Some Recent Commentary on the Arms Trade Treaty

PSAAG member Dr Rod Alley reviews commentaries on the ATT by Paul Meyer and Elli Kytömäki:

A Banner Year for Conventional Arms Control? The Arms Trade Treaty and the Small Arms Challenge
*Global Governance* 20(2) 2014, pp. 203-212

The Arms Trade Treaty’s Interaction with Other Related Agreements, and

The Arms Trade Treaty and Human Security: Cross-cutting Benefits of Accession and Implementation
*RIIA* (Chatham House), February 2015.

Paul Meyer

A Fellow in International Security at Simon Fraser University and Senior Fellow at The Simons Foundation, Vancouver, Paul Meyer is a former career diplomat who served as Canada’s Ambassador and Permanent Representative to the UN and the Conference on Disarmament in Geneva.

Meyer notes that, as well as concluding the ATT, the United Nations (UN) saw the Security Council unanimously pass Resolution 2117 which addressed small arms as a discrete threat to international peace and security. The latter development was new to the extent that the UN has come relatively late to addressing the security and humanitarian challenges posed by conventional weapons, particularly small arms.

Resolution 2117 has a lengthy preamble that expresses grave concern over the illicit transfer, destabilising impacts, and misuse of small arms and light weapons (SALW) as a threat to international peace and security. It condemns the adverse impacts of SALW on social and economic development, and the violence accordingly perpetrated against women and girls. The Preamble is positive in support of Responsibility to Protect principles and the role of civil society.
Yet Meyer sees the operational aspects of the Resolution adding little to what is already in the Programme of Action (POA). States are reminded of existing Council-mandated arms embargoes, while peacekeeping operations may ‘if deemed necessary by the Council’ assist host governments in various ways with SALW related problems and programmes.

Reservations Expressed

States that voiced misgivings about the ATT are identified. India criticised its failure to adequately address terrorism and arms abuse violations committed by non-state actors. It also sought to exclude mention of defence cooperation agreements from the text, believing this would work to the advantage of a few key exporting states but to the detriment of a large number of arms importing states.

Egypt expressed concerns over the lack of definition of what were considered important terms, and a lack of collective mechanisms to identify the applicability of agreed criteria. Others regarded adoption of the treaty by UN General Assembly vote, not by consensus, a worrying precedent that could jeopardise state security interests.

Caveats Aplenty

More widely, Meyer sees SALW issues continuing to complicate implementation of the Programme of Action, or POA. At its second review conference in 2012, which considered an implementation plan for 2012-18, a striking amount of conditionality was entered into the ‘action’ items that states are required to undertake. Replete with such caveats as ‘to the extent possible’; ‘as appropriate’; ‘when necessary’; ‘when in a position to do so’. This wording, Meyer maintains, gives adequate cover for states that would prefer to do little or nothing over measures required.

Meyer concludes that with major arms exporting and importing states remaining on the side-lines of the ATT, a shadow is cast over its future prospects. It remains open whether existing holdouts will change their position once subject to peer pressure, or the demonstrable benefits accruing from a proven ATT track record. Here much will
depend on the quality of future implementation.

Elli Kytömäki

Kytömäki’s first of two longer papers has been published under the auspices of the International Security Department of Chatham House where the author is an Associate Fellow currently working on ATT issues, export controls and nuclear non-proliferation. A key theme of the first paper is the scope for ATT complementarity with existing and related international instruments of relevance. Such complementarity, it is argued, offers positive opportunities but some disadvantages. What already exists through these instruments is helpfully conveyed in a figure presentation.

Identified on the positive side of the complementarity ledger is the scope for ATT implementation to enhance the transparency of conventional arms transfers covered by international and regional instruments. For that to occur, states will require assistance in drafting comprehensive laws and control systems. Although not cited by this paper, an example is the Arms Trade Treaty Model Law devised by the New Zealand government in collaboration with the Small Arms Survey. Designed to support Pacific island states, its objective is to design legislative provisions appropriate to ATT requirements as they relate to the Pacific region.

Looking ahead, it is argued that ATT conferences of parties need to foster connections with related instruments in interests of enhanced implementation. Organisational linkages could include those with INTERPOL, the World Customs Organization (WCO) and the United Nations Office on Drugs and Crime. To help countries identify high risk transfers, the WCO has developed indicators that could be used to detect illicit SALW transfers. Wider cross-cutting advantages to accrue include combating piracy or corruption.

Strengthening Links

The rapid growth of private security providers has seen soft law restraints emerge from the Montreux Guidelines and now developed into the International Code of
Conduct for Private Security Providers (ICoC). Along with required pledges to uphold humanitarian, human rights, and international criminal law provisions, the ICoC has established common practices for the management of weapons and weapons training which could usefully supplement ATT principles and objectives.

To avoid reporting fatigue – a growing problem – states should look to improving existing electronic tools and databases and building new capabilities. This underlines the need for different branches of national authorities to strengthen their connections with relevant international bodies. If not, then a gap dividing the ATT’s political requirements for good faith observation from on the ground practicalities of enforcement could soon emerge and widen.

While the ATT provides for possible reinforcement of United Nations Security Council mandated arms embargoes under sanctions, Kytömäki is sceptical as to their actual impact. She sees them having limited success in halting the flow of arms since violations are widespread. Whether that is a fault of poor monitoring and enforcement, or a lack of political will by member states remains in dispute.

Also unsettled is the question of how the ATT may affect existing defence cooperation agreements. The compromise struck by the treaty indicates that it may not be used to weaken such agreements, but that any transfers must meet the stipulated ATT criteria. Unresolved is how to treat transfers occurring once a state has joined the treaty but where it sees itself bound by a previous defence cooperation agreement.

Trafficking and Corruption

Finally, this author notes the close interplay between illicit small arms trafficking and corruption. Transparency International is cited with a claim that two thirds of the world’s largest arms importers, and half of the largest arms exporters operate weak anti-corruption controls. To date at least, full and effective implementation of the UN Convention against Corruption remains patchy, while some experts doubt the capacity of the ATT to tackle national level corruption. A possible risk reduction measure would include a requirement that arms recipient states ratify and implement
the UN Convention against Corruption.

The ATT and Human Security

Kytölä’s second paper, over a maximisation of the ATT’s impact in improving human security, gives priority to the following. Regardless of their current affiliation with the treaty, all countries need to:

- Ensure that they have comprehensive, well informed risk assessment processes in place that prevent arms transfers violating international human rights, humanitarian law and international criminal law.
- Ensure that such goals are embedded within existing or future regional, sub-regional and international arms transfer regulations and instruments.
- Foster universal adherence and application of the ATT.
- Encourage the ATT Secretariat to develop comprehensive risk assessment protocols, especially to prevent violation of humanitarian law and human security rules and norms.
- Establish a UN consortium comprising representatives from the Security Council, the United Nations Development Programme, the Human Rights Council and the Office of the High Commissioner of Human Rights to meet six monthly to assert human security principles within all arms transfers. Doing so would entail utilisation of a global network of relevant experts and an online information exchange platform.

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