

UN Arms Trade Treaty: An Analysis

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Introduction

On April 2nd this year, the United Nations General Assembly (UNGA) passed the Arms Trade Treaty with a majority vote that has been described as a landmark achievement by many analysts. The issue was brought into the limelight by wide scale violations of basic human rights witnessed during a series of crises in different parts of the world.¹ The efforts towards this end started in early 1990s with Amnesty International's advancement of the cause. With a maturation process still to follow, the treaty must be recognized as a step towards strengthening international as well as human security. It directly links the trade among parties in conventional arms to the state of human rights.

Awareness about the issue gradually increased due to the support of Nobel Laureates, NGOs and many others, leading to the establishment of a Code of Conduct on Arms Exports by European Union in 1998, which was revised in 2000.² Things kept evolving until the debate gained vigor after re-entering UN in 2006. A UNGA resolution supporting the treaty was finally passed in 2009, when Obama administration decided to get on board. The ATT has now been passed. Majority of states have approved the treaty, but initially the states could not be mobilized effectively and the draft was taken to the General Assembly as a last resort, where it was finally adopted by a majority vote.

ATT is unique in comparison to other trade regulating frameworks due to the altruistic spirit which underlies it. Its emphasis is on human security; trying to minimize the violations of basic human rights due to inappropriate and illicit use of arms. It appears to be an improvement over the existing situation, but the draft at this initial stage brings to mind lots of questions regarding the logic, final shape and likely implementation mechanisms that would impact the future shape of the treaty.

¹ 'The long journey towards an Arms Trade Treaty', *Amnesty International*, March 27, 2013. Available at, <http://www.amnesty.org/en/news/long-journey-towards-arms-trade-treaty-2013-03-27>.

² Ibid.

The Logic of Linking Trade in Conventional Arms to Human Rights

The basic logic for this linkage is provided by humanitarian law and the human rights law which call for the protection of basic living rights of all human beings in all circumstances on the basis of equality. States are the political entities responsible for ensuring these rights for their citizens.

Currently, a number of international and intra-national conflicts are taking place in different parts of the world. Bloodshed and human rights abuses observed in these places help us to understand the existing link between international peace, security and arms trade. With reference to this conspicuous link, the treaty aims to regulate the behavior of states regarding the use of weapons and arms they buy. The initiative is meant to reduce human suffering which increases with innovation and multiplication of arms.

The ongoing Syrian civil war presents the best manifestation of this link, reinforcing the logic which underlies the treaty. The war in Syria is worrisome where there are two conflicting sides relying heavily on the use of arms. The state is using lethal weapons without bothering to differentiate between rebels and non-rebels. This two year long unrest shows the intensity with which irresponsible arms trade can impact human rights of larger populations making them indirect victims of the conflict.

ATT attempts to make the preservation of human rights a pre-requisite for the arms trade, compelling governments to take better care of their citizens, contributing to an over-all well being of humans across the globe. The logic gains greater strength from the success of earlier efforts made in this direction such as the UN Register of Conventional Arms, established in 1991 which has become a key international mechanism of official transparency on arms transfers.³ Another is the effectiveness of 1997 *Convention dealing with use, production and destruction of Anti-Personnel Mines*, also known as the Ottawa Treaty, which strengthens ATT's logic. It has reduced landmine use to two states in 2007 against 15 in 1999, when it came into force.⁴

³ Assessing the United Nations Register of Conventional Arms, *UNODA Occasional Papers No. 16*, April 2009. Available at, <http://www.un.org/disarmament/HomePage/ODAPublications/OccasionalPapers/PDF/OP16.pdf>.
http://www.sipri.org/research/armaments/transfers/transparency/un_register

⁴ Anup Shah, Landmines, *Global Issues*. Available at, <http://www.globalissues.org/article/79/landmines> .

About The Treaty

The treaty has 28 articles in all. The first one defines the object and purpose of the treaty. The rest cover the scope, checks and controls, and procedural matters pertaining to ratification, implementation, amendments and withdrawal.

Checks and Controls

Article 2 defines the scope of the treaty, i.e. the arms and weapons whose trade and transfers would be directly impacted by the treaty. These include battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons.⁵ In addition to this list, the export regulation also covers ammunition, spare parts and components which could be used one way or the other to complement the listed weapons and arms.

To meet the above objective, the treaty calls for establishing national control systems; maintenance and public availability of national control lists; specifying national contact points for exchanging relevant information; all meant to increase transparency. It restricts trade with countries facing sanctions and embargoes, making states to follow the rules prescribed by internationally agreed frameworks.

From voting to implementation

The passage of the treaty at UNGA has raised great hopes but this initial stage is only the first step towards making the treaty functional. The treaty would get real value only after it is formally implemented, which would take at least 2-3 years. The journey towards implementation begins in June this year when it will be opened for signatures and subsequent ratification by the states. Ratification by at least 50 states is needed to enforce the treaty. Ninety days after the ratification by the 50th state the treaty would enter into force. Only after that the treaty would attain the legal status to impact the international arms trade.⁶

Judging on the basis of time taken by the treaty to arrive at this initial consensus, the processes of implementation, being more complex, are expected to take relatively longer. This is because the states think critically, they do a cost-benefit analysis, and

⁵ Original text of the ATT as adopted by United Nations General Assembly, Available at, [http://www.un.org/disarmament/ATT/docs/ATT_text_\(As_adopted_by_the_GA\)-E.pdf](http://www.un.org/disarmament/ATT/docs/ATT_text_(As_adopted_by_the_GA)-E.pdf).

⁶ Ibid

only after foreseeing the cost effectiveness of proposals they agree or disagree with a treaty. If states decide to remain out, they cannot be forced into it. For ATT the ratifications will follow the same course and some states might take longer than others to fully analyze and ratify the treaty. Therefore, no precise estimate when it would get implemented can be given. After all, debating the issues at national level under diverse forms of political structures is a time consuming process.

Potential obstructers might succeed in hampering the progress in addition to those who opposed the treaty (Iran, Syria and North Korea) and abstained from the voting process during passage of the treaty by the General Assembly. Already abstentions by major global actors including China, Russia, and India in addition to Arab League members have raised concerns about the future of the treaty. These have diminished the hopes of any real impact as the acceptance of these states is crucial to the success of such initiatives and vice versa. Both the abstentions and negative votes challenge the universality of the treaty.

Analyzing the Treaty Draft

The text of the treaty expresses a genuine effort towards ensuring human security by regulating trade in conventional weapons. It tries to ensure peace and stability in addition to promoting confidence building, cooperation and transparency at a global scale. The Preamble recognizes the mutually reinforcing inter-linkages which exist between development, peace and security and human rights. It makes a special reference to women and children who form the majority among those facing direct consequences of conflict and armed violence.⁷ It however tries not to obstruct legitimate arms trade in view of states' political, security and commercial interests, and so lacks components of arms control or disarmament. The treaty also respects the sovereignty of states as at no place it calls for bypassing the limits of their national laws, practices and policies.⁸

The proposed mechanisms, steps and procedures dealing with regulatory authorities, control lists, national records, reporting and exchange of information are aimed at checking diversion, creating increased transparency, enhancing cooperation and reducing the chances of abuse of human rights. All the mechanisms support the cause of the treaty and aim to help states improve their performance and compliance. An exceptional aspect of the treaty is related to withdrawal where a state party to the

⁷ *ibid*

⁸ UN approves first-ever global arms trade treaty, *Pakistan Today*, April 2, 2013. Available at <http://www.pakistantoday.com.pk/2013/04/02/news/foreign/un-approves-first-ever-global-arms-trade-treaty/>.

treaty, if it decides to withdraw afterwards, would not be free of any obligations to which it was bound while being a party to it.⁹ This step tries to induce a permanent behavioral change in states regarding arms trade.

Apart from the prospects for a positive change and betterment associated with the ATT, a number of concerns have been cited by many states, most of which arise from the ambiguities and contradictions in the treaty draft.

- Article 51 of UN Charter, recognizing the right to self defense of all states, has been listed among the main principles on which the treaty is based. This article authorizes states to bypass any treaty obligations under the compulsions of self defense. Although the article guarantees the sovereignty of states, it also provides space to deviate from treaty protocols for the purpose of ensuring self defense; a justification in itself, with no further explanations needed. So, this article may contradict the goals which ATT aims to meet.
- There is an imbalance in the status of importing and exporting states, putting greater restrictions on the former, leaving them in no position to have any decisive impact on the trade in conventional arms. This obvious tilt towards exporting states is in fact an imbalance between rights and responsibilities, with exporters being given greater rights, including the right to decide what should be exported and to whom. The importers contrarily, are over-burdened with duties to ensure the preservation of human rights in their states. How exporters contribute towards promoting human rights is not the subject of the treaty.
- Exporters have the power of assessing the possibilities of diversion of arms for inhuman purposes in the importing states before authorizing the transfers. This aspect gives exporters' a leverage to assess the needs of importers and allow the transfers. This tilt in favor of one group causes concern in the other group due to several reasons:
 - Firstly a neutral and un-biased assessment cannot be guaranteed as in most cases the task of assessment is subjective in nature.

⁹ Original text of the ATT as adopted by United Nations General Assembly, Available at, [http://www.un.org/disarmament/ATT/docs/ATT_text_\(As_adopted_by_the_GA\)-E.pdf](http://www.un.org/disarmament/ATT/docs/ATT_text_(As_adopted_by_the_GA)-E.pdf).

- No clear criteria have been defined on which to base assessments. No specific agencies or organization could be considered as authentic sources of human rights records, nor does ATT specify any.
 - Exporters' assessment and the sharing of authorization related information are subject to their national laws, practices and policies. This negates the idea of transparency the treaty wants to achieve and creates space for transfers to un-authorized actors. This also points towards a lack of accountability for exporters.
 - Permitting the exporters to assess the needs of the importing states as well as the use of weapons within importers' territory tantamount to intervention within the internal jurisdiction of states. This calls for a forced adherence of importers to arrangements to which exporters are a party without caring if they (importers) are also a party. This violates Article 2 (7) of the UN Charter which is one of the principles on which the treaty is based. This broadens exporters' domestic jurisdiction, strengthens their role while giving them greater rights vis-à-vis importers.
 - Last but not the least, the processes of assessment and authorization put a big question mark facing the exporters especially when we refer to cases like Iraq, Afghanistan and the human rights violations faced by Kashmiris and Palestinians. In such cases, consciously authorized arms exports at one time in history, turned into massive disasters for states and peoples at some other (in some cases many years later). This shows the inevitability of the unintended, unexpected and un-thought-of results of arms transfers, authorized in the first place in the best interests of states as well as international peace and security. Arms transferred through authorized trade have played a great part in the wide scale abuse, torture and killing of innocent populations (non-direct conflict participants) in a number of places, most prominent being Afghanistan, Iraq, Somalia, Syria, Lebanon, Kashmir and Palestine in addition to others. Unfortunately the export assessment does not cater for the issue of such distant-in-future reversals and the possible responses and counter-measures in case they occur.
- The defense cooperation agreements among states would remain unaffected by the treaty. This is a partial behavior. This implies that Israel, India, and many others would retain access to arms under such agreements, strengthening their potential to victimize innocent populations.

- The treaty has not proposed any central verification mechanisms to check and counter-check the performance and compliance of states. No space has been left for amendments which the states might want before ratification and implementation; this can cause delay in its enforcement.
- Pakistan voted in favor showing its endorsement of the cause of the treaty and the need of setting universally applicable standards for arms transfers. It, however, desired the treaty to be more inclusive. It would have been possible if some states had shown flexibility to achieve unanimity which could help achieve a long term global improvement. Pakistan's representative to the UN highlighted the imbalance in the draft regarding the status of importers and exporters which leads to a lack of accountability for the latter. Ambassador Masood Khan pointed to the issue of excessive production being left out, which could impact the treaty's effectiveness. He further emphasized that omission of certain important definitions was a departure from the established protocol, which might provide space to interpret these definitions to suit the interests of exporters.¹⁰
- Syria opposed the treaty by pointing towards the selective criteria for denying exports. It also had reservation over the lack of any guarantees regarding the access to weapons of un-authorized actors; an element which gets least focus without any concrete measures being outlined to aptly manage the problem. It further demanded that the right of self-determination of peoples living under foreign occupation must be referred to in the text of the treaty and their status must be clarified in relation to human rights abuses carried out by use of conventional arms (in special reference to Israel). It cannot be discarded as a mere excuse to avoid voting.¹¹ This is a crucial issue as the defense cooperation agreements helping actors like Israel to have access to technologically advanced weapons, stay out of the treaty's ambit and will remain unaffected. Syrian opposition based on above reasons and abstention by Syria's major trading partners clearly shows that ATT's success with respect to managing Syria (if that is the tactical goal as widely believed) cannot be guaranteed.

¹⁰ 'Statement by Ambassador Masood Khan Pakistan's Permanent Representative to the United Nations, at the Final United Nations Diplomatic Conference on the Arms Trade Treaty', *Pakistan Mission to United Nations*, 28 March 2013. Available at, http://www.pakun.org/statements/First_Committee/2013/03282013-01.php.

¹¹ 'We have an Arms Trade Treaty! But the hard work starts now', *Arms Trade Treaty Legal Blog*, April 2, 2013. Available at, <http://armstradetreaty.blogspot.com/2013/04/we-have-arms-trade-treaty.html>.

Conclusion

The ATT is a step forward towards regulating arms trade to counter human rights abuses. However presently, it is far from being perfect and needs amendments to remove its weaknesses and get aligned with the proposed end goals. Among its major weaknesses is the free-hand given to exporters, without calling for their accountability regarding trade. A number of states have already shown their concerns over this imbalance. For ensuring a responsible arms trade, the treaty must strike a balance between the rights and duties of exporters and importers and ideally both must be equally liable to sanctions in case of going astray.

A lack of accountability for exporters as opposed to stringent checks and controls for importing states is a cause of concern for the latter and needs a review to avoid the treaty being labeled as the one unfairly tilted in favor of exporters. Additionally, the treaty must also focus on international and internationalized conflicts in addition to intra-state conflicts which are currently its main target. This is because such conflicts in Iraq and Afghanistan had violently killed more people in 2006-2007 as compared to intra-state conflicts.¹²

Most importantly if technologically advanced countries like China, Russia and North Korea remain outside the treaty, restricting the emergence of cases like Syria becomes a difficult and almost an un-attainable task. Iran, India, Indonesia, Cuba, Sudan, Belarus, S. Arabia, Vietnam, Bahrain, Sri Lanka, Egypt and Kuwait were also among the abstaining parties.¹³ The genuine reservations of these parties must be addressed in order to make ATT more inclusive and more universal, thus ensuring its long term success.

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¹² Global burden of Armed Violence, *Geneva Declaration Secretariat*, Switzerland; Paul Green Printing, 2008, p. 10. Available at, <http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf>.

¹³ [Debidatta Aurobinda Mahapatra](#), 'Arms Trade Treaty: The RIC Perspective', *Russian & India report*, April 9, 2013. Available at, http://indrus.in/world/2013/04/09/arms_trade_treaty_the_ric_perspective_23637\html.