

**Institute for Security Studies**

POLICY BRIEF

RECOMMENDATIONS

- Since its UN debut in 2006, the ATT debate has been focused around three interlinked topics, i.e. feasibility, parameters and scope. It is primarily within the debate concerning scope that ammunition continues to be raised as a theme of contention. A majority of African states strongly support the inclusion of ammunition within the scope of the ATT. African states must strive to maintain this position.
- The ATT must be an international, legally binding instrument based on states' existing obligations under international law. It must be properly implemented to close the loopholes associated with the uncontrolled trade in conventional weapons and ammunition, including technology transfer. The ATT must also establish binding criteria for analysing international arms transfers on a case-by-case basis and clearly determining when an arms transfer is prohibited. This is particularly important for Africa, as it is one of the regions in the world most affected by the impact of armed conflict.
- The ATT must regulate all types of arms transfers, including import, export, re-export, temporary transfer and trans-shipment via state-sanctioned and commercial trade, plus transfers of technology, loans, gifts and aid; and all arms trade-related transactions, including those by dealers and brokers, and those providing technical assistance, training, transport, storage, finance and security. Technology transfer should also be regulated, as the absence of such regulations may create a loophole to get around the prohibitions in the ATT.

Priorities for African states negotiating for an Arms Trade Treaty

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SUMMARY

A strong Arms Trade Treaty (ATT) is needed because of the poorly regulated international transfer of conventional arms and the current absence of global standards based on human rights and international humanitarian law to control such transfers. This situation will continue to cost hundreds of thousands of lives each year and blight the livelihoods of millions of people in many countries unless the international community takes principled and resolute action to deal with it.

In an attempt to address this issue, all United Nations (UN) member states gathered at the UN Headquarters in New York over the period 2–27 July 2012. Despite an intense four weeks of negotiations, the conference could not reach agreement on a treaty text. The historic lack of action on regulating the international trade in conventional arms is, as the UN Secretary-General has said, rather unfortunate. Ban Ki-moon noted rising military expenditure, armed conflict and human rights violations as requiring concerted, collective action on this issue.¹

While different entities play different roles in the arms trade, all should be bound by a collective responsibility to uphold what must be the key objective of the treaty: the preservation of human security and the prevention of human suffering. Achieving this treaty will require not only good faith among all participants but an uncompromising dedication to alleviate human suffering.

This policy brief aims to provide objective analysis of key aspects of a future ATT that are applicable to Africa in particular. It recommends that African states prioritise several specific areas of text at the upcoming UN conference on the ATT scheduled to take place on 18–28 March 2013.

ORIGINS OF THE ARMS TRADE TREATY

There are currently no legally binding international standards for the export and import of conventional weapons or for the brokering of such deals. On 24 July 2006 Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the United Kingdom presented a draft resolution entitled 'Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms'. The UN General Assembly adopted the resolution, which established a group of governmental experts in 2008 to examine the feasibility of an ATT and requested member states to submit their views on such a treaty to the UN Secretary-General.

In 2009 the General Assembly adopted a resolution that included a decision to convene a UN conference on the ATT in 2012 to negotiate a legally binding instrument that would lay down the highest possible common international standards for the transfer of conventional arms. It established four preparatory committees in 2010 and 2011 to make recommendations to the negotiating conference on the elements necessary for an effective treaty.

The ATT process is ongoing and during November 2012 the General Assembly decided to convene another conference over the period 18–28 March 2013 to conclude the work begun in July 2012. The vote on the continuation of the ATT negotiation process had an unprecedented outcome, with 157 states voting in favour of the ATT conference, 18 abstentions and no votes against. The chair of the March 2013 conference will be Ambassador Peter Woolcott of Australia. However, agreeing on a strong treaty will not be an easy task.

WHY THE ATT MATTERS FOR AFRICA

Africa is one of the regions in the world most affected by the impact of armed conflict. Weapons have streamed into the continent for decades, devastating the lives and livelihoods of countless people, and destroying economies.

Even though the draft ATT text is the result of extensive negotiations and compromises among states, especially those states with significant influence on the international arms trade, the current draft text could in some places undermine the goals and objectives of the treaty.

It is imperative that African states continue to advocate for a treaty that covers a broad range of weapons, including small arms, light weapons and ammunition. To be effective, governments should be required to regulate the international trade in and transfer of weapons, perform risk assessments before authorising an arms transfer, and track the use of exported arms. The treaty should also prevent governments from transferring arms to any state that is subject to a UN arms embargo and prevent arms transfers in instances where serious human rights violations have occurred in the intended recipient state.

During the July 2012 negotiations the government of South Africa stated that it:

... supports an ATT that will regulate all arms transfers, both military and commercial. Thus, it should not be limited to the weapons covered by the UN Arms Register, but should include small arms and light weapons, as well as ammunition. While some states may believe that the administrative burden of regulating ammunition may be too excessive, South Africa believes that the death, injury and suffering caused by ammunitions, particularly to civilians in armed conflict, and the use of illicit small arms and light weapons by far outweigh such administrative concerns.¹

The majority of African states support this position, which is why it is imperative for African states to keep the momentum going. African states need to continue to resist

pressure to weaken the treaty and should hold firm for a robust ATT in March 2013. The draft ATT text is a good basis for a treaty, but various loopholes need to be addressed during the second round of negotiations.³

RECOMMENDATIONS FOR AFRICAN STATES

- **There is a need for the scope of the ATT to be expanded to include munitions, ammunition, parts and components under draft Article 2(A).** Under existing UN Register definitions, the seven categories of arms devised 20 years ago exclude military technologies, some types of military vehicles and aircraft, lower-calibre artillery, and potentially lethal weapons and munitions used in internal security operations, yet these are usually included in national export control lists.⁴ Under Article 6 of the Draft ATT, states parties must also control the export of ammunition for conventional arms categories listed in Article 2, and likewise parts and components for conventional arms must be controlled 'to the extent necessary' (because these are often dual-use items). However, the term 'ammunition' as it is used in draft Article 6(4) does not necessarily include all munitions such as bombs, grenades, mines and other military explosives. Therefore the ATT should reflect existing widespread state practice and explicitly include munitions, ammunition, parts and components in Article 2(A)(1).⁵ This would be achieved through an amendment to Article 2(A)(1), which should be expanded to include '(j) Munitions, ammunition, parts and components for use with weapons defined in subparagraphs (a) to (h)'.
- **Implementing an ATT requires clearly defined obligations for states parties.** The term 'transfer' on its own under Article 2(2)(B3) is too broad and does not impose a clear obligation on states. In the interests of a strong ATT, it is recommended that this article be expanded to specifically mention the import, export, re-export, temporary transfer, trans-shipment, transit, transport, lease, loan or gift of conventional arms.
- **Strong language in Article 4 is essential and must require the refusal of transfers that are likely to violate international humanitarian law (IHL) and international human rights law (IHRL).** To be effective, the ATT must require all states parties to refuse, suspend or revoke the authorisation of an international transfer of arms that is likely to be used to commit or facilitate a serious violation of IHRL or IHL. Language in Article 4(5) must be maintained that clearly states that the state party concerned 'shall not authorise' a transfer if violations of IHL and IHRL could occur.
- **Language relating to defence cooperation agreements must be amended.** The wording of Article 5(2) could be interpreted to mean that any existing or new defence cooperation agreements between states

parties that conflict with the ATT could enable states to ignore their obligations under the ATT.⁶ It is extremely important that this loophole is removed through the amendment or removal of this language in Article 5(2).

- **The prohibition of transfers is a very important article in the ATT and needs to be enhanced. The current wording ('for the purpose of facilitating the commission of genocide') in draft Article 3(3) gives the impression that the exporting state itself intends to facilitate genocide etc. This wording makes this provision extremely weak and it requires amendment.** The current wording also does not capture the existing international law principles that a state cannot aid or assist another state in the commission or maintenance of an internationally wrongful act. A suggested revision could be:

A State Party shall not authorize a transfer of conventional arms within the scope of this Treaty if the transfer would facilitate the commission of genocide, crimes against humanity, war crimes or a consistent pattern of serious violations of international human rights law.⁷

- **Exporting states must undertake a rigorous and objective assessment of the potential risks of a proposed transfer.** The use of the word 'could' in Article 4(2) under national assessment does not accomplish this and sets a very low due diligence standard for states to adhere to, because many proposed arms exports 'could' eventually be used, for example, to commit serious violations of human rights or IHL, and thus states would not need to be rigorous in their risk assessments. It is important that Article 4(2) be revised as follows: 'The State Party shall assess whether the proposed export of conventional arms is likely to:'
- **Article 4(1) requiring states parties 'to assess whether the proposed export would contribute to or undermine peace and security' is vague.**⁸ This should be more specific so that national authorities can interpret it more objectively. States should suggest that Article 4 should be amended to explicitly require such a responsibility. Article 4(1) could, for example, be amended to read:

Each State Party shall assess whether the proposed export is likely to contribute to or undermine peace and security in the country and region of final destination and if a proposed arms export would seriously undermine peace and security then the exporting State shall refuse to authorize that export.⁹

- **Draft Article 4(6) has very weak language on measures to avoid international arms transfers being diverted; being used to commit or facilitate**

gender-based violence, transnational organised crime or corrupt practices; or impacting the development of the importing state.¹⁰ Instead of 'shall consider taking feasible measures ... to avoid the transfer of arms', this text could be strengthened by encapsulating a basic obligation that all States Parties 'shall take feasible measures ... to avoid the transfer of arms'.¹¹

- **Given the danger posed by unregulated arms-brokering activities, as recognised by the General Assembly and by states in other UN and regional bodies, more attention needs to be paid to Article 8 on brokering.** The second sentence in Article 8 should be amended to: 'Such controls shall at a minimum require brokers to obtain written authorisation before engaging in brokering transactions.'
- **Under Article 10 on reporting and record-keeping, an explicit responsibility to publish annual reports of both authorisations and actual transfers, including authorisations for arms brokering, would enable the conduct of states parties to be subjected to full public scrutiny.** Therefore, the first sentence of Article 10(5) should be amended to read:

Each State Party shall submit annually to the secretariat by 1 July a report for the preceding calendar year concerning the authorisation and actual transfer of conventional arms under the scope of this Treaty, including authorisations for arms brokering activities.

In order to achieve this, draft Article 10(1) should also be amended so that each state party is required to maintain national records 'of authorisations and actual transfers of the conventional arms under the scope of this Treaty, including authorisations for arms brokering activities'. States should push for an amendment to Article 10(2) and suggest that record-keeping be extended from 10 years to 20 years. Record-keeping for 20 years is important because of the longevity of conventional arms and in order to ensure consistency with the International Tracing Instrument.

- **Under Article 16 on entry into force, the requirement of the deposit of the 65th instrument of ratification, acceptance, approval or accession with the depositary¹² is currently set too high.** States should advocate for 30 states to ratify the treaty in order to speed up its entry into force, because this is the practice under some disarmament instruments and would be more appropriate for the ATT.
- **Draft Article 20(3) on amendments would require amendments to the treaty to be adopted by consensus,¹³ which has the potential to make amendments impossible.** This clause needs to be revised. The consensus rule should not be used to allow

a single state party to unduly constrain or prevent most states parties from developing the treaty in future. In line with other treaty amendment processes, the ATT could instead include a provision in Article 20 similar to the following:

The Conference of States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

NOTES

- ¹ G Dube, African States Push for a Bullet-Proof Arms Trade Treaty at the United Nations, ISS TODAY, 27 November 2012, http://www.issafrica.org/iss_today.php?ID=1573 (accessed 25 February 2012).
- ² J Kellerman, Statement delivered by South Africa at the United Nations Conference on the Arms Trade Treaty, 5 July 2012, http://www.un.org/disarmament/ATT/statements/docs/20120706/Member%20States/20120706_South%20Africa_E.pdf (accessed 8 July 2012).
- ³ G Dube, African states push for a bullet-proof Arms Trade Treaty at the United Nations, ISS TODAY, 27 November 2012, http://www.issafrica.org/iss_today.php?ID=1573 (accessed 25 February 2012).
- ⁴ UN (United Nations), Draft of the Arms Trade Treaty, ACONF.217/CRP.1, 1 August 2012, http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.217/CRP.1&Lang=E (accessed 7 February 2013).
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ Amnesty International, Arms Trade Treaty: key issues for consideration, 3 December 2012, <http://www.amnesty.org/es/library/asset/.../2012/es/.../act300872012en.pdf> (accessed 7 February 2013).
- ⁸ UN, Draft of the Arms Trade Treaty.
- ⁹ Amnesty International, Arms Trade Treaty.

¹⁰ UN, Draft of the Arms Trade Treaty.

¹¹ Amnesty International, Arms Trade Treaty.

¹² UN, Draft of the Arms Trade Treaty.

¹³ Ibid.

ATT-RELATED ONLINE RESOURCES

Amnesty International	http://www.amnesty.org/en/campaigns/control-arms
ATT Legal Blog	http://armstradetreaty.blogspot.com
ATT Negotiation Mapping Database	http://armstreaty.org/index.php
Control Arms	http://www.controlarms.org/home
International Committee of the Red Cross	http://www.icrc.org/eng/war-and-law/weapons/index.jsp
International Action Network on Small Arms	http://www.iansa.org/campaign/arms-trade-treaty
Oxfam	http://www.oxfam.org/en/category/freetags/arms-trade-treaty
Reaching Critical Will	http://www.reachingcriticalwill.org/disarmament-fora/att
Saferworld	http://www.saferworld.org.uk/what/arms-trade-treaty-
Stockholm International Peace Research Institute	http://www.sipri.org/
Transparency International	http://www.ti-defence.org/focus-areas/att
United Nations Institute for Disarmament Research	http://unidir.org/bdd/ficheactivite.php?ref_activite=537
United Nations Office for Disarmament Affairs	http://www.un.org/disarmament/ATT/

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