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## The Arms Trade Treaty: Half Full or Half Empty?

by Marc Finaud

### Key Points

- The adoption by the United Nations (UN) General Assembly of the Arms Trade Treaty (ATT) is a significant achievement considering the traditional resistance to dealing with conventional armaments, and in particular small arms and light weapons (SALW) within the UN framework as well as the enormous weight of the lobbies that opposed such a treaty.
- The ATT has the main advantage of setting for the first time international legally binding norms on arms transfers by states.
- The criteria for assessing whether exports or imports can be authorised may be subject to unilateral interpretations, but the mere existence of the treaty will offer serious grounds to the international community, including civil society, to monitor its implementation.
- Apart from licit trade, which will be under scrutiny, the treaty will also strengthen the existing, rather weak, instruments to prevent illicit trafficking, in particular of SALW, which cause the most violence and victims both in conflict and peacetime.
- The implementation of the treaty will depend on national resources required in particular for export and import control, reporting, legislation, border control, etc., which can be challenging for developing countries.
- In the end, the effectiveness of the treaty will derive from the political will of governments of exporting states to act responsibly in keeping the arms industry and trade under control, as well as the mobilisation of civil society organisations to maintain the necessary pressure so that arms are sold and used only in self-defence and not for fuelling violence and conflict.

### The Arms Trade Treaty: a Welcome Development

Each year, between \$45 to \$60 billion worth of conventional arms sales agreements are concluded. According to the United States (US) Congressional Research Service,<sup>1</sup> developing countries were the recipients of 79% of those transfers in the period 2008-2011. For more than two decades the main exporters have been the five Permanent Members of the United Nations (UN) Security Council and Germany. The US has remained in the lead (with a 44% share in 2011), but, in the 2008-2012 period, China replaced the United Kingdom (UK) as fifth largest exporter. Thus, the international arms trade basically amounts to a North-to-South flow, although some emerging countries in the South (Brazil, South Africa, Turkey) are also becoming increasingly active as producers and exporters. According to SIPRI, in the period 2008-2012, India, China, Pakistan, and South Korea remained the main importers (see Box 1).

Within the arms trade, the volume of authorized international transfers in *small arms and light weapons* (SALW) is estimated to an annual \$8.5 billion<sup>2</sup> (i.e. between 14 and 19% of total licit trade), including some \$4.3 billion in ammunition.<sup>3</sup> Like for heavy armaments, this trade is concentrated around a handful of actors, and transparency about transfers is weak in most regions apart from Europe and the US. The estimates for *illicit trade* in SALW vary between \$2 and 10 billion per year.<sup>4</sup> Such relatively low figures do not do justice to the incalculable impact of such weapons not only in regions in conflict but also in peacetime: they are the weapons of choice of insurgents, armed gang members, pirates, terrorists. Because of the large number of producers (more than 1000 in 100 countries producing some 7.5 to 8 million small arms per year) as well as widespread corruption and weak controls, a large share of the weapons ends up on black markets.

<sup>2</sup> Small Arms Survey 2012, "Moving Targets", Cambridge University Press, 2012.

<sup>3</sup> Small Arms Survey 2011, "Gangs, Groups and Guns", Cambridge University Press, 2011.

<sup>4</sup> Small Arms Survey 2012, op. cit.

<sup>1</sup> R. F. Grimmett and P. K. Kerr, Conventional Arms Transfers to Developing Nations 2004-2011, Congressional Research Service, 24 Aug. 2012.

For decades, contrary to most other areas of commerce, the arms trade has not been regulated on an international basis, leaving the ground for robust competition between suppliers, a trend now exacerbated by the global economic crisis. The main attempts to control exports of heavy conventional armaments that could have destabilizing effects have been either regional efforts (such as the 1998 European Union –EU– Code of Conduct, legally binding since 2008,<sup>5</sup> the 1998 Wassenaar Arrangement as well as conventions on SALW in the Americas and Africa), or global efforts to promote transparency but on a voluntary basis (UN Register of Conventional Arms since 1991). The other global initiatives have been either politically binding only and restricted to SALW like the 2001 UN Programme of Action (PoA) or the 2005 Marking and Tracing Instrument or, if legally binding, also limited to technical aspects of SALW, like the 2001 Firearms Protocol.

**Box 1: Shares of the main exporters and the main importers of conventional arms (in percentages of the global exports or imports) (Source: SIPRI)**

Exporters	2003-2007	2008-2012
USA	31%	30%
Russia	24%	26%
Germany	10%	7%
France	9%	6%
China	2%	5%
UK	4%	2%
Others	20%	24%
Importers	2003-2007	2008-2012
India	12%	9%
China	6%	12%
Pakistan	5%	2%
South Korea	5%	5%
Singapore	4%	1%
Others	68%	71%

In the absence of a *legally binding* instrument to control the international trade both in heavy armaments and in SALW, negative trends occurred over time and were denounced by civil society organisations:

- A sizable proportion of licit exports is diverted to illicit markets and falls into the wrong hands;
- Both some licit and illicit uses of weapons fuel conflicts and allow massive violations of human rights or international humanitarian law (IHL), including the use of child soldiers and gender-based violence;<sup>6</sup>
- Authoritarian regimes use armaments to oppress their own populations and armed or terrorist groups use weapons against civilians;
- Contrary to other industries under international trade rules, the arms industry in producing countries receives massive subsidies from state budgets, diverted from social needs;
- The arms trade has been considered as the one that lends itself to most corruption (40% of corruption cases

in global transactions).<sup>7</sup>

**Box 2: Chronology of the Arms Trade Treaty (Main Source: United Nations)**

<b>1997 – 2006</b>	Campaign by Nobel Peace Prize Laureates to establish ethical standards for the international arms trade, followed by civil society mobilization, in particular through the “Control Arms” coalition.
<b>2006 18 Dec.</b>	United Nations General Assembly (UNGA) resolution 61/89 invites Member States to submit their views on the feasibility, scope and draft parameters of an arms trade treaty (ATT); gives mandate to establish a Group of Governmental Experts (GGE) to examine feasibility, scope and draft parameters of an ATT.
<b>2007</b>	Over 100 states submit their views on an ATT, published in a report A/62/278.
<b>2008</b>	The GGE meets in three sessions. 24 December: UNGA resolution 63/240 establishes an Open-ended Working Group (OEWG) to meet in six sessions in 2009-2011 to consider elements of an ATT.
<b>2009 2-6 Mar. and 13-17 Jul.</b>	the OEWG meets for two of its six sessions to consider goals and objectives of a feasible ATT, its scope, principles and draft parameters.
<b>2010 12 Jan.</b>	UNGA resolution 64/48 converts the four remaining sessions of the OEWG into a Preparatory Committee (PrepCom). 12-23 July: PrepCom meets for its first session and discusses: possible structure and contents of an ATT, elements, principles, parameters, implementation and application, scope and others. Chairman of the PrepCom issues a draft paper on principles, goals and objectives, and indicative list of elements of an ATT.
<b>2011 27 Feb.-3 Mar. and 11-15 Jul.</b>	PrepCom meets for its second and third sessions.
<b>2012 13-17 Feb.</b>	PrepCom meets for its fourth session. 2-27 July: UN Conference on the ATT, New York. Failure to adopt a treaty by consensus.
<b>2013 4 Jan.</b>	UNGA resolution 67/234A decides to resume the UN Conference in March 2013. 18-28 March: Final UN Conference on the ATT held in New York. Failure to adopt the treaty by consensus. 2 April: UNGA adopts resolution 67/234B with the ATT by overwhelming majority (154-3-23). 3 June: the ATT is opened for signature.

**An International Treaty Initiated by Civil Society**

As in the case of antipersonnel landmines and cluster munitions, which led to the 1997 Ottawa Treaty and the 2008 Oslo Treaty, the ATT is the result of a campaign launched by civil society organisations against the reluctance or scepticism of most governments. Traditionally, in the UN framework, disarmament efforts have concentrated on weapons of mass destruction (WMD), deemed as the most dangerous for humanity. Whenever attempts were made, in the early 1990s, also to focus on conventional armaments, many states, producers and exporters or recipients, considered that the right of legitimate self-defence required total freedom in this regard. However some major conflicts such as the Balkans wars or the Rwanda genocide as well as internal violence in Latin America showed how devastating the unregulated sale of conventional weapons, including SALW, could be. Only

<sup>5</sup> European Union, European External Action Service, “Arms Control Export”, [http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index\\_en.htm](http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm).

<sup>6</sup> Control Arms, “The Impact of Guns on Women’s Lives”, 2005, <http://controlarms.org/wordpress/wp-content/uploads/2011/02/The-Impact-of-Guns-on-Womens-Lives.pdf>.

<sup>7</sup> A. Feinstein, P. Holden, and B. Pace, “Corruption and the Arms Trade: Sins of Commission”, in SIPRI Yearbook 2011, p. 121.

then did pressure mount in the international community to introduce some controls. This culminated with the UN Secretary-General, Kofi Annan, stating that “[t]he death toll from small arms dwarfs that of all other weapons systems – and in most years greatly exceeds the toll of the atomic bombs that devastated Hiroshima and Nagasaki. In terms of the carnage they cause, small arms, indeed, could well be described as ‘weapons of mass destruction’”.<sup>8</sup>

From 2003, the *Control Arms* campaign, which included major NGOs, gathered a million signatures on a petition in favour of an ATT, and handed that document to Ban Ki-moon, the UN Secretary-General, in 2006. This started the UN process that led to the adoption of the Treaty in 2013 (see Box 2). Among major exporters, the UK, followed by France and Germany, encouraged by their EU experience, immediately supported an ATT. The other main suppliers expressed mixed feelings or reservations about it. For example, on UNGA resolution 61/89 in 2006, the US voted against while Russia and China abstained like many major importers (Egypt, India, Iran, Iraq, Israel, Pakistan, Saudi Arabia, Syria, etc.). The same voting pattern was observed on UNGA resolution 63/240 in 2008 (on the OEWG); from 2010, the US voted in favour of UNGA resolution 64/48 (on the PrepCom) while most of those who had abstained continued to do so. At the end of the 2012 UN Final Conference, the US, followed by Cuba, North Korea, Russia, and Venezuela, declared that negotiations needed to be extended. UNGA resolution 67/234A (for the resumption of the conference) was supported by the US, China, and Russia, while those abstaining still included Egypt, Iran, Saudi Arabia, Venezuela, etc. The final version of the treaty eventually adopted by UNGA resolution 67/234B in 2013 received negative votes only from Iran, North Korea, and Syria, while 23 states abstained, including China and Russia as well as several Latin American, African and Arab countries.

Critical voices about the Treaty invoked various arguments: the ATT was not adopted by consensus (China, Egypt, Iran); it does not contain international definitions (Iran, Pakistan) nor prohibits the transfer of arms to “unlawful non-state actors or entities” (India, Indonesia, Iran, North Korea, Russia, Syria, Latin American countries) or to states committing an aggression (Iran, Latin American countries) or occupying foreign land (Egypt, Iran, Syria, UAE); it favours the rights of exporting states, in particular to evaluate the behaviour of importing states (Cuba, North Korea) and choose their own implementation measures (Iran); there are no penalties for breaches of obligations (Pakistan); it may affect transfers of technology useful for economic development (Cuba, Iran); it does not address the excessive production of armaments (Bolivia, Iran, North Korea, Pakistan, Venezuela); its export assessment criteria may be interpreted differently (Russia); it exempts transfers between members of a same military alliance (Iran), etc. However well-founded or artificial some of those arguments may be, their expression only demonstrates the difficulties ahead in attracting their proponents to becoming states parties of the Treaty and implementing it in good faith.

<sup>8</sup> United Nations, “We, the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century”, Millennium Report of the Secretary-General, 2005, <http://www.un.org/millennium/sg/report/ch3.pdf>.

## The Main Benefits of the Treaty

In trying to convince the hesitant ones, it will be critical to demonstrate the benefits resulting from implementation of the Treaty. Indeed, the ATT has the merit of aiming to establish “the highest possible common international standards” and requirements to make this trade transparent and responsible, not fuelling conflict and not conducive to violations of human rights or international humanitarian law (IHL).

### The most difficult aspect of the implementation of the Treaty will be the general nature of the criteria identified for denying exports.

**The Scope:** the ATT will apply to the seven categories of heavy armaments already identified in the UN Register of Conventional Arms<sup>9</sup> as well as SALW.<sup>10</sup> Despite the impact of SALW in the world, including them into the scope of the Treaty was most difficult. China, Egypt, and Israel claimed that SALW were already covered by other instruments, and others, like Italy, Finland, and Canada wanted to exclude hunting or sports weapons. As for ammunition and munitions, the US and other large producers (Egypt, Indonesia, India, or Vietnam) argued that it would be difficult to trace them. Nevertheless, all states parties will have to establish a national control system also to regulate their export. Similar provisions apply to parts and components of the weapons covered by the Treaty. On technology transfers, emerging countries feared that regulation would affect their economic development. So the Preamble acknowledges that “regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in material, equipment and technology for peaceful purposes.”

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**Control System:** all states parties will have to “establish and maintain a national control system, including a national control list” and make the latter available to the other states parties. This requirement applies to both exporting and importing states and will also include transit and brokering.

**Prohibited transfers:** exporting states will have to ensure that no transfer violates: UN sanctions (i.e. arms embargoes); relevant treaties; and IHL. This central provision of the Treaty was the most difficult to negotiate, and the end result reflects a compromise between opposing approaches.

**Export Assessment:** exporting states will have to assess whether, potentially, a transfer not *a priori* prohibited would undermine peace and security and could be used to commit or facilitate: a serious violation of international human rights or IHL; or an international instrument on terrorism or transnational organised crime.

**Diversion:** all states will “seek to prevent the diversion” of transfers by assessing the related risks and taking mitigation measures (confidence-building measures, joint programmes, certificates, assurances, denial of export, etc.). Cooperation among all relevant states will be compulsory as well as action in case of detection of diversion.

<sup>9</sup> Battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers.

<sup>10</sup> Small arms include handguns, rifles, shotguns, manual, semi-automatic, and full automatic weapons and man-portable machineguns. Light weapons include man-portable and vehicle-mounted antipersonnel, antitank and antiaircraft rockets, missiles, grenade launchers, rocket launchers, landmines, antiaircraft guns, mortars, hand grenades and rocket-propelled grenades (RPGs).

**Recording and Reporting:** exporting states will have to keep records of their authorised or actual exports, and all states parties will report each year on their authorised or actual exports and imports. This should bring about increased transparency as compared to the UN Register: it should be more difficult for one party to conceal transfers if those were reported by the other party. Only "commercially sensitive or national security information" may be excluded from reports.

**Implementation and Enforcement:** the Treaty relies on national implementation measures of states parties. However, thanks to increased transparency and the monitoring of civil society organisations, pressure will be exerted on governments to abide by their commitments. In case of serious violations of the Treaty, suspected states could be deferred to the UN Security Council. But the effectiveness of the latter's action may be reduced if one of those states is a Permanent Member. The situation in Syria is a case in point.

**International Cooperation and Assistance:** as in previous international instruments, cooperation between states parties in the implementation of their obligations will be mandatory, especially in jointly agreed investigations, prosecutions and judicial proceedings in case of violations of national measures. Less developed states will be entitled to assistance and capacity-building from more developed states (e.g. for stockpile management, model legislation, etc.).

## The Challenges of Implementation

The most difficult aspect of the implementation of the Treaty will be the general nature of the *criteria* identified for denying exports. Indeed notions such as violation of "relevant international obligations", "undermin[ing] peace and security" or "serious violation of international human rights law" or "IHL" are likely to be interpreted differently by states. But here again, the combination of discreet bilateral cooperation and mandatory information exchange with the required level of transparency and oversight should lead to the necessary policy changes. The fact that the ATT refers to instruments to which all states are parties (like the UN Charter, the Universal Declaration of Human Rights or the 1949 Geneva Conventions) should suffice to offer a legal basis for monitoring compliance.

The other main challenges to implementation are related to the *resources* and *capacity* required by the provisions of the Treaty. Indeed, putting into place and operating a whole control system, including recording and reporting, as well as legal and administrative measures to enforce some prohibitions or obligations will entail a serious burden for ill-equipped governments. This is why the Treaty makes it an

obligation for developed states with the necessary resources to provide assistance upon the request of those states which need it.

Preventing and combating diversion of licit flows to the *illicit markets*, especially regarding SALW, will also be a daunting challenge, in particular for the same developing countries whose populations are the victims of such trafficking. The multiplicity of producers, including of ammunition and spare parts or components, combined with the accessibility, low unit prices, ease in smuggling or recycling of SALW as well as the power of criminal groups or the 'gun lobby' in some countries will continue to make international controls most difficult to operate effectively.

## Conclusions and Recommendations

In assessing whether the ATT is like a glass half-empty or half-full, one should compare it with the high expectations of many civil society organisations: in that sense, they may be disappointed that criteria for export denial are not more precise and that there is no mechanism to penalize the 'guilty' ones. But it should also be compared with the previous situation of unregulated trade and the preferences of some exporting states for even lesser controls. It will not completely eliminate the risk of irresponsible transfers but it will certainly reduce it. As US Secretary of State John Kerry said, "[it] will help reduce the risk that international transfers of conventional arms will be used to carry out the world's worst crimes, including terrorism, genocide, crimes against humanity and war crimes."<sup>11</sup>

But how far it will affect those irresponsible arms transfers which fuel conflict and organised crime, divert resources from economic and social development, or support authoritarian regimes will of course mainly depend on the diligence of the main exporting countries, in particular the five largest exporters, which account for 75% of the world arms trade. They will have to review their own commercial strategies (often related to political alliances) and be more selective on clients.

In institutional terms, the next steps will need to focus on attracting as many countries as possible to sign and ratify the Treaty (including the main exporters) and, as soon as the ATT enters into force, putting into place the Secretariat and encouraging states parties to begin implementing their obligations without delay. The coalition of actors, governmental and non-governmental, whose efforts resulted in the adoption of the ATT, should as a priority concentrate on those tasks as well as the above-mentioned provision of assistance and capacity-building.

<sup>11</sup> United States Department of State, "Kerry on "Historic" U.N. Vote on Arms Trade Treaty", 2 April 2013, <http://ipdigital.usembassy.gov/st/english/texttrans/2013/04/20130402145105.html#axzz2ZstOEg1Z>.

NB: This paper is solely the opinion of the author and does not necessarily reflect the official view of the GCSP.

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