

2013: a unique opportunity for the Arms Trade Treaty.

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This policy paper argues that the diplomatic conference due to be held in March 2013 is a unique opportunity to reach agreement on the Arms Trade Treaty (ATT). The new round of negotiations will take place a few months after the diplomatic conference of July 2012, which came close to achieving a consensus. Since then, the international context has changed; the stability of domestic politics in the United States, the largest producer and exporter of weapons, means we can be moderately optimistic about an agreement being reached. The biggest obstacle to be faced by supporters of the treaty will be the rules of the game and, in particular, the need for consensus for decisions to be taken. This text includes 11 recommendations aimed at helping civil society activists increase their influence.

Context

The arms trade continues to be out of control. As of today, there is no international treaty which regulates arms transfers at a worldwide level. In fact, there is more regulation on the sale of almost any other product (from bananas to cars) than on that of a weapon. We thus have the paradoxical situation in which a toy gun has to go through stricter controls before reaching its destination than a real one does.

However, there is some regulation at national and regional levels, as is the case of the European Union, whose Common Position of 2008 lays down a series of criteria under which arms cannot be exported to areas in conflict. Most of these regulations are non binding guidelines, which are only applicable to certain countries or regions, and they exclude many types of weapons, as well as different types of transfers – in the case of the EU the guidelines focus exclusively on exports – without coming together in a robust and comprehensive regulation on a global scale. Thus, arms dealers exploit the loopholes in the existing legislation in order to continue supplying arms to virtually anywhere on the planet.

A first step in addressing this problem is the signing of a binding treaty which regulates the international trade in both light and heavy conventional weapons, as well as in their ammunition. Obviously, this proposal is not presented as a panacea which will put an end to all the problems arising from the proliferation of armed violence. Even once a treaty has been signed, it will have to be ratified and, most importantly, put into practice. However, the experience of the treaty against antipersonnel mines and more recently the convention against cluster bombs should lead us to be optimistic. These are treaties which are being put into practice; they have gone from the printed page to the real world. And given that they are still in the minds of diplomats and international negotiators, they represent valid precedents on which the current negotiations can be based.

Returning to the issue at hand, the conventional arms trade is a worldwide phenomenon; it is completely globalised and interdependent. Component manufacturing, assembly, transfer, etc. often take place in different countries. For most states, this trade has a strategic importance which goes beyond its purely economic value. That is what makes this such a sensitive issue, over which countries are reluctant to

cede sovereignty. However, strictly speaking the ATT is not a disarmament treaty. Nor can it be categorised as just a trade treaty. Because the nature of what this trade deals with — above all, the consequences of the use of the weapons sold — means that the treaty deals with very serious issues in humanitarian terms. Therefore, perhaps the most useful theoretical framework for understanding what we are dealing with is that of human security. That is to say, while this Convention will be important for the security of states, it goes beyond that, given that it affects (and how!) the security of all people and communities, even though the problems posed by this type of trade are different in each part of the world.

From this point of view the role of civil society is fundamental, as it was in the negotiations which led to the two treaties mentioned above. If we recognise that, when dealing with the arms trade we have to take into account the humanitarian aspect, we must accept that those who represent victims should have a voice in the whole process. That is why NGOs have been pushing this issue from the start, just as happened in the past around most of the issues concerning development, disarmament, human rights and the environment in which global regulation has been achieved. Think of child soldiers, the International Criminal Court or the Kyoto Protocol, to name but three well known examples from different policy areas.

Together with NGOs, the support from governments which are especially sensitive on these issues is critical. Countries like Norway and Mexico have been the leaders of a process that should result in a robust and legally binding treaty, even at the risk of there being fewer States Parties to the agreement than there would have been for an ambiguous and non-binding text. In the case of Norway, we are talking about a country that already played a key role in the signing of the conventions against anti-personnel mines and cluster bombs. This is a country that has made the defence of human rights and active peacebuilding the central points of its foreign policy and which, despite its relatively small size and economic power, has become a superpower in humanitarian terms. Mexico, on the other hand, suffers daily from high levels of armed violence, partly because of the proliferation of small arms which are trafficked across the United States border.

This is one of the most important and also controversial aspects of the negotiations. As the President of the Diplomatic Conference of July 2011, Roberto García Moritán, pointed out, small arms and light weapons have to be included in the scope of the treaty.¹ They are by far the most deadly weapons, those which produce most destruction and those that are

used to commit the majority of human rights violations. For that reason, a treaty which did not include them would not make sense. It also would help to legitimise the trade in these weapons, as has been argued by those who are against the treaty from more the most radical sections of civil society.²

We must recall that the treaty's objective is not to ban trade in a particular type of weapons. It is understood that there is a legitimate trade which, when authorised and conducted responsibly, can contribute to international peace and stability, such as those weapons which go to the police forces of democratic countries. For that reason it is essential to know who will be the end user of the weapons. The dividing line between the legitimate and illegitimate trade is very permeable; legally authorised weapons often end up being used in contexts very different from those that they were originally meant for.

Nor is it a question of regulating the possession of firearms by civilians — despite what is often said, for its own reasons, by the arms lobby.³ In this regard, we should highlight the role of the representatives of the National Rifle Association (NRA), who have had a lot of influence on the United States delegation, as they do on many of that country's Congressmen and Senators.

Evolution of the process

The idea of the ATT emerged in the mid-90s, coming originally from a group of Nobel Peace Prize winners, including, among others, the former Costa Rican President, Oscar Arias. At that time, what was proposed was a code of conduct to avoid the transfer of weapons to dictators and to those who would use them to commit serious human rights violations. This proposal took the form of a set of criteria in May 1997. Principles similar to these would end up being adopted by the European Union, and in 2008 they became the EU Common Position and therefore binding rules for European Union Member States.

In 2003 a working group coordinated by the Arias Foundation contributed to establishing the Control Arms campaign, which included two large development and human rights organisations (Oxfam and Amnesty International), along with the International Action Network on Small Arms (IANSA). Under the umbrella of Control Arms their aim was to coordinate a global

² See, for example, the Campaign Against Arms Trade: www.caat.org.uk

³ This confusion arises on occasions due to the existence of a second international regulatory process, in the ambit of the United Nations with its "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects". Unlike the ATT, it is a non-binding agreement, which excludes heavy weapons and which, in addition to trade, deals with many other issues, such as the marking of weapons or their possession by civilians.

¹ See the interview with Roberto Garcia Moritán in the documentary "Armes Sota Control", broadcast on 04/10/2012 by Catalan public television, TV3, in the series *Latituds*: blogs.tv3.cat/latituds.php?itemid=47727.

campaign with one specific objective: the ATT.

The first states to sign on to this idea in that same year were Cambodia, Costa Rica, Finland, Iceland and Mali. In 2004, the process reached a turning point when the United Kingdom announced that it would support the draft treaty and began work — along with a geographically mixed group of countries, made up of Argentina, Australia, Costa Rica, Finland, Japan and Kenya — on coordinating a UN resolution to that effect. These countries have co-sponsored the various UN resolutions on the ATT until now.

Finally, in 2006, there was the first UN resolution, adopted by the General Assembly with 154 votes in favour, 24 abstentions and just one vote against, that of the United States. From then on, a group of government experts took responsibility for examining the feasibility, scope and general outlines of the future ATT. In 2008 a second resolution was adopted and another group of experts was created to analyse the ingredients of a future international legally binding instrument. In 2009, with Obama already in power, the third resolution on the subject was approved with the only vote against, being that of Zimbabwe. With this decision the negotiating process was formally initiated. However, the condition laid down by the United States for supporting the resolution was that decisions be taken by consensus, a point that would have fundamental implications for the evolution of the process, since it implies a *de facto* guarantee of the right of veto on a treaty being approved.

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Between 2010 and 2012 a preparatory committee met four times in New York to facilitate the Diplomatic Conference of July 2012. The aim of these prior meetings was to iron out points of disagreement and sort out procedural matters. Nonetheless, the Diplomatic Conference ended without agreement, following a month of intense negotiations. At the last moment, when it seemed that consensus had been reached, the United States delegation declared that it needed more time to study the draft, thus blocking the adoption of the treaty. The following day, more than 90 countries presented a joint statement reaffirming their support for a robust and comprehensive treaty.

Thus, the process has not stopped, and in autumn 2012, the United Nations passed a new resolution, urging Member States to organise a second diplomatic conference in March 2013, to pick up the work from July 2012 and to complete the process of the ATT. This conference will again negotiate on the basis that consensus is necessary for decisions to be taken, without it having been clarified whether this means that complete unanimity is necessary or whether, on the contrary, in the event of an overwhelming majority in favour of the adoption of the treaty, the necessary consensus could be deemed to exist.

Analysis

The current situation

We are presently at the most favourable moment for an agreement to be reached. The resolution adopted on 7 November, 2012 by the UN General Assembly's First Committee, responsible for disarmament and international security, maintained the momentum, so the issue remains high on the international agenda.

There is a widespread view that the right of veto — which in theory is guaranteed for any country, but in practice is used by the great powers and, in particular, by the United States — is a brake on the achievement of agreements, as shown in the inaction of the Conference on Disarmament over the last 15 years. This is a point that has been increasingly raised by NGOs, diplomats and the specialised agencies and institutes of the United Nations, such as UNIDIR.

In addition, the international context is sadly conducive to making very evident the problems associated with the arms trade. A robust and effective ATT should have been able to prevent the transfer of arms to countries that repressed their populations during the Arab Spring. Armed conflicts in places like Syria or the Great Lakes region show the need for controls in the international arms trade.

Currently, six countries are responsible for 80% of international exports of conventional weapons. These are the five permanent members of the UN Security Council (the United States, Russia, France, the United Kingdom and China, known as the P-5), along with Germany, the engine of the European economy. In the case of the European countries, they have the support of their industries, which want companies in emerging countries to have to operate under the same regulations that exist in the EU, thus reducing their comparative advantage. Other European countries are committed to a more robust treaty, one which takes into account the position of the states which most suffer the human costs of the arms trade. Often, the position of France and the United Kingdom within the EU is not fully consistent with what they argue in their discussions with the P-5.

We should highlight the role of the United States, the largest producer and exporter of weapons in the world. This is a country that historically has favoured a unilateral foreign policy, rather than the multilateralism which is characteristic of the European Union. We have already mentioned the influence of the NRA, which was clearly visible under the Presidency of George Bush Jr., when the association even formed part of the United States' negotiating delegation. In this sense, we must remember that the United States is not a single actor, but rather a set of individuals that change with each new administration in Washington. If the election of Barack Obama meant fresh air and the *de facto* unblocking of negotiations, his re-election means that there is now the most favourable political climate so far for supporters of the treaty. Even so, Obama's reelection is no guarantee of success. In fact, much of the responsibility for the failure of the previous diplomatic conference can be laid at the door of his administration. Nonetheless, even if they are not in favour of the whole process, they could help in specific issues. For example, the United States has not signed the Ottawa treaty, but every year it allocates a large sum of money to demining activities.

The major sticking points in the ATT negotiations include, in the first place, the types of transfers to be regulated. So while some of the major exporting countries would like a treaty focused only on exports, most states are in favour of controlling all types of transfers, including issues such as transportation, but also the lending, leasing or even the donation of arms. In the current version of the text (presented by the President of the Diplomatic Conference on 26 July 2012) there is some ambiguity in this regard, although it should be noted positively that it mentions intermediaries, which are key figures in the transition from the legal market to the illicit trade.

Regarding the criteria which permit the rejection of specific arms transfers, these include issues related to human rights, international humanitarian law and the possibility of terrorist acts being committed. By contrast, when it comes to the other criteria (violence against women and children, organised crime, corruption or a negative impact on development in the importing country) the terms of the text are less exact.

While some states would like to limit the scope of the treaty to the seven types of weapons on the UN Register, most countries would prefer to control all conventional weapons. In the current version of the text, the categories of the UN Register have been broadened to include small arms, but ammunition (as well as weapons parts) are dealt with in a separate section and hence with less stringent controls than the other elements of arms. Excluded, however, are some heavy arms such as transport aircraft, drones, police weapons designed for the suppression of internal protests and dual-use weapons, as well as arms transfers to non-state actors.

Regarding the process for the ratification and entry into force of the treaty, the number of ratifications required is currently set at 60, without it being necessary for these to include the largest producers or exporters. This is a large number (for the Convention on Cluster Munitions only 30 were required), but considering the number of states in favour of the process, it is considered possible for the ATT to enter into force within a reasonable period of time. In the interests of transparency, it would be desirable to include the obligation for states to make public their annual reports on arms transfers, a requirement which is not included in the current text.

In the current version of the text, the seven categories of the UN register have been expanded to include small arms, but ammunition will be subject to less stringent controls.

The current draft is ambiguous with respect to other issues, such as defence cooperation agreements. To satisfy the demands of the gun lobby, weapons used for hunting and sports shooting have been excluded, and it is proposed that the ATT can only be altered in the future by consensus, which practically excludes the possibility of the text being amended. The text is therefore a minimum agreement (less demanding than the European regulations, but stronger than the average level of controls on international arms transfers), acceptable for NGOs and for most states, but still open to being improved before the coming Diplomatic Conference of 2013. On the basis of this judgment, we present 10 recommendations aimed at achieving the best possible ATT, taking into account the limitations imposed by the existing rules of the game.

Recommendations

Be realistic, demand the maximum. It is essential to identify the priorities, the red lines. In this sense, unity between NGOs should take priority over fulfilling the aspirations of one particular NGO or achieving any personal goals. For this reason, it is vital to define the essential elements of the treaty, such as small arms or ammunition. There has to be generosity, and the representatives of civil society have to stick together. So, while we have to present our maximum demands (if the NGOs don't do it, nobody else will), we

also have to be realistic and be prepared to accept a good treaty, even if, by definition, this means it's not perfect.

Work between conferences. It would be desirable to meet in March 2013 having already held additional regional workshops to bring positions closer together, so that negotiations can begin on the first day on the points on which it is possible to reach an agreement. In this sense, the President of the new Diplomatic Conference, the Ambassador of Australia, must play a fundamental role, following the example of his predecessor, Roberto Garcia Moritán.

Dialogue with the moderate voices within the gun lobby. The strategy for maximising the influence of NGOs should include dialogue with adversaries. Thus, a possibility which so far has not been explored much by activists is to look for potential allies among moderate people on the other side. It is a question of dividing the enemy. To do this, we need to be open hearted and pragmatic. Lines of communication should be established with non extremist associations within the gun lobby, such as hunting groups or sports shooting associations. Explicit support from such organisations for the objectives of the treaty would increase activists' credibility in the eyes of some countries, international organisations and a large sector of public opinion, especially in the United States.

Dialogue with the arms industry. This dialogue has already taken place in Europe, especially with the arms industry in the UK. This should be promoted in other countries, being aware of the risks of cooptation and of the treaty being diverted towards objectives other than those that were initially laid down. Ideally, dialogue should include proposals for the conversion of the arms industry, in those cases in which a reduction of the market is foreseen, and thus conversion of the labour force so as to maintain employment.

Encourage creativity. *Control Arms* has been characterised by their excellent use of social networks, as well as infographics specifically designed for this campaign. As has been seen in other cases, it is essential to be creative with tactics. An example would be to use the strategy of "naming and shaming" to embarrass irresponsible governments. Tactics of this kind are one of the most effective ways that coalitions have to influence negotiations. No country wants to be on a human rights organisation's list of "bad guys". This worked well in the Ottawa Process and also with the Cluster Munition Coalition.⁴ This is an area that

⁴ At the Dublin Diplomatic Conference, where the key part of the Oslo Process was negotiated, every day diplomats were faced with a map of the world on which each country had a different colour (green, yellow or red), representing its position on a ban on cluster bombs. Many diplomats admitted that this simple map had a massive effect on their discussions. It was something visual for journalists, always keen to get headlines like "our country is on the list of bad guys". Additionally, it was something that evolved during the

activists could promote at a low financial cost and with a potentially enormous influence.

Increase the role of victims. Another way to use creative tactics in social movement activism is the inclusion of those closest to the social problems, that is to say, the victims themselves. Giving voice to those affected is socially and strategically important, and campaigns would be stronger if they incorporated them. In this sense, the growing inclusion of victims within government delegations should have a significant impact on the content and direction of the negotiations.

Extend lobbying to different levels. Working in major cities both at national and regional level, bearing in mind that countries are not unitary actors and that some diplomats do not receive specific instructions from their governments. In this sense, diplomats with a background in civil society organisations can be more open to those issues which are of greatest concern to NGOs.

Take advantage of the international context. Negotiation processes do not occur in timeless isolation. On the contrary, unfortunately, they coincide with military conflicts. Activists could increase their effectiveness if they were able to establish direct connections between the ATT and contemporary events, such as the war in Syria. The academic literature shows how transnational activism is more effective in periods where citizens, including diplomats, are more aware of the consequences of armed conflict. Think of cluster bombs in Lebanon, small arms in a massacre at a school, landmines in Cambodia, child soldiers in the Congo, etc. While underlining the horrors of war, these terrible examples are also an opportunity for activists; they can attract more media attention to the effects of weapons proliferation in prolonging armed conflicts.

Improve relations with other coalitions. In this aspect there has been a lot of improvement over the last few years. However, it is still necessary to strengthen the idea that there should not be competition between campaigns or between coalitions, and thus aim to reduce the struggle for resources, media coverage or political support. There are many organisations that are only worried about their own specific issue. Seeing each issue as one particular aspect within a broader framework of human security could help to promote the kind of cooperative thinking whereby success in one campaign is also a step forward for the other organisations.

Be pragmatic and avoid sceptical countries. In some of the most successful disarmament negotiations, such as the Ottawa Process and the Oslo Process, there were strict rules for participation. This was crucial to avoiding a negative position from the countries that

negotiations, so that the colour changes became part of the official discourse of government delegations.

had an interest in blocking negotiations, as has happened in the traditional forums on disarmament and arms control. In the context of the ATT, we need to pose the question as to what extent it makes sense to make concessions to the most sceptical countries. In reality, the chances of these countries actually signing and ratifying the treaty are minimal. Be it as it may, in March 2013 this will be one of the key points for guaranteeing the success of the negotiations.

Exploit the potential of those who aren't native English speakers. Strategy meetings should not be held simply in English, with the occasional translation. Holding meetings in which different languages are used is key to integrating and allowing a fuller role to be played by activists from the countries affected, such as Latin America or Francophone Africa, as well as representatives from Asia, possibly those who have the most difficult task when it comes to pressurising their governments.

Postscript

Whatever happens in March 2013, what has achieved up to now is much more than what could have been expected a few years ago. We could even say that the arms trade has, to some extent, been stigmatised and that governments already feel the need to justify their decisions in this regard. On the other hand, we must not forget that there are other options, for example a new process, with more flexible rules of the game. Therefore, faced with the dilemma between a weak universal treaty and a treaty which is strong, although it can not be signed by all states, we should opt for a strong treaty. It can become universal later on. Moreover, the experience of non-universal treaties, such as the one on landmines, shows that in practice their effects can be felt beyond the states party to the treaty.

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