The Arms Trade Treaty from a Global Civil Society Perspective: Introducing Global Policy’s Special Section

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Abstract
The 2013 Arms Trade Treaty (ATT) offers the first comprehensive, global and legally binding standards on the trade and transfer of conventional arms. The idea for the treaty was conceived not in the boardrooms of weapons manufacturers, nor in the assembly halls of statecraft, but rather by civil society activists and Nobel Laureates – practitioners, academics, survivors and researchers and advocates. And its robust provisions on human rights, humanitarian law and gender were championed by states often marginalized by traditional arms control. The resultant treaty is a sort of ‘platypus’ of international law – simultaneously an arms control regime, an instrument of human rights and humanitarian law and a trade agreement. Given its widespread acceptance and likely rapid entry into force, it could have a wide-ranging impact on global policy making in many issue areas. But as with any new framework of global policy, the ATT represents a compromise, recognizing the legitimacy of states’ rights to trade in weapons. This special section on the ATT, written from the perspective of scholars and practitioners associated with the civil society campaign that championed the treaty, reviews the ATT’s normative implications, role of NGOs and implementation challenges.

On 3 June 2013, diplomats from some 60 states gathered in the Trusteeship Council chamber at the United Nations (UN) headquarters in New York City to sign the new Arms Trade Treaty (ATT) (UNGA, 2013). As the representative of Iceland inked the first signature, representatives of the global civil society campaign Control Arms, seated in the galleries at the back of the room – broke into protocol-defying applause. The ATT offers the first comprehensive, global and legally binding standards on the trade and transfer of conventional arms, a market that has – as UN Secretary General Ban Ki-moon put it – until now been less regulated than the trade in arm chairs (2013).

The idea for the treaty was conceived not in the boardrooms of weapons manufacturers, nor in the assembly halls of statecraft, but rather by civil society activists and Nobel Laureates – practitioners, academics, survivors and researchers and advocates. And its robust provisions on human rights, humanitarian law and gender were championed by states often marginalized by traditional arms control. But as with any new framework of global policy, the ATT represents a compromise, recognizing the legitimacy of states’ rights to trade in weapons. It is thus safe to assume that it does not threaten the core interests of most major arms exporting states,
since 13 of the top 20 have signed it (SIPRI, 2013). Four of the remaining seven nonsignatory states voted in favor of a 2013 UN General Assembly (UNGA) Resolution (A/RES/68/31) praising the ATT and calling on member states to sign it. The process of the ATT’s negotiation also reflected a curious mix of high ideals and raw power politics – a hybrid of classical Great Power horse-trading, upstart Middle and Small State politics, and NGOs and other civil society groups were at the centre of the ATT process from the very beginning (Kyтомаки, 2011, p. 51; see also Garcia, 2011, pp. 50–53). Civil society organizations began to call for better regulation in the conventional arms trade in the early 1990s, prompted largely by shock and outrage over the public revelations about transfers of weapons and munitions to dictators such as Idi Amin and Saddam Hussein. In 1997 a group of Nobel Laureates, led by Oscar Arias Sanchez, drafted an International Code of Conduct on the Transfer of Arms (Arias, 1997). Along with the World Development Movement, Saferworld, Amnesty International and the British–American Security Information Council in particular, Arias began to explore the feasibility of establishing arms transfer guidelines that would be rooted in international human rights and humanitarian law. States took several initiatives to establish such principles, including the 1998 Common Criteria for EU countries, the 1999 International Arms Sales Code of Conduct Act in the US, the joint US–EU Declaration of Responsibility in Arms Exports in 2000 and the Economic Community Of West African States (ECOWAS) Convention on Small Arms and Light Weapons. However, the Nobel Laureates and civil society wanted to go further than these efforts and establish a framework or code of conduct that would be both legally binding and global and would keep the means of repression and violence out of the hands of dictators and abusers of human rights (Mack and Wood, 2010). Building on earlier work that had been done by Amnesty International, these civil society organisations together developed a Framework Convention on International Arms Transfers in 2001 and began to contact friendly governments to promote what had become known as the ‘Arms Trade Treaty’. (For overview of early history of the ATT idea, see: Erickson, 2007 and 2012; Garcia, 2011, pp. 43–53).

While governments began to take greater interest in the issue – particularly the UK, which backed the concept in 2004 and became a ‘champion state’ (Garcia, 2011, p. 188) – it was clear that civil society would need to mobilise at other levels in order for the issue to gain any real political traction. A global campaign was launched

An overview of the ATT

The ATT is the first comprehensive global legal instrument to regulate the transfer of conventional weapons. It aims to ‘Establish the highest possible common international standards’ to contribute to global ‘peace, security and stability’, reduce ‘human suffering’ and promote ‘cooperation, transparency and responsible action’ (Article 1). The ATT prohibits the transfer of applicable weapons if doing so would violate UN Security Council resolutions, multilateral treaty obligations, or if states party have ‘knowledge at the time’ that weapons would be used to commit war crimes (Article 6). States party are also required to assess and mitigate risks that transferred weapons will be used to ‘undermine peace and security’, violate international human rights and humanitarian law, engage in terrorism or organized crime and gender-based violence (Article 7).

The resultant treaty is a sort of ‘platypus’ of international law – simultaneously an arms control regime, an instrument of human rights and humanitarian law and a trade agreement. Given its widespread acceptance and likely rapid entry into force, it could have a wide-ranging impact on global policy making in many issue areas. For the ATT establishes new legal norms, but also new processes of treaty negotiation that may have normative implications beyond the control of the global arms market.

Since the ATT is a recent addition to the global legal system, it has not yet received a thorough examination by scholars and practitioners. There is some recent coverage in academic journals (Acheson, 2013; Green et al., 2013; Valenti et al., 2014) but much of the literature on the ATT predates its adoption – focusing on earlier drafts and/or negotiating processes (Erickson, 2007 and 2012; Garcia, 2011; Bolton et al., 2012; Bromley et al., 2012; Sears, 2012; Calixtus, 2013). The ATT is thus in need of critical engagement by scholars and practitioners. We believe that Global Policy, which convenes leading-edge conversations between the academy and policy arena, is an excellent forum for this opening salvo – a special section on the ATT.

This introductory essay provides a brief overview of the ATT’s main provisions (for a more detailed analysis see Valenti et al. 2014 or the legal commentary from the Geneva Academy for International Humanitarian Law and Human Rights, 2013). It then outlines the specific perspective or ‘social location’ of this special section’s editors and authors – we all were involved in the civil society campaign advocating for the ATT. This gives us insight into the ATT’s development, but we also acknowledge that this collection of papers is shaped by particular commitments and positionalities. We then introduce the three essays that follow this one – two academic examinations of the ATT negotiations and a ‘practitioner commentary’ on the road forward for the treaty. Finally, we close with reflections on the need for more analysis of the ATT, offering possible avenues for future research.

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which led to the establishment of the Control Arms coalition in 2003 (Amnesty International, 2013), intended as an umbrella network to connect the increasing number of NGOs working on the ATT and provide guidance and coordination among their efforts. The campaign illustrated the need for such a treaty and cultivated political appetite for exploring what it might include and how it could operate. Using strong evidence-based campaigning, the budding coalition focused on illustrating how the under-regulation of the arms trade fuelled conflicts and crime in all parts of the world by allowing for arms and ammunition to become diverted into the hands of dictators, gangs and warlords and thereby stalling socio-economic development and perpetuating armed violence (see Whall and Pytlak’s paper in this special section).

Over time, as momentum and interest grew, so too did the coalition and the extent of its activities; 2006 was a breakthrough year. Control Arms presented ‘One Million Faces’ to then-UN Secretary General Kofi Annan, just a few months before governments passed a resolution at the UN that would start a formal exploratory process to discuss how a future treaty might operate. The Million Faces campaign was a tremendous accomplishment in an era before smart phones and social media existed. It collected the images – either hand-drawn or photographed – of one million people from around the world who were supporting the call for an ATT. Crucially, in 2006 the ATT process itself began inside the UN at the General Assembly First Committee on Disarmament and Security. A resolution, introduced by a core group of seven governments assembled by the UK (Argentina, Australia, Costa Rica, Kenya, Japan, Finland and the UK) and vigorously advocated for by Control Arms, gained more than 100 co-sponsors (A/RES/61/89). The resolution passed in a landslide vote in the General Assembly, 153 to 1 (the US was the no vote), with 24 abstentions (Garcia, 2011, pp. 37, 188). As Anna Macdonald, then Head of Arms Control at Oxfam, and co-chair of Control Arms remarked, ‘Had the process been launched in the consensus-bound Conference on Disarmament in Geneva – currently in its 12th year of meeting without even being able to agree an agenda – chances are it would never have left the starting blocks’ (Macdonald, 2013).

One year later, Control Arms mobilized members in 50 countries to organize ‘People’s Consultations’. These consultations were a unique way to ensure that the views of average citizens would be taken into account by their governments as they began to make their recommendations at the UN about what a future treaty should include and how it should work. The final report, titled Voices from around the world: the People’s Consultation for an Arms Trade Treaty 2007 was presented at the UN in October 2007 to coincide with the UN Secretary General’s consultation on the ‘scope, parameters and feasibility of an ATT’ (Mack and Wood, 2010). A group of governmental experts convened by the UN Secretary General in 2007, released its report in August 2008, leading to another UN resolution (A/RES/65/240) establishing an open-ended working group on the ATT.

As noted by Muggah, ‘By international arms control standards, the ATT’s progress from hopeful ideal to accepted norm was lightning quick’ (2013). As the process of preparatory meetings and negotiations began to unfold over the next three years, states began to play a greater role in establishing the foundations of what the ATT would be (Garcia, 2011, pp. 49–67). However, Control Arms members continued to mobilize in national capitals and in New York to keep up the pressure. Tactics frequently included public stunts that captured interest from the public and created strong photos for use in media; direct contact with the media through press conferences or published articles; and bilateral and direct advocacy to government officials during meetings. The establishment of a global secretariat for the coalition in 2011 in New York, consisting of three full-time staff members, allowed for improved coordination among members and also their participation at negotiations.

By late 2009, political support for the treaty had grown strong enough that a new UNGA resolution was introduced to call for formal negotiations on the world’s first Arms Trade Treaty (A/RES/64/48). Recognising that civil society organisations were ‘important partners of states in the process toward an ATT’ (Kyтомаки, 2011, p. 53), the resolution takes note of the role played by civil society to enhance cooperation, improve information exchange and transparency and assist States in implementing confidence-building measures in the field of responsible arms trade (A/RES/ 64/48).

The ATT was negotiated by UNGA mandate at two diplomatic conferences in New York, in July 2012 and March 2013. Unable to reach complete consensus, the treaty text was overwhelmingly adopted by UNGA vote on 2 April 2013 and opened for signature 3 June 2013. At the time of writing, the ATT had 118 signatories, and 31 ratifications. The treaty will enter into force 90 days after the 50th ratification (Article 22).

The ATT ‘Scope’ (Article 2, para. 1), states the treaty ‘shall apply to all conventional arms within the following categories:

a. Battle tanks;
b. Armoured combat vehicles;
c. Large-calibre artillery systems;
d. Combat aircraft;
e. Attack helicopters;
f. Warships;
g. Missiles and missile launchers; and
h. Small arms and light weapons.’

This classification is derived from the list of weapons covered by the UN Register of Conventional Arms (a
voluntary reporting mechanism for arms transfers), plus small arms and light weapons (SALW). It is important to note that the UN Register does not cover all conventional weapons, only those ‘deemed the most lethal’ (UNODA, n.d.); it focuses on large-scale offensive weapons. The ATT does not provide explicit definitions of these categories and so relies implicitly on the definitions provided by the UN Register and/or other international convention. SALW were defined by UNGA in the 2005 International Tracing Instrument for SALW (ITI).

In Articles 3 and 4, the ATT extends the prohibitions, assessments and risk mitigation provisions in Article 6 and 7 to ‘ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1)’ and ‘parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2(1).’ However, ammunition/munitions and parts and components are not subject to the same stringent import, trans-shipment and antidiversion measures or record keeping and reporting requirements as the weapons in Article 2(1) (Articles 8-13). Ammunition/munitions are not specifically defined in the treaty.

Enforcement of the ATT will occur through signatories’ ‘National Control Systems’. Each state will draw up a ‘National Control List’ of the weapons to be covered by the treaty’s provisions. This means that beyond the weapons specifically listed in Article 2, 3 and 4, states are encouraged to apply the provisions of the ATT to ‘the broadest range of conventional arms’ (Article 5, para. 3). States are also required to ‘regulate brokering’ of weapons included in the scope (Article 10) and ‘shall take measures to prevent… diversion’ of arms shipments from their registered end users (Article 11). The ATT requires states to maintain detailed ‘national records’ on transfers of weapons in the scope for a ‘minimum of 10 years’ (Article 12). They must also submit reports to each other and to a secretariat on authorized imports and exports as well as their efforts to implement the treaty, though ‘Reports may exclude commercially sensitive or national security information’ (Article 13). States parties are encouraged to ‘cooperate with each other’, including ‘exchanging information’ (Article 15) and to seek and provide assistance from each other, as well as regional, multilateral and nongovernmental bodies (Article 16).

The ATT sets up a variety of new institutions to assist in implementation. Article 16 establishes a ‘voluntary trust fund’ to provide ‘international assistance’ to states parties requesting help implementing the treaty. States parties will also meet regularly in a Conference of States Parties, to review progress, ‘consider and adopt recommendations’ on implementation, consider amendments to the treaty text and provide a mandate and budget to a new secretariat (Article 17). The secretariat will manage the receipt and distribution of reports from states parties, distribute directories of contacts, facilitate international cooperation and assistance and manage the Conferences of States Parties (Article 18).

Finally, the treaty provides for the potential amendment of its text six years after entry into force. In considering amendments states ‘shall make every effort to achieve consensus’. However, if this effort is ‘exhausted’, amendments will be adopted by ‘three-quarters majority vote of the States Parties present’ (Article 20).

A global civil society perspective

Given the pivotal role played by global civil society in proposing and advocating for the ATT, an understanding of the negotiation process would be hollow without comprehension of the NGO perspective. We thus think it is appropriate that civil society actors are among the first to interpret its implications and see the civil society perspective of this special section – an extended review of the treaty and its process – as its value-added. We feel that academic analysis of social phenomena is always shaped by political and social contexts. While we strive to prevent our commitment to achieving a comprehensive and humanitarian and human rights-centered ATT from skewing honest and rigorous analysis, it is this very commitment which has enabled us to see the campaign and diplomatic negotiations up close. Therefore, we admit readily to our bias – one that will and should be countered by other commentators in the future – but believe our principled stand has given us the ‘inside look’ that more supposedly ‘neutral’ observers lack.

We must therefore be upfront with our ‘social location.’ All of the editors and authors in this special section have varying levels of involvement in Control Arms, the coalition of over 100 NGOs from around the world ‘campaigning for a bulletproof Arms Trade Treaty.’ Our association with the campaign ranges from those directly employed by Control Arms, such as Allison Pytlak (Control Arms’ campaign manager) to Matthew Bolton, who has served as a voluntary adviser and monitor. Helena Whall headed up Control Arms’ content, information and analysis team during the negotiations. Hector Guerra coordinated Control Arms’ Latin America advocacy and lobbying and was accredited as a member of Mexico’s delegation to the diplomatic conferences. Katelyn James has served as a Control Arms intern.

Nevertheless, we write this special section not as representatives of Control Arms, but rather in our personal and academic capacities. This means that our work here is not an expression of official Control Arms policy. Nor should readers assume that all the authors and editors necessarily agree on everything. Indeed, we hope you will discern the real differences in interpretation across the pieces we have produced and curated here.
The articles in this special section offer a range of perspectives on the development, negotiation and implications of the ATT. In the paper following this introduction, Bolton and James consider in-depth whether the ATT represents a normative innovation in the arms control ‘game’ in favor of humanitarianism and human rights. They examine not only the normative implications of the treaty text itself but also the negotiation process that brought it into being. They argue that the ATT negotiation and treaty represent a melding of ‘maximalist’ human security–civil society approaches to arms control with UNGA concerns about small arms proliferation and the ‘minimalist’ strategic and commercial interests of the major arms exporters. This new ‘pathway’ to global policy on weapons offers potential openings for other ongoing disarmament processes.

The next essay, by Whall and Pytlak, looks specifically at the role of civil society in the negotiations at the diplomatic conferences in New York. While there is an extensive literature on the role of NGOs in global policy making, there is less on the everyday practice of influencing treaty negotiations. Whall and Pytlak detail the strategy and tactics deployed by the Control Arms coalition to shape the ATT into their vision of a progressive human security instrument. They show how understanding the ways NGOs applied pressure on states offers insights for civil society advocates working on other global policy issues.

This journal aims to convene conversations between thinking policy practitioners and engaged academics. As a result, the final article in the special section is framed as a sort of symposium, bringing the ideas outlined in the preceding academic articles into dialogue with civil society activists who have been involved in the campaign for an ATT. This interview asks these campaigners to ‘look forward’ to the ATT’s universalization process, implementation, impact and broader implications. Indeed, in their remarks at the 3 June 2013 signing ceremony many states have asked civil society to continue to play a role, particularly in aiding and monitoring the implementation of the treaty.

Avenues for future research

Our special section cannot, of course, offer a comprehensive examination in the limited space available here. As a complex instrument, the ATT will need thorough engagement from academics, lawyers and policy analysts to provide a commentary on its legal provisions. Our focus, as noted above, is on the perspectives and roles of civil society. But we make no claims that this is or should be the only angle to study the treaty. After all, the treaty is a contract between states – not NGOs – and so much more work needs to be done on outlining the role played by various types of states in the process. Calixtus (2013) has provided a good introduction to the small states’ interaction with the negotiations. However, careful case studies on the diplomacy of several key states – notably the US, China, the UK, Kenya, Mexico and Trinidad and Tobago – would help illuminate the deals, interests and values that ultimately shaped the final text. Understanding ongoing objections from skeptical states may also help with the universalization efforts.

A possible critique of our collection of essays is that we have focused on the ‘progressive’ elements of civil society, neglecting to examine the divisions within the NGO sector. There were differences within the Control Arms campaign – over strategy, emphasis and relationships with states – that could be examined in more depth than we do here. The Control Arms campaign has also been subject to incisive critique from what might be described as elements of civil society to its ‘left’, such as the British-based Campaign Against Arms Trade. Perhaps more crucial for understanding the context of the ATT’s reception in North America, further analysis is needed of the attempts by right-wing ‘gun rights groups’ and arms manufacturers’ associations to scuttle the ATT talks.

Once the treaty enters into force, there will be opportunities for academics to examine specific policy challenges and detailed case studies of implementation in diverse contexts around the world. Evaluating the success of the treaty will require understanding of its economic, political, social, cultural and military impact at local, national, regional and global levels.

In sum, our contributions in this special section are intended not to arrogate an attempted last word on the treaty. Rather we aim here to stimulate the conversation, within and between the academic and policy-making communities, speaking from our specific social location, interests and areas of expertise. We hope this will encourage others to engage with, build on, extend and critique what we have presented here.

Note

Matthew Bolton and Katelyn James’ participation in this research was funded by a Faculty Fellow grant from the Helene and Grant Wilson Center for Social Entrepreneurship.

References


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