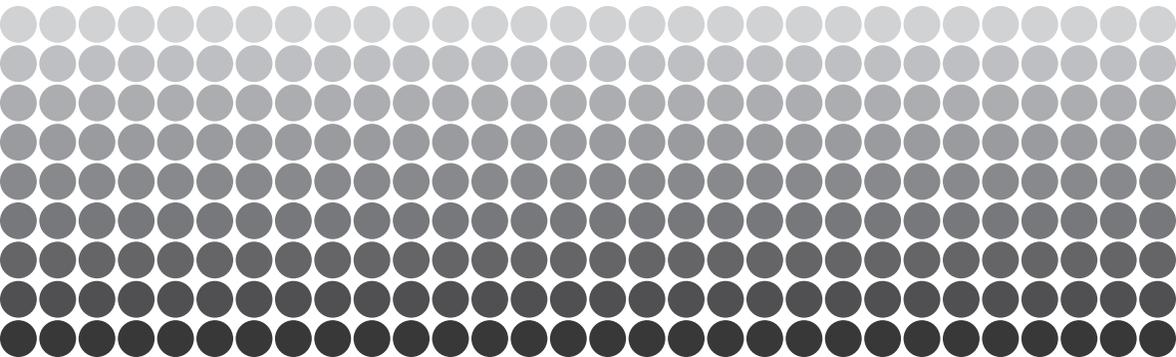


SIPRI YEARBOOK 2014

Armaments, Disarmament and International Security

The Arms Trade Treaty

PAUL HOLTOM



The Arms Trade Treaty

PAUL HOLTOM

Contents

The 2013 final United Nations conference	445
Consensus and the adoption of the Arms Trade Treaty	448
Preparing for entry into force of the Arms Trade Treaty	449

This is an offprint of section I of chapter 10 of

SIPRI Yearbook 2014: Armaments, Disarmament and International Security

Oxford University Press, 2014

Hardback, ISBN 978-0-19-871259-6, xxii+581 pp., £100/\$185

The SIPRI Yearbook is published and distributed in print and online by Oxford University Press—more information is available at <<http://www.sipriyearbook.org/>>

OXFORD
UNIVERSITY PRESS

www.sipriyearbook.org

I. The Arms Trade Treaty

PAUL HOLTOM

After six years of negotiations, the Arms Trade Treaty (ATT)—a legally binding agreement to establish international standards to regulate the international arms trade—was finally adopted and opened for signature in 2013.¹ The ATT aims to prevent the illicit arms trade in order to contribute to peace, security and stability; reduce human suffering; and promote cooperation, transparency and responsible action in the arms trade.

The United Nations process to negotiate the ATT began in 2006, and brought together UN member states, civil society organizations and arms industry representatives.² Negotiations in the UN were expected to wrap up in July 2012 at the UN Conference on the ATT. However, the conference ended without agreement on the draft treaty text. The UN General Assembly agreed in December 2012 to convene a final conference on the ATT in March 2013, intended as a continuation of the July 2012 conference, albeit with a new conference president, Ambassador Peter Woolcott of Australia. A report on the final conference was to be delivered to the General Assembly ‘at a meeting to be held as soon as possible after 28 March 2013’.³

While the final UN conference on the ATT concluded without achieving consensus on the treaty text, the ATT was adopted following a vote in the UN General Assembly on 2 April 2013. This section provides an account of the final UN conference on the ATT and the treaty’s adoption in 2013, as well as some of the preparations for its entry into force.

The 2013 final United Nations conference

Despite a break of several months and a new conference president, there was considerable continuity in the process between the 2012 and 2013 conferences. The final draft treaty text of the 2012 conference was used as the basis for negotiations during the 2013 conference, and throughout the 2013 conference the same issues continued to separate the ‘progressive’ states (which sought to promote a robust and workable ATT with a special emphasis on avoiding the negative impact of arms transfers on national and

¹ For a summary and other details of the Arms Trade Treaty, including a list of signatories and ratifications as of 31 Dec. 2013, see annex A, section I, in this volume.

² On the background to the UN process see Holtom, P. and Bromley, M., ‘Arms trade treaty negotiations’, *SIPRI Yearbook 2013*; and Holtom, P. and Wezeman, S. T., ‘Towards an arms trade treaty?’, *SIPRI Yearbook 2007*.

³ UN General Assembly Resolution 67/234, 24 Dec. 2012.

human security) and ‘sceptical’ states (which sought a treaty that would be limited in its scope and would avoid ‘subjective’ assessment criteria).⁴

On the first day of the conference, 108 progressive states called for ‘considerable improvement’ to the 2012 draft treaty text, in particular the inclusion of ammunition in its scope, the elaboration of provisions relating to the prevention of diversion, and the strengthening of the criteria for risk assessment for export.⁵ India, one of the most vocal sceptical states, called for the treaty to explicitly address trafficking to terrorists and ‘other unauthorised or unlawful non-State actors’ and, most crucially, balance the obligations of exporters and importers.⁶ The five permanent members of the UN Security Council—China, France, Russia, the United Kingdom and the United States—primarily took a pragmatic approach, calling for a treaty that was ‘simple, short and easy to implement’, and calling on all states to lower their expectations in order to reach the common goal of ‘consensus’ and recognize that the 2012 draft text ‘contains some compromises that it is essential to preserve’.⁷

Woolcott appointed 11 facilitators to conduct informal meetings on the main points of disagreement in the draft treaty.⁸ While most aspects of the draft treaty were covered by these group meetings, states directed most energy towards the ATT’s scope, prohibitions, criteria for export assessment, diversion and relationship with other international agreements. Woolcott noted that in some cases the facilitators ‘reshaped’ the treaty and in others ‘identified the fact that there could be little further development of a particular issue’.⁹ The USA continued to play the key role in blocking the calls for an explicit prohibition on transfers to unauthorized non-state actors. It also opposed calls for moving ammunition from a dedicated article into Article 2(1) on scope (which would have subjected ammunition to export risk assessments, diversion-prevention measures and ATT reporting requirements). Both of these positions had a large number of supporters. China remained instrumental in blocking moves for regional

⁴ Bromley, M., Cooper, N. and Holtom, P., ‘The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history’, *International Affairs*, vol. 88, no. 5 (Sep. 2012), pp. 1040–44.

⁵ United Nations, Final UN Conference on the ATT, Statement delivered by Mexico on behalf of 108 states, New York, 18 Mar. 2013. This and other statements are available at <<http://www.un.org/disarmament/ATT/statements/>>.

⁶ United Nations, Final UN Conference on the ATT, Statement by Sujata Mehta, Permanent Representative of India to the Conference on Disarmament, New York, 18 Mar. 2013.

⁷ United Nations, Final UN Conference on the ATT, Declaration by H. E. Jean-Hughes Simon-Michel, Permanent Representative of France to the Conference on Disarmament, on behalf of the China, Russia, the UK, the USA and France, New York, 18–28 Mar. 2013.

⁸ United Nations, General Assembly, Report of the Final United Nations Conference on the Arms Trade Treaty, A/CONF.217/2013/2, 2 Apr. 2013.

⁹ Woolcott, P., ‘A multilateral negotiation: finalising the ATT text’, Presentation at ‘The Arms Trade Treaty: Past, present and future’, Geneva Forum, SIPRI and the Friedrich-Ebert-Stiftung, Geneva, 20 June 2013.

organizations to be party to the ATT, as it continued to tie the issue to the European Union (EU) embargo on supply of arms to China.

Most changes to the 2012 draft treaty constituted a reshuffling of contents or minor amendments and tweaks (e.g. the number of ratifications required in order for the treaty to enter into force was lowered from 65 to 50). There were two areas in which significant changes were undertaken.

First, the loophole in the 2012 draft ATT which stated that the ATT 'shall not be cited as grounds for voiding contractual obligations under defence cooperation agreements' was watered down by removing the reference to 'contractual obligations' and moving the remainder of the paragraph to Article 26, which deals with the treaty's 'relationship with other international instruments'.¹⁰ Article 26(1) emphasized that obligations contained in other 'international agreements' shall be consistent with the obligations contained in the ATT, ensuring that defence cooperation agreements no longer provided a loophole for evading ATT obligations.¹¹ This change ensured that one of India's 'red lines' had been crossed and pushed its lead negotiator close to opposing the adoption of the ATT.

Second, the two-tiered risk assessment outlined in Article 4 of the 2012 draft treaty, on 'national assessment', was replaced in the 2013 treaty text by (a) a single level covering assessments for risks relating to international humanitarian law, international human rights law, international conventions or protocols relating to terrorism, and international conventions or protocols relating to transnational organized crime; (b) the creation of a new article dedicated to addressing diversion; and (c) a requirement to take into account the risk of gender-based violence or serious acts of violence against women and children.¹² Mexico, as facilitator of the informal group on diversion issues, played the key role in expanding a single line in the 2012 draft treaty into an article that addressed measures to be taken by states parties to prevent diversion, and which encouraged information sharing in this regard.¹³ However, the 2012 draft treaty's explicit requirement that states parties consider the risk of corrupt practices and impact on development before authorizing an arms export was removed. Consideration of the risk of gender-based violence or serious acts of violence against women and children was retained primarily due to effective lobbying by civil society organizations, with the cause eventually taken up by 100 states.¹⁴

¹⁰ United Nations, General Assembly, 'The draft of the Arms Trade Treaty', 26 July 2012, A/CONF.217/CRP.1, Article 5(2).

¹¹ Arms Trade Treaty (note 1), Article 26.

¹² United Nations, General Assembly (note 10), Article 4; and Arms Trade Treaty (note 1), Articles 7, 11.

¹³ Arms Trade Treaty (note 1), Article 11.

¹⁴ '100 states support strengthening the criterion on preventing gender-based violence', *Arms Trade Treaty Monitor*, vol. 6, no. 8 (27 Mar. 2013), p. 5.

The treaty text presented to UN member states on the final day of the final UN Conference on the ATT was therefore different from the 2012 draft in a number of areas. However, it still contained the constructive ambiguities created as a result of compromises negotiated over several years, and did not elaborate in detail the steps that states parties would have to take to implement the ATT. Woolcott expressed the view that ‘the final text could not have been any stronger and still held the disparate interests in the room together’ and that in the run-up to the final day ‘there was a feeling of optimism that a consensus outcome might be possible’.¹⁵

Consensus and the adoption of the Arms Trade Treaty

On 28 March 2013 the UN conference failed to adopt the ATT by consensus. After last-minute consultations and repeated requests for clarification by the conference president, three states—Iran, the Democratic People’s Republic of Korea (DPRK, North Korea) and Syria—objected to the adoption of the treaty text on the grounds that it lacked balance with regards to exporter and importer rights, and because their proposals were not sufficiently reflected in the treaty. Algeria, Armenia, Belarus, Bolivia, Cuba, India, Indonesia, Nicaragua, Pakistan, Russia, Sudan, Venezuela and the Arab Group did not veto the text but stated that they would not adopt the current text.¹⁶ India stated it was close to opposing the adoption of the ATT, for similar reasons to those put forward by Iran, North Korea and Syria.

Mexico tried to argue that there is no definition of ‘consensus’ and called for adoption of the text without a vote, but this was opposed by China, India, Iran and Russia.¹⁷ After the conference closed, Kenya introduced a draft resolution for the text to be adopted by the UN General Assembly, on behalf of the seven co-sponsors of the original 2006 General Assembly resolution on the ATT—Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the UK—as well as Mexico, Nigeria, Norway and the USA.¹⁸ On 2 April 2013 the General Assembly met to consider the draft resolution and the ATT was adopted by a vote of 155 in favour to 3 votes against, with 22 abstentions.¹⁹ The ATT was then opened for signature on 3 June 2013.

¹⁵ Woolcott (note 9).

¹⁶ Acheson, R., ‘The failure of consensus’, *Arms Trade Treaty Monitor*, vol. 6, no. 10 (29 Mar. 2013), pp. 1–2.

¹⁷ United Nations, Final UN Conference on the ATT, Statement by Juan Manuel Gomez Robledo, Head of Delegation of Mexico, New York, 28 Mar. 2013.

¹⁸ United Nations, General Assembly, ‘The Arms Trade Treaty’, Draft resolution A/67/L.58, 1 Apr. 2013.

¹⁹ In the recorded vote on 2 Apr. 2013, 154 states were in favour, with 3 against and 23 abstaining. Angola originally abstained but later voted in favour of the treaty text. Abramson, J., ‘Special report: UN General Assembly adopts Arms Trade Treaty in overwhelming vote’, *Arms Control Today*, vol. 43, no. 4 (May 2013).

Woolcott has argued that, while the final conference ‘did not deliver a substantive consensus outcome in the formal sense’, a consensus-governed process striving for a negotiated consensus outcome delivered a final treaty that only 3 of the 193 UN member states openly opposed. In his view, the General Assembly resolution that convened the 2013 conference provided states with the option of legitimately taking the treaty text to a General Assembly vote when the consensus approach was exhausted.²⁰ This view of the process was opposed by China and Russia, both of which explained that one of their key reasons for abstaining from the vote (the only public reason given by China) was their opposition to the adoption of the ATT through a majority vote in the General Assembly.²¹ China has concerns about setting a precedent for other arms control negotiations, although there are hopes that it may still sign the ATT.²² In contrast, it is less likely that Russia will sign the ATT, even after careful study.²³

Preparing for entry into force of the Arms Trade Treaty

The ATT was opened for signature on 3 June 2013 and on the first day 67 states signed the treaty.²⁴ By 31 December 2013, a total of 115 states—including the USA—had signed the ATT, including 9 that had ratified it.²⁵ This number is expected to increase during 2014, when EU member states are able to complete their ratification processes following a review by the European Parliament and the adoption of a EU Council decision.²⁶ The treaty will enter into force 90 days after it has been ratified by 50 states—it is expected that this could happen before the end of 2014.

There are several sets of challenges ahead for those seeking to establish a treaty regime for regulating international arms transfers and preventing diversion to ensure that both the state security and human security goals of the ATT are achieved. First, as states review their arms transfer control systems as part of the process of ratifying the ATT, it is expected that they will face challenges in translating the constructive ambiguity of the treaty into law, policy and practice. For example, existing regional, international

²⁰ Woolcott (note 9); and UN General Assembly Resolution 67/234 (note 3), Operative para. 7.

²¹ ‘China: UN Arms Trade Treaty should be reached through consensus’, Xinhua, 3 Apr. 2013; and ‘Russia warns that it may not sign landmark UN arms treaty’, *Moscow Times*, 4 Apr. 2013.

²² Bromley, M., Duchâtel, M. and Holtom, P., *China’s Exports of Small Arms and Light Weapons*, SIPRI Policy Paper no. 38 (SIPRI: Stockholm, Oct. 2013), p. 11.

²³ Pukhov, R., ‘Russia’s special opinion on the Arms Trade Treaty’, Valdai Discussion Club, 17 Apr. 2013, <http://valdaiclub.com/defense/57540/print_edition/>.

²⁴ ‘More than 65 countries sign landmark treaty regulating multibillion-dollar world arms trade’, Associated Press, 3 Jun. 2013.

²⁵ For a list of signatories and ratifications see annex A, section I, in this volume.

²⁶ Council Decision 2014/165/EU of 3 March 2014 authorising Member States to ratify, in the interests of the European Union, the Arms Trade Treaty, *Official Journal of the European Union*, L89/44, 25 Mar. 2014.

and multilateral agreements and texts offer different interpretations of key treaty terms such as ‘transfer’, ‘overriding risk’, ‘knowledge at the time of authorization’ and ‘mitigation measures’.

Second, a number of states that are supportive of the goals of the ATT lack the legal infrastructure and capacity to develop an effective transfer control system to meet the requirements of the ATT. While Article 16 of the ATT outlines international assistance provisions for states parties, it does not provide for assistance to help establish systems to fulfil treaty commitments before the ATT enters into force. However, this challenge had already been acknowledged during the 2012 conference, and the UN Office for Disarmament Affairs (UNODA), together with Australia, Denmark, Germany, the Netherlands and Spain, has established the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) to provide support for early ratification and entry into force of the ATT.²⁷ States, regional organizations and non-governmental organizations are also providing assistance to states prior to the treaty’s entry into force.²⁸ For example, in December 2013 the EU established a dedicated ATT implementation support programme to support states’ efforts to implement the treaty.²⁹

Third, the question of the location of the future ATT secretariat has led to divisions in the progressive alliance of states in the Global North and Global South that formed during the ATT process, with Trinidad and Tobago competing with Austria and Switzerland to host the secretariat. In contrast, there is broad support for Mexico’s proposal to host the first conference of states parties.

²⁷ UN Office for Disarmament, ‘UNSCAR: UN Trust Facility Supporting Cooperation on Arms Regulation’, <<http://www.un.org/disarmament/UNSCAR/>>.

²⁸ Bromley, M. and Holtom, P., ‘Arms Trade Treaty assistance: identifying a role for the European Union’, EU Non-Proliferation Consortium, Discussion Paper, Feb. 2014, <<http://www.nonproliferation.eu/activities/activities.php>>, p. 3.

²⁹ Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L341, 18 Dec. 2013; and Bromley and Holtom (note 28).