

Why the Arms Trade Treaty matters



After almost ten years of discussion and wrangling, the Arms Trade Treaty entered into force on 24 December 2014. Each State Party must draw up its own list of controlled items consistent with the treaty and all trade activities are included – export, import, transit, transshipment and brokering. Richard Tauwhare explains why it demands attention.

The first conference of the States Parties of the Arms Trade Treaty¹ ('ATT') met in Cancun, Mexico from 24-27 August², marking a key milestone towards the implementation of the first legally-binding agreement on the international trade in weapons. What does the treaty aim to achieve? How was it agreed? What does it do? How is it being implemented? And what difference will it make?

What does the treaty aim to achieve?

On the near-unanimous adoption of the ATT by the UN General Assembly in April 2013, UK Prime Minister David Cameron said: 'This is a landmark agreement that will save lives and ease the immense human suffering caused by armed conflict around the world. This momentous step will make our world safer for all.'

This was and remains the ambitious vision for the ATT. By cutting both the availability of illicit weapons and the irresponsible use of legal ones, the treaty should:

- **Promote development:** conflict fuelled by irresponsibly or illegally-traded arms costs Africa alone some \$18bn a year, roughly the same as it receives in development aid;
- **Combat terrorism and crime:** worldwide, over 1,000 people are killed each day by small arms wielded by terrorists, insurgents and criminal gangs. Two-thirds of homicides are committed with firearms;
- **Reduce suffering:** three-quarters of grave human rights abuse involves irresponsibly-traded weapons and security equipment; and
- **Underpin the legitimate defence trade:** the ATT is not a disarmament treaty. It recognises that states have a right to acquire weapons for internal security, self-defence and peacekeeping.

By establishing common criteria for the legitimate arms trade, it should help to reinforce it.

How was the treaty agreed?

Work began in 2006 with a UN General Assembly vote to develop a treaty. What followed was a unique model for international diplomacy, constructing international consensus over the next seven years through a process which was, in particular:

- **Global:** driven by the seven 'Co-Authors' of the 2006 UN resolution (Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the UK), representing all regions and working together closely as partners;
- **Collaborative:** bringing together governments, industry and civil society, each with its own agenda but finding common ground and leveraging their different constituencies to build support for the treaty;
- **Consensual:** a treaty setting higher

standards could have been rapidly agreed if it had been aimed only at like-minded states. But it was determined at the outset that, for the treaty to have the greatest impact, it must attract the broadest possible support, particularly from the major current and future defence exporters.

There were inevitable differences among the ATT's supporters. In particular, some argued for setting 'no compromise' high standards and exerting political pressure to bring sceptical states on board after the treaty was in force. Others – particularly the Co-Authors – considered that the treaty would ultimately attract more states, and thereby have greatest impact, if all states felt engaged in a genuine negotiating process. This meant making compromises in the treaty but with the long-term aim of strengthening the rules over time.

This tension continued throughout the seven years of negotiation, overseen



by Ambassador Roberto Moritan of Argentina. It came to a head in the meeting in July 2012 intended to conclude the treaty. After one month's intensive negotiations, a deal was close. But the U.S., followed by Russia and other sceptics, insisted on more time. Although Ambassador Moritan's draft text had widespread support, he

The main provisions of the treaty are as follows:

Scope: The treaty covers all types of weapon, including small arms and light weapons. It also covers all weapon parts and components, and ammunition (although there is some ambiguity over whether it includes munitions which

excluded for national security or commercial confidentiality reasons (which risks being exploited as a basis for providing little detail) and there is ambiguity over how far the reports should be made public.

Arms brokering must be regulated, but how this is done is at the discretion of national governments.

Imports, transit and transshipment should be regulated where feasible but this is not mandatory.

Assistance and co-operation: should be provided by those who can give it to those who request it. A voluntary fund is established to provide resources. Extensive help is already available, particularly from the EU, to build administrative capacity, to provide legal, technical, material and financial assistance; and to co-operate and exchange information to combat illicit trafficking, strengthening border controls, training personnel, assisting investigations and prosecutions.

Structures: the treaty provides for a Conference of States Parties, a small secretariat, a dispute resolution mechanism and a process for arms-importing states to request information from an exporting state if, for example, there are concerns about the grounds for an export refusal.

How will the treaty be implemented?

The focus is on four aspects: national implementation, procedures, interpretation and universalisation.

First, the treaty must be implemented on a national level. In the UK, as in other states with well-developed arms trade control regimes, the treaty required only minor adjustments to existing regulations and imposed in practice no new burden on exporting companies. The UK government introduced minor amendments to the Consolidated EU and National Arms Export Licensing Criteria (against which export licence applications are assessed) and extended the extraterritorial controls on arms brokering to cover all the weapons within the scope of the ATT. Besides these, no other measures were required in the UK.

But the great majority of states have little existing legislation, regulations or structures in place to regulate the arms



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concluded that more work was needed to try to win the support of the U.S., Russia, China, India and others.

It took another nine months to reach what Moritan's successor as chair, Australian Ambassador Peter Woolcott, judged to be the highest possible level of agreement. The draft text incorporated significant compromises in a genuine effort to meet the concerns of all sides. This text would have been adopted by consensus if Iran, North Korea and Syria had not chosen to block it. In a UN General Assembly vote in April 2013, the draft treaty was adopted by 154 votes in favour, three against (as above) and 23 abstentions. When it achieved the target of 50 state ratifications, the ATT entered into force on 24 December 2014.

What does the ATT do?

Given widespread misinformation about the treaty, it is important to be clear what it does *not* do:

- It explicitly does not interfere with national rules on the right to bear arms or with domestic arms trade – despite vigorous assertions by some, particularly in the U.S. and Canada to the contrary;
- It does not ban the export of any type of weapon. It is not a disarmament treaty;
- It does not compromise States' legitimate right to self-defence. This is explicitly recognised and promoted throughout the treaty's provisions;
- It does not undermine national standards already in place. It sets a floor, not a ceiling, and encourages States to set higher standards wherever possible.

are not 'fired, launched or delivered', such as mines). Each State Party must draw up its own list of controlled items consistent with the treaty. All trade activities are included – export, import, transit, transshipment and brokering.

Arms exports must be assessed against specified criteria:

- If they would be used for genocide, crimes against humanity or war crimes, the export must be refused (the treaty largely reflects, and does not extend, existing international humanitarian law);
- If there is an overriding risk to peace and security, human rights, international humanitarian law, terrorism or transnational organised crime, the export must be refused;
- The risk of serious acts of gender-based violence, violence against women and children must be taken into account;
- The risk of exported weapons (but not parts, components and ammunition) being diverted, e.g. to an illicit use, must be assessed and mitigating measures must be considered. Despite substantial pressure (notably from Russia) to exclude 'non-state actors' as recipients of arms shipments, company-to-company transfers are not obstructed.

Decisions and reporting: each State Party makes its own sovereign decisions on arms exports on a national basis but must submit annual reports on actual exports and imports. This should enable States Parties to scrutinise and to question others' decisions. But information may be

trade and to combat illegal diversion of weapons. For them, effective implementation depends on practical, capacity-building support. The voluntary trust fund established by the ATT is already acting as the primary instrument for funding this work, but it still needs decisions on an effective mechanism for ensuring the right assistance is provided quickly to those who request it.

Secondly, States Parties need to ensure that the procedures and structure of the treaty are effective and



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cost-efficient. The conference in Mexico last month made substantial progress:

- Establishing rules of procedure for meetings – always a sensitive issue as these can affect the relative balance of power between participants;
- Agreeing to locate the small secretariat in Geneva, against strong competition from Vienna and Port of Spain in Trinidad and Tobago. As a well-established hub for other arms control meetings and related organisations, with permanent diplomatic missions from a wide range of countries, Geneva should be well placed to provide an effective base for the secretariat and States Party meetings;
- Adopting financial rules and a provisional budget to provide for sustainable, affordable funding of the secretariat and any subsidiary bodies on the basis of equitable shares between States Parties;
- Appointing a first Head of the Secretariat, Mr Simeon Dumisali Dladla of South Africa, to serve for a year until a full-scale, merit-based selection process is launched and completed;
- Setting up an informal working group to take forward the crucial issue of reporting. As has already been mentioned, each State Party must submit reports on its exports and imports each year. This needs to be transparent and user-friendly since it is each state's annual report

that will enable its arms export decisions to be scrutinised and held to account by other states and by civil society. But some states remain resistant to the idea of public reporting. Sweden, as facilitator on the issue, has designed a draft reporting template that will now be trialled for 12 months.

A programme of work was agreed for the period up to the next annual ordinary session of States Parties in the second half of 2016. This includes

developing a work plan for the Secretariat, collating best practice and identifying lessons on the implementation of the treaty, and work on the two major issues discussed further below: the treaty's interpretation and universalisation.

Looking first at interpretation: in the interests of attracting the widest possible support for the treaty, compromises during the negotiations left ambiguities and potential loopholes in the text. While the interpretation of a treaty should be based on its ordinary meaning, account should also be taken of subsequent agreements between States Parties and their practice in its implementation. But in the short term there is considerable scope for divergence between States Parties. To take three examples:

- **Scope:** there is an ambiguity over whether *gifts* of arms are included since the ordinary meaning of 'exports' is the cross-border movement of goods for sale; but some states have made clear that they consider that gifts *are* included. For example, in the UK it is a long-established policy that proposed gifts are assessed against the same consolidated criteria³ as other exports. This is a significant issue for China, whose arms exports are frequently labeled as gifts or loans rather than exports;
- **'Overriding risk':** this is the treaty's stated threshold for whether an export should be refused. Some

interpret this as 'more likely than not,' others as 'substantial risk', and others as requiring a judgement weighing the negative against the positive factors. In the UK, the thresholds in the consolidated criteria for the refusal of a proposed export differ between the criteria: in the case of internal repression, the test is whether there is a 'clear risk that the proposed export might be used for internal repression' while for national security, the criterion is discretionary and 'takes into account' a range of risks. Significant differences between States Parties over the application of 'overriding risk' are inevitable until precedent and practice establish guidelines;

- **Diversion:** the treaty requires the risk of the diversion an arms export to be assessed and mitigating measures to be considered. But there is no mandatory refusal in the event of an overriding risk of diversion. This allows States Parties considerable discretion. (In the UK, this is a discretionary criterion although in practice any serious risk of diversion leads to a refusal).

Finally – and arguably most important – is the pursuit of universalisation of the treaty, that is, encouraging all states to join it. At the time of writing, the treaty has 59 signatories and 72 full States Parties. The parties to the treaty include most of the EU, Japan, Australia, New Zealand, Norway, Switzerland and a small but growing number of African, Latin American and Caribbean countries. Signatories (who still need to accede to the treaty) include the U.S., Brazil, Israel, Republic of Korea, the UAE and a range of developing countries still working on completing the necessary legislation. Notable absentees are Russia, China, India, most Middle Eastern states and, oddly placed in this company, Canada.

Much work remains to be done:

- To provide help to those who wish to join but need first to put in place the necessary legislative framework;
- To counter the arguments of opponents of the treaty in the U.S. and Canada that it will impinge upon national gun rights and laws – these are baseless;
- To address the arguments of those who judge that the treaty is biased against their interests, such as India

and many in the Middle East. India in particular has concerns that the treaty may be used as a pretext to cut-off defence supplies to it for political reasons (which India has previously experienced following its nuclear weapon tests). Such states need to be reassured: since the ATT adds little to the existing standards in place in many arms exporters, if they wanted to refuse exports, they could do so regardless of the ATT. But as States Parties, they would have access to mechanisms to challenge exporters if they refuse an export. And by putting in place matching standards, such states stand to gain from the opportunities to integrate their domestic defence industries into global supply chains;

- Finally, to mobilise political pressure on the major current and future arms exporters who would prefer not to have to meet the international standards which the treaty sets. Russia has recently stated that it will not accede. China and India will continue to feel relatively comfortable staying outside as long as they have company – currently being provided by the U.S. and Canada.

What difference will the ATT make?

In measuring the impact of the treaty, the world divides broadly into three camps: states with already well-regulated arms trade; those suffering from poor regulation; and major countries currently outside the treaty.

For the first group, with well-

established arms trade controls, the treaty imposes in practice few new obligations or requirements. But this does not mean that they will be unaffected. As the treaty becomes more widely implemented, it should create a more level international playing field for defence manufacturers, requiring a growing proportion to meet the same high standards for exports. This is a key reason why much of the EU and U.S. defence industry supported the ATT: they understood that it will underpin both their business and their reputations. Some, particularly in civil society, will be disappointed if the ATT does not lead to lower overall levels of arms trade. But this was not an objective: states have a legitimate right to self-defence and security, and other states have a legitimate right to supply them with the weapons necessary for these purposes.

For the second group, suffering from conflict or crime fuelled by illicit or irresponsible arms supplies, the potential gains are more obvious. Already, assistance being provided to help states to ratify the treaty is having effect, building capacity to counter illicit arms trafficking, to bear down on diversion and unregulated brokering, and to manage and reduce weapons stockpiles. In the longer term, raised standards in these countries will support the development of domestic defence production, feeding into wider global supply chains. But their governments need to take action: to pass legislation, to create procedures for import and export, to tighten border controls, to fight corruption in government, police and the military, and to build bilateral cooperation against arms traffickers.

For the third group, specifically Russia and China: while they remain outside the ATT, the treaty's impact on them and on the rest of the world will be significantly limited. Between them, they supply some 40% of the international arms trade and the great majority of irresponsibly and illicitly traded weapons, particularly in Africa and the Middle East (although governments in the Middle East also bear a heavy responsibility).

Even without Russia, China and India, the treaty is delivering some benefits. By most comparisons, the ATT has got off to a good start, entering into force within 18 months of being opened for signature, with some two-thirds of states having signed it and with substantial resources already being deployed to build national capacity and raise national standards.

But this is a long-term project: success should not be measured by what is achieved within one to two years but more likely 10-20 years. Over that timescale, if implemented effectively, this treaty can help transform the way the arms trade operates. Even without some of the big exporters on board, all states will in practice be measured against the norm and held to account. While the ATT may not prevent the supply of weapons by Russia to the Assad regime in Syria, or by China to an irresponsible regime in Africa, it should nonetheless substantially raise the political price of such actions and put heavy international political pressure on the supplying countries – not only from the West but globally – to abide by what will become established international standards.

In the words of Tom Countryman, the U.S. State Department Assistant Secretary and representative at the conference: 'The Treaty is not a solution by itself to the problems of armed conflict that plague the world, but it is a tool that we can use, energetically and effectively, to address those problems.' The First Conference of States Parties has taken an early step down the long road towards transforming the global arms trade.

Links and notes

- ¹ The full text of the ATT is available in all UN languages on the website of the UN Office for Disarmament Affairs
<http://www.un.org/disarmament/ATT>
- ² The report of the Conference is available on the website of the ATT Provisional Secretariat
<http://www.thearmstradetreaty.org/index.php/en/>
- ³ The UK's Consolidated EU and National Arms Export Licensing Criteria, last up-dated in a statement to Parliament in March 2014
<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/wmstext/140325m0001.htm#14032566000018>

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This article is reprinted from the September 2015 issue of *WorldECR*, the journal of export controls and sanctions.

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