Special Report: UN General Assembly Adopts Arms Trade Treaty In Overwhelming Vote

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- Arms Control Today

Jeff Abramson

UN member states on April 2 overwhelmingly adopted the Arms Trade Treaty (ATT), a pact that, for the first time, mandates a common set of global standards for trade in a wide range of conventional arms.

The treaty, which has its origins in efforts by civil society and Nobel laureate efforts in the 1990s and was the subject of a UN resolution in 2006, requires all states-parties to establish regulations governing the transfer of major conventional arms and small arms and light weapons, as well as the export of ammunition and weapons parts and components.

The General Assembly vote of 154-3, with 23 abstentions, came just days after a diplomatic conference failed to agree on a text. (See ACT, April 2013.) By the rules of that conference, which met at the United Nations during March 18-28, agreement required consensus among all participating states.

Arms trade experts and diplomats involved in the talks said they expect the treaty to tip the scales in favor of human rights and human security considerations when states consider arms sales in the future. As more states, sign, ratify, and implement the ATT, current loopholes that enable illicit and irresponsible arms sales will begin to close, the diplomats said.

The treaty “will make a difference over time in contributing to the humanitarian objectives that were the original motivation” for the negotiations, said Thomas Countryman, U.S. assistant secretary of state for international security and nonproliferation, at a public forum at the Stimson Center in Washington on April 5. “It will make a difference in reducing the supply of weapons to the worst people in the world, to those who are fueling conflict in Africa and elsewhere.”

The treaty achieves “a balance between the interests of importing and exporting states,” said Countryman, who was the lead U.S. negotiator of the treaty. “Most importantly,” he said, it creates obligations for those countries, as well as for “transit states.”

Critical to the success of the treaty, say long-time arms trade observers, are the prompt entry into force of the pact, the decisions by states about how to implement and apply key provisions, and the way the treaty will affect the behavior of certain major weapons suppliers and buyers even if they do not immediately accede to it.

On the day of its adoption by the General Assembly, UN Secretary-General Ban Ki-moon called passage of the ATT a “victory for the world’s people” and a demonstration of “the great things that can be achieved when governments and civil society work together through the United Nations.” U.S. Secretary of State John Kerry said that the United States was “pleased” that the General Assembly had approved “a strong, effective, and implementable” ATT that can “strengthen global security.”

The United States, which was among the 12 original sponsors of the General Assembly resolution to adopt the treaty, joined with Western arms exporters and other European countries, as well as most African, Latin, and Pacific states, in approving the treaty. The same three states that blocked
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consensus at the UN diplomatic conference on March 28—Iran, North Korea, and Syria—voted against the accord.

China, India, and Russia were among the abstentions. Some confusion about the final vote count remains because some states asked to change their vote after the official count was recorded. A UN official told Arms Control Today on April 21 that Angola indicated its desire to vote yes rather than abstain and Cape Verde wished to vote yes rather than be marked absent. Those changes would make the final vote 156-3-22.

Toward Entry Into Force

The treaty now will be opened for signature on June 3 and will enter into force 90 days after the 50th state deposits its instruments of ratification. Paul Beijer, Sweden’s ambassador to the treaty talks, said in an April 15 e-mail to Arms Control Today that, in his personal view, “[W]e should be able to reach fifty within a couple of years—three at most.”

The draft version of the treaty that emerged from the failed July 2012 UN conference and served as a starting point for this year’s conference would have required ratification by 65 states before entry into force. (See ACT, September 2012.) Many states and civil society advocates argued that the threshold for entry into force should be as low as 30 ratifications, as is the case for the Convention on Cluster Munitions. That treaty was opened for signature in December 2008 and reached 30 ratifications 15 months later. (See ACT, September 2010.) In his e-mail, Beijer said Sweden “insisted on a relatively high number” of ratifications so that the treaty’s principles would have “a certain standing—even without the great powers’ participation.” He said that a requirement of 50 ratifications “strikes a pretty reasonable balance.”

Although U.S. support for the final treaty text was important to its adoption by the UN General Assembly, the timeline for U.S. signature remains unclear. During a March 28 conference call with reporters, Countryman said the U.S. government would conduct a careful review, which “takes, even for a treaty simpler than this one, usually a few months.”

Signature, which requires action only by the president, would commit the United States not to act counter to the treaty’s object and purpose. That step would create pressure on other major arms supplier states, including Russia and China, to follow suit, observers say.

In statements about the treaty, U.S. officials have been careful to stress its consistency with current U.S. law and practice. Kerry said that “nothing in this treaty could ever infringe on the rights of American citizens under our domestic law or the Constitution.” In encouraging careful review of the treaty, Countryman, in his April 5 remarks, reiterated what he said was his personal belief that there is “no change in legislation or policy or procedures that the United States needs to make as a result of this treaty.”

Many U.S. civil society organizations welcomed the adoption of the treaty and encouraged quick action by President Barack Obama. The influential U.S. Conference of Catholic Bishops, which had not been active during ATT negotiations, added its support in an April 11 letter to Kerry. Bishop Richard Pates, chair of the conference’s Committee on International Justice and Peace, urged the administration “to expedite a thorough review” of the pact so that Obama can sign it “in early June.”

Ratification, which would require the advice and consent of the U.S. Senate, “is a separate decision and potentially a long way off,” Countryman said in his April 5 comments. He said a number of other important treaties “have been in the queue much longer than this one,” citing in particular the Comprehensive Test Ban Treaty and the UN Convention on the Law of the Sea.

Winning the two-thirds majority required for Senate approval will require changing the minds of a number of senators. Thirty-six senators, led by Sen. Jerry Moran (R-Kan.), joined a nonbinding sense of Congress resolution that the president should not sign the ATT and the Senate should not approve it because the treaty “risks infringing on freedoms protected by the Second Amendment” of the U.S. Constitution. The nonbinding resolution, introduced before treaty negotiations were completed, echoes claims about the treaty made by the National Rifle Association and Heritage Foundation.
have been rejected by the Obama administration and the American Bar Association’s Center for Human Rights.

Sen. Robert Menendez (D-N.J.), chairman of the Senate Foreign Relations Committee, which would conduct the first review of the treaty should it be sent to the Senate, applauded the General Assembly vote in an April 3 statement. He promised “a vigorous and fair review” if the treaty were submitted to the Senate and commended the U.S. negotiating team for “crafting what appears to be a strong, effective and implementable treaty” that “applies only to international trade in arms and reaffirms the sovereign right of any State to regulate arms within its territory.”

**Arming Syria, Subnational Groups**

The ongoing conflict in Syria and issues of arming Syrian government forces and rebel groups served as a backdrop to the ATT negotiations.

Before the conference, the United Kingdom and France made clear that they would like to amend or remove the European Union’s embargo on arms exports to Syrian government and rebel forces in order to give EU countries the ability to arm rebel groups in a conflict during which tens of thousands of people have died.

Russia continues to defend the Syrian regime, although it joined an April 11 statement by the foreign ministers from the Group of Eight industrialized countries declaring that “[t]he humanitarian situation in Syria is deplorable and continues to worsen,” and has worked to prevent the UN Security Council from adopting an arms embargo on the country. Russia, Syria, and a number of other countries called for the ATT to prohibit arms transfers to subnational armed groups.

Given the interest of states in retaining the option of arming resistance groups and the U.S. interest in providing arms to Taiwan despite China’s claim of sovereignty over the territory, it is not surprising that the ATT contains no provisions banning arms transfers to subnational groups.

Yet, the treaty does establish criteria for defining responsible arms trade. Article 6 requires a state not to authorize the transfer of conventional weapons or of their ammunition and parts and components if the transfer violates UN Security Council arms embargoes. That article also prohibits authorizations when the state has “the knowledge” that the arms would be used in the commission of “genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.” Many states and experts read this article as prohibiting transfers to the regime of Syrian President Bashar al-Assad. (See *ACT, April 2013*.)

In Article 7, the treaty requires states to assess the potential that the arms exported would “contribute to or undermine peace and security” or could be used to commit or facilitate serious violations of international humanitarian or human rights law, acts of terrorism, or transnational organized crime. If an “overriding risk” of “negative consequences” remains after the state considers measures to mitigate the risk of these violations, the treaty requires that a state “shall not authorize the export.” The treaty does not provide guidance on determining what threshold the risks must meet to be considered “overriding.”

Article 7 also requires states to consider whether the weapons in these transfers would be used in serious acts of gender-based violence or violence against women and children. Separate articles call on states to take measures to prevent diversion of weapons, which had been a risk assessment criterion in earlier treaty drafts and was reformulated in the adopted text.

States indicated that the treaty’s criteria would be applied to decisions to arm Syrian opposition fighters or similar groups in other countries. Asked directly about the treaty’s impact on potential arms transfers to Syrian rebels, Countryman said April 5 that Articles 6 and 7 would “require a careful study by a national government on making that decision.”

Jo Adamson, the United Kingdom’s lead negotiator, said in an April 17 e-mail to *Arms Control Today* that the ATT “creates global standards, which will be applied nationally.” Her country analyzes arms
export requests “case by case” and applies “a number of criteria to the decision-making process,” she said. The new treaty “will not change that but will build on that approach.”

Room for Improvement

Numerous states had called for a broader range of weapons and ammunition to be included in the treaty’s scope, more criteria to be included in arms transfer risk assessments, and an explicit requirement for public reporting. Instead, in many places, the ATT provides a baseline of required activities and “encourage[s]” states to do more, leading to the possibility that the encouraged activities would become treaty practice as states join and implement the accord, according to diplomats.

Under the ATT, states will be required to establish national control lists that “cover not less than” the so-called 7+1 formula, the seven categories of major offensive weapons under the UN Register of Conventional Arms plus small arms and light weapons, as that term is “used in relevant UN instruments.” That language was included because there are widely accepted descriptions of small arms and light weapons other than the one in the UN Register.

States also will be required to establish a national control system for the export of ammunition fired by those weapons and parts and components that enable their assembly. These definitions, although encompassing armored combat vehicles, large-caliber artillery, combat aircraft, attack helicopters, warships, and missiles and missile launchers, will not necessarily include military support or training vehicles or grenades that are thrown rather than being rocket propelled. In addition, some treaty provisions are not applied to ammunition and parts and components, such as those requiring reporting or measures to prevent diversion.

A group of governmental experts is scheduled to meet this year to review and possibly change the UN Register to explicitly include armed drones, also known as unmanned aerial vehicles, within the convention. (See ACT, November 2010.) A U.S. State Department official said April 23 that the United States proposed such an expansion in the 2009 meeting of experts, where it was not adopted, and continues to support it now. Because the register will provide the baseline definition of the treaty’s major weapons, inclusion of armed drones in the register would in turn expand the ATT’s scope.

In his e-mail, Beijer, who acted as the facilitator on scope issues during the March conference, expressed optimism that states would implement “a higher standard than the 7+1 minimum.” He pointed to Article 5.3, under which states are “encouraged” to apply the treaty to “the broadest range of conventional arms.” He added that states developing new export control systems will want to use existing lists that already are broader than the 7+1 standard, rather than create entirely new ones. He cited as an example the lists coming from the Wassenaar Arrangement, a voluntary group of 41 countries that develops nationally implemented lists of munitions and dual-use goods. He also suggested the possibility that states simply would share updates at conferences of states-parties and then make changes on a national basis, rather than formal changes to treaty structures.

Dell Higgie, New Zealand’s lead negotiator and ambassador to the Conference on Disarmament (CD), also suggested that nonbinding measures would be available to keep the treaty up to date. In an April 17 e-mail to Arms Control Today, she suggested that conferences of states-parties could pass resolutions calling for the parties to “act as though new weapons or technologies were indeed included.”

In an April 15 e-mail to Arms Control Today, Paul van den IJssel, the Dutch lead negotiator and the facilitator on record-keeping and reporting at the March conference, pointed to the conference of states-parties as important to further developing transparency under the ATT.

The ATT requires that states make an initial report to the treaty secretariat on measures to implement the treaty and annual reports of authorized or actual exports and imports on treaty-covered weapons, but not on transfers of ammunition or parts and components. According to the treaty, the secretariat is to make these reports available to the other parties.

The ATT makes no specific provision for public reporting. But in the April 15 e-mail, van den IJssel
expressed his personal views that the treaty’s reporting requirement, in spite of its limitations, will still improve transparency because “many states do not report at all so far.” Van den IJsell, who is the Dutch ambassador to the CD, wrote that “there was too much resistance to making reporting explicitly public” during the treaty conference, but expressed “hope that over time the resistance against making reports public will diminish.” That has been the path of the UN Register, which does not require public reporting, but for which such reporting has become the norm.

The adopted treaty text provides another path for change by allowing for amendment by a three-quarters majority starting six years after the treaty enters into force. Earlier drafts allowed for amendment only by consensus. Nevertheless, Beijer and Higgie cautioned against the likelihood of the treaty improving through amendments, in part because of the paucity of examples of successful amendments to treaties.

Reconsidering Consensus

The last time a major arms control agreement failed to reach consensus in its drafting conference yet succeeded in garnering General Assembly approval was 1996, when the president of the Conference on Disarmament (CD) moved the Comprehensive Test Ban Treaty to the assembly for adoption. Since then, the requirement for consensus essentially has prevented the CD from even adopting an agenda. Some feared that application of consensus to the ATT negotiations, even though conducted outside the CD and its disarmament mandate, would lead to a similar stalemate. The success of the ATT in overcoming the inability to achieve consensus could provide a precedent for future UN-sponsored agreements, although some diplomats said they did not expect changes in the CD.

On March 28, near the end of the diplomatic conference, Mexico introduced a resolution to simply adopt the treaty “without a vote, in the understanding that there is no definition of what consensus is in the United Nations.” Although consensus often allows for a single state to withhold approval, Mexico has long insisted that consensus is not defined as unanimity. Mexico’s resolution immediately garnered the support of a small number of states, including Costa Rica and Japan, two of the seven original co-authors of the 2006 resolution that started the ATT process within the United Nations. Peter Woolcott of Australia, who chaired the March conference, cut off discussion of the resolution after Russia intervened; he ultimately declared that the existing support for the treaty did not constitute consensus.

The decision to move forward at that point without consensus marked an apparent shift in the position of the United States, which had demanded a consensus approach in 2009. Washington later took advantage of the requirement for consensus to be the first state, later joined by others, to prevent the adoption of the treaty text on the final day of the July 2012 ATT conference. (See ACT, September 2012.)

During the March 28 conference call, Countryman said championing the move to a vote showed no inconsistency with supporting consensus. Consensus will remain important to the United States in “defense of our interests,” he said, but added that the option of a vote in the General Assembly meant that “a strong treaty that has the overwhelming support of the world can’t, in the end, be blocked by a few who fundamentally disagree with the purpose of the treaty.”

In their e-mails, Higgie and van den IJssel, while agreeing that the ATT negotiations should not have been bound by strict consensus requirements, said that they did not expect the CD’s unanimity-based definition of consensus to change. Van den IJssel said consensus “has too many advocates on different sides of the aisle.”

Higgie echoed that sentiment, saying that “many states—and of a variety of backgrounds, not just the biggest guys—like the comfort of having in effect a ‘veto’ and I haven’t seen anything to suggest from the ATT [process] that this has changed, or will change.”

Daniel Prins, secretary-general of the March conference and chief of the conventional arms branch at the UN Office for Disarmament Affairs, suggested that the ATT experience may strengthen the hands of majority-decision advocates. In an April 18 e-mail to Arms Control Today, he said that if there is
another case in which “a very small minority will use the consensus rule to block a broadly carried disarmament agreement, then it will only strengthen the position of those who say that future disarmament negotiations need to be held on the basis of majority decision making.”

China’s decision on whether to join the treaty could be telling for the future of consensus and impact of the ATT. In explaining its decision to abstain from the April 2 UN General Assembly vote on the ATT, China stressed the importance of not setting a precedent that undermines the consensus approach.

According to data released in March by the Stockholm International Peace Research Institute (SIPRI), China is—for the first time since the end of the Cold War—one of the top five major arms suppliers, replacing the United Kingdom on the list for such trade for the five-year period from 2008 to 2012. Beijing also is one of the top five arms importers.

China, along with Russia and India, was one of the major players in the arms trade that abstained in the April 2 vote on the ATT. According to the SIPRI data, Russia is one of the top five arms suppliers, and India is the largest arms importer. All other top-five arms suppliers—France, Germany, and the United States—and all other top-five arms importers—Pakistan, Singapore, and South Korea—voted for the accord. So too did emerging regional arms players Brazil and South Africa.

When asked whether they were concerned about the Chinese, Indian, and Russian abstentions, Adamson and Beijer recommended caution in drawing conclusions. Adamson wrote that “we should read very carefully what China, India and Russia each had to say in their final statements.” Arguing that the three countries “said that they would carefully study” the treaty text, she said she thought it was possible to have a discussion with all the abstainers about their objections.

“We very much hope that all countries will join the ATT,” she said, “and we should be inclusive in our future engagement.” She added, “The vote on the ATT has given us the potential to forge a new global community.”

**What the Arms Trade Treaty Would Do**

The Arms Trade Treaty requires all states-parties to adopt basic regulations and approval processes for the flow of weapons across international borders, establishes common international standards that must be met before arms exports are authorized, and requires annual reporting of imports and exports to a treaty secretariat. In particular, the treaty

- requires that states “establish and maintain a national control system, including a national control list” and “designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms”;

- prohibits arms transfer authorizations to states if the transfer would violate “obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes” or under other “relevant international obligations” or if the state “has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes”;

- requires states to assess the potential that the arms exported would “contribute to or undermine peace and security” or could be used to commit or facilitate serious violations of international humanitarian or human rights law, acts of terrorism, or transnational organized crime; to consider measures to mitigate the risk of these violations; and, if there still remains an “overriding risk” of “negative consequences,” to “not authorize the export”;

- applies under Article 2(1) to all conventional arms within the seven categories of the UN Register of Conventional Arms (battle tanks, armored combat vehicles, large-caliber...
artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile
launchers) and small arms and light weapons;

• requires that states “establish and maintain a national control system to regulate the
export of ammunition/munitions fired, launched or delivered by” the conventional arms
listed in Article 2(1) and “parts and components…that provide the capability to assemble”
the conventional arms listed in that article;

• requires each state to “take the appropriate measures, pursuant to its national laws, to
regulate brokering taking place under its jurisdiction” of conventional arms covered under
Article 2(1);

• requires each state to “take measures to prevent…diversion” of conventional arms
covered under Article 2(1);

• requires each state to submit annually to the treaty secretariat a report of the preceding
year’s “authorized or actual export and imports of conventional arms covered under Article
2(1)” and allows states to exclude “commercially sensitive or national security
information”; and

• enters into force 90 days after the 50th state ratifies the treaty.

Jeff Abramson, an independent arms trade analyst, is former director of the secretariat at Control
Arms, an international coalition that pressed for a strong and comprehensive arms trade treaty
during the negotiations. From 2009 to 2011, he was deputy director of the Arms Control Association.

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