

IS SELLING ARMS REGULATED IN PRACTICE?¹

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ABSTRACT

Although it drops to second level after oil industry, arms trade, in fact, is the highest international trade sector. Majority of arms sales are orchestrated secretly because of national security concern, or paid from covered national fund or are sold to the illegal non-governmental organizations such as guerillas, warring parties, proxies and terrorist groups on the ground. That's why, majority of arm sales are not seen within the legal documents and thence could not be tracked. Major arms, small arms and light weapons (SALW) are the main two categories in the arms sales. It is proved that majority of the untracked SALW are used in illegal actions and civil wars today. Although selling weapons to the conflicted areas and illegal organizations are forbidden, high prices from the warring areas are attracting major arm suppliers to sell weapons to the mentioned areas by using "indirect ways" and middlemen. There was no regulation about the selling arms until Arms Trade Treaty (ATT), December 2014. Top-10 major arm suppliers, except three of them, have not signed or ratified the ATT and it is not an ideal document to stop illegal arms sales and indirectly civil wars; however human kind does not have better alternative at the moment. This article aims to ameliorate the imperfections of the ATT and stipulate to increase the number of signatory parties especially among the main arm suppliers.

Keywords: Security Studies, Major Arm Sales, Arms Trade Treaty, International Law, Strategic Studies

1- SPENDING OF (IN) SECURITY

Until the end of 2014, everything except main weapons, small arms, and light weapons (SALW) were subjected to international regulations and rules. Any goods' trade in the world had to follow international norms and codifications; however, guns were, for non-signatory parties still are, free to sell and buy in the international arena. Besides, between two states trade, these arms sales are going to drug lords, rebels and bandits and in all regions in the world, free small arms form a persisting problem. The small arms trade is easy to handle cheap, light, transport and conceal. A build-up of small arms alone may not create the conflicts in which they are used, but their excessive accumulation and wide availability aggravate the

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tension. The violence becomes more lethal and lasts longer, and a sense of insecurity grows, which in turn may lead to higher demand for weapons.

Today world conflicts are fought mainly with small arms and broadly used in interstate disputes³. They are the weapons of choice in civil wars and for terrorism, organized crime and gang wars. The use of small arms causes most conflict deaths, and civilian populations bear the brunt of armed conflict more than ever. Small arms facilitate a vast spectrum of human rights violations, including killing, maiming, rape and other forms of sexual violence, enforced disappearance, torture, and forced recruitment of children by armed groups. More human rights abuses are committed with small arms than with significant arms. Small arms trade could be illicit very easily. Sources of small arms supplies to areas conflicted regions are varied. Domestically, small arms can enter illegal circulation through distribution, theft, leakage, divergence, or resale. The cumulative destabilizing force of such small-scale trade is not to be underestimated, particularly in unstable regions where small arms are traded from one conflict to another. The small arms industry appears to be fragmenting, bringing manufacturers closer to potential markets⁴.

Most small arms are sold and transferred legally, but global patterns of supply of small arms and light weapons have changed profoundly over the past few decades. This has complicated controls. Contemporary traders, agents, brokers, shippers and financiers may well combine activities, making it difficult at times to distinguish small arms trade from brokering. Investigations of arms embargo violations by the monitoring groups of the Security Council have exposed some international networks involved in the illicit trade and negotiating of small arms. These brokers and dealers exploit legal loopholes, evade customs and airport controls and falsify documents. Illegal activities by certain brokers and traders - and by the Government officials they collude with - have violated every UN arms embargo, with small arms and ammunition as the main items transferred.

A recurring problem concerning the proliferation of small arms, in zones of crisis and conflict, is the absence of a normative framework for all States to guide decisions regarding arms transfers. The UN defined small arms and light weapons in 2005, and it includes heavy machine guns, grenades, portable launchers of anti-tank missile and rocket systems, portable anti-aircraft missile systems in addition to SALW, major arms industry also, is the biggest industry which manufactures and sells weapons and military technology⁵. World military expenditures are roughly \$2.5 trillion which up around 5 % of the world GDP⁶.

According to the Stockholm International Peace Institute (SIPRI), the volume of international trade of major arms in 2014-18 was 7.8 per cent higher than 2009-13. Top-5 largest exporters were the US, Russia, France, Germany and China; and the Top-5 largest importers were Saudi Arabia, India, Egypt, Australia and Algeria. According to SIPRI 2018 Arm Sales Report, sales in the Middle East has increased by 87 per cent in the 2014-18 term. US arms exports accounted for 36 per cent of the global total in 2014-18 and grew 29 per cent compared with 2009-13⁷.

³ UN Office for Disarmament Affairs Report, 2014. See: <http://www.un.org/disarmament/convarms/salw/>

⁴ Ibid

⁵ UN General Assembly, International Trace Instrument, 2005.

⁶ Pieter D. Wezeman, Aude Fleurant, Alexandra Kuimova, Nan Tian and Siemon T. Wezeman, SIPRI Factsheet, Trends in International Arms Transfers, 2018, Solna, Sweden, March 2019, p. 1.

⁷ SIPRI Factsheet-2019, p. 1-3.

Table 1: Top-10 Largest Exporters of Major Arms and Their Main Clients

Exporter	Share of arms exports (%)		Per cent change from 2009–13 to 2014–18 ^a	Main clients (share of exporter's total exports, %), 2014–18		
	2014–18	2009–13		1st	2nd	3rd
1 United States	36	30	29	Saudi Arabia (22)	Australia (7.7)	UAE (6.7)
2 Russia	21	27	-17	India (27)	China (14)	Algeria (14)
3 France	6.8	5.1	43	Egypt (28)	India (9.8)	Saudi Arabia (7.4)
4 Germany	6.4	6.1	13	South Korea (19)	Greece (10)	Israel (8.3)
5 China	5.2	5.5	2.7	Pakistan (37)	Bangladesh (16)	Algeria (11)
6 United Kingdom	4.2	4.3	5.9	Saudi Arabia (44)	Oman (15)	Indonesia (11)
7 Spain	3.2	2.9	20	Australia (42)	Turkey (13)	Saudi Arabia (8.3)
8 Israel	3.1	2.1	60	India (46)	Azerbaijan (17)	Viet Nam (8.5)
9 Italy	2.3	2.7	-6.7	Turkey (15)	Algeria (9.1)	Israel (7.6)
10 Netherlands	2.1	1.9	16	Jordan (15)	Indonesia (15)	USA (11)

Source: SIPRI Arms Transfers Database, March, 2019, p. 2.

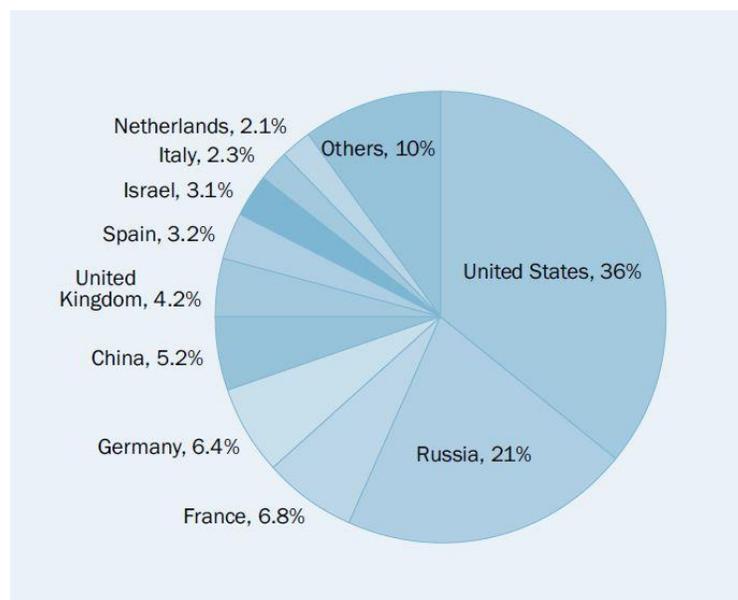


Figure 1: Global Share of Major Arms Exports by the Ten Largest Exporters, 2014–18⁸.

It is very ironic that the six largest weapon industry producers and exporters are the 5+1 members, and five of them are the establishers of the UN and five permanent members of the UNSC “to protect international peace”. According to the UN big five countries’ annual defense budget is around \$ 1.2 trillion. All countries’ (in the world) annual budget is around \$ 2 trillion, so big five’s annual budget is around 60% of the world.

⁸ Pieter D. Wezeman et al, SIPRI Factsheet, March 2019, p. 3.

According to regional categorization, Asia is accounted for 40 percent of arms imports. India, China, Taiwan, S. Korea, Vietnam and Indonesia are the primary weapon buyers in the region. The Middle East comes in the second rank among the other areas, where Saudi Arabia, Egypt, UAE and Iraq, are the main buyers. Africa is another important region in the weapon market. In the continent, weapons have never ceased firing, and mass destructions have been continuing in the last six decades. Algeria accounted for 56 per cent of African arms imports, Morocco for 15 per cent and Nigeria for 4.8 per cent⁹. Official indicators show that Africa's defence spending is around 45 billion USD, but this is the "tip of the iceberg" in compare with illicit and illegal sales. Terrorist and rebellion groups movements, political instabilities, national competitions, ethnic and religionist turmoil accelerates arm races in the African continent. Algeria, Niger, Nigeria, Sudan, South Sudan, Uganda, Kenya, Congo, Ivory Coast, Burkina Faso and Guinea are the main open markets in the continent.

Civil arms sales are not a minor number in the total arms sales with small arms and light (SALW). According to the UN statistics, there are 14 countries which are selling SALW over 100 million USD. The US is selling SALW around 500 USD million annually. After the US, Top-10 lines up as Italy, Germany, Brazil, Austria, Switzerland, Israel, Russia, S. Korea, Belgium, China. Civil arming is the highest in the US. During the negotiations of Arms Trade Treaty, the most vigorous opposition came from US arm lobbies by claiming that the treaty violates national sovereignty or individual rights. While not fundamentally opposed to an ATT, these groups are keenly sensitive to ensuring an ATT does not undermine domestic constitutional protections and individual rights. These groups include the National Rifle Association, the Institute for Legislative Action, National Shooting Sports Foundation, the Heritage Foundation¹⁰.

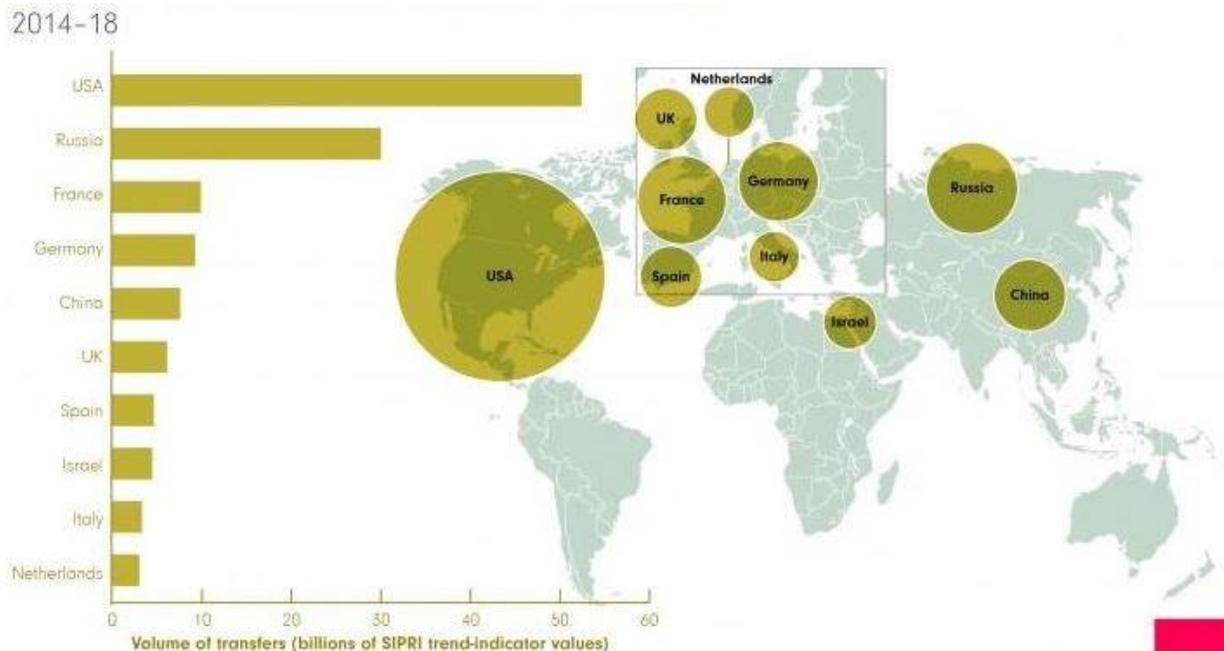


Figure 2: Top-10 Largest Arms Exporters in the World¹¹

⁹ SIPRI Arms Transfers Database, March 2019, p. 8-11.

¹⁰ "NRA to UN: don't regulate US arms ownership". SFGate.com.

¹¹ Pieter D. Wezeman et al, SIPRI Factsheet, March 2019, p. 6.

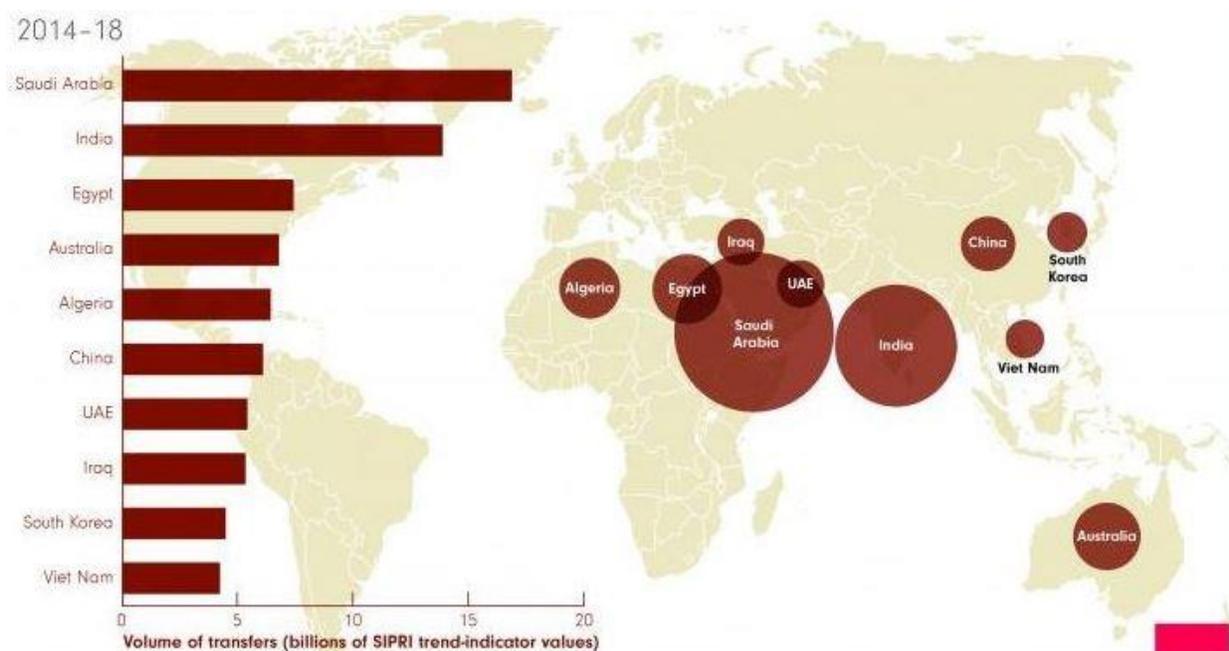


Figure 3: Top-10 Largest Arms Importers in the World.¹²

2- REGULATION AND ENCOMPASSING THE WORLD

The UN has less information on small and major arms than on nuclear weapons. Reliable data sets on small arms can only be built if countries provide information on production, holdings, trade, legislation and use. But of all transparency measures on weapons systems, those on small arms are the least developed. Even today, more is known about the number of nuclear warheads, stocks of chemical weapons and transfers of primary conventional weapons than about small arms¹³. There are no accurate figures for the number of small guns and light weapons currently in circulation globally. Sources estimate the total to be at least 900 million USD. Most small arms - generally the only category of weapons not falling under Government monopoly of possession and use - are in private hands¹³.

Governments should ensure that small arms from Government stocks or private ownership are not misused and do not enter illicit circuits, where their use may contribute to uncertainty and increasing poverty. To attain those goals countries have agreed on specific commitments on small arms control: The Firearms Protocol, the Program of Action on small arms - including an Instrument on marking and tracing - and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Related with small arms, countries are giving separate attention to closely related issues, such as armed violence, child soldiers, the protection of civilians in armed conflict, ammunition, the arms trade treaty and the UN register of conventional arms¹⁴.

¹² Pieter D. Wezeman et al, SIPRI Factsheet, March 2019, p. 7.

¹³ UN Office for Disarmament Affairs Report, 2014. See: <http://www.un.org/disarmament/convarms/salw/>

¹⁴ UN Office for Disarmament Affairs Report, 2014. See: <http://www.un.org/disarmament/convarms/salw/>

Such arms control policies and treaties are focused on international arms trafficking and in the standardization of laws, protocols and sharing of law enforcement information and best practices across nations to prevent illicit arms sales. They also focus on terrorism, arms proliferation as a humanitarian concern, disarmament in the face of extreme violence, and cases of ameliorating anarchy, civil war and international conflict. SALW provisions are generally not oriented towards imposing or enforcing domestic national or local legislation of legitimate gun ownership or sale¹⁵.

Arms Trade Treaty (ATT) was negotiated at a global conference under the auspices of the United Nations in July 2012, in New York. It was not possible to reach an agreement and was rescheduled twice in 2013. In April 2013, the UN General Assembly voted overwhelmingly to adopt the ATT to govern the sale, stockpiling and trafficking of many types of weapons, from warships and aircraft to small arms and light weapons. The main reason for lengthy negotiations was the resistance of big arms producers. In September 2013 the UN Security Council passed Resolution 2117, which urged nations to remain committed to small arms embargoes and SALW control protocols¹⁶. Work on SALW via the UN is coordinated by the UN Office for Disarmament Affairs (UNODA). The ATT entered into force on 24 December 2014. The ATT is an attempt to regulate the international trade of conventional weapons to contribute to global and regional peace, reducing human suffering, and promoting co-operation, transparency and responsible action by and among states.

The UNODA claimed the treaty would not: interfere with domestic arms commerce or the right to bear arms in its member states; ban the export of any weapon; harm the legitimate right to self-defense or undermine national arms regulation standards already in place. “The Arms Trade Treaty obligates member states to monitor arms exports and ensure that weapons don't cross existing arms embargoes or end up being used for human-rights abuses, including terrorism. Member states, with the assistance of the U.N., will put into place enforceable, standardized arms import and export regulations and be expected to track the destination of exports to ensure they don't end up in the wrong hands. Ideally, that means limiting the inflow of deadly weapons into places like Syria.”

Advocates of the treaty say that it only pertains to the international arms trade and would have no effect on current domestic laws¹⁷. The resolution explicitly states that it is “the exclusive right of States to regulate internal transfers of arms and national ownership, including through constitutional protections on private ownership.” International non-governmental organizations have struggled more than states on putting this treaty on the table. Amnesty International, The Arias Foundation for Peace and Human Progress, Safer world and International Action Network on Small Arms took leading roles on drafting the ATT and pressure on the states to sign.

¹⁵ UN General Assembly, International Trace Instrument, 2005.

¹⁶ UN Resolution, 2117-7.

¹⁷ [“Separating fact from fiction on the Arms Trade Treaty”](http://oxfamamerica.org). oxfamamerica.org. 21 July 2011; [“A big deal about small arms”](http://birchbarkletter.com). birchbarkletter.com. 25 April 2012; [“The Arms Trade Treaty: A Response to the 2nd Amendment Critique”](http://law.marquette.edu). law.marquette.edu. 1 December 2012.

The ATT ensures that no transfer is permitted if there is a substantial risk that it is likely to

- be used in serious violations of international human rights or humanitarian law, or acts of genocide, or crimes against humanity,
- facilitate terrorist attacks, a pattern of gender-based violence, violent crime or organized crime;
- violate UN Charter obligations, including UN arms embargoes;
- be diverted from its stated recipient;
- adversely affect regional security; or
- seriously impair poverty reduction or socioeconomic development.

Arms took leading roles on drafting the ATT and pressure on the states to sign.

The treaty includes all conventional arms from warships to the SALW. Accordingly, states will establish and maintain a national control system to regulate the export of ammunition, and they will make their control lists publicly available. They will designate national contact points to exchange information. It is forbidden to sell arms if it knows that the weapons would be used in the commission of genocide, crimes against humanity¹⁸.

The most important points are included in article 7 affirming that states “(a) would contribute to or undermine peace and security; (b) could be used to (i) commit or facilitate a serious violation of international humanitarian law; (ii) commit or facilitate a serious violation of international human rights law; (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting state is a party; or (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party¹⁹. If the state determines that there is an overriding risk of any of the negative consequences, she shall not authorize the export²⁰. The exporting country will make available information to the importing state and the transit or trans-shipment states, subject to its national laws, practices or policies²¹.

Importing country’s judicial organs can request information from exporting state²². Each state is authorized to pursue transshipment and brokering and diversion²³. They will record all legal papers and report to Secretariat²⁴. They shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty²⁵.

¹⁸ UN, Arms Trade Treaty, New York, 2 April 2013, article: 6

¹⁹ Ibid, article: 7

²⁰ Ibid, article: 7 (3)

²¹ Ibid, article: 7 (6)

²² Ibid, article: 8

²³ Ibid, article: 9-11

²⁴ Ibid, article: 12-13

²⁵ Ibid, article: 14

After the fiftieth state's ratification, the ATT has been put into force on 24th December 2014. So far, 101 states are the parties of the treaty. By the European Commission decision, all European countries were forced to sign and ratify the mentioned treaty. Some of the biggest arms sellers in the EU, UK, France, Germany, Belgium, Italy and Spain, signed the deal because of the Commission's decision. But the other largest arm exporters, such as Russia, US, China, Israel, and Ukraine have not signed or ratified the agreement²⁶.

3- AMENDMENTS AND BINDING FOR ALL

The fundamental dilemma lays on the macro economy and illegal transportation. States have the right to buy any military equipment for their primary duty which is external security and defense, while exporter countries are making their most significant part of their income from arms sales. Even if the deals come from a private company, the state is charging around 28-40% tax; so, for the home country, it is a "win-win" situation between company and state. Except for 30 countries, the remaining states in the world are arm importer to ensure their national defense. If they feel that they are under potential threat, arms sales accelerate dramatically. That's why both parties are very reluctant to codify the rules. By the NGOs significant pressure, the ATT could be effectuated with the lack of biggest arms sellers. Because of the high income and difficulty of pursuing the last consumer exporter countries do not want to sign or ratify the agreement. So, the sales still go to illegal NGOs, terrorist groups and vague states hands.

Tracing the last destination is still the main issue. If the sale is between two states, it looks like open/explicit trade and submitting documentary evidence is easier. If a private company does a deal with a country, it could be convenient, but if both sides are private companies, it will be easy to trace. This is because control mechanisms are based on exporter state's report and the other side's confirmation. If the other party does not give accurate information, again tracing will be very problematic. Flag issue is another problem in determining this issue. In the high seas, the carrier changes the flag and cruise to another destination, and this makes tracing unlikely. For that purpose, it is essential that the weapons are marked upon production and import, and that appropriate records should be kept. Existing stocks should also be marked. Although many arms are marked upon production and import, international cooperation in marking and tracing of small arms is in its infancy²⁷. But again the 'marking' is open to abuse or possible to escape because markings are being erased by producers, carriers, transship companies etc. French weapons were found in Africa with erased marks of "made in France". Hidden marking by an independent organization could be a small solution because they are erasing it.

In addition to reporting the states may be an independent international organization might be established to serve the UNODA or UN. It should not be dependent on the UNSC or other UN bodies. Because the problem comes from the significant exporters and these countries are UNSC permanent members. If the tracing institution is under the UN, five permanent members will intervene in this institution in favor of their politics. Independent organizations directly report to the UNGA could be a better idea.

²⁶ For the treaty and signatory state parties please see UN Office for Disarmament Affairs, UNODA website: <http://disarmament.un.org/treaties/t/att>

²⁷ UN Office for Disarmament Affairs Report. See: <http://www.un.org/disarmament/convarms/salw/>

Without Russia, the US, China, this treaty looks like the League of Nations established after World War I: Good intention, short charter and lack of biggest actors. Even all states ratify the ATT; it has jurisdictional shortness. The problem lies on *pacta sunt servanda* point. ATT Article 5 brings national control system, and the shortest article has most extended results and most significant loophole: “Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty”²⁸. Domestic laws are varied in different countries, and most of them are relevant to the number of weapons such as US Law. There is no difference in jurisdictional punishment between selling 1 or 100,000 rifles in Florida. And everybody has the right to buy and sell light weapons in many countries. Secondly, if the government violates domestic law on exporting weapons, can we prosecute the government in domestic law? Because the ATT gives jurisdictional authorization to the state’s hand²⁹. What if the exporting or importing state violates the agreement? International politics and law are antagonistic to each other when national interest and international law conflicts, like the 2003 Iraq invasion and Junior Bush Administration, and the Crimea invasion by Russia. The best solution could be establishing an independent specialized court like “Arms Trade and Violations Court”. It should have the economic and political verdict right. Maybe under that condition, it could have deterrent power for all sides. It will be challenging to punish Great Powers or if this court is established.

Information on global ammunition flows is difficult to obtain. More than 80 per cent of ammunition trade seems to remain outside of reliable export data. However, ammunition forms a key component of tackling the small arms topic in all its aspects. In contexts of sustained use, ammunition stockpiles are rapidly depleted. Preventing their resupply in unlawful situations should be a matter of prime concern.

Furthermore, these stockpiles present a two-fold problem of security and safety - research shows that much of the non-State actors' ammunition is illicitly diverted from State security forces, and ammunition warehouses located in densely populated areas have exploded in some countries, causing thousands of casualties. Therefore, security, as well as safety measures concerning ammunition stockpiles, need to be urgently addressed. But again, the risk of abusing is still on the table³⁰. What if the state does not sell it with conventional ammunition? Who is going to catch it? And with what?

ATT ensures that no transfer is permitted “if there is substantial risk that it is likely to be used in serious violations of international human rights or genocide or crimes against humanity; facilitate terrorist attacks, violent crime or organized crime; violate UN Charter obligations; adversely affect regional security; or seriously impair poverty reduction or socioeconomic development”. These terms are too flexible, open to debate and depend on governments’ understandings. Where we can say that arms sales will not cause “poverty reduction” or will not affect “regional security.”

²⁸ Ibid, article: 14.

²⁹ UN, Arms Trade Treaty, New York, 2 April 2013, article: 5 and 14.

³⁰ UN Office for Disarmament Affairs Report. See: <http://www.un.org/disarmament/convarms/salw>

Loopholes would be minimized by including³¹ all weapons—including all military, security and police arms, related equipment and ammunition, components, expertise, and production equipment. All types of transfer—including import, export, re-export, temporary transfer and transshipment, in the state-sanctioned and commercial trade, plus transfers of technology, loans, gifts and aid. And all transactions—including those by dealers and brokers, and those providing technical assistance, training, transport, storage, finance and security.

In the treaty “each state is authorized transshipment and brokering”³². This point is unclear: what kind of responsibility is given to the states? Can we investigate any ship in non-signatory state’s territorial seas or high seas? If there is a gap, this hole will be used by private companies and abusing countries. Transshipments and brokering are the main paths used by terrorist groups and illegal any parties such as states under embargo.

ATT says “It is forbidden to sell arms if it knows that the arms would be used in the commission of genocide, crimes against humanity”³³. This article is open to abuse again. If a state claims it does not know if it was going to be used by the second party for any purpose, who will accuse the country of recognizing that fact? And, how could it be known by the first party where it will be used? When it is sold, the other party can use it in any conflicted area or another place without informing the first party.

CONCLUSION

According to realist theory, rough human nature and killing desire has been continuous. This reflects the domestic level and brings to question the arms sales at the international level. Maybe it is impossible to stop it totally, but at least minimizing it could depend on regulations and codification of the arms sales. In every minute one soul is lost by light or major weapons in the world and we, as humankind should solve this issue immediately. ATT is the first codification on the trade of conventional and small arms. It is short and immature, but a unique document in our hand and we are better than 2014 when we had no regulations. In addition to that, an independent and international control mechanism and body should be established to monitor all arms sales. Independent specialized court with the highest authorization to judge all actors including states should be created too. Several amendments mentioned above are necessary for the treaty and should be implemented immediately. But maybe the essential step is persuading the big five arms suppliers of signing and ratifying the agreement as soon as possible under the pressure of world public opinion, think-tanks and NGOs.

³¹ [Loopholes “Can you spot the difference?”](#) Demonstrating virtual identity between military/police weapons and sporting arms.

³² UN, Arms Trade Treaty, New York, 2 April 2013, article: 9-10.

³³ UN, Arms Trade Treaty, New York, 2 April 2013, article: 6 (2).

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