dr Stelios Zachariou, Expert Counsellor, Disarmament and Non-Proliferation, Ministry of Foreign Affairs, Greece

Thank you for the informative presentations. Referring to the arms embargo reports, Hugh indicated there was a funding issue, the UN budget is a three-year budget, and the work they are doing is quite important in that respect. Is it a political decision that the budgets are being reduced for this undertaking, or is it budgetary restraints? You indicated that the reports used to be open, but it was not clear to me whether they are open today.

Tomas spoke about the common position and the ICT; we work on the COARM report, which is a lot of work, and this year the process is being reviewed. How do you make this extensive report better? For small countries it is an issue to get this information and compile it, regardless of whether you export weapons or not. It is a lot of work for us, and for the Commission.

Michael Hurley, Disarmament and Non-Proliferation, Department of Foreign Affairs and Trade, Ireland

I have a question for Elli on the consensus question. I would like to get a sense of your view as to how that discussion will go, given that we are now going into the last PrepCom. The Resolution is perhaps not fully clear on what it means, and there are a number of views on what it could mean. We would like it not to become a procedure for blocking even preliminary negotiations or interim negotiations. At the same time, we would like to have the big players remain on board throughout. I wanted to get a sense of how you think it will go, and what happens if consensus breaks down.

Prof. Michael Brzoska, Institute for Peace Research and Security Policy, University of Hamburg

My first question is to Elli, regarding the monitoring of a treaty: what is your prediction of what kind of monitoring would be possible? Hugh, why do you think the EU has never established any kind of monitoring team for EU sanctions? What kind of problems are there?

Sara Depauw, Researcher, Flemish Peace Institute

Hugh, why not have our own experts to verify whether the EU embargoes are being followed? Do you think it is a good idea to have more EU embargoes? When you think about how to deal with Libya, Syria, and countries like that, should we have more EU instruments to deal with that, and clear positions, or should we stick to the UN?

Hugh Griffiths

To answer Patrick's questions: there is a roster, but they have recruitment issues. I cannot speak to the UN Secretariat, who do a good job in difficult circumstances, but the reason I turned it down was because you have to be at a specific point in your life with the contract they are offering. Six months for a consultancy, to sit in Addis waiting to get a visa to try to get into Khartoum; two years sitting in Côte d'Ivoire watching the whole thing unfold, and knowing there is no post-mission support. When I was working in humanitarian aid, it was the same thing; you went from your job to being out of a job with no support afterwards. If you have seen terrible things, or been working in stressful circumstances, you are essentially out in the street trying to reconstitute your life. That kind of work is expert and focused, but there are only a limited number of job opportunities. It comes back to a more central issue of looking at it holistically.

In terms of a mechanism, you do good work with the standards, and I do not wish to insult the UN in any way, but I have seen trust funds being administered in other places under other circumstances, and I am not necessarily sure that is the best way forward, although it is not my business to make a judgment there. There may be issues with it being blocked if you try to go through the UN. It comes back to the next question, which is on the budget. I cannot speak to why these cuts have been introduced. It would be good if the Greek Foreign Ministry sent a letter – check the latest reports on DRC and Côte d'Ivoire, where they note that the consultancies are being cut out – and enquire, as a fee-paying UN member state, why this is the case. Those kinds of enquiries send a message. I cannot speak to the internal decision-making processes: what happened, why there were cuts.

It used to be the case that reports were published with the stamp of the Security Council. What you see now is certain big member states withholding reports: the report on Sudan, the report on North Korea. They somehow appear on the internet, but without the stamp of the Security Council. You have to listen to their problems, but essentially the dynamic is that if you do your job properly and well – if you investigate back to source the shipment of ammunition used to attack UN Peacekeepers in Darfur, and discover where that ammunition came from, or you investigate a flight from the Eurasian landmass, which was either heading towards Côte d'Ivoire or one of its neighbours, and you upset an air cargo company with links to certain governments – what you find is that you lose it. Those states block your appointment for another period on the panel. This is sending out a clear and alarming message, because it is by action, not words, as to what happens if you do your job well. Those panel members – and there are not many – who sit and do nothing are not threatened by that kind of thing. There is a clear message being sent. Coming back to Tomas' point about norms, values and standards: these are UN Sanctions and maybe the EU is interested in promoting that kind of thing.

I am interested by the points raised about EU arms embargoes: maybe there are so many difficult issues associated with it, but in terms of the EU making a gesture and trying to

structure something, it would be useful and interesting to do. There are EU arms embargoes on states where certain members of the P5 would not countenance it, notably Syria, but there are also problems with those EU arms embargoes. While it is true that the EU arms embargoes are up to each member state to enforce, maybe some of the smaller states, particularly on the front line, do not have the information that some of the bigger states have to make the correct decisions.

There is the recent case of the *MV Chariot* sailing to Syria, stopping in Cyprus, and by chance being discovered through a safety inspection, and this getting out to the media. According to the media, the Cypriot government were assured by the Russian company and the captain of the vessel that the ship would not proceed to Syria. Of course, it did so. I do not know the background to the Cypriot government's decision-making process, but this ship has been involved in destabilising arms transfers before – this is not the first time – shipping exactly the same kind of cargo. Had the Cypriot government been aware that this is the business that the company undertakes, they might not have believed the assurances they were given by the captain of the vessel. That is one example of the current difficulties, even with the EU arms embargoes we have in place now.

Tomas Baum

I will start with the COARM reporting, and give you a simple, real-life example. The 2010 figures were issued: as a research institute, we have to note after the publication that, for example, a transit licence of €65m was accounted as an export licence from our own country. When you are making totals based on official numbers that you got from an official body, it gets awkward to note that they are incorrect. Mistakes can happen, but a thorough capacity for checking before publishing would be nice. I am not saying it does not happen, but it could be better.

It has been a few years since I looked at this issue, but I recall that the French licences were different in nature to other licences in the way they were perceived – the *Préalable*; they are of a different nature, which explodes their export figures. You could agree on a unified reporting system: the Flemish Parliament has a competence for exports. You have 22 military list (ML) categories: ML category, sub-category, country of destination – if you want to be very nice, country of end use – total amount, and it is a database: for €5,000 you can make a database. There are problems with confidentiality of entrance, but on a very pragmatic level it is easy to make a simple database in that sense.

Opening the discussion on harmonised reporting could have spill-over effects in harmonised policy later on. Harmonised reporting is a quite innocent way to begin, and maybe you can then get more harmonised policies, because there is discussion on the policy you are reporting. As we say in Dutch, it is like a song you have an obligation to sing: we give the numbers and we have done our job on the COARM agreements. It could be taken

more seriously.

On the debate: you should not narrow down a public debate. The media could talk about it more, but there is a need for this public debate in 2012, as opposed to earlier on. Earlier on the defence industry was nationalised: it was national security, it was secret, and so on. It has been rationalised and privatised to a large degree, including private military companies. Private companies in a democracy can never have the same exceptional status that 'we cannot tell you, because it is secret'. They are accountable in a different way. Governments should ensure that this old defence with security – it is intelligence, so you cannot know it – does not apply to the same degree to the new actors.

From a government perspective, you have to find new and creative ways of reporting, especially in the EU. You will not give *ex-ante* licences, but you will expose controlled firms who are certified who could export to other European countries. Make sure that you account to your parliament for the way that you checked, in the way you do for fiscal policies: how many people did you check, what did you find? The need and challenge is at the information level: you cannot entrust private agencies or private actors with the same cloak of secrecy that you give to government, which is accountable in different ways. The rest follows: in every member state one should go for as much transparency as possible on this policy, and what is happening. The idea that you should not damage commercial interests is a valid argument, but you have to bear in mind that there is a democratic consensus supporting these kinds of issues. The European Parliament does a good job, and has increased its powers so it can do more; it holds the EEAS accountable. I work in Parliament, so it is natural to me that it happens there.

The Arab Spring: I am not going to do the moral decision making on that. If you look to European exports to Saudi Arabia, even in 2010 and 2011, perhaps it is a more stable country and has more petrol dollars and so on, and the commissions on transactions are more substantially interesting than the ones to Brazil. You have to look at these things in a preventative way. I would invest my time in discussions on prevention rather than on interventions, because then it is too late. Europe particularly, because of its lack of hard power, is better placed to take these preventive issues into account. I explained in my talk the tension that exists, and in my view that is increasing.

Elli Kytomaki

On lessons learned: it is a good point and we have been looking at those that you mentioned. We are talking about partially the same people – the disarmament diplomats – that have been involved in the Convention on Certain Conventional Weapons (CCW) negotiations and are now covering the ATT. That applies to civil society and NGOs: it is my feeling they have learned lessons themselves, in campaigning on land mines, for example, and now there is an arms control campaign on the ATT. On the other hand, with regard to

the NGOs, there has been a negative spill over, not so much in CCW, but with regard to the small arms process, where we have seen a similar kind of debate to the one we have had in the programme of action on small arms – the US Second Amendment people coming over to the ATT debate and pushing their agenda there. It does not have a place in the ATT, which is about international trade.

An obvious difference between CCW, the Ottawa Convention and ATT is that the two first are agreements to prohibit a type of weapon, whereas ATT is about trade. The natural conclusion is that the lessons learned are limited in terms of the nature of the process. When we look at details of the instruments, there are definitely things that we can take on board from organising cooperation and assistance, national coordination mechanisms between different departments that have been put up with regard to the other instruments and will have to be involved in the ATT, to transparency reporting – these kinds of technicalities.

Again, one bigger type of negative lesson learned is comparing processes within and outside the UN. What the ATT has taken on board is the importance of keeping the negotiations within the UN, and getting the P5 report, and the support of the big exporters to the treaty. The Chairman's approach: I agree, if you had seen the Chairman's draft paper, which is not the draft treaty but has been the basis for discussions, it is quite a long one and it covers a wide range of issues. It was, to my understanding, a deliberate decision by the Chair from the beginning to keep more ingredients rather than leave something out. It is a bit of a salad currently, but Moritán's feeling is 70-80% of the stuff that is there is agreed upon. There is the question of how it will be addressed: in addition to this consensus point, the approach to the actual drafting of the treaty will be crucial, because the more detailed descriptions we want to put into the text, the more difficult it becomes to agree upon it. However, to have general categories of weapons, for example, runs the risk of creating a treaty that cannot be easily interpreted in a unified and objective way.

It is difficult to say: there have been voices calling for a short, simple, and easy-to-implement treaty. That is the approach that the P5 has taken. If I had to put my bets on a 20-page treaty or 6-page treaty, I would go for a shorter one, which is not to say that it would automatically mean that some of the wish-list stuff would have to be left out – extensive documentation or record-keeping requirements, smaller things that would have to be sacrificed at some point – as the general items under scope parameters and implementation are pretty much there.

In terms of national systems and possible guidance on those at the domestic level, we are looking at the 'what' rather than the 'how'. The treaty is likely to describe and set the object and purpose of what it wants to achieve, and the minimum requirements of what has to be put in place for that, but the question of how to set up an export control system, an import control system, record-keeping, and details of legislation will be left up to the state parties.

Of course, we have to trust that they will implement the treaty in good faith and according to their specific structure and challenges. I would not rule out the possibility of, in addition to the treaty text, having something of a more detailed guidance. The EU has the users' guide to guide the implementation of the common position. I do not know if it is a fair comparison, but I could see something similar to that, like an implementation guide, and that could be developed as a voluntary and non-binding reference document that states could use if willing. That then links to assistance and those programmes that could be set up in the implementation of the treaty.

Consensus: I am not going to guess what is going to happen. We all realise that if we talk about reaching a legally binding agreement between 193 UN member states it is not an easy task. When I said that that is the most important strategy point that we have to think about, I could imagine that states themselves are thinking different ways of 'what if'. Again, we have to be careful in where to draw the line between leaving things out in order to gain consensus, or keeping important stuff in, even if it were to risk losing consensus. If a consensus agreement was not reached in July, it would not mean that that would have been a wasted exercise; there are ways beyond that, but what those are I leave up to states to decide.

Monitoring ATT: even though we have had suggestions on all kinds of things, from monitoring to verification, possibilities for having some kind of dispute settlement mechanism, peer review, it is going to be more like a soft norm-building exercise through increased transparency, national reporting, and then bilateral and voluntary dialogue between states and the implementation. Yesterday I happened to be at a meeting where we discussed specifically reporting on the ATT, and I was smiling when we were talking about it being easy to agree on a common format: that is going to be one of the things that will have to come back after the treaty is there. Those are features that people generally agree that we should have included in the treaty, but if we start talking about the terms of the treaty text – categories, reporting templates, specific systems that should be put in place to monitor the implementation – we are not going to be able to do that in July. That is something that could be taken up in the review conferences and follow-on meetings. The agreement and negotiation of the treaty will not be the end point but the start of a process, which is important to keep in mind. The treaty should be developed in a way that we do not exclude some things that might later become important or where we would want to add specificity later. At the same time, we should not make it too general, which could sacrifice the effectiveness.

Cédric Poitevin

I will now close this session; thank you for your comments and the insightful debate.