

Arms Trade Treaty: A Critical Analysis

Ghazala Yasmin Jalil*

Abstract

The Arms Trade Treaty (ATT), in force since 2014, aims to regulate the international trade of conventional weapons, estimated to be worth US\$100 billion a year, and seeks to reduce the illicit arms trade with the aim to reduce human suffering caused by illegal and irresponsible arms transfers. The paper uncovers the complexities of the decades-long negotiations process, and the politics at play involving such widely differing interests as non-governmental organisations, the arms importing and arms exporting countries. It discovers that the drafting of the treaty was heavily influenced and dominated by the interests of the powerful arms exporting countries. It resulted in a treaty that has many flaws and loopholes that can be exploited for political interests and many escape clauses whereby the arms exporters can continue to conduct arms trade as business as usual. The paper also looks at ATT from Pakistan's perspective and discusses its significance for Pakistan.

Keywords: Conventional Arms Trade, Illicit Trade, Civil Society Groups, International Human Rights Law, International Humanitarian Law, Arms Exporting States, Arms Importing States.

Introduction

The Arms Trade Treaty (ATT) sets standards for the international trade of conventional weapons and seeks to reduce the illicit arms trade. It aims to reduce human suffering caused by illegal and irresponsible arms transfers, improve regional security and stability, as well as to promote accountability and transparency by state parties concerning transfers of conventional arms. It was opened for signature on June 3, 2013 and entered into force on December 24, 2014. Although it sounds like a simple and straightforward treaty with simple aims, it is far from being

*The author is Research Fellow at the Institute of Strategic Studies Islamabad.

the case. It represents a microcosm of differing interests of various stakeholders — the arms producers, arms exporting countries, the arms importing countries, and the non-governmental organisations (NGOs) — each with their own aims and interests to safeguard. ATT is a treaty that was negotiated after decades of campaigning by NGOs, with a lot of haggling by negotiating states.

This paper aims to uncover the complexity behind the ATT negotiations, the differing interests that were at play at the time and the possible effectiveness of the treaty. Is ATT a balanced and an effective treaty, and is it in Pakistan's interest to sign it? This study examines questions: Does it favour all countries or only certain countries or actors? what are the loopholes, if any, in the treaty? and how does it affect Pakistan?

The conventional arms trade brings together vital interests in security, foreign policy, economics and human security, often confronting states with conflicting demands that eventually need to be translated into a policy. In the negotiations leading to ATT, all these interests were at play. The paper attempts to uncover the politics of arms trade and how these were eventually weaved into ATT.

The paper argues that, while ATT regulates conventional arms trade in order to prevent diversion of weapons and consequent human suffering, ATT also provides a legal cover for powerful interest groups and states.

Theoretical Framework

The paper seeks to apply the Realist School of Thought, which argues in essence that international institutions are created by powerful states to further their own interests. Real politik has strong presence in institutions.¹ Put differently, theory of institutionalism puts great faith in institutions, arguing they are key means to promoting world peace. Realists, on the other hand, maintain that institutions are basically a reflection of the distribution of power in the world. "They are based on self-interested calculation of the great powers.... Institutions matter only

¹John Mearsheimer, "The False Promise of International Institutions," *International Security*, vol. 19, no. 3, Winter, 1994-5, 7.

on the margins.”² While the paper does not go as far as to argue that ATT was created by the powerful states to further their interests, it does demonstrate how the interests and objectives of powerful states dominated the negotiations of ATT and were ultimately reflected in the final treaty text.

Literature Review

The literature on ATT is mostly focused on the negotiation process over the decades³ and also the potential of the treaty to reduce human suffering through the regulation of the arms trade.⁴ The latter strain also includes debate on the developmental potential of the treaty by reducing the negative consequences of armed violence and promoting sustainable development.⁵ One particular important book tackles the core and most divisive legal problem of whether or not the laws relating to arms control and relevant norms of international law provide substantive restrictions upon the transfer of small arms by states.⁶ However, there is a distinct lack of literature assessing the treaty after it entered into force. Therefore, there is not much literature assessing whether the treaty is an effective one or whether there are any loopholes that can affect the implementation or effectiveness of the treaty. Accordingly, this paper aims to present an assessment of the treaty together with its pros and cons and how that may impact on future conventional arms trade. Finally, there is virtually no analysis on Pakistan’s position on ATT. The present paper aims to fill this gap.

²Ibid., 7.

³ Dominique Dye, “Africa and an arms trade treaty,” issue 191, *Institute for Security Studies* (South Africa)

⁴ Elli Kytomaki, “The Arms Trade Treaty and Human Security: Cross Cutting Benefits of Accession and Implementation,” International Security Department, February 2015, Chatham House, the Royal Institute of International Affairs, <https://www.chathamhouse.org/publication/arms-trade-treaty-and-human-security-cross-cutting-benefits-accession-and-implementation>, also see Binalakshmi Nepram, *India and the Arms Trade Treaty: Making Disarmament Meaningful to People’s Lives* (India Research Press, 2009).

⁵ Elli Kytomaki, “How Joining the Arms Trade Treaty can Help Advance Development Goals,” International Security Department, December 15, 2014, Chatham House, the Royal Institute of International Affairs, <https://www.chathamhouse.org/publication/how-joining-arms-trade-treaty-can-help-advance-development-goals>

⁶Zeray Yihdego, *The Arms Trade and International Law*, Hart Publications, 2007

Genesis of the Arms Trade Treaty

The idea of an arms trade treaty was propounded by the Costa Rican President, Oscar Arias, a Nobel laureate, who proposed a set of standards to regulate international arms trades in the 1990s. However, it was the NGOs dealing with issues of peace and security and arms control that campaigned for over two decades to make ATT possible. Some of these NGOs included the Arias Foundation for Peace & Human Progress, Amnesty International, Oxfam, Saferworld, Global Parliamentarians for Action and the International Action Network on Small Arms (IANSA) who lead the Control Arms Campaign. During mid to late 1990s, Amnesty International and a small number of NGOs joined Oscar Arias and other Nobel Peace Prize laureates in a campaign for a legally binding International Code of Conduct on Arms Transfers. Their efforts began to bear fruition when, in 1998, the European Union agreed on a non-legally binding EU Code of Conduct on Arms Exports with a human rights criterion. Oscar Arias, laureates and NGOs circulated a draft in November 2000 to all the UN member states of a legally binding international Code of Conduct on Arms Transfers.⁷

In 2003, Amnesty International, Oxfam and IANSA together with more than 100 organisations formed a coalition called the Control Arms coalition. The coalition was formed in response to the lack of regulation in the international trade in arms and argued that it was fuelling armed conflict, poverty and human rights abuses worldwide. Its purpose was to mobilise international political opinion to put pressure on governments to negotiate a strong and effective arms trade treaty. It campaigned in over a hundred countries in the next several years and support for ATT grew from a few governments to over 50, including the UK.⁸ The campaign used mass public actions, public consultations, policy publications and lobbying of government officials and diplomats. It used the “Million Faces” petition, which brought together people around the world who had suffered from armed violence. The petition reached its goal in 2006, when it was presented to the UN Secretary-General, Mr. Kofi Annan.

⁷“Timeline of Arms Trade Treaty Campaign Landmarks,” Amnesty International Fact Sheet, March 4, 2013, ACT/30/016/2013

⁸ Ibid

The efforts to win support for the treaty took on a momentum with more governments supporting it. In July 2006, early supporters of the treaty, namely Argentina, Australia, Costa Rica, Finland, Japan, Kenya and the UK circulated a UN General Assembly resolution “Towards an Arms Trade Treaty”.⁹ Again, in December the same year at the UN General Assembly, 153 States voted in favour of a resolution calling on the Secretary General to seek views of member states on the feasibility, scope and draft parameters of ATT. There were 24 abstentions and only the US voted against the resolution.¹⁰ In parallel, the Control Arms coalition held more than a 100 “people’s consultation” events around the world to convince governments to support an effective ATT. The efforts of the NGOs had started to take effect. In 2009, 153 UN member states voted for starting a formal UN process for negotiating ATT including a series of five preparatory meetings leading to an ATT negotiating conference in July 2012.

Conflicting Positions in Negotiations

The negotiations brought together different groups with diverse aims and interests. The negotiation to draft ATT brought together state parties, NGOs and civil society groups. The states were divided into those who supported the adoption of the treaty, those who had some reservations and those who were firmly opposed to it. The states were also divided into arms exporting states and arms importing states. All the differing interests and concerns were reflected in the negotiation process.

The NGOs and civil society groups had a very idealistic stance on ATT. They were looking for a wide scope of the treaty, whereby all categories of weapons would be included, as well as munitions, parts, and technology transfers and gifts. They were also looking for a treaty with robust enforcement mechanisms and strict criteria for transfers. They were also looking to include a clause on victims’ assistance. For the NGOs, it was a “way to create a framework that would create stability, and seek reduction of proliferation of weapons around the

⁹ Ibid

¹⁰ UNGA resolution A/RES/61/82, Session 61, meeting 67, December 6, 2006, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/82&Lang=E

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world.”¹¹ Brigadier (Rtd.) Mujahid Alam, a Pakistani consultant with Amnesty International who was closely associated with the negotiations, said, “The NGOs had an idealistic picture in their mind. Their objectives were not wrong but were unrealistic.”¹² Therefore, the initial draft was watered down to accommodate differing parties involved and their respective interests.

There were many reservations and objections by the major arms exporting countries. Their stance heavily influenced the final draft of the treaty. For example, China accepted the need for a treaty to recognise international human rights and humanitarian law, but opposed strict rules for such criteria since they are very difficult to judge objectively. Chinese diplomats wanted to exclude ammunition as parts and components from the treaty as well as transfers and gifts of arms from one state to another. Also, the draft treaty required states to establish a national control list of arms; China firmly opposed any clause for such lists to be published.¹³

Russia, the world’s second largest arms trading country, also had a substantial influence on the ATT negotiations. It abstained during the UN General Assembly vote in November 2012 to continue negotiations on ATT. Russia had similar objections as China, where it objected to including binding rules on international human rights law, international humanitarian law and socio-economic development. Russian diplomats argued that such rules would be interpreted in a subjective and ideological way. Russia did not object to the categories of conventional weapons to be included, but had objections to publishing the entire control list. Russia’s emphasis was on targeting the diversion of trade into the illicit arms market.¹⁴

France, also a major arms exporter, developed a progressive position on ATT in line with principles in the EU Common Position on Arms

¹¹ Interview with Shazia Rafi, former Secretary-General of Parliamentarians for Global Action, January 29, 2016.

¹² Interview with Brigadier (R) Mujahid Alam, on January 29, 2016.

¹³ “The ‘big five’ in Arms Trade Treaty Negotiations,” Amnesty International Media Briefing, March 2013, <https://www.amnesty.org/download/Documents/.../act300172013en.pdf>

¹⁴ Ibid.

Control, established along with other EU governments. It supported Amnesty International's *Golden Rule* which said that no arms transfers will be approved if there is a substantial risk that could be used to commit or facilitate serious violations of international humanitarian law or international human rights law. France has supported a comprehensive ATT with robust enforcement mechanisms. It has endorsed the need to criminalise arms trafficking activities in national laws.¹⁵

The UK, like France, had a progressive role in the ATT negotiations and became the first major trading country to support ATT. It helped establish the EU Code or the EU Common Position on Arms Exports. The UK has supported Amnesty International's *Golden Rule* in the ATT negotiations. It has supported a broad scope for ATT and robust transparency measures.¹⁶

The US is the world's largest arms trading country and as such had the biggest potential to influence the ATT negotiations besides swaying the positions of other countries. The Obama Administration reversed the previous administration's opposition to ATT in 2009. However, it insisted that the treaty text be adopted on the basis of consensus, which is the conventional approach in the adoption of an international treaty. The US objected to the inclusion of ammunitions as well as parts and components in the Treaty. It has also opposed inclusion of rules on preventing diversion or annual reporting requirements.¹⁷ The US opposed any restrictions on civilian possession or trade of firearms, otherwise permitted by law. It also opposed any clause for an international body to enforce ATT.¹⁸

The biggest arms exporters, therefore, had a number of issues with the proposed treaty text: China and Russia had objections to the reference of human right law and international humanitarian law; the US, China, and Russia all objected to the inclusion of ammunitions in the treaty; and they all opposed an enforcement body or mechanism for the treaty. Their objections and concerns were reflected in the final treaty text that was adopted.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Arms Trade Treaty, <http://www.state.gov/t/isn/armstradetreaty/>

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It was seen vital for the success of ATT to get the support of the major arms exporting states. However, their support came at a price: a watered-down treaty. Accommodating demands of the US and other big arms exporters weakened the treaty in many ways. It exempted ammunition and shells from the treaty's record keeping and reporting requirements. It also prohibited the establishment of an enforcement body. The US insistence that the treaty should only be adopted by a strict consensus rather than a majority vote, effectively gave the US or any other state the power to veto it, which made it even more difficult to negotiate a treaty that could be effective.

There was another group of smaller, mostly arms-importing countries that also had a number of objections to the treaty text. This was also a diverse group with a wide range of objections to the treaty. Syria, North Korea, Iran and Cuba opposed a strong treaty right from the beginning. Syria, North Korea and Iran were also the countries that voted against the treaty when it was adopted in April 2013. The objections ranged from the states stating that the treaty favoured arms exporters over importers and failed to specifically ban arms transfers to rebels and terrorists. There are also questions about enforcement of the treaty and complaints about loopholes.

Syrian diplomat, Bashar Jaafari, said his country did not object to regulating the international arms trade, but opposed the draft because it did not refer to the arming of "non-state terrorist groups". He further said that some of the countries behind the draft treaty were "fully engaged in supplying terrorist groups with all kinds of lethal weapons."¹⁹ He was apparently referring to the proxy war in Syria where the US and Russia are supplying arms to different parties. Cuban representative said that his country would abstain from the vote because the draft contained "ambiguities" which puts "serious limitations" and that it favoured the interests of arms exporters. Similarly, Iran said that the treaty was full of flaws and loopholes and North Korea said that it was unbalanced.²⁰

Widely differing positions of the states was one reason why it was so difficult to agree to a treaty text that was acceptable to all parties. After

¹⁹UN passes historic arms trade treaty by huge majority, *BBC News*, April 2, 2013

²⁰ *Ibid.*

several years of negotiations, the July 2012 Diplomatic Conference on the Arms Trade Treaty at the UN ended with a draft treaty text, but states failed to adopt it with major powers like the US, Russia and China seeking more time. A new meeting for the conference was scheduled for March 18-28, 2013. However, this final UN Conference on ATT failed to reach an agreement among all the 193 member states on a treaty text.

Adoption

After the failure in March 2013 to reach a consensus on a treaty text at the final UN Conference on ATT by all the member states, a draft resolution was introduced in the United Nations General Assembly where ATT was adopted on April 2, 2013 by a 154-to-3 vote with 23 abstentions. North Korea, Iran, and Syria voted in opposition, while China and Russia were among the major exporters that abstained it. Other states that abstained included: Cuba, India, Indonesia, Myanmar, Nicaragua, Saudi Arabia, and Sudan.²¹ Armenia, Dominican Republic, Venezuela and Vietnam did not vote. The treaty was stipulated to enter into force 90 days after the 50th ratification, which it did on December 24, 2014. Currently, there are 130 signatories and 82 ratifications/accessions to ATT.²²

The treaty covers eight weapons categories — battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, small arms and light weapons.²³

The UN office of Disarmament Affairs confirmed that the treaty would not interfere with domestic arms commerce or the member states' right to bear arms, ban the export of any type of weapon; harm the states'

²¹“UN General Assembly approves arms trade treaty,” *UN News Center*, April 2, 2013, <http://www.un.org/apps/news/story.asp?NewsID=44539#.VuERz8v2YaI>, Accessed March 10, 2016

²² <http://www.un.org/disarmament/ATT/#Significance> for UN

²³ Article 7 of the Arms Trade Treaty, <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

legitimate right to self-defence or undermine national arms regulation laws already in place.²⁴

Compromise in the Final Treaty Text

In order to draft a treaty text that would be acceptable to such widely differing groups with diverse aims and objectives, the final text of the treaty reflected many compromises. From a treaty draft that began with a wide scope, strict transfer criteria, and robust enforcement mechanisms, it ended with many of its provisions diluted. This resulted in a weak treaty with many loopholes and flaws. This section discusses some of these flaws in the Treaty.

First, the treaty's threshold for refusing arms exports is far too high and open to interpretation. Article 7 of the Treaty, concerning the criteria for the export assessment, states that arms should not be exported if there is an "overriding risk" of serious violations of international humanitarian law or human rights law. The word "overriding" included in the treaty text is open to interpretation. It could be taken to mean that arms exports should only be stopped in extreme or exceptional circumstances. An arms exporting country could decide that, while a client country was likely to commit human rights abuses, the right to self-defence, or regional stability or the need to protect a strategic partnership is a more important one.²⁵ The original Control Arms Draft said that arms transfers should be refused if they were "likely" to be used to commit serious violations; later drafts diluted it to "substantial risk," and in 2012 it was further watered down to "overriding risk". The civil society group tried later to change the working back to "substantial," with support from many countries, but the US insisted that "overriding" must remain.²⁶

Second, the reporting requirements were also considerably revised to adjust to the objections of some of the powerful arms-supplying states. The original treaty idea was to introduce high level of transparency and

²⁴ UN General Assembly approves arms trade treaty," UN News Center, April 2, 2013, <http://www.un.org/apps/news/story.asp?NewsID=44539#.VuERz8v2YaI>, Accessed March 10, 2016

²⁵ Kirk Jackson, "The Arms Trade Treaty: A historic and momentous failure," *Ceasefire*, April 29, 2013, <https://ceasefiremagazine.co.uk/failure-arms-trade-treaty/>

²⁶ Ibid.

accountability to conventional arms trade, traditionally shrouded in secrecy, by requiring detailed record keeping and public reporting of all arms transfers. In order to accommodate the reporting and publishing objections by countries like the US, Russia and China, these requirements were diluted. While the earlier drafts required states to submit annual reports on arms transfers to be published by an international body, the final text only requires states to record a minimal list of arms exports, which is to be submitted to the UN Secretariat, which will not be published. Moreover, states can leave any information out that is considered “commercially sensitive or national security information.”²⁷ This undermines one of the original purposes of the treaty, to bring transparency to conventional arms trade and thereby avoid diversion towards illicit trade. This also undermines the effectiveness of the Treaty.

Third, there are serious flaws in the scope of the Treaty. The Treaty excludes certain weapons and categories of weapons. In place of all ‘military’ vehicles, helicopters, and aircraft, as Ambassador Roberto Garcia Moritán of Argentina, as Chairman of Preparatory Committees²⁸ had proposed in the July 2011 draft, the treaty covers only ‘armoured’ and combat versions of equipment. This means that training and transport equipment is excluded. This is a serious loophole in the treaty since helicopters bought as training equipment can be re-fitted with comparative ease to engage in combat and used for military or repressive purposes. Another major shortcoming in the scope is that surveillance equipment is not covered under the treaty. Unmanned Aerial Vehicles (UAV) or drones that are capable of striking targets come under the category of combat aircraft. However, their increasingly common usage for the surveillance of target populations and the gathering of intelligence of all kinds falls outside the treaty. Surveillance equipment can play a large role in exacerbating internal dissent, and in advancing the repression and violence caused by actual weaponry. Surveillance equipment can be used by repressive regimes against their own populations, which can possibly lead to human rights violations.

²⁷ Article 13 of the Arms Trade Treaty, <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

²⁸ Ambassador Moritan was the Chairman of four Preparatory Committee sessions were held in 2010 and 2011, and in February 2012, and President of the Diplomatic Conference held in New York from 2 to 27 July 2012.

Therefore, this is a serious omission. Another limitation on the scope of the treaty is that it leaves out weapons technology altogether. It was included in the July 2011 draft in the main scope article: “Technology and equipment especially and exclusively designed and used to develop, manufacture or maintain any of the categories in subparagraphs (a) – (j).”²⁹ This category was eliminated at a very early stage, and permanently removed from all subsequent drafts. During the March 2013 negotiations, there was some support for its reinstatement from the Caribbean Community (CARICOM) states. But it was not considered a high profile issue and was not taken up by any significant number of states. This is again a serious omission. As a result, all guidance systems for the weapons covered under article 2 (1) of the treaty, like submarines and combat aircraft, are excluded. With the rapid technological advancements and changes especially in the military field, there is the likelihood that it would make some categories outmoded.³⁰

One of the greatest controversies during the negotiation was over the issue of whether to include ammunition in the Article 2 of scope or not. It was included in the Chairman’s July 2011 Paper. Yet the overwhelming number of states participating in the preparatory conference and the March 2013 meeting was strongly in favour of inclusion of ammunitions. During the March 2013 meeting, Mexico delivered a Joint Statement on behalf of 108 states, which advocated strengthening the treaty in four key aspects, inclusion of ammunitions was as one of them. Later in the same meeting, Ghana spoke for 69 states, including all the African states in a Joint Statement reiterating the necessity for its inclusion. A clear majority of states including CARICOM, most of Latin America and most members of the EU, supported the inclusion of munitions.³¹ However, they encountered firm opposition from Russia, China, India, and Malaysia, but most vehemently from the US. Thus, in the final treaty text, ammunitions excluded from the main article 2 (1). Article 3 of the Treaty does mention ammunition and components and obligates states parties to maintain a national control system to regulate the export of munitions

²⁹ Chairman’s Draft Paper, July 14, 2011, <http://www.geneva-academy.ch/RULAC/pdf/Chairman-Draft-ATT-blog.pdf>

³⁰ Laurence Lustgarten, “The Arms Trade Treaty: Achievements, Failings, Future,” *International and Comparative Law Quarterly*, vol. 64, issue 3 (July 2015): 582.

³¹ *Ibid.*, 582.

fired by conventional arms covered under Article 2 (1). Thus, Articles 8 to 15 concerning imports, brokering, diversion and record-keeping, apply only to conventional arms mentioned in Article 2(1) but exclude ammunition. This means that states are not required to regulate the import, transit, trans-shipment, brokering or diversion of ammunition or parts.³² The final treaty text reflects the influence of the US, China and Russia, who are all important arms exporters. In the case of the US, this opposition stemmed from domestic politics. According to a 2012 estimate, the US has a huge civilian gun ownership amounting to over 300,000,000,³³ and it cannot meet the munitions requirements domestically and ends up importing it. In 2012, the US imported approximately two and one quarter billion cartridges and shotgun shells.³⁴ Requirements of regulating brokering, diversion and recordkeeping of these ammunitions would be untenable. Many objected to the exclusion of ammunitions from article 2 saying that “guns don’t kill, bullets do.” A diplomat from Ghana described the treatment of ammunition as including the football player but not the ball.³⁵ It means while the treaty has mention of munitions, it left loopholes to be exploited. This is a significant flaw since munitions play a large part in sustaining conflicts. It also means that munitions can be diverted for possible illicit use.

Fourth, the treaty only covers international arms sales. While earlier drafts of the treaty proposed inclusion of arms as loans, leases, aid, transfers or gifts, the final treaty text only covers arms sales under its provision. This also reflects the objections of some of the influential weapons exporting states. More significantly yet, the treaty has a provision under Article 26 (2) stating “This treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between

³²Kirk Jackson, “The Arms Trade Treaty: A historic and momentous failure,” op.cit.

³³William J. Krouse, “Gun Control Legislation,” Congressional Research Service report, November 14, 2012, p.8, <https://fas.org/sgp/crs/misc/RL32842.pdf>

³⁴M. Bastasch, “Foreign Ammo Imports doubled in 2013 to meet exploding US demand,” The Daily Caller, May 8, 2013, <http://dailycaller.com/2013/05/08/foreign-ammo-imports-doubled-in-early-2013-to-meet-exploding-u-s-demand/>

³⁵ Laurence Lustgarten, “The Arms Trade Treaty: Achievements, Failings, Future,” 583.

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States Parties to this treaty.”³⁶ This effectively means that arms transfers or sales under defence cooperation agreements are exempt from the Treaty. This again is a huge flaw in the Treaty whereby states can well term any arms trading that they wish as part of a defence cooperation agreement. This again is a convenient escape clause that can be used by the powerful arms trading states.

Finally, there is no international body or mechanism for implementation or enforcement of the treaty provision. Neither is there any provision of sanctions for major violations of the treaty. The original proposals for the treaty included robust implementation mechanisms and international bodies for enforcement of the treaty. However, major powers like the US, China and Russia objected to such proposals. The result was a weak treaty with no enforcement mechanism or clause. Moreover, the arms exporting country is entirely responsible for assessing the risk of an arms export. Therefore, a country that wants to export arms will tend to decide that there is no “overriding” risk.³⁷ This is aided by the fact that an exporter’s decisions are not open to international review. The risk assessment is, thereby, very much subjective and fluid, which can be interpreted to suit the purposes of the exporting state.

Civil society groups expressed their concerns over the treaty provisions during the negotiation process. Peter Herby of the International Committee of the Red Cross (ICRC) said that, “all the core provisions of this draft treaty still have major loopholes which will simply ratify the status quo, instead of setting a high international standard that will change state practices and save lives on the ground.”³⁸ While Anna Macdonald from Oxfam likened the June 2012 draft text to a leaky bucket, Amnesty International’s Brian Wood, commented that if

³⁶ Article 26 of the Arms Trade Treaty, <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

³⁷ Kirk Jackson, “The Arms Trade Treaty: A historic and momentous failure,” op.cit.

³⁸ Civil Society unhappy with Arms Trade Treaty Draft,” News Archive of the US Non-Governmental Liaison Service, http://www.unngls.org/index.php/unngls_news_archives/2012/335-civil-society-unhappy-with-un-arms-trade-treaty-draft

the treaty will contain an opt-out for security, “a lot of governments will use that a lot of the time to just make irresponsible arms transfers.”³⁹

Pakistan: Position and Implications

Pakistan has always supported the basic principles of the Treaty. However, it had reservations over certain provisions and the way the Treaty is imbalanced by its built-in advantage for arms-exporting countries over arms-importing ones. This is of particular significance for Pakistan since it is primarily an arms importing country.

During the July 2012 conference at the UN, Pakistan’s representative stated that “any treaty on arms trade must both address the supply and demand side of the equation. Any treaty which seeks to address only the transfer of arms but not their development production and deployment will be internationally inequitable against countries which do not produce such armaments.”⁴⁰ This point was again reinforced by the former Permanent Representative of Pakistan to the United Nations, Ambassador Masood Khan, who stated that “the treaty text ignores a key aspect of ‘excessive production’ that is an inseparable component of the entire chain of the international trade in conventional arms. Arms acquisition by states, motivated by security needs, can hardly be separated from their production and sale that are driven by profits and politics.”⁴¹ He further highlighted the imbalanced nature of the treaty which “may be seen by many as essentially a product of and by the exporters only. It falls short of striking an appropriate balance of interests and obligations among the exporters and importers as well as the affected states. An overwhelming majority echoed the call for balance. Some treaty provisions, however, legitimize in a global legal instrument what the existing national and multilateral export control systems cover. The interests of exporting countries have been

³⁹ Ibid.

⁴⁰ Statement by Ambassador Raza Bashir Tarar, Deputy Permanent Representative of Pakistan at the United Nations Diplomatic Conference on the Arms Trade Treaty, July 9, 2012.

⁴¹ 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, March 28, 2013.

accommodated in the form of special exemptions, exceptions and protections.”⁴²

The treaty is further imbalanced towards arms exporters since it failed to establish any mechanisms for accountability in case an arms exporting country violating the terms of the treaty. The Pakistani representative also expressed concern over this aspect of the treaty: “it did not provide a clear mechanism for accountability of the exporters who flout or violate their new responsibilities particularly those related to the criteria section. Such lack of oversight could reinforce the perception that the treaty is unfairly tilted in favour of the exporters.”⁴³ Despite these objections to the treaty text, Pakistan voted for the adoption of the treaty on April 2, 2013 because it is committed to the goals of promoting peace and prosperity, and for reducing human suffering caused by illicit conventional trade. However, as of September 2016 Pakistan had yet to sign the Treaty.

These flaws in ATT text have a number of implications for Pakistan. First, ATT as an imbalanced treaty which advantages the powerful arms-exporting countries, immediately puts Pakistan at a disadvantage as an arms-importing county. Second, the subjective nature of the treaty-transfer criteria can be used as a foreign policy tool by certain powerful states if they so choose to deny arms sales to Pakistan on the pretext of the risk of the weapons diverted to Pakistan-based terrorists. Despite the fact that Pakistan has been assisting the US fight against terrorism, and is also fighting its own internal battle against terrorism, this treaty-transfer clause can easily be used as an excuse to deny arms sales to Pakistan. On the other hand, potential human rights violators or states that may have potential for furthering conflicts can be supplied conventional weapons, if the arms exporting state so choses. Third, Pakistan has a major challenge with the porous nature of the border with Afghanistan where regulation of weapons and personnel has long been a problem. If Pakistan chooses to sign the treaty, the porous border would make it difficult for Pakistan to meet its treaty obligations. Fourth, if Pakistan chooses to sign the treaty, then it would need to create a national regulatory authority, and submit yearly reports to the UN of any imports, exports or diversions.

⁴² Ibid.

⁴³ Ibid.

Conclusion

The idea of an ATT was borne out of a desire to reduce human suffering caused by unregulated arms trade. That ideal still remains a distant dream. The negotiation of the Treaty is a tale of how the powerful states dominated and manipulated the process. Ultimately, the interests of the powerful arms exporting countries prevailed and the final treaty text bears their footprint. The findings of the paper validate the claim of the Realist theory that institutions are a reflection of the distribution of power in the world. The ATT, in its present form, is a weak treaty with many flaws that explicitly favours arms-exporting states over arms-importing ones. Also, it has no enforcement mechanism. Pakistan is among the countries that is a major importer of conventional arms. If the treaty advantages exporters of conventional arms, and there is no retribution for exporting countries in case they fail to keep their obligations, then signing the treaty may put Pakistan at a disadvantage. Moreover, the treaty criteria are subjective and can be used by major arms producer states for political and strategic interests. Having said that, this aspect of the treaty can be applied to arms importing states regardless of whether they are signatories or not, as long as arms exporting countries are parties to the treaty. Pakistan should wait and see how the treaty develops and is implemented in practice, and then review its decision to join or not to join the treaty in the future.