

control arms



Canadian Control Arms Coalition Submission to Foreign Affairs, Trade and Development Canada on Canada and the Arms Trade Treaty July 17, 2013

Foreign Affairs, Trade and Development Canada is conducting a technical assessment of the Arms Trade Treaty (ATT) with a view to providing the Government of Canada recommendations on the Government's possible next steps, including whether or not Canada should sign the treaty. As part of this process, the Control Arms Coalition in Canada has prepared the following submission, which outlines:

1. The reasons why Canada should sign the ATT
2. The expected impact (and lack thereof) of the ATT on legitimate gun ownership in Canada
3. The changes that Canada will need to bring to its existing conventional arms transfer regulations and procedures in order to meet the ATT's requirements and standards
4. Recommended voluntary action to assist with treaty implementation
5. Our conclusion

1. Why Canada should sign the ATT

Until now, the unregulated arms trade has contributed, among other things, to considerable loss of life, widespread human rights abuse and gender-based violence, political instability, preventable conflicts, and corruption. In turn, all of these factors have undermined peace and peace-building processes, human security, poverty reduction initiatives, and prospects for sustainable socio-economic development. By signing the ATT, Canada would join the 79¹ countries who have already signed the treaty in creating a safer world for the thousands of civilians living under the threat of violence. Signing the treaty would also encourage other countries to join Canada in living up to its international obligations in terms of human rights, conflict prevention and violence against women, as well as its own policy objectives in terms of trade and development.

a) The ATT can save lives, protect civilian populations from human rights abuses and reduce gender-based violence:

More than 2,000 people are killed every day due to armed violence. Until now the lack of global robust and legally binding obligations governing the sale and transfers of arms has allowed those perpetrating human rights abuses and gender-based violence to stock their arsenals with impunity.

In 2010, for example, Syria imported more than \$1 million worth of small arms and light weapons, ammunition, and other munitions, as well as air defence systems and missiles worth an additional \$167 million. Some of these arms played a central role in the Syrian government's crackdown on protesters at

¹ As of July 10, 2013.

the start of the uprising in 2011. A report from the UN Office of the High Commissioner for Human Rights outlined a litany of government abuses, including apparent “shoot-to-kill” policies against protesters by snipers. In addition to regular military units armed with automatic weapons, the military deployed snipers, Special Forces units, tanks, armored personnel carriers and intelligence units during operations to end demonstrations. The ATT requires states to conduct a comprehensive risk assessment before authorizing arms exports, including examining whether there is a risk of serious violations of international human rights or humanitarian law or of facilitating gender-based violence or violence against children. Given the current situation in Syria, an accurate risk assessment against the ATT criteria would likely conclude that there is a substantial risk any transfer of weapons would lead to serious violations. The exporting, as well as the transit/transshipment country would be required to reject the arms transfer application and the weapons would not be legally transferred. Today, the ATT cannot resolve the current situation in Syria. However, it could certainly reduce the likelihood that similar situations will cause such great suffering.

The ATT can also help prevent sexual violence, which is often widely and systematically employed against civilians during armed conflict. In Côte d’Ivoire for example, gender-based violence against women, perpetrated by state security forces and armed opposition groups, has been greatly intensified by the massive imports of small arms into the country. Prior to the belated UN arms embargo, several Eastern European countries supplied large consignments of arms to the Government of Côte d’Ivoire, notwithstanding its forces’ involvement in serious human rights violations. Moreover, weapons continue to circulate in the country and international arms brokers and traffickers threaten further deliveries of small arms and larger conventional weapons.

In contexts where the UN Security Council is unable for any number of reasons to take effective action, the ATT will enhance efforts to control arms transfers that fuel ongoing conflicts. In the case of the 10-year-old conflict in Darfur, for example, the UN arms embargo is limited to the region itself and poorly enforced. And in recent years, no action has been taken by the Security Council to address indiscriminate aerial bombings and ground attacks in civilian areas by the government of Sudan in Southern Kordofan and Blue Nile states. These bombings and attacks have led to deaths, injuries, destruction of property, and severe food shortages. More than 500,000 people have fled the area, including 150,000 refugees into neighbouring Ethiopia and South Sudan. Three of the five permanent members of the Security Council have supplied weapons and equipment to Sudan. However, the comprehensive risk assessments required by the ATT will set a clear standard for all states and help ensure that any transfers to Sudan do not contribute to the systematic and deliberate targeting of civilians.

By signing the ATT, Canada would reinforce its efforts to implement the seven international conventions on human rights it has already ratified, including the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol on the Involvement of Children in Armed Conflict of the Convention of the Rights of the Child. Signing the ATT would also strengthen Canada’s contribution to implementing the UN Declaration on the Elimination of Violence against Women, which it helped develop, as well as the Canada-led UN Resolution on the Elimination of Violence Against Women.

b) The ATT can contribute to conflict prevention:

Another example of the ATT’s potential effectiveness can be found in the conflict in Mali, which was sparked by the proliferation of arms from Libya in the wake of the fall of Colonel Gadhafi. Some 200,000

Malians were obliged to flee the fighting, which engulfed the whole of Northern Mali from January to March last year.

Had the ATT been in effect during the Mali crisis, it could have helped to cut off the flow of weapons into a conflict zone and encouraged political negotiation. It is also likely that, had an ATT been in place in the past twenty years, Libya would have been unable to build up the excessive stocks of arms that were then diverted to fuel conflict in the Sahel. And, given the transparency and reporting mechanism that are built into the treaty, much more would be known about just what those stockpiles contained, and where they were stored. This would have allowed effective international action to contain arms stockpiles in the wake of the war and strengthened Canada's efforts, as a NATO ally, to end the conflict in Libya.

c) The ATT can support Canada's development efforts:

According to the World Bank, 1.5 billion people live in areas affected by fragility, conflict, or large-scale organized criminal violence, and no low-income fragile or conflict-affected country has yet achieved a single UN Millennium Development Goal (MDG). On average, these states lag 40 to 60 per cent behind other low and middle-income countries in MDG achievement. Furthermore, between 1990 and 2006, Africa lost an estimated cumulative total of \$284 billion as a result of armed conflict – on average \$18 billion per year. This was nearly the same as the total amount of ODA that the continent received during this time.

In fact, armed violence has shrunk national economies in Africa by a staggering 15 per cent. Countries neighbouring those in conflict are also affected, losing up to 0.7 per cent of their annual GDP for each neighbour involved in civil war. Furthermore, armed violence and conflict place considerable strain on the delivery of public services, which means that governments and public officials are forced to make difficult decisions on spending. For example, in Zambia it costs \$10 to \$15 to treat a patient with malaria, or to provide antiretroviral therapy and a month's course of anti-tuberculosis medication in government health centres. At these rates, it would be possible to scale up service delivery to meet the MDG targets on major diseases, given that Zambia's annual per capita expenditure on health is \$48. This investment is comprehensively degraded when hospitals must instead treat patients injured by gunshot wounds at a cost of between \$100 and \$3,000 each.

According to Canada's Department of Foreign Affairs and International Trade (now Foreign Affairs, Trade and Development Canada), "Canadians recognize that their interests are best served by a stable, rules-based international system. Countries which respect the rule of law tend to respect the rights of their citizens, are more likely to benefit from development, and are much less likely to experience crises requiring peacekeeping, emergency assistance or refugee resettlement missions."² As such, by signing the ATT, Canada can ensure that it meets its own policy objectives, while allowing recipients of Canada's ODA to move ahead with their programs to strengthen development and stay on course to meet the MDGs.

d) The ATT can help to reduce corruption:

The notoriously secretive nature of the arms trade has allowed corruption to flourish. Many governments continue to be secretive about the details of their defence budgets, and in some cases military expenditure comes from off-budget sources, which have few or no public oversight mechanisms. The unregulated arms trade has also facilitated irresponsible procurement. All low- and

² See <http://www.international.gc.ca/rights-droits/policy-politique.aspx>.

lower middle-income countries which allocated more than 10 per cent of central government expenditure to the military in 2009 scored poorly on corruption indices, such as Transparency International's Corruption Perception Index, that year. Without strong, accountable, and transparent governance structures, development processes cannot take root and succeed in transforming lives.

By requiring signatory states to publicly report on their international transfers of arms, the ATT promises to bring more transparency into the arms trade. By signing on, Canada would contribute to enhance its overall existing transparency and anti-corruption efforts, such as the amendments to the Corruption of Foreign Public Officials Act (CFPOA) introduced earlier this year, or recent measures to encourage more transparency in the extractive sector.

2. The ATT and legitimate gun ownership in Canada

There has been considerable speculation, and even misrepresentation on the part of some lobby groups, that the ATT would curtail legitimate gun ownership in Canada. This is not the case – there is absolutely nothing in the ATT that would prevent Canadians from legitimately owning firearms or that would change the obligations of current owners. Indeed, thanks to Canada's successful efforts, the treaty preamble insists that States Parties be "mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law." More specifically:

a) The ATT should not impact the costs or availability of firearms or ammunition to the average legitimate gun owner in Canada.

The treaty has no jurisdiction over the exchange or sale of firearms and ammunition within Canada, meaning it does not apply to private sales between Canadians or sales to Canadians by domestic firearms or ammunition dealers and suppliers. The treaty does apply to firearms and ammunition exported from or imported into Canada, but since Canada has export and import controls in place that generally meet the standards required by the treaty, treaty implementation by Canada should not have a noticeable impact on legitimate domestic firearms owners.

An important point here is that the treaty requires national control systems to regulate the movement of weapons, parts and components, and ammunition across borders. These control systems must now include an export assessment process to prohibit transfers when they would breach UN arms embargoes or international laws such as the Geneva Conventions. The assessment process also must prevent transfers if there is a significant risk of undermining peace and security, serious human rights violations or other egregious offences. It is not credible that a foreign arms exporter would make assessments that shipments of firearms or ammunition for use by legitimate Canadian gun owners would result in such breaches or risks.

Moreover, US and European firearms and ammunition suppliers are subject to existing export controls in their respective countries that generally meet or exceed the standards of the ATT. The relationships of these suppliers with Canadian importers are unlikely to change when the ATT comes into force.

While Canada may have to undertake additional reporting to meet treaty obligations, the treaty does not require reporting trade in ammunition and firearms parts and components, such as those used by private firearms users. Reporting requirements are confined to Article 2.1, the scope of the treaty which does not include ammunition and weapons parts and components. At the same time, Canada already reports firearms exports to all countries (except the US) in its public reports on the "Export of Military Goods from Canada". It also annually reports firearms (small arms and light weapons) exports and

imports to the UN Register of Conventional Arms. In addition, Statistics Canada compiles data on the export and import of firearms, including those to and from the US. From these sources Canada should be able to meet ATT requirements without any additional paperwork or costs to private firearms owners.

b) The ATT will not impact private companies' ability to import old, collectible military arms for the purpose of commercial sale.

The ATT presents no impediments or extra costs for this trade for the same reasons as cited in a) above.

c) The ATT will not alter the ability of importers to source and import surplus military ammunition for distribution in Canada to sport shooters:

Imports of ammunition are not covered by the treaty, and therefore the ATT will not require changes in Canadian import regulations for surplus military ammunition. According to the RCMP,³ prohibited ammunition cannot be imported into Canada; non-prohibited ammunition can be imported without an import permit, except where the exporting states explicitly require one.

Article 3 of the ATT requires all exporting states to regulate the export of military ammunition. This may mean that some states that currently do not require a Canadian import permit as a condition of export may in the future require one. In the case of the US and European suppliers, however, it can be assumed that existing conditions will not change.

d) The ATT does not call for national gun registries:

The record keeping (Article 12) requirements of the treaty do not reach that level of detail. Under Article 12, states are encouraged to include in their records "the quantity, value, model/type, authorized international transfers (...), and end users, as appropriate." The important words here are "encouraged" and "as appropriate". Ultimately, it is at the discretion of each state how much of this detail they wish to record. Moreover, even under a robust interpretation, the ATT does not require records of individual gun owners, or individual transactions of firearms sales. There is no evidence that any state will use the ATT as an opportunity to institute a national firearms registry.

The ATT is unlikely to have a significant impact on legitimate Canadian firearms owners. The sole exception could arise from a robust interpretation of Article 11 on Diversion on the part of exporters to Canada. When Canada recently removed the obligation for firearms dealers to maintain "point of sale" records for non-restricted firearms, the last source of data to effectively meet non-restricted firearms tracing requests from INTERPOL or foreign law enforcement bodies disappeared. It is possible that states supplying firearms to Canada will interpret this development as creating a higher risk of diversion into illicit channels and as a result refuse authorization of some non-restricted firearms exports to Canada.

It is important to note, however, that for Canada the ATT diversion provision has not created new commitments, but rather is reinforcing ones under existing treaties which Canada has signed but not ratified. Specifically, under the CIFTA firearms treaty of the Organization of American States and the UN Firearms Protocol, there are obligations to keep firearms records in order to assist with criminal investigations and tracing requests from other treaty signatories.

³ See <http://www.rcmp-grc.gc.ca/cfp-pcaf/fs-fd/import-importer-eng.htm>.

3. Required changes to Canada's existing conventional arms transfer regulations

To meet the terms of the ATT Canada will need to add to or amend its existing conventional arms transfer regulations. These changes are significant, but would not be onerous. They should include:

a) Comprehensive national authorization of exports of conventional weapons, their parts and components and ammunition (ATT Articles 2 through 5) and improved national import authorization (Article 8):

Under the Export and Import Permits Act, Canada has developed a national system to regulate the export and import of military goods from and to Canada. The system is not comprehensive, however. Cross-border trade in military goods between Canada and its largest military trade partner, the US, is currently unregulated. Canada does not require export permits for shipments of military goods to the US and Canadian imports of US military goods are exempt from US regulation. This "free trade" arrangement will need amendment to bring Canada in line with ATT provisions that require the authorization of all exports of the weapons, their parts and components and ammunition within the scope of the treaty.

While the ATT does not apply to all military goods exported by Canada to the US, Canada has traditionally supplied parts, components and ammunition for many US weapon systems that fall within the treaty scope. For practical processing reasons alone, it would be in Canada's interest to authorize all exports of military goods to the US rather than to distinguish between goods that are, or are not, within the scope of the treaty.

Additionally, the Department of National Defence (DND) should be subject to the same authorization process as other exporters of military goods from Canada. DND, as a Crown Department, is currently exempt from the Export and Imports Permits Act which governs Canadian weapons transfers. Although Article 2.3 of the ATT exempts equipment transfers by DND for its use outside Canada (DND equipment shipped to Afghanistan, for example) from the treaty scope, under Article 5 DND transfers to other states, such as equipment donated as military aid, should be subject to Canada's export control system, including risk assessments.

The import provisions of the treaty (Article 8) provide some flexibility to States parties and do not appear to require amendments to Canada's existing import regulations and procedures. Nevertheless, in keeping with comprehensive authorization of exported military goods, Canada should move towards comprehensive import authorization by implementing formal approval of imports of US military goods.

b) Strengthening Canada's export control policy and procedures to reflect the prohibitions and risk assessment criteria of the treaty (Articles 6, 7 and 11):

The guidelines that Canada currently uses to "closely control" arms exports are insufficient under ATT provisions. At a minimum, Canada's export authorization process must acknowledge and include the treaty prohibitions (Article 6) that, by definition, are not subject to guidelines. Canada's export control procedures must explicitly forbid exports that would breach UN arms embargoes, or violate obligations under relevant international agreements (such as the Landmines or Cluster Munitions treaties), or would be used in the commission of genocide, crimes against humanity or war crimes.

Canada's export control system also must deny weapons exports if the risk assessment process stipulated by the treaty reveals that there are substantial transfer risks. To meet treaty standards Canada's export authorization process must be based on the criteria of the ATT export assessment

(Article 7). These require not only an assessment of the risk of human rights violations (which is included in Canada's current guidelines⁴) but also of other stipulated risks not formally assessed by Canada, including the risk that exported weapons could be used to breach international humanitarian law or to commit acts of terrorism or organized crime. The treaty article on diversion (Article 11) calls for assessment of diversion risks. Diversion also is not referenced in Canada's current guidelines.

In making risk assessments treaty states parties are additionally required to "take into account" risks of exported weapons being used to commit serious acts of gender-based violence or violence against women and children. These would need to be included in the Canadian export control process. Treaty risk criteria do not include an equivalent to Canada's assessment of whether a country is "involved in or under threat of hostilities," but this would be usefully retained by Canada as an additional risk criterion.

Since there can be significant delays between arms export authorization and physical transfer, Article 7 encourages a State Party to reassess authorizations if the Party "becomes aware of new relevant information," for example, that political or security conditions have deteriorated in the recipient state. It is not apparent from publicly-available information whether Canada currently undertakes reassessments. Regardless, Canada could make this standard procedure.

c) Introduce brokering regulations (Article 10):

Canada does not have regulations to specifically control the activities of arms brokers, that is, the parties that act as "go-betweens" in weapons transfers. The ATT brokering provision (Article 10) requires each State Party to "take measures, pursuant to its national laws, to regulate brokering." Arguably, the treaty requires less of Canada than the brokering provisions of other multilateral instruments to which Canada is bound, including the UN Firearms Protocol, the UN Programme of Action on small arms, and the Inter-American Convention on Firearms (CIFTA) (see Epps 2013).

CIFTA model regulations to control firearms brokers were drafted in Montreal in 2003 with Canadian assistance. These call for *inter alia* the licensing of firearms brokers and penalties for those who break brokering regulations. If Canada were to implement these and related obligations from existing relevant instruments it would meet the brokering obligations of the Arms Trade Treaty.

d) Comprehensive record keeping (Article 12):

In Canada, as a condition of export permit authorization, details of military goods exports must be reported by exporters to the Department of Foreign Affairs. Article 12 of the ATT requires each State Party to maintain national records of export authorizations or actual exports of weapons that are within the scope of the treaty. Canada would meet treaty record keeping requirements by maintaining records on export permits or the "actual exports" that currently appear in the periodic "reports on the export of military goods from Canada." Because the trade with the US is unregulated, however, no records of permits or arms exports to the US are kept by Canada. The new arrangements that Canada must

⁴ Arguably, Canada's current guideline for human rights sets a standard higher than that required by the ATT. Under Canada's guideline, in the case of governments that "have a persistent record of serious violations of the human rights of their citizens," it must be demonstrated "that there is no reasonable risk that the [exported] goods might be used against the civilian population." In other words, there is a presumption of caution unless it can be demonstrated that there is no reasonable risk of human rights violations. Under the ATT the presumption is that the export will proceed unless it can be demonstrated that there is a high risk of human rights violations. Seemingly, the former is more difficult to demonstrate and hence in more cases caution should prevail. The problematic issue is that current Canadian risk assessment involves guidelines only for "close control" of arms exports.

negotiate with the US to achieve comprehensive authorization should stipulate the necessary record keeping and reporting requirements to correct this omission.

e) Annual reporting (Article 13):

Although Canada was one of the first countries to publish a detailed annual report on its export of military goods, recent reports have not reflected the transparency standards set by other arms exporting states. In the past decade, Canadian reports have been delayed (the latest available figures are for 2009), irregular (with reporting periods as long as three years) and confusing (with “double-counted” figures undermining data accuracy). At a minimum, Canada must increase its reporting frequency to meet the ATT provision (Article 13.3) that requires states to submit reports for the previous calendar year by May 31. But Canada should do more to help establish high treaty reporting norms. It could report data from both export authorization (permit) and actual exports records, for example. It could also provide more record detail including the quantity, value, and model/type of weapons transferred, as suggested in the treaty.

4. Recommended voluntary action to assist with treaty implementation

Canada needs to attend to the provisions outlined above if it is to meet ATT obligations. Because Canada has the resources and export control experience, making the necessary adjustments to Canadian export control policies and procedures will be relatively painless. Other states will have far greater challenges. In recognition of the unequal conditions, the treaty encourages Canada and other wealthy states to support states that possess limited resources.

Canada could contribute to the ATT’s “voluntary trust fund,” which will be used by states that request international help in implementing the treaty. As well, Canada has important technical expertise in the control of conventional weapons transfers that could be helpful to many states parties. Although Canada did not play an active role in the development and negotiation of the treaty, it has the opportunity to take leadership during the important ongoing period of treaty implementation and amendment.

5. Conclusion

The Arms Trade Treaty provides Canada with an unprecedented opportunity to reinforce the international architecture of conflict prevention, and indeed to bring peace and stability to the many communities now suffering from the effects of armed violence. For many countries the ATT will raise conventional weapons import and export standards, and it will have no appreciable impact on legal gun-owners in Canada.

We recommend that Canada sign the Arms Trade Treaty without hesitation.

For more information contact:

Kenneth Epps, Senior Program
Officer
Project Ploughshares
Telephone: 519-888-6541 ext. 7701
E-mail: kepps@ploughshares.ca

Lina Holguin, Policy Director
Oxfam-Quebec.
Telephone : 819-923-0041
E-mail: holguinl@oxfam.gc.ca

Hilary Homes, Campaigner Arms
Trade
Amnesty International Canada
Telephone: 613 744 7667 ext. 247
E-mail: hhomes@amnesty.ca

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