

Saferworld Briefing



The 2012 Arms Trade Treaty Negotiations Controversy, Compromise and Disappointment

Elizabeth Kirkham, September 2012 *

Looking back over the U.N. Arms Trade Treaty (ATT) process — from its inception in the form of UNGA Resolution 61/89 of 18 December 2006 to the July 2012 Diplomatic Conference — it is striking how much progress was made in a comparatively short period of time.

In less than six years, U.N. member states started discussions that, in the early stages, centred on the issue of whether an ATT was in fact feasible, then progressed by way of a Group of Governmental Experts process, through two sessions of an Open-Ended Working Group and four Preparatory Committee meetings. Along the way there were also two consultations under the auspices of the U.N. Secretary General, and then the culminating effort, spanning four weeks this July (2012), to negotiate a Treaty.

This process undoubtedly reflected a sense of common purpose and conviction among the more than 150 states that voted in favour of the three successive U.N. resolutions of 2006, 2008 and 2009 and who also engaged positively in the discussions throughout all aspects of the U.N. process. However, it is also important to recognize that the rapidity of the progress was in no small measure due to the outstanding leadership of Ambassador Roberto Garcia Moritán of Argentina, who skilfully guided states through the U.N.

process and presided over a Diplomatic Conference that very nearly delivered.

So Near

The draft Treaty (A/CONF.217/CRP.1) on the table by the end of the Diplomatic Conference on 27 July was not perfect, by any means; but it was undoubtedly stronger than many had expected, given the complexity of the issues at stake and, crucially, the constraints of a U.N. Conference hidebound by consensus decision-making on all matters of substance.¹ Moreover the draft Treaty was a significant improvement over the first full draft text that had been circulated just a few days earlier, on 24 July, which had been widely criticized by civil society and progressive states as being weak in all key respects. Following the circulation, on the final Thursday afternoon, of the revised text — in the form of an actual draft Treaty — a night-time session was held during which there emerged a growing sense that CRP.1 might just pass unopposed or, at least, with very few states speaking out against it.

In the end, the fact that the Treaty was not adopted by the Conference was less about differences among states over the substance of the proposed agreement or running out of time, and more about electoral pressures within the United States and concerns that agreeing to an ATT at this time could lose President Obama votes in November. Throughout, U.S. negotiators participated extensively

in the Diplomatic Conference process expending considerable effort to advance their government's priorities and defend its red-lines. This meant that the final draft Treaty text contained several U.S.-driven compromises — for example, the absence of ammunition from the scope — that, in many eyes, served to weaken the potential Treaty. However, once the U.S. had signalled its intention to block agreement on the final morning of the Conference (by asking for “more time”) the Conference was effectively over.

Despite a palpable sense of disbelief, the reaction to this news was swift. A group of over 90 states signed a statement, delivered to the Conference by Mexico, in which they expressed disappointment and frustration at being denied the opportunity to reach agreement and a willingness to try to finalize matters through the U.N. General Assembly. Further to this call, in one of his final and most significant acts as president, Ambassador Moritán put forward the draft Treaty CRP.1 to be annexed to the report of the Conference for transmission to the U.N. General Assembly First Committee (Disarmament and International Security); this proceeded unopposed. As a result, CRP.1 has been accorded official status, attached to the president's report on the Conference, thereby ensuring that the work undertaken is preserved and increasing the chances of this text forming the basis of an eventual ATT.

Good in Parts

Given the official status of CRP.1 and its potential role in the future development of an ATT, it is worth considering the relative strengths and weaknesses of this text. As noted earlier, the draft Treaty text was not viewed — by anyone — as a panacea for the excesses of the international arms trade and significant problems have been identified by governments and civil society alike.

Notwithstanding this, the positives of CRP.1 could be considered to lie, among other things, in the following:

1. Clear goals and objectives that clearly state that the purpose of the ATT is to prevent human suffering.

2. A scope that includes small arms and light weapons, that is, those weapons that are responsible for most deaths due to armed violence.
3. A requirement that, as part of the arms export decision-making process, states undertake an assessment based on the risk that a transfer could be used to facilitate human rights and humanitarian law violations or terrorist acts.
4. A requirement that states should take steps to avoid the possibility that potential arms exports may have an adverse impact on development; contribute to gender-based violence or violence against children; become subject to corrupt practices; or be used in transnational crime.
5. A requirement that states report on arms transfers under the scope of the Treaty and on steps they take to implement the Treaty.
6. The establishment of a Secretariat to assist states parties in the “effective implementation of the Treaty.”
7. Dispute settlement provisions that allow for the possibility of arbitration.

On the other hand, the negatives of CRP.1 include the following:

1. A scope that explicitly includes major conventional weapons only to the extent specified under the categories of the U.N. Register of Conventional Arms, allowing states, if they wish, to exempt significant quantities of military equipment from control.
2. The failure to include ammunition and parts and components in the scope, with the consequence that these crucial items are controlled for export only based on risk factors relating to human rights and humanitarian law (point three above) and are excluded from considerations pertaining to diversion and also to development, gender-based violence and violence against children, corruption and transnational crime (point four above).
3. The requirement that a refusal to authorize an arms transfer because of the risk of undermining human rights and humanitarian law (point three above) be based on an “over-riding risk” as opposed to a “substantial” or “significant” risk, thereby setting the bar unrealistically high.

4. The possibility that arms transfers that are classified by states as “defence co-operation agreements” would be exempt from the Treaty’s provisions.
5. Reporting requirements that do not include ammunition or parts and components, that allow states to submit as much or as little information as they wish, and that do not provide for information to be made publicly available.
6. A requirement that 65 states must ratify the Treaty before it enters into force, meaning it could be many years before the Treaty is operational.
7. Amendment provisions that will be haunted by the spectre of consensus decision-making.

Controversy and Compromise

The negotiations that took the U.N. to the brink of establishing a global ATT were often complex and unpredictable and, at times, opaque. Contrary to the agreed Rules of Procedure, around half of the Main Committee sessions during weeks two and three of the Conference were designated “closed,” meaning that civil society was excluded from important sections of the debate; other closed sessions were also held during weeks three and four.

Controversies also abounded on matters of substance. One of the most intractable issues centred on the treatment of ammunition. The U.S. government was at the forefront of efforts to exclude ammunition from the scope of the potential agreement, while many African states were equally convinced that a Treaty that did not include the issue of ammunition would be of very limited worth. After much debate and posturing on this issue, the “fix” on ammunition emerged only in the last hours of the Conference. While the proposed compromise was regarded as unsatisfactory by most civil society groups and a number of (mainly African and Caribbean) states, there was still optimism when the Diplomatic Conference resumed on the final Friday morning that, with some further adjustment, a stand-off could be avoided.

There were also significant debates regarding references to armed violence, gender-based violence, development, corruption and the threshold of risk (whether the requirement that arms transfer risk

assessments should be based on an “overriding” risk had set the bar too high), with many civil society groups and progressive states arguing for their inclusion (or, in the case of risk threshold, its amendment) in various parts of the text. In addition there was debate regarding the balance between humanitarian considerations and those relating to preventing the illicit arms trade within the Goals and Objectives; there was also significant controversy over the implications of the exemption for “defence co-operation agreements.” Most of these issues were resolved to a greater or lesser degree, however, and to generally positive effect — with the exception of the last. However, because of the U.S. action to block consensus on the morning of 27 July the Conference was effectively deprived of valuable time during which outstanding issues could have been further debated.

Making It Work

So, would a Treaty in the form of CRP.1 make a significant impact on the poorly-regulated international trade in arms? Given the crucial weaknesses in the Text — in particular in relation to its treatment of ammunition and the exemption for defence co-operation agreements — this is, perhaps, doubtful. However, if it had been possible to address these and other issues in the final hours of the Conference then the final outcome might well have provided a useful basis for an effective international arms transfer control regime.

At the same time, however, it is important to recognize that the key to the effectiveness of any Treaty lies in its implementation. In the case of the ATT, this will be dependent on both the thoroughness and quality of the implementation by states parties and on progress towards universality. With regard to the latter, the perennial dilemma facing supporters of the ATT has always been the likely trade-off — and indeed the apparent inverse proportionality — between numbers of states parties and the strength of the agreement.

For a fleeting moment at the July Conference (prior to the U.S. final intervention) it appeared possible that a text based on CRP.1 might be adopted by consensus with the support of several of the world’s

largest arms exporting nations. Given recent data indicating that in 2011 the U.S. had a 77.7 percent share of the global trade in arms, their support, in particular, would have been an important achievement.²

Whether the draft Treaty would have gained the explicit support of the other major arms exporters or major world powers was less clear, however. While the detailed position of Russia was not well known (until they followed the U.S. lead in calling for more time) the Russian delegation was largely silent on the floor of the U.N. and certainly showed no inclination to lead any effort to block agreement. Whether Russia would sign a Treaty based on CRP.1 remains in doubt, however, particularly given the international controversy surrounding its arms sales to Syria. The Chinese delegation, on the other hand, appeared to play a quietly constructive role throughout the negotiations. In particular, they abandoned their previous insistence that small arms and light weapons and ammunition should be excluded from the Treaty and seemed willing to see an ATT emerge despite concerns about the nature and application of some parts of the draft text — in particular the export criteria. Again, whether China would actually sign an agreement based on CRP.1 remains an open question.

Conclusion

Although most governments and civil society groups were hugely disappointed and frustrated by the failure of the ATT Conference, the fact that agreement actually appeared within reach has also served as an important spur to the continued effort to reach such agreement. Currently, however, the prospects for CRP.1 — or some modified version — emerging as the actual ATT remain unclear. While there has been discussion about taking the draft Treaty text (with some key fixes) through the U.N. General Assembly, the likelihood of a second Diplomatic Conference cannot be discounted. Whatever path is chosen, it will be crucial that the next step in the U.N. ATT process is a decisive one that enables the conclusion of a Treaty as soon as possible; ensuring that any future Diplomatic Conference is not constrained by

consensus decision-making would certainly help facilitate such an outcome. Finally, given that CRP.1 will, in all likelihood, form the basis of future discussions, it will be imperative that serious efforts are made to address the deficiencies of the draft Treaty to ensure that a truly robust ATT emerges that will save lives and livelihoods.

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Elizabeth Kirkham is the small arms and transfer controls advisor for Saferworld, an independent international organization working to prevent violent conflict and build safer lives.

Notes

1. The draft of the Arms Trade Treaty can be found on the Saferworld website at <http://www.saferworld.org.uk/downloads/120726%20CRP.1%20%28draft%20ATT%20text%29.pdf>
2. Grimmett, R. F. and Kerr, P. K., *Conventional Arms Transfers to Developing Nations, 2004-2011*, Congressional Research Service, August 2012. Accessed at <http://www.fas.org/sgp/crs/weapons/R42678.pdf>

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While we are not a traditional development agency, we seek to understand and influence the relationship between conflict, security and international development.

We work in 17 countries in Europe, Africa, the Middle East and Asia. We have over 80 staff, based in Bangladesh, Kenya, Kosovo, Nepal, Somalia, Sri Lanka, Sudan and Uganda, as well as in London, Brussels and Vienna. Our funding for 2010-2011 was around £6.8 million – mainly in the form of government grants from Canada, Denmark, the EU, Germany, the Netherlands, Norway, Sweden, and the UK.

Saferworld – 28 Charles Square, London N1 6HT, UK
Registered Charity no 1043843
Company limited by guarantee no 3015948
Tel: +44 (0)20 7324 4646 | Fax: +44 (0)20 7324 4647
Email: general@saferworld.org.uk
Web: www.saferworld.org.uk