

Politics of Arms Trade Treaty Negotiations

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Summary

The making of an ATT has to pass through dynamics of world politics. At times, it gives the impression of formation of new political groupings based on enlightened self-interest of the concerned parties. Simultaneously, it also signals traditional international political groupings shaping the agenda when European arms suppliers and the US join hands for inflicting more control on recipients. In fact, multiple interactions are shaping negotiations for an ATT. The final outcome may be the reflection of the balancing act played by the international community. Any imbalance will result in an ineffective treaty. Both a robust treaty without key members and a weak universal treaty are of little use. The treaty needs to be capable of addressing existing and perceived threat of the world; at the same time, it should be flexible enough to meet emerging security challenges.

The on-going Diplomatic Conference meeting which seeks to conclude an Arms Trade Treaty (ATT) will end on July 27, 2012. As the ATT is not a treaty for disarmament or a step towards general disarmament, it has a different framework for negotiations. It is going to be concluded as a treaty for *regulation* of arms trade. An ATT, whatever shape it takes, will be implemented by the national governments of signatories and the national export controls systems and their procedures will include the provisions of an ATT. There will be no role for any “supranational agency” for licensing or export controls of defence goods. This Conference was prescribed by the United Nations (UN) General Assembly Resolution; it assembled for four weeks from July 2, 2012, onwards and will conclude on the last working day of the fourth week, that is, on July 27.

Centrality of the UN

The UN has been the nodal institution for the campaign for an ATT. It is hosting negotiations at present but previously, for many years, it passed resolutions for an ATT. The 2009 resolution prescribed convening of a “United Nations Conference” (the Diplomatic Conference).¹ Earlier, the UN played a very important role in preparing for the outline of the treaty, for which it helped organize an open-ended working group and the Group of Government Experts.

The December 2006 resolution of the General Assembly asked the UN Secretary General “to seek the views of Member States on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms.”² Over 100 countries submitted their national positions for an ATT. In general, countries favoured “a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms.”³

The UN General Assembly Resolution also asked the Secretary General to set up “a [G]roup of [G]overnmental [E]xperts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards

¹ United Nations, General Assembly, “Arms Trade Treaty”, Resolution adopted by the General Assembly: on the report of the First Committee (A/64/391), Sixty-fourth session, Agenda item 96 (z), A/RES/64/48, January 12, 2010, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/res/64/48&Lang=E, accessed on July 2, 2012

² United Nations, General Assembly, “Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms”, Sixty-third session, Item 91 of the provisional agenda, A/63/334, August 26, 2008, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/63/334&Lang=E, accessed on July 2, 2012

³ Ibid.

for the import, export and transfer of conventional arms.”⁴ The Group was formed on the principle of equitable geographical distribution.

Research and studies undertaken by different UN bodies helped the countries in understanding intricate issues of the proposed treaty. A number of earlier UN initiatives also helped in the making of an ATT. Though the 1978 “First Special Session on Disarmament of the UN General Assembly” had discussed conventional munitions problem, some measures taken in subsequent years addressed the issue of conventional arms trade more precisely. The “United Nations Standardized Instrument for Reporting Military Expenditures” (1980) and the “United Nations Register of Conventional Arms” (1991) gave early support for the idea of bringing conventional arms trade into a transparency and control framework. In 1991, the five Permanent Members of the UN Security Council espoused “Guidelines for Conventional Arms Transfers” and later, in 1996, the Disarmament Commission accepted the “Guidelines for International Arms Transfers”. Earlier in 1992, too, the UN Disarmament Commission issued the “Guidelines and Recommendations for Objective Information on Military Matters”.

In May 2001, the UN General Assembly adopted the “UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition”, supplementing the “United Nations Convention against Transnational Organized Crime”. In the same year, in July, the United Nations adopted the “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspect”. In 2005, the international community through the UN measure – the “International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons” – tried to intervene in disturbing illicit transfer.

The general understanding of member-states was that the making and the nature of treaty should adopt “a step-by-step” approach. The UN Secretary General report reflected this thinking. The same report also acknowledged that the member states by and large favoured negotiations for the treaty in an open and transparent manner. Also, the principle of consensus was favoured in the Group of Governmental Experts. The Group also asked to strike a balance between responsible conventional arms trade and the right to self-defence under Article 51 of the UN Charter.

⁴ United Nations, General Assembly, “Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms”, Resolution adopted by the General Assembly: on the report of the First Committee (A/61/394), A/RES/61/89, December 18, 2006, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/89&Lang=E, accessed on July 3, 2012

The UN convened four meetings of the Preparatory Committee (PrepCom) in 2010 and 2011 to gather ideas from the member countries before starting the Diplomatic Conference. These PrepComs resulted in two drafts from the chairman of the Committee. A number of position papers from member states, regional and other groupings along with NGOs were presented. These position papers most certainly shaped the agenda of ATT negotiations in the Diplomatic Conference. The overall objective of the UN holding the PrepComs was to ensure that the eventual treaty is a legally binding instrument, balanced and effective.

Important Issues

Through different UN committees, including PrepCom, several provisions for an ATT have emerged. As these provisions may enter into the national systems of the member countries during the processes of implementation and enforcement, it is quite natural that the member countries have responded through various mechanisms. The debate is taking place on issues ranging from drawing a control list to transit and transshipment controls, to the scope of treaty. The principles and criteria are also witnessing divergent approaches from different international and global forces.

From the very beginning, the scope invited divergent approaches among nation-states and other groupings. If a country like the US opposed the very conclusion of the treaty, many other countries, even those which wanted an ATT, supported a flexible treaty. A consensus emerged that the treaty must target illicit and irresponsible transfers, and non-state actors (read terrorists) should not get benefit. A large number of countries such as the United Kingdom (UK) and Germany favoured a comprehensive ATT while others like India did not favour such a treaty. The latter felt that it is “premature to work on a comprehensive, legally binding instrument”⁵. Some countries also maintain that the real problem lies in non-implementation of existing obligations.

In the Chairman’s draft paper, the scope of the treaty included tanks, military vehicles; artillery systems; military aircraft (manned or unmanned); military helicopters (manned or unmanned); naval vessels (surface and submarine vessels armed or equipped for military use); missile and missile systems (guided or unguided); small arms; light weapons; ammunition for use of weapons to be included in the treaty; parts or components specially and exclusively designed for these weapons and munitions; technology and equipment for the design; and development, manufacturing and maintenance of these weapons.

The scope of the treaty, too, witnessed debate among the international community. A number of countries such as France and Sweden favoured a robust treaty with most of the weapons included in its ambit. Other countries such as Brazil and Indonesia wanted to keep the list shorter. The developing world seemed to have a problem with including

⁵ No.2 Towards An Arms Trade Treaty

“technology” in the treaty. Most developing countries appeared to support the inclusion of “Small Arms and Light Weapons (SALW)” into the treaty. Some of the countries favoured starting with the UN arms register and SALW. The leading countries which made this submission—that is, to start with UN Arms Register and SALW—included Brazil, El Salvador, India, Indonesia, Malaysia, New Zealand, and Thailand, among others. Quite interestingly, Japan opposed the inclusion of dual-use technology in the scope. It feared that the inclusion of dual-use goods may affect the genuine commercial trade.

The Chairman’s draft also proposed an institutional framework for implementation of the treaty. According to the proposal, member countries were asked to establish a national contact point. This national contact point would work with the Implementation Support Unit (ISU) of the treaty. The ISU was proposed to be set up later to serve as the repository for annual reports of the member countries as well as reports on disputes on transfer denials; to support assembly of state parties and member countries; to “act as a clearinghouse for offers and requests for assistance”⁶; to coordinate with other international and regional organizations; to promote outreach to increase awareness of the objectives of the ATT; and to take up other important responsibilities arising from time to time. A few countries felt that ISU may start a new wave of politics after the conclusion of ATT.

The proposal also had a provision for details for transfers. The Chairman’s draft wanted the future ATT to have a “description of arms”, and “the proposed recipient state and end user.”⁷ However, it wanted states parties to keep denial notification confidential and not to use for commercial advantage. The draft proposed the future ATT as having an arrangement for information exchange, record keeping, reporting and transparency.

Parameters, principles and criteria have also been the issues on which countries contested. The subjective criteria, such as regional stability and human rights, were opposed by many countries. China was at the forefront in opposing the inclusion of the human rights criterion. However, a number of countries from the developing world supported the international human rights law and international humanitarian law. Similarly, though the regional stability factor may have been generally disliked, yet countries did bring in some regional arrangements for conventional trade.

⁶ United Nations, General Assembly, “Report of the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty”, United Nations Conference on the Arms Trade Treaty, 2-27 July 2012, A/CONF.217/1, issued on March 7, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/1&Lang=E, accessed on July 1, 2012

⁷ Ibid

Forces Behind the Treaty

ATT has been driven primarily by two major actors – non-governmental organizations (NGOs) and the European countries. Among the NGOs, Control Arms may have emerged as an umbrella organization; yet for years, organizations such as Oxfam, Saferworld and Transparency International effectively campaigned for the treaty all over the world. Some non-governmental research organizations also joined in the campaign and provided informed inputs about the contested concepts and issues. NGOs roped in parliamentarians, eminent people from different walks of life, victims and former soldiers to campaign for an ATT. These organizations generally are supporting a robust treaty, except some like the National Rifle Association and World Forum on the Future of Sport Shooting Activities.

Though generally, most member countries of the UN have a highly interactive relationship with NGOs, the latter's efforts have received a stronger support from European countries, especially the UK. These NGOs have also worked with African and Caribbean countries very closely. It seems their efforts resulted in the July 20, 2012 statement issued by 74 countries for a robust ATT.⁸ The group which issued the statement included countries from Europe, CARICOM, Africa and other geographical groupings.

European countries not just issued the statement and supported major NGOs but also actively campaigned for an ATT. The European countries worked in the UN in passing the resolutions and subsequently in different groups and committee set up for helping negotiations for the treaty. During the PrepCom meetings, Australia made the maximum number of interventions. Yet European countries, through the interventions of the European Union (EU) delegation and individual countries, exceeded any other country or group of countries. The EU delegation had made 18 interventions, Switzerland made 11 interventions, and the UK 8. Other European countries such as France, Norway, Sweden and Germany were also active. The UK was the most active country, both outside and inside the UN, for an ATT. In the Diplomatic Conference, though the EU intervened only once, other leading countries such as UK, France and Germany have been making interventions. At the Diplomatic Conference, more than the number of interventions, the intensity and substance of negotiations would matter. The EU is pushing for a robust treaty. It has been working with the US as well.

However, the most remarkable feature of ATT negotiations was the division within the Western alliance. American, European and non-European partners are active pursuing the conclusion of negotiations towards an ATT. As discussed, European countries and Australia are in the forefront. Japan with its three no's has already got very restrictive arms export policy. Interestingly, in the PrepCom, and even in the statement made in the

⁸ Joint Statement by 74 Countries in Favour of a Strong ATT, Reaching Critical Will, July 20, 2012, http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/negotiating-conference/statements/20July_groupof74.pdf, accessed on

Diplomatic Conference, it has been trying to take a balanced position. It, along with its neighbour South Korea, did not sign the July 20, 2012 statement for a robust treaty. It is true that the current move for negotiations for an ATT gathered momentum after US supported the move for negotiations. The US supported negotiations for the conclusion of an ATT after resisting it for years. Inside the US, there is still visible and invisible resistance; the former can be seen in the statements coming from the National Rifleman Association. However, there is a strong belief that US arms industry is also opposing the conclusion of the treaty domestically.

India's Dilemma

India is actively seeking the formulation of an ATT. However, India's national positions submitted in different committees reflect the dilemma it faces because of its unique security situation. The country is facing terrorism and SALW have been used as tools of terror against its population. Even security analysts supported the idea of calling SALW "Weapons of Mass Destruction". Illicit and clandestine transactions of these weapons came from within India's neighbourhood. This led to the Indian support for any initiative, including the ATT, for curbing illicit and illegal transactions of SALW. Quite possibly, the illicit transactions of these weapons are also making India realize the significance of a regional arrangement to bolster the ATT. When the UN General Assembly Resolution fixed the concrete time table for negotiations, which included the concrete work plan for PrepCom and the Diplomatic Conference, India supported the move and made submissions for different committees such as the Group for Governmental Experts and PrepCom.

To further deal with the uncertain security situation in its neighbourhood, propelled by massive military modernization of China, India is paying attention to its defence preparedness. For this, India has to import arms, especially major platform systems as well as develop strategic weapons and some major weapon systems. Initially, India was not in favour of a comprehensive ATT. It made it clear in its submission to the Group of Governmental Experts. Its focus was on small arms and light weapons control. However, when the majority of countries supported an enhanced regulatory mechanisms or best practices of arms export controls, India also evolved its position.

Though it did not oppose export control provisions such as transit, transshipment and brokering control, India wants to balance obligations for export control and those of import control. India went along with the international mood that the national government, and not any supra-national body, will be the nodal point to implement the treaty. As it is going to be a recipient of arms in the near future, and it knows the complexity involved in the licensing system, India would not like to have an arms licensing system that may trouble it in or after procuring arms. Similarly, as an emerging Research and Development country that requires technology for the development of indigenous weapons systems or the science and technology base of the country, India opposed the inclusion of technology in the scope of the treaty. Sensing trouble in record keeping of ammunition, India seems to have not supported the idea of including ammunition within the scope of the treaty.

India did not agree with some of the provisions articulated through Chairman's draft papers because these provisions may restrict India's national interest. India remains a strong supporter of international organization, yet it did not support the making of the ISU. The Indian delegation felt that an interaction of a state party with other state parties is a better option. India was of the view that many international regulatory mechanisms work without any secretariat. It did not favour a body which may have to depend on "financial and human resources made available perhaps by a group of countries and not fully responsible to the states parties. Implementation is and should remain the responsibility of states parties meeting at regular intervals."⁹

India also opposed detailed reporting and record-keeping provisions. It felt that these provisions would only burden the national governments. Also, it considered that there are national security, foreign policy and commercial sensitivities involved. India opposed notification and discussion of denials primarily because it found these intrusive and onerous and potential for politicization. The Indian delegation stated in the PrepCom: "Our objective is not to prescribe how export control systems should be designed or how they should be enforced. Our objective is to ensure that transfers are authorised after consideration of the criteria specified in the proposed treaty in due process based on national law and administrative procedures. Apart from being clearly national, implementation should also not burden importing and transit countries while granting intrusive rights to exporters to seek information and inspections. In our view the proposed treaty should reflect a balance between the rights and obligations of importers and exporters."¹⁰

Conclusion

The making of an ATT has to pass through dynamics of world politics. At times, it gives the impression of formation of new political groupings based on enlightened self-interest of the concerned parties. Simultaneously, it also signals traditional international political groupings shaping the agenda when European arms suppliers and the US join hands for inflicting more control on recipients. In fact, multiple interactions are shaping negotiations for an ATT. The final outcome may be the reflection of the balancing act played by the international community. Any imbalance will result in an ineffective treaty. Both a robust treaty without key members and a weak universal treaty are of little use. The treaty needs to be capable of addressing existing and perceived threat of the world; at the same time, it should be flexible enough to meet emerging security challenges.

⁹ United Nations Conference on the Arms Trade Treaty, Intervention by Amandeep Singh Gill of India, Third ATT Prep Com, 14 July 2011, Statements on an Arms Trade Treaty, available at <http://www.un.org/disarmament/convarms/ATTPrepCom/Documents/Statements-MS/PrepCom3/2011-July-15/2011-07-15-India-E.pdf>, accessed on

¹⁰ Ibid.