1991 Arms Trade Control Efforts and Their Echoes

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Two decades ago, Iraq invaded Kuwait, using weapons provided by the major arms-supplying states. In the wake of the resulting Persian Gulf War, the international community sought to tighten controls on the conventional arms trade to prevent similar misuses of the weapons. Today, as Libyan leader Moammar Gaddafi uses military equipment acquired from a host of arms-exporting states to kill thousands of Libyan citizens who were rebelling against his authoritarian and repressive rule, the 1991 efforts and their mixed results deserve renewed attention.

On August 2, 1990, a well-equipped Iraqi army invaded Kuwait and in two days declared it the 19th province of Iraq. Saddam Hussein’s forces were able to do this thanks to the arms they had imported from China, France, Russia, the United Kingdom, and the United States—the five permanent members of the UN Security Council, or P5—as well as Germany and other states. In both words and actions, the international community quickly realized that the arms exports had led directly to conflict. The ensuing Persian Gulf War cost more than $70 billion to wage, albeit with minimal military casualties, and resulted in a global economic upheaval costing billions more.

Postwar Measures

After the war, there was an outpouring of proposals from all quarters, and many efforts were made to control and restrain the arms trade. This article reviews four of them, with an eye to how the lessons learned may guide efforts undertaken in response to the recent developments in Libya and elsewhere in the Middle East.

The P5 Mea Culpa: Pursuing a Global Mechanism. The first concrete response came from the United States when it announced its Middle East Arms Control Initiative on May 29, 1991.[1] Declaring arms proliferation a global problem, it called on the P5 to meet at senior levels in the near future to discuss the establishment of guidelines for transfers of conventional arms. Suppliers would commit to “observe a general code of responsible arms transfers, avoid destabilizing arms transfers, and establish effective domestic export controls on the end-use of arms or other items to be transferred.”

The most revolutionary aspect of this initiative was the call for consultations among suppliers. These talks were to include notifying one another in advance of certain arms sales, meeting regularly and on an ad hoc basis if a “supplier believed guidelines were not being observed.” The mechanism also called for an annual report on transfers.

The P5 met in Paris in July and London in October 1991. In a communiqué issued after the London meeting, the states committed themselves to a set of “Guidelines for Conventional Arms Transfers” that they would “consider carefully” and a set of negative outcomes from arms transfers that they would seek to “avoid.”

These negative outcomes did not specifically include the recipient’s use of the imported arms to violate the human rights of its citizens. Also, there was no mention of a consultation process.[2] It was later revealed that there was serious disagreement in the P5 about the use of prior notification, as well as whether the guidelines would apply globally or just to the Middle East.[3] There were two additional meetings in 1992, but the issues were not resolved, and the P5 process ceased at that point.
(Almost) Dead on Arrival: The UN Register. The only truly global effort to survive was the UN Register of Conventional Arms. The idea of an arms register had been percolating in the United Nations since 1988 as well as during the P5 talks discussed above. It became the fallback position for a failed P5 effort and in fact may have contributed significantly to the failure of that initiative.

The register was designed as a cooperative security measure that would prevent “excessive and destabilizing arms buildups posing a threat to national, regional and international peace and security, particularly by aggravating tensions and conflict situations.” It was to do so by having states voluntarily submit an annual report on the import and export of major conventional weapons—tanks, fighter aircraft, etc.—that had been delivered in the previous calendar year. The framers of the register were able to get agreement from states to develop a form for submitting data on exports and imports but not on military holdings and procurement through national production. For the data on holdings and domestic procurement, they settled for states submitting this information as “background information,” seen by all as a lesser requirement.

In retrospect, indications that the register would never reach its potential surfaced immediately, during the deliberations to create the forms and procedures for states to submit data. A watered-down version survived, but even by that date, a majority of the members of the UN panel of experts charged with developing the register made it clear that the register had been approved under very unusual circumstances and that if it were up for a vote in the General Assembly now (June 1992), it would not pass.

Today it is clear that the register had not accomplished any of its goals. Although it has resulted in increased transparency, it has not restrained or controlled the arms trade as some of its backers once hoped. The reasons are clear and provide the main explanation for the decline in participation in the register and the failure of a global mechanism to emerge. They also serve as a guide to future efforts to prevent and control the negative consequences of arms exports.

- The original resolution establishing the register pushed to a later time all of the critical elements that would have made it a truly global instrument for restraint and control. These included adding data in the annual reports on national production and military holdings. Export and import data alone cannot provide any meaningful measure as to whether transfers result in an “excessive and destabilizing” arms buildup. None of these enhancements to the register ever occurred.

- The enabling resolution assigned the difficult question of defining “excessive and destabilizing” to the Conference on Disarmament. After two years of discussion, that body could not agree on a practical definition of the concept.

- The register could not overcome the view of many states that transparency runs counter to the most effective means of defending themselves: secrecy.

- The hoped-for consultative mechanism was never seriously considered.

The establishment of the register was aided by the ending of the Cold War, as Russia almost disappeared as an arms exporter, and with it a major rationale for the conventional arms trade. However, the end of the Cold War also produced an environment that made the register increasingly irrelevant, given that most armed conflicts were intrastate and employed a different class of weapon—small arms and light weapons. This combination of factors has resulted in a gradual decline in the motivation of states to participate in and further develop the register.

NormBuilding in a Suppliers Club: The Wassenaar Arrangement. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies was formalized in 1995. It is a suppliers club whose members agree to prevent, through their national export control policies, the destabilizing accumulation of conventional arms and dual-use goods and technologies. It is not a global mechanism because it includes only exporters, not importers, of conventional arms and dual-use goods and technologies. Its members’ dealings are not transparent, and it relies on national arms export decisions. Yet, it does contain some of the features missing in the UN Register, such as a forum whereby states can raise questions about dangerous arms buildups and thereby
prevent armed conflict.

The Wassenaar Arrangement did contribute to setting global norms. Since its inception, it has approved “Best Practice Guidelines for Exports of Small Arms and Light Weapons,” “Elements for Export Controls of Man-Portable Air Defence Systems [MANPADS],” and “Elements for Objective Analysis and Advice Concerning Potentially Destabilizing Accumulations of Conventional Weapons.”

**Legally Binding Criteria: The European Code of Conduct on Arms Exports.** The Iraqi arms buildup leading to armed conflict also stimulated Europe to begin considering an EU approach. Eventually, the politically binding 1998 EU Code of Conduct on Arms Exports became legally binding in 2008, and the European Union agreed to eight criteria:

- respect for the international commitments of member states
- respect for human rights in the country of final destination
- existence of internal tensions or armed conflicts in the country of final destination
- preservation of regional peace, security, and stability
- national security of the member states
- behavior of the buyer country with regard to its attitude toward terrorism; nature of its alliances; and its respect for international law
- risk of diversion of equipment under undesirable conditions
- compatibility of the arms exports with the technical and economic capacity of the recipient country.

The code also has a consultative and reporting mechanism and calls for states to report all transfers that they deny, for the purpose of discouraging other states from making the sale. All decisions are made at the national level, based on each government’s interpretation of the eight criteria.

**The Way Forward in 2011**

How has the experience of attempting to control the conventional arms trade since 1991 influenced the current response to yet another misuse of arms exports by an importing state? Some of the reaction looks familiar. A March headline in the Guardian blared, “EU Arms Exports to Libya: Who Armed Gaddafi?” The Stockholm International Peace Research Institute’s Arms Trade Project produced an article calling for a “critical evaluation of arms supply policies towards Libya” to inform the debate on arms trade controls. As expected, the civil society organizations supporting the development of an arms trade treaty (ATT) responded negatively and swiftly to these events and called for a strong ATT.

Most of the criticism, however, was directed at the states that had taken advantage of the “new” Libya, which had been open for legitimate arms exports since 2003, after Gaddafi renounced weapons of mass destruction. The British press and Parliament were particularly critical of the United Kingdom’s exports to Libya. However, their proposed remedies focused on improving British arms export policy, rather than improving the EU code of conduct or creating an ATT. Clearly, the global response to the Libyan case was not the same as Iraq in 1991.

In the Iraqi case, a very structured, patron-client Cold War arms trading system had collapsed. Nothing had taken its place yet. Today, there is a global arms trade system that has evolved over the past 20 years, somewhat similar to the Cold War era in that it is based on unilateral (national) restraint and control guided by an emerging set of regional and global criteria. States seem very comfortable with this system and not in a hurry to change it.

The current context is defined by a set of criteria that an increasing number of states consider prior...
to exporting arms. These criteria did not exist in 1991. In the Libyan case, the result is that video clips showing the inhumane use of weapons condemn implicate not only Gaddafi and his regime but also the governments that supplied the weapons. This then led to civil society and legislatures bringing pressure on European national governments for violating the arms export norms to which they had agreed.

It also is important that the international community is in the process of negotiating a legally binding ATT. There is evidence that those states negotiating an ATT were not influenced by the events in Libya, given the work already underway to fashion an ATT that can prevent or seriously reduce exactly the type of transfer that had taken place.[10]

As mentioned above, because the international community’s primary concern is reducing and preventing the armed violence in intrastate conflicts, it pays less attention to major conventional weapons, such as tanks and aircraft, than to small arms and light weapons. Arms trade issues today are more about human security than just national security.[11] This is reflected in the case of Libya where the security of people is the prominent issue, not the security of Libya or any of its neighboring states. Global control measures have been put into place to deal with these threats to human security, including the UN Program of Action on small arms (2001), the UN Firearms Protocol (2001), the International Tracing Instrument (2005), the Geneva Declaration on Armed Violence and Development (2006), and the ongoing UN project to develop international standards to control small arms.[12]

This recap of the past 20 years suggests that certain realities should guide efforts to restrain and control arms exports.

• No consensus exists that the negative consequences stemming from the trade in major conventional weapons require regulatory action at the global level. With the possible exception of MANPADS in the hands of terrorists, no weapon in this category is considered inherently dangerous by the international community. Excessive and destabilizing buildups leading to interstate war have become rare. Legitimate self-defense (Article 51 of the UN Charter) is a powerful challenge to those who would put controls on who can transfer what to whom. There is no longer a common enemy and, for major weapons, no common moral imperative for restraint.

• Although measures restraining and controlling the full range of conventional weapons may be difficult to implement, it is still possible to construct such measures if they focus on a specific weapon. A case in point is the consensus to employ restraint when exporting MANPADS. All states could suffer from the proliferation of these weapons to terrorists groups that could use them to destroy civilian aircraft in flight.[13]

• Most states view arms exports as benign (with the main export rationales being economics and prestige) or positive in the traditional national security sense (mutual deterrence). Examples that duplicate the Iraqi buildup and invasion in 1990 are difficult to find. The empirical link between arms exports and conflict remains elusive, in contrast to the well-established link between imported arms and violations of human rights, the main reason for generating the ATT process.

• In the past 20 years, there has been a developing consensus on the criteria that should guide national arms exports. However, states still feel free to interpret these criteria using national factors such as the need to maintain relations with an importing state even if it does not meet arms export criteria. This is the key finding in the case of the United Kingdom and other states arming Libya.

• Despite an initial effort to create a multilateral mechanism based on prior approval of exports, this concept is dead. Arms export decisions remain the purview of states.

• It is very difficult to declare that a particular transfer will have negative consequences. It normally takes years for a buildup to look dangerous.

• Transparency is a nonstarter if it involves revealing secrets about critical data on national production and holdings. This will complicate efforts to demonstrate that a particular export will have negative consequences, other than that it easily can be used to violate the human rights of the
importing state’s citizens.

The leaders of current and future efforts in arms trade restraint and control should keep these realities in mind. These efforts will focus on continuing the development of criteria that states agree should be utilized when exporting arms, as well as on ways in which states can prevent the diversion of arms that they control. In this regard, the creation of a legally binding ATT will mark an important step forward, as the EU code of conduct did when it became legally binding in 2008. Making a transfer that runs counter to the criteria developed in an ATT a violation of international law may not prevent every unwise transfer, but it certainly will raise the stakes and shine a brighter light on irresponsible arms export behavior.

These restraint and control efforts must be accompanied by a global initiative to assist states that desire to comply with these norms but lack the capacity to do so. If states do not want to comply with these norms, other states must develop the courage to “name and shame.” The immediate mea culpa by the United Kingdom in the Libyan case is an example of what one increasingly would hope to see as an evolving deterrent to such arms export behavior in the first place. The longer-term goal is to transform mea culpas into national denials of those arms exports that pose even a slight risk of enhancing armed conflict and harming human security.


ENDNOTES


5. UN General Assembly Resolution 46/36L, December 1991.

6. The author, along with Herbert Wulf, was tasked by a UN panel of experts with designing the first draft of the register in the spring of 1992.

7. In 2009, only 23 states reported background information on military holdings. Nineteen were European states, the least likely to be involved in interstate conflict with major conventional weapons.

8. The variety of terms used for recipient country reflects the actual documents establishing the code.


10. This information was gathered in conversations with experts with direct knowledge of the ATT at
UN meetings held in March 2011.


