

The Arms Trade Treaty: Is the glass half full or half empty?

Herbert Wulf

After several false starts, the text of a global Arms Trade Treaty (ATT) was adopted by the United Nations General Assembly, by the required two-thirds majority, on 2 April 2013. After the postponement last year and the rejection of the Treaty by Iran, North Korea and Syria at the end of March 2013, this was, according to some delegates and human rights organisations, a “historic moment”. But will the Treaty deliver on these high expectations? That now depends on the States Parties themselves, for 50 countries need to ratify the Treaty before it can enter into force.

With 154 votes in favour, the same three “no” votes as before, and 23 abstentions, the text of the Treaty, whose 28 articles aim to control the international arms trade, was finally adopted in early April 2013. The ATT does not ban arms trading in general, but introduces rules which prohibit the supply of certain types of weapons, ammunition/munitions, and parts and components if these items would be used in the commission of genocide, crimes against humanity, war crimes or attacks directed against civilians. In other words, the Treaty creates new binding and universally applicable norms that centre on human rights and global peace.

Long in the making ...

The negotiations which led to the adoption of the ATT were the outcome of a lengthy process which created the pressure necessary to place the topic of “the international arms trade” on the United Nations agenda. Indeed, a very first draft was presented for

negotiation at the League of Nations as early as 1925, but vanished from sight during the subsequent wars.

The UN Register of Conventional Arms

Decades later, the issue of the arms trade resurfaced in various major international reports (e.g. by the Brandt Commission and the Palme Commission), which explicitly referred to its negative effects. However, more initiatives – and more time – were needed before negotiations on a Treaty could be launched.

Key impetus for the new movement was finally generated by the violent annexation of Kuwait by Iraqi troops in August 1990. This event created a broad consensus in the United Nations that Iraq’s substantial weapons stockpile had exerted a destabilising effect. The five permanent members of the UN Security Council, whose previous contributions to the build-up of weapons in the Middle East were by no means inconsiderable, now initiated talks aimed at making the flow of weapons to the region more transparent. In December 1991, the UN General Assembly adopted a resolution establishing a UN Register of Conventional Arms. Starting in 1992, the UN Member States should provide the Register annually with data stating which conventional arms they exported in the preceding calendar year and to which countries, and where their own imports of arms originate. However, by no means all governments honour this voluntary commitment – and this applies particularly to those governments in the Middle East which were the cause to establishing the Register in the first place. The regular reviews of the Register raised similar issues to those arising in the negotiations on

the Arms Trade Treaty. An ongoing concern for many countries is that an international agreement could infringe on their sovereignty. Nonetheless, the data held in the Register provide at least a broad overview of the transfers that have taken place.

The ATT applies to the following conventional arms

Article 2 (1):

- (a) Battle tanks
- (b) Armoured combat vehicles
- (c) Large-calibre artillery systems
- (d) Combat aircraft
- (e) Attack helicopters
- (f) Warships
- (g) Missiles and missile launchers, and
- (h) Small arms and light weapons

Article 3:

Ammunition/munitions for the conventional arms covered under Article 2

Article 4:

Parts and components for the conventional arms covered under Article 2

The new Arms Trade Treaty covers the eight categories of weapons dealt with by the Register, although these categories are now somewhat outdated as a result of weapon modernisation (see Box above). These arms are typically used in conventional warfare but do not take account of new developments. The ATT additionally covers ammunition/munitions and parts and components.

The Mine Ban Convention and small arms control

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (also known as the Mine Ban Convention or Ottawa Convention) and the United Nations Programme of Action on small arms indirectly influenced the adoption of the ATT as well. For decades, the international community's efforts in the field of arms control and disarmament focused on weapons of mass destruction. By contrast, small arms – rifles, pistols, machine guns and ammunition, and mortars and grenades – were largely overlooked.

However, critical public opinion and the campaigns by numerous humanitarian and development organisations for a mine ban and small arms control put governments under such pressure that they finally had no option but to address the conventional arms trade as well. The adoption of the Ottawa Convention in 1997 gave fresh impetus to the debate about small arms and light weapons. After lengthy and heated discussions, the United Nations adopted the

UN Programme of Action on small arms and light weapons in 2001. Admittedly, many of the demands voiced by civil society organisations on small arms control went unheeded, but with the establishment of the Register, the adoption of the Ottawa Convention and the launch of the Programme of Action, the issue of conventional arms control was now firmly on the UN agenda.

... compromises and loopholes

Between 1995 and 1997, a group of Nobel Peace Prize laureates, led by Óscar Arias from Costa Rica, proposed an International Code of Conduct for the arms trade. In 2003, the Control Arms Campaign was launched by several non-governmental organisations. In 2006, the majority of UN member states adopted Resolution 61/89 "Towards an arms trade treaty". This meant that negotiations on a Treaty could now begin, although at the same time, the further development of the UN Programme of Action on small arms and light weapons was falling short of expectations, and indeed failing in many respects, due to opposition from numerous governments (including the USA, Russia and China) (see Box, p. 3).

As so often happens with international negotiations, especially where security issues and economic interests are at stake, reaching a consensus proved difficult. At first, the positions advanced during the negotiations were irreconcilable. Some governments – major importing and exporting countries alike – would have preferred to drop the issue altogether. Others – mainly from the EU and African countries – were keen to agree binding norms.

The outcome is a compromise. A positive aspect is that the Treaty covers exports, imports and transit/trans-shipment of conventional weapons and also requires governments to take measures to regulate brokering and prevent and eradicate the illicit trade in conventional arms and prevent their diversion. Exporting countries, but above all importing countries, must in future maintain records to determine the weapons' final destination.

The present Treaty covers the eight main categories of conventional arms, as well as ammunition/munitions, parts and components. It does not, however, cover other equipment of military relevance (e.g. training and transport aircraft, transport helicopters and drones, or surveillance equipment, explosive materials and hand grenades). One aspect which could prove very important in future is that in addition to the weapons specified in the Treaty, Article 5 (3) encourages the Parties to the Treaty to apply its provisions to the "broadest range" of conventional arms. In other words, the Treaty offers scope for expansion, and governments are free to introduce more restrictive national provisions for the control of these weapons than those provided for in the ATT.

As well as the limited definitions of the various weapons categories, the Treaty as it stands contains at least three other implicit or explicit loopholes.

Firstly, at the behest of the Chinese government, military assistance in the form of gifts and loans is not covered by the Treaty. Although this is not stated outright, the wording is deliberately ambiguous. The subject of the Treaty is “trade”, which of course offers scope for interpretation as well as opportunities to circumvent the intentions of the Treaty, i.e. to control the arms trade.

Secondly, the provisions on record keeping, reporting and enforcement contained in Articles 12, 13 and 14 only apply to a limited extent to munitions/ammunition and components/parts; this was in response to a demand from the USA.

Thirdly, the Treaty on the one hand specifies criteria whose fulfilment precludes arms transfers. On the other hand, it also makes provision for assessments, stating the criteria to be applied. In other words, case-by-case decisions will be required. The Treaty does not include general principles such as “development compliance”, i.e. an assessment as to whether the proposed exports would seriously hamper the sustainable development of the recipient country, as provided for in the EU’s Common Position.

For a long time, the Indian Government lobbied hard for existing and future defence cooperation agreements to be excluded from the ATT. Arms transferred as part of a “defence cooperation agreement” are not exempt from the Treaty. This was one of the factors prompting the Indian Government to abstain in the vote.

Obstacles and new norms

Can the Treaty’s entry into force be anticipated soon, and will this have implications for the international arms trade? Key arms-exporting and -importing countries abstained in the vote, including Russia and China, and also India – the world’s largest importer of arms in recent years. It is not just that three countries voted against the Treaty and 23 countries abstained; a further 13 countries did not attend for the vote. This shows that there is by no means a consensus on the need for the Treaty. It is uncertain how these sceptics will react now that the Treaty text has been adopted. There is also no certainty that ratification will proceed smoothly in the USA. The arms lobby there is working hard to whip up opposition to the Treaty and, as with the defeat of gun control legislation in the Senate, there is already considerable resistance to the Treaty in the USA.

But even in the countries which actively supported the Treaty process, swift ratification is by no means a given in every case. For example, the Treaty contains

binding provisions on reporting and national record keeping relating to the exports of conventional arms. However, the type of system in place in the EU countries, for example, does not exist everywhere, so appropriate measures must necessarily be implemented before ratification can take place.

One of the criticisms voiced by non-governmental organisations is that although the Treaty aims to create more transparency in relation to the international arms trade, the reporting obligations imposed on the exporting and importing countries do not include a requirement for the reports to be published. The reports are to be sent to the Secretariat and distributed by it, but only to other States Parties. Public pressure will have to be maintained to achieve more openness and transparency.

The Treaty negotiations: timeline

1995-1997: Group of Nobel Peace Prize laureates propose an International Code of Conduct for the arms trade.

2003: The Control Arms Campaign is launched by Amnesty International, Oxfam and the International Action Network on Small Arms (IANSA).

July/October 2006: Presentation of a draft resolution (supported by the EU) for an international arms trade treaty. The resolution is adopted; the United States is the only government to vote against the resolution.

August 2008: Proposal for the establishment of a Group of Governmental Experts.

2009: The General Assembly adopts a resolution which includes a decision to convene a United Nations Conference on the Arms Trade Treaty, to sit for four consecutive weeks in 2012 to elaborate a legally-binding instrument on the highest possible common international standards for the transfer of conventional arms.

2009-2011: Working group holds meetings to consider elements where consensus could be developed for inclusion in a Treaty.

July 2010-February 2012: Four sessions of the preparatory committee are held to prepare for the Arms Trade Treaty negotiations.

July 2012: Failure of the negotiating conference; the process is postponed.

March 2013: Rejection of the Treaty text at the second negotiating conference, with three votes against.

2 April 2013: Referral to the UN General Assembly. The Arms Trade Treaty is adopted by an overwhelming majority, opening the way for ratification.

The question which remains, then, is whether the Treaty will genuinely be effective in curtailing the arms trade in future. More specifically, if the Treaty were already in force, would the supply of arms to the Syrian Government or rebel forces be banned? In Syria, human rights are undoubtedly being violated, civilians are being targeted and war crimes are being committed. The Treaty text states that the transfer of conventional arms covered by the Treaty is not authorised if the exporting government has knowledge that the arms or items would be used to commit such abuses. The Russian delegation pointed out in New York that the word “knowledge” is very broad and implies “full conviction”. Is the Russian Government convinced yet that the Assad regime is committing war crimes, violating the Geneva Convention and trampling human rights under foot? But equally, other governments (such as the United Kingdom) should also be asking themselves whether supplying arms to the Syrian rebels is in keeping with the letter and spirit of the Treaty.

The object of the Treaty is to establish the highest possible common international standards for regulating the international trade in conventional arms for the purpose of contributing to international and regional peace, security and stability and reducing human suffering (Article 1). This signals that trading arms is not the same as trading any other goods. These new universal norms, no matter how weak at present, are the benchmarks against which the Parties will in future be judged. The greater the public pressure for compliance with the Treaty, the less scope governments will have to shirk this responsibility.

Recommendations

Together with other EU Member States, the German Government was an important advocate for the Arms Trade Treaty. It should therefore act swiftly to ratify the Treaty and, prior to its entry into force, adapt its own arms export practices to ensure compliance with the Treaty, but without abandoning the more restrictive provisions of the Political Principles of the German Government governing the Export of War Weapons and Other Military Equipment as valid from 2000, and the EU Common Position of 2008.

Implementation of the Treaty requires, inter alia, that the provisions on small arms adopted by Ger-

many now be adapted to the UN rules, with reporting being aligned to the timeframe set out in the Treaty. The reports on annual exports of the arms covered by the Treaty must be submitted annually by 31 May.

Furthermore, the German Government should do its utmost to protect the Treaty from being undermined. For example, transfers to countries which abstained in the vote (e.g. Saudi Arabia and Qatar) should be conditional on the German exports’ compliance with the provisions of the Treaty.

It is to be hoped – indeed, it is reasonable to expect – that the international norms to control the international arms trade will benefit from positive improvements if human rights in the importing countries become a key criterion. As the first and most important step, however, the Treaty must enter into force. So is the glass half full or half empty? Time will tell – but at least now there is water in the glass!

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Further reading

Control Arms
<http://controlarms.org/en/>

United Nations Office for Disarmament Affairs
<http://www.un.org/disarmament/convarms/ArmsTrade/>

Anna Macdonald: Arms trade treaty may point a way forward for the U.N.
<http://blogs.reuters.com/great-debate/2013/04/09/arms-trade-treaty-may-point-away-forward-for-the-u-n/>

Small Arms Survey – An Arms Trade Treaty: Will It Support or Supplant the PoA?
http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-15.pdf

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