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The Arms Trade Treaty

The Politics behind the UN Process

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On 6 December 2006, the United Nations General Assembly (GA) voted 153 to one¹ to begin work on a treaty to regulate the trade of conventional arms. For most observers, including the treaty's most avid supporters, both the speed and the overwhelming success of the vote were unexpected even a year before. Indeed, despite the multitude of problems associated with sales to troubled areas, the arms trade has long proven conspicuously resistant to multilateral standards and controls for the simple reason that conventional weapons play an established and legitimate role in the maintenance of national security. Yet intensive state and NGO campaigning, as well as progress on transfer control criteria through the UN small arms process, have propelled the Arms Trade Treaty (ATT) forward on the international agenda and signaled positive movement within the UN on conventional arms control. As requested by the GA resolution, formal work toward an ATT began in 2007 with the Secretary General's collection of national views on the feasibility and scope of a treaty. This marks the start of a process to articulate, clarify, and formalize criteria to guide the international conventional arms trade, including states' legal obligations to respect human rights, peace, and stability in their decisions to export weapons. Nevertheless, although there is now strong and widespread support to pursue such a treaty, the work ahead is likely to be difficult, drawn out, and at times contentious.

This paper outlines the most prominent challenges facing the development of the ATT and the lessons which can be drawn for German conventional arms control policy. It specifically examines the politics of the ATT for two of the major arms exporting states: the United Kingdom, a key leader on ATT, and the United States, the major dissenting power. It begins by briefly outlining the debate and explaining the development of the ATT initiative. It then proceeds with an overview of the main domestic and international factors influencing ATT policies in the two case studies, highlighting key points of interest for German policy. Finally, it reviews the central challenges for the process ahead and offers a series of policy recommendations. In particular, it suggests that while Germany is

¹ The United States was the only country to vote against GA Resolution 61/89. 24 countries abstained: Bahrain, Belarus, China, Egypt, India, Iran, Iraq, Israel, Kuwait, Lao People's Democratic Republic, Libya, Marshall Islands, Nepal, Oman, Pakistan, Qatar, Russian Federation, Saudi Arabia, Sudan, Syria, United Arab Emirates, Venezuela, Yemen, and Zimbabwe.

an important supporter of the ATT, it could play a more active and visible role to maintain and build political momentum for the United Nations work in 2007 and beyond.

Why an ATT? The Debate in Brief

Advocates of an ATT argue that the unrestrained trade of conventional arms can undermine good governance, state and regional stability, human rights conditions, social and economic development, and post-conflict reconstruction.² As such, arms transfers to troubled recipients may go against existing national, regional, or international commitments. However, without a set of global legal standards, it is difficult if not impossible to hold states accountable to these commitments. Moreover, many states currently lack any explicit standards; a global arms trade treaty would therefore strengthen, broaden, and standardize the obligations of exporters worldwide. Indeed, with the increasingly globalized production of arms, shared legal standards are seen to be practical and necessary, so as not merely to divert business to states with looser or non-existent controls.³ As with the 1997 Anti-Personnel Landmine Treaty, an ATT may even influence the behavior of non-signatory states, pressured for political or economic reasons to comply with newly established standards of practice.

This view is shared by many governments, NGOs, and arms manufacturers, but unsurprisingly not by all. ATT proposals have found broad acceptance in Europe and Canada, as well as in states adversely affected by destabilizing arms transfers. Nevertheless, some states, such as Russia, with nascent or struggling arms industries fear the loss of markets from joining an ATT, while others worry that they would lose the means to provide for their own national security.

² These arguments are based on a plethora of research since the early 1990s. It is impossible to give even a representative sample here. However, a few standard sources include: Jeffrey Boutwell, Michael T. Klare, and Laura W. Reed, *Lethal Commerce: The Global Trade in Small and Light Weapons*, American Academy of Arts and Sciences, Cambridge, 1995; The Graduate Institute of International Studies, *Small Arms Survey*, Oxford University Press, New York, 2001-2007; John Sislin and Frederic S. Pearson, *Arms and Ethnic Conflict*, Rowman & Littlefield Publishers, Lanham, 2001.

³ See *Shattered Lives: The Case for Tough International Arms Control*, Control Arms Campaign, 2003; *Arms Without Borders: Why a Globalised Trade Needs Global Controls*, Control Arms Campaign, October 2006.

Arms industry preferences also vary. Manufacturers in states with already strong export regulations tend to support an ATT, in hopes of leveling the playing field with their foreign competitors, while others express concern for the loss of foreign sales if forced to abide by proposed standards. The NGO community is similarly divided: Groups exist on both sides of the issue, in stark contrast to nuclear, biological, chemical, or landmine weapons sales. A combination of strong domestic civil society actors and international NGOs, represented by a wide variety of global and local groups, have been active in pushing for an ATT. At the same time, many states also have pro-gun lobbies, which oppose any efforts to impose standards on the arms trade that could possibly be construed as hindering private gun ownership. These diverse interests and positions highlight the explosive political potential of the issue at hand and will be further explored in the sections to come.

Build-Up to the ATT Process

The current initiative to establish shared international criteria to guide the conventional arms trade began with Nobel Peace Laureate and former Costa Rican President Dr. Oscar Arias Sánchez in 1995. With the support of other Nobel Peace Prize recipients, the movement at first proposed an International Code of Conduct for the Arms Trade, outlining criteria to limit weapons transfers most notably to countries engaged in conflict and/or severe human rights violations. This proposal was unique in the history of the conventional arms trade, which, in contrast to nuclear, chemical, and biological weapons, had resisted the development of international normative and legal obligations. Unlike the widely accepted “taboo” on the use of these other types of weapons, conventional weapons were (and still are) seen as a legitimate tool of national defense and as such have been protected by UN Charter Article 51. Consequently, states considered any external attempts to hinder or regulate their acquisition of arms – whether by production or by trade – to be antithetical to their national interests and in violation of their rights as members of the international community.

Certainly, the central place occupied by conventional weapons in the legitimate practice of national and international security has – and continues to be – perhaps the major obstacle in achieving global arms transfer restraints. The Landmine Treaty has un-

questionably provided a model for the more recent small arms and ATT campaigns and broadened the arms control discussion to include humanitarian concerns and the “human security” vocabulary. Even so, it is important to note that there are significant differences between the landmine and small arms/ATT issues. Landmines are a discrete category of small arms with limited military utility and a tiny economic base. Due to the nature of the weapon and its potential indiscriminate effects, landmines were also susceptible to the argument that they violated international humanitarian law and were therefore illegitimate tools of security and defense. These characteristics made governments more receptive to a total ban on their production and use, and provided for a clear and engaging public campaign. In contrast, small and major conventional arms encompass the universe of conventional weapons and, as stated above, have a legitimate place in national and international security, as recognized by international law and practice. In many countries, they also enjoy a more substantial economic base and often have public support in favor of their production and sale that is in some cases just as strong as the support to control them. A simple ban is therefore not an option, opening up a complex and sensitive political debate within and between states around the world.

In spite of these obstacles, the tide began to turn in favor of arms export restraint in the early 1990s. In the aftermath of the Cold War and the 1991 Gulf War, the effects of an unregulated arms trade became increasingly obvious. Many states suffered embarrassing scandals brought on by transfers of arms and weapons-related technology to Iraq in the 1980s, while civil and ethnic conflict commanded post-Cold War news headlines and policy agendas. States neither wanted to face their own weapons in conflict, nor wished to be so closely associated with some of the regimes to which they had previously sold weapons. Although the failure of talks between the five permanent members (P5) of the UN Security Council in late 1992 made the pursuit of restraint seem again improbable,⁴ transparency initiatives made significant progress in the creation of the UN Register of Conventional Arms in 1991 and the Wassenaar Arrangement in 1996. Concern for the illicit trade in small arms and light

⁴ Although the P5 were able to agree to a set of common guidelines for the export of conventional weapons, efforts fell apart when China withdrew its participation in late 1992 in response to the United States’ decision to sell F-16 aircraft to Taiwan. The talks were not resumed.

weapons (SALW) also attracted attention in the United Nations and research advocacy communities, which began to uncover its role in undermining state and regional stability, development, and human rights conditions in some recipient countries.

The international momentum to tackle the question of the legal trade in conventional arms has evolved in the context of three primary factors: the UN process on the illicit trade in SALW, the development of various regional arrangements, and NGO campaigning. First, the 2001 UN Programme of Action (POA)⁵ and its follow-on conferences have provided a regular forum for states to discuss arms trade issues. While the POA focuses solely on illicit trade and does not include provisions on licit-transfer controls, many states have sought to amend the document to address this omission with regard to SALW.⁶ The primary argument is that if the illicit trade and its negative impact on social and political stability, development, and human rights are to be effectively combated, then it is necessary also to control the main supplier of the black and gray markets: the *legal* arms trade. Participants of the 2006 POA Review Conference have noted the tremendous progress made there on achieving shared criteria and – had it not been for a handful of dissenting states – that consensus existed for a final document to include transfer controls. Thus although this conference was widely regarded as a failure to move the UN small arms process forward in general, it was successful in bringing together a discussion on transfer controls and highlighting significant common ground states in this area. Consequently, states have increasingly begun to regard transfer controls as a fruitful topic to pursue outside the POA framework, which, bound by rules of consensus, has been stalled by the unwavering dissent of a few countries.

Second, regional agreements on the arms trade began to spread in the late 1990s, establishing a political basis for seeking more global standards within the United Nations. Beginning in 1998 with the EU Code of Conduct on Arms Exports⁷ and the Economic

Community of West African States (ECOWAS) Moratorium on the Importation, Exportation and Manufacture of Light Weapons in West Africa,⁸ numerous regional and security organizations have now issued controls and best practice guidelines for the arms trade. These agreements have shown states willing to establish shared standards and address arms transfer issues in multilateral fora. Yet, as ATT proponents argue, the geographic coverage of such agreements is incomplete and specific obligations vary across the agreements themselves. This leaves wide open the possibility that arms can still be traded to questionable locations through countries not under any political or legal restraints. At the same time, the defense industry – whose production is now unavoidably global in nature – is faced with a complex plethora of export and import criteria around the world. Thus while existing agreements lay the political groundwork for more global effort, they are not a sufficient substitute for it.

Third, NGOs have engaged in active campaigning, most recently in partnership with supportive governments, to gain wider acceptance of the ATT concept and its provisions. The successful International Campaign to Ban Landmines (ICBL) both raised the profile of NGOs on security issues and encouraged them to lobby for additional arms control measures. Moreover, the positive state-NGO cooperation on the Landmine Treaty in 1997 increased the incentives for states to work with such organizations on such policy initiatives. Given the strong international support for the Landmine Treaty, many states now value being on the “right side” of the conventional arms control debate, such as small arms or the ATT, and gain points at home for appearing open to input from non-state actors. Within the ATT Steering Committee and the Control Arms Campaign,⁹ a broad range of NGOs have lobbied for government and public support for an ATT, as well as proposed treaty language and principles derived from international law. Moreover, NGOs

⁵ Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Document A/CONF.192/15)

⁶ The strengthening of national export control systems has also been pursued through the POA and is especially important in this context, given the greater difficulty inherent in controlling trade in SALW.

⁷ In addition to transparency and consultation mechanisms, the EU Code sets out eight criteria to guide national arms export decision-making, including human rights, the preserva-

tion of regional peace, security, and stability, risk of diffusion, and sustainable development <<http://www.fas.org/asm/campaigns/code/eucodetext.html>>.

⁸ See <<http://www.grip.org/bdg/g1649.html> for full text of moratorium>.

⁹ The ATT Steering Committee membership is listed at <<http://www.armstradetreaty.org/att/aboutus.php>>. The Control Arms Campaign is run by Amnesty International, the International Action Network on Small Arms (IANSA), and Oxfam, all of which are also members of the ATT Steering Committee.

in major exporting countries have sought to hold governments accountable in complying with their existing national and regional export criteria. Pressed at home, many of these governments (and their defense industries) have become more supportive of the global application of similar standards.

UN GA Resolution 61/89 initiates the formal process to pursue an ATT, which it describes as “a comprehensive, legally binding instrument establishing common international standards for the import, export, and transfer of conventional arms.” In doing so, it simultaneously reaffirms states’ Article 51 right to acquire arms for self-defense and security, and acknowledges the relationship between arms transfers and human rights, peace and security, and development. Specific criteria outlined by NGOs and the ATT Steering Committee are based largely on existing international law and have been on the table in various forms since 1997.¹⁰ State interest has grown the most rapidly in recent years, however. In March 2005, the United Kingdom became the first major exporting state to announce support for an ATT. By October 2005, 42 countries had publicly stated their backing of the initiative. This substantial but still small number increased dramatically in 2006, a year of heavy NGO and state-led campaigning, as well as explicit discussions in the UN POA Review Conference to establish common arms trade criteria. On 30 October 2006, the First Committee vote to pursue an ATT passed by a margin of 139 to one (only the United States in dissent). By the GA vote on 6 December 2006, the number of supporting states had increased to 153, leading to the success of a conventional arms control initiative in the UN format and proving the resonance of the ATT as “an idea whose time had come.”

Nevertheless, the conclusion of an Arms Trade Treaty has a long and still far from certain road ahead of it. The 2006 GA Resolution sets in stone the first two steps, with the negotiation of treaty language dependent on the outcome of these initial stages. First, in early 2007, the Secretary General invited states to submit papers outlining their views on the “feasibility, scope, and draft parameters” for an ATT. By the end of April, 52 states had submitted papers, 95 percent of which were positive and along the same broad lines. With an absolute deadline of 28 June 2007, this number is already significantly higher than the 20-30 pa-

¹⁰ For the most recent edition, see Arms Trade Treaty Steering Committee, *Compilation of Global Principles for Arms Transfers (Revised and Updated)*, Amnesty International, London, 2007.

pers usually received in such exercises. The papers will help to inform the work of the Group of Governmental Experts (GGE) set to convene in 2008.¹¹ A “positive enough” GGE report will be difficult given its consensus requirement amidst the expected heterogeneity of perspectives, but it is seen as critical to the ability to open negotiations on a treaty document in 2009. The distinction among skeptical countries between the view that an ATT “won’t work” versus the view that it “would be very difficult” is an important one, and ATT lead states see lobbying in the next few years as essential to ensuring that the scale tips in favor of the latter. Understanding the challenges ahead and the realm of constructive political activity available to ATT supporters is therefore an important task, grounded in the politics of the arms trade both at home and abroad.

Case Studies

By most measures, the top five conventional arms exporters are the United States, Russia, the United Kingdom, France, and Germany.¹² Of this group, the United Kingdom, Germany, and France are ATT supporters. However, experts argue that if an ATT is ultimately to reduce the adverse affects of “irresponsible” arms transfers, it must be observed by *all* of the largest exporters. Russia has viewed efforts at best with suspicion, expecting its defense industry to suffer adverse economic consequences if proposed controls are imposed. Perhaps more problematically, the United States in recent years has been a strong critic of multilateral conventional arms control initiatives. At a minimum, an immediate task for ATT supporters is therefore to prevent skeptical or hostile states from acting to derail the process. Most optimistically, uncommitted or opposing states could be swayed in a positive direction, although domestic and foreign policy pressures may in some cases be far too intransigent at present for this to be a realistic possibility. With the goal of identifying what is, can, and could be

¹¹ The GGE will be arranged by geographical distribution and engage supportive and skeptical countries alike. P5 members are also automatically invited to participate and are themselves divided on the ATT issue.

¹² See *World Military Expenditures and Arms Transfers*, 28th Edition, U.S. Department of State, Washington DC, 2003, p.14, and Stockholm Peace Research Institute, *SIPRI Yearbook 2006: Armaments, Disarmament and International Security*, Oxford University Press, New York, 2006, p. 450.

done by Germany to advance the ATT process, this section focuses on the politics and lobby activity of the United Kingdom, a key lead state, and the nature of the forces behind U.S. opposition, a primary concern for ATT advocates.

United Kingdom

The United Kingdom is one of the lead ATT advocates, and the Labour government has committed to advancing the process in both word and deed. As a top arms exporter who has made the creation of international and legally-binding standards an explicit policy priority, the UK brings political force and credibility to the ATT campaign. Its motivations for doing so are linked to both its domestic politics and foreign policy, dating back to the “arms to Iraq” scandal in the mid-1990s and the Labour Party’s election to power in 1997. The current ATT initiative has been supported by cross-Whitehall work within the government, as well as cooperative efforts between the government, NGOs, and industry. As such, the British case provides a useful example of the policy and lobby strategies of a major conventional arms exporting state serious about the pursuit of global export standards.

British leadership on conventional arms control has been prompted by domestic political interest and a specific vision of foreign policy promoted by the Labour government. Indeed, although the UK announced support of the ATT only in March 2005,¹³ Labour’s interest in arms exports pre-dates its election in 1997. It emerged initially as a matter of domestic political opportunity. The Scott Inquiry into the “arms to Iraq” scandal under John Major’s government cultivated a strong public distaste for the arms trade and highlighted questionable practices of the long-ruling Conservative Party. As opposition, Labour took advantage of the headline-grabbing scandal and, together with NGO groups, advocated greater transparency and an overhaul of arms export regulations in UK legislation, which dated back to 1939. Once in office, it appointed long-time arms trade critic Robin Cook as Foreign Secretary and made standards-based arms transfers a priority. It also made policy-making more open to Parliament and non-state actors, such as industry and NGOs, and invited scrutiny of its arms

¹³ Jack Straw, Securing a Global Arms Trade Treaty, Speech at Institute of Civil Engineers, London (15 March 2005). Accessed on 24 April 2007 at <<http://www.fco.gov.uk>>.

trade practices from all sides. Labour thus both responded to public opinion in the wake of the Scott Report and in doing so, made itself susceptible to additional pressure to follow through on its recommendations once in power. It has not only been a matter of winning points with the public, but, once won, not losing them.

Reforming the arms trade has not been confined to a domestic issue. Upon taking office, Cook sought to formulate an “ethical dimension” to British foreign policy, and with it an explicit commitment to promote arms control and disarmament, as well as human rights.¹⁴ Blair himself linked the issues in his outline for “Principles of a Modern British Foreign Policy,” cautioning that Britain must not “ignore the ethical dimension of the trade in arms”¹⁵ as it seeks to use its influence to promote British values around the world. Although criticized as falling short in practice, and although the “ethical dimension” language was later dropped, Labour has nevertheless continued to promote the integration human rights, development, peace, and stability considerations with its decisions to export arms. This has applied not only to the conduct of its own arms sales, but in its foreign policy initiatives to promote similar standards in multilateral fora. As EU president, the government oversaw the creation of the EU Code of Conduct for Arms Exports in 1998. Within the UN small arms process, it has also been a primary advocate of developing transfer controls (known as the Transfer Controls Initiative, or TCI).¹⁶ Most recently, it has taken on a leadership role in the formation of an ATT, pushing for the initiative in its bi- and multilateral relations alike.

ATT support in the UK is broad. London is a primary center of arms trade research, and NGOs have strongly urged the government and others to take up the ATT

¹⁴ Robin Cook, Speech at Foreign and Commonwealth Office, London (12 May 1997). Accessed on 9 January 2007 at <<http://www.guardian.co.uk>>.

¹⁵ Tony Blair, The Principles of a Modern British Foreign Policy, Speech at Lord Mayor’s Banquet, London (10 November 1997). Accessed on 5 June 2007 at <<http://www.fco.gov.uk>>.

¹⁶ The ATT process is an explicitly separate program from TCI, although there is significant overlap between the two. This has caused some confusion for other states and interested groups. The ATT deals with all conventional weapons, while TCI is limited to small arms. Moreover, the ATT is a process independent from the UN POA, unlike TCI. A meeting in Geneva in late August 2007 hosted by the Canadian and Swiss governments will informally seek progress on TCI. A positive outcome would certainly benefit ATT, as well, although the two are not formally linked.

idea. British NGOs, such as Saferworld and the UK branches of Oxfam and Amnesty International, have been active both inside and outside the government, seeking to hold Labour accountable to its own policies while also lobbying – often now in partnership with the government – to advance an ATT worldwide. This specialized sector has been able to maintain political momentum for transfer controls, despite the general disconnect of the public from such technical issues. The Control Arms Campaign was successful in mobilizing popular support; however, in general, the public has a minimal interest in foreign affairs or arms exports more specifically. Certainly, active British support of an ATT “looks good” in domestic politics and wins the approval of highly regarded NGOs at home – a plus for the Blair administration in the midst of the lingering dark cloud of the Iraq War. Yet although the public largely views the arms trade – and the arms industry – with a highly critical eye, in the decade since the Scott Inquiry, the issue only rarely now finds itself in the spotlight of British politics.

Interestingly, the British arms industry came out in support of the ATT initiative in mid-2006¹⁷ and has begun to play an active role in the UK’s international lobbying efforts. The Defence Manufacturers Association (DMA), which includes most of the UK’s large defense companies with the exception of BAE Systems (which also supports an ATT), argues that an ATT is in the British industry’s interest as a way to “level the playing field” with companies in other countries currently under less stringent export regulations. In other words, the DMA and BAE hope that an ATT will compel non-British companies to abide by export rules like those already imposed on UK companies, negating the trade advantage enjoyed by less regulated arms industries in some markets. Along with the NGO community, DMA representatives have also taken part in government lobbying for an ATT, focusing mainly on economic arguments in favor of a treaty for companies in states more skeptical about an ATT. As active participants in the ATT process, the UK industry in turn expects that regulations imposed by an ATT would look very similar to existing British regulations, thus requiring only minimal changes, if any, in British arms export practices.

The experiences of the British government point to two broad and interrelated lessons – one strategic and one substantive – useful for other states in similar

¹⁷ Stephen Fidler, UK arms makers to join call for treaty, *The Financial Times* (20 June 2006), p. 10.

circumstances seeking to move the ATT process forward within the UN. In particular, as another major arms exporter with strong national standards of transfer controls, Germany may identify here useful avenues through which to promote wider international support of an ATT, or possibly other conventional arms issues with which it is becoming increasingly active, such as ammunition and stockpile controls.

Work with partners

The UK has made use of its diverse domestic base of support in its international work to promote an ATT. In doing so, it recognizes the contributions its NGO and industry partners can bring to the task of persuading skeptical states. For example, DMA representatives have accompanied government officials in meetings with Russia on ATT. One of the major roadblocks to Russian support is the concern over the costs to its struggling arms industry; British industry is thus well positioned to argue for the business benefits of an ATT, such as the increased potential for collaborative production ventures opened up by shared export standards. The NGO and research communities can also often add an independent or politically neutral voice to government advocacy to enhance the message presented.

Similarly, the UK and other ATT core lead states rely on the diplomatic strengths of one another and their allies to make their case in the international arena. In places where the UK may have to tread carefully due to its colonial past, other states may be better suited to government-to-government lobbying efforts. Within the European Union (EU), member states – including Germany – divide the lobbying workload so as to concentrate their efforts where they have the best connections and can be most effective. Advancing the ATT process is certainly not a task that can be taken on by any one country, and it can benefit significantly from the broad base of support it has already developed within the United Nations.

Grow common support

The central substantive task ahead for ATT advocates is to diversify the support base for the initiative and to establish common ground among “yes states” on future treaty content in anticipation of smoothing later negotiations. There is nothing surprising about these ideas, but they are nevertheless of central importance. The UK is working actively with its partners to garner support from an even wider range of countries. The addition of a few supporting states from the Middle

East, for example, could have a positive domino effect in the region, which has thus far been dominated by Egyptian opposition and a lack of existing regional arms control agreements.

Beyond increasing support among countries, it will streamline the process later to work to identify and deepen the common ground on proposed regulations among the existing 153 “yes states.” By leading discussions on transfer controls through the UN small arms process, as well as in its efforts to release its own documents and position papers early, the UK has sought to help grow shared understandings of what to include in an ATT. This appears to be paying off; the Foreign and Commonwealth Office has already noted substantive similarities in the provisions of the position papers submitted so far.

Finally, the UK has noted the importance using lobbying and multilateral discussions to clarify what can be expected from an ATT and what it would – and would not – cover. British diplomats are concerned that many countries supporting the ATT process are conflating it with SALW initiatives and may not yet be fully familiar with ATT proposals. While this is not currently problematic, it could create difficulties during treaty negotiations. Moreover, current misunderstandings about the scope of a treaty (such as the impressions that it would block states’ right to self defense or intrude on states’ domestic gun possession laws) may also discourage other supporters and fuel opposition groups. Clarification in these cases is essential to gain as universal acceptance of the initiative as possible.

United States

As a military superpower and the world’s top arms exporter, the United States’ relationship with the arms trade is complicated by pronounced economic and foreign policy pressures both to maintain a strong defense industry and to use arms as a tool of influence in international affairs. As a result, US arms transfers have long been criticized as being too permissive. Nevertheless, Washington has historically been a supporter – and often a leader – in the brief history of multilateral conventional arms control initiatives. In addition, the United States boasts one of the world’s most sophisticated national export control systems, as well as comparatively high export transparency. President Carter sought (largely without success) to

link human rights to US arms trade policy and restrain international transfers already in the late 1970s. Since the end of the Cold War, the US has led the way to the creation of both the UN Register of Conventional Arms and the Wassenaar Arrangement as the successor to the Coordinating Committee on Export Controls (COCOM), partaken in the P5 talks, and, under President Clinton, been a strong supporter of the UN small arms process. Moreover, in an initiative directly related to the ATT process now underway, Congress passed a bill in 1999 requiring the president to begin negotiations on an international arms trade code of conduct.¹⁸

At the same time, the United States under President Clinton refused to sign the Landmine Treaty, ostensibly delaying until replacement technology could be developed. Less ambiguously, under the current Bush administration, the US has outright rejected the move to initiate ATT discussions, acted as an obstructionist state in moving the UN small arms process forward, and in some cases, even loosened its own export standards to win allies in the war on terror. The prospects for US support of an ATT in the present political climate are therefore far-fetched, while changes under the next presidential administration will depend as much on geopolitical circumstances as on the domestic political priorities and support bases of party in the White House.

The severe opposition the United States currently expresses toward the ATT process is rooted both in domestic and foreign policy factors, which appear to be particularly acute for the present administration. US opposition, however, does not seem to stem from general US public opinion. In fact, a 2004 Chicago Council on Foreign Relations poll found that 57 percent of the public supported “giving the UN the power to regulate the international arms trade” a number which grew to 60 percent in 2006, with only 36 percent opposed.¹⁹ As an interesting comparison, these figures echo those in February and March 2003 about an Iraq invasion, with 59 percent of Americans in

¹⁸ For the full text of the International Arms Sales Code of Conduct Act of 1999 (part of HR 3194), see

<<http://www.fas.org/asmp/campaigns/code/intlcodetext.html>>.

¹⁹ The Chicago Council on Foreign Relations, *Global Views 2004: American Public Opinion and Foreign Policy*, 2004; The Chicago Council on Global Affairs and WorldPublicOpinion.Org, *World Publics Favor New Powers for the UN* (10 May 2007). Retrieved on 7 June 2007 from <<http://www.chicagocouncil.org>>.

favor and 37 percent opposed.²⁰ Moreover, the US public has a long-standing dislike for the arms trade: In 1975, only 35 percent of Americans supported arms sales to other nations; in 1995, the number had dropped to a mere 15 percent in favor and 77 percent opposed, a ratio that has remained steady even in the midst of the war on terror, with 18 percent in favor and 77 percent opposed in 2002.²¹

The domestic sources of ATT opposition are thus more concentrated and linked to specific constituencies with close ties to the Bush administration. Although there are American NGOs promoting multilateral conventional arms control – the Center for Defense Information, the Federation of American Scientists, and the Friends Committee on National Legislation, among many others – in contrast to the UK, they have not managed to play an influential role in the policy debate, to the extent that one exists. Rather, the National Rifle Association (NRA), a well-known and powerful lobby, has been a very vocal ATT opponent, successfully rallying its membership and promoting its position within the government. The NRA has an active nationwide membership and is an established electoral base for the Republican Party. The NRA argues that an ATT could infringe on the Second Amendment rights of Americans to keep and bear arms; a concern also expressed by the US government in explaining its opposition to multilateral controls of the legal arms trade. Similar reasoning has been applied to the UN small arms process, and, at the 2006 Review Conference, where the US also blocked transfer control initiatives, the three NGO members of the US delegation were prominent NRA members.²² While the UN has been careful to delineate the boundaries of these discussions to exclude national gun possession – indeed, even the Congressional Research Service (CRS) notes that UN bodies “have supported US Second Amendment rights of citizens to firearms”²³ – the NRA has managed to frame the issue for its constituents otherwise.²⁴ Whether or not the NRA will be such an

²⁰ See <<http://www.galluppoll.com/content/default.aspx?ci=1633&pg=3>>.

²¹ Chicago Council on Foreign Relations, *American Public Opinion and U.S. Foreign Policy 1975; American Public Opinion and US Foreign Policy 1995; Worldviews 2002*. Available at <<http://www.chicagocouncil.org>>.

²² Warren Hoge, With Caveats, US Backs Session at UN on Curtailing Illegal Arms, *New York Times* (28 June 2006), p. A10.

²³ Marjorie Ann Browne, The United Nations and “Gun Control”, *CRS Report for Congress*, The Library of Congress (7 April 2005), p. 6. See also Hoge 2006.

²⁴ As an organization that advocates responsible gun owner-

influential factor in the post-Bush administration policy debate will depend on the next occupant of the White House and his or her foreign policy priorities, as well as the domestic political climate.

With few other large groups in the US so actively interested, it is not surprising that the Bush administration has taken this position. However, it may also simply be an added benefit and justification of ATT opposition, along side more entrenched foreign policy concerns both specific to the Bush administration and linked to the established nature of the relationship between US foreign policy and arms transfers. In general, the Bush administration has expressed a dislike for multilateral treaties in a broad range of security affairs, in essence contending that such treaties are ineffective. In the case of an ATT, it feels that the “initiative will be expensive, time consuming, and of little utility because any final product will inevitably establish standards of the lowest common denominator.”²⁵ Nor does the administration support non-binding measures that could eventually evolve into binding international laws or agreements. As John Bolton, Under Secretary for Arms Control and International Security at the time of the 2001 UN small arms conference, stated in reference to the POA and related initiatives, “from little acorns, bad treaties grow.”²⁶ Instead, the administration views the legal arms trade as solely the domain of national control and advocates bilateral assistance to strengthen national export control systems and implement the existing provisions of the Programme of Action. It is, of course, impossible to say whether this perspective would be carried into a new administration, though it is possible to imagine that the handling of the Iraq War could lead to political pressure at home and abroad for a more multilateral approach to US foreign policy across the board.

This “no new treaties” view is specific to the Bush administration. However, the reluctance to accept externally binding rules to govern US arms transfers may also be a symptom of a more general American penchant to use arms sales and gifts as a common tool

ship, it could just as easily be argued that an ATT to promote responsible legal trade is actually in line with NRA principles.

²⁵ Wade Boese, Arms Trade Treaty Effort Endorsed, *Arms Control Today* (December 2006). Retrieved on 10 May 2007 from <<http://www.armscontrol.org>>.

²⁶ John R. Bolton, Press Conference on the UN Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects, UN Headquarters, New York City (9 July 2001). Retrieved on 6 June 2007 from <<http://www.state.gov>>.

of foreign policy. The Bush administration may not like its foreign policy options constrained by international agreements as a matter of principle, but presidents for decades – in practice if not in policy – have sought foreign policy flexibility through the arms trade as an alternative to military intervention or as a way to win allies. This applies today to US arms transfers in the war on terror, as it did to “third world transfers” during the Cold War. In particular, conventional arms have long been used by the US to express friendship with other states, provide security assurances, and gain influence in international affairs. The United States has protected its ability to choose who and what it supports politically, including the freedom to use its arms trade as it sees fit to use as a demonstration of its support.

Therein lies another specific point of objection to an ATT, if the final document includes a ban on sales to non-state actors. Certainly, this is well within the realm of possibility; it is an issue most states agree should be included and may be a non-negotiable point to get India on board. The United States, in contrast, wishes to retain its ability to transfer arms to its allies abroad, whether its allies are state or non-state actors, as an expression of its military or political support. Moreover, it argues that some non-state actors, though not protected by Article 51 of the UN Charter, also have the right to acquire arms “to defend themselves against tyrannical and genocidal regimes.”²⁷ Providing arms to support certain non-state groups abroad is not a foreign policy strategy limited to either the Bush administration or Republican presidents. This issue therefore has enormous potential to be a sticking point for the United States not only in the upcoming Group of Governmental Experts, but also in future treaty negotiations.

With such intransigent opposition under the current US administration, lobbying from ATT supporters will be constrained, but it will by no means be without value. For states with close relationships with the United States, like Germany and the UK, lobbying even now will be important to encourage the US to maintain a policy of passive opposition and not to derail the ATT process. It may also offer future benefits by targeting certain sectors of US society, such as the arms industry, and setting the stage to work toward

²⁷ Robert G. Joseph, Remarks at UN Review Conference on the Illicit Trade in Small Arms and Light Weapons (27 June 2006), USUN Press Release No. 137 (06). Retrieved on 8 June 2007 from <<http://www.state.gov>>.

US ATT support in the next presidential administration.

Discourage active opposition

Although in the immediate term it is extremely unlikely that the United States can be persuaded to join an ATT, it is nevertheless critical that the Bush administration opposition not shift from its present passivity to a more active disapproval, in which it seeks to derail the UN process. This will require ATT supporters to walk a fine line between leaving the US to its own devices, so long as it is content simply to let the process move forward without its support, and discouraging it from taking any moves to foster opposition among other countries and create problems in the upcoming GGE.

This latter scenario will require pressure from not only ATT lead states, like the UK, but a wider spectrum of ATT supporters – and especially those with longstanding relationships with the US, like Germany. Moreover, if the US does take a turn to active opposition, these states will need to work even more diligently in their international lobbying efforts. Germany and others will need to be prepared to vocally, visibly, and coherently counter US activity, especially among undecided states, and maintain support and substantive common ground among the existing “yes states.”

Lobby U.S. industry

To lay the groundwork for future discussions with the United States on the merits of its participation in an ATT, immediate and long-term lobbying of US industry to come out in favor of an ATT would be well worth the investment. US industry has been largely silent on the issue of an ATT, but given the high export standards it already faces and its far-reaching international production ties, an argument on behalf of shared global export standards could prove persuasive. Indeed, in recent years, US industry has complained that it suffers a disadvantage in the global market by being subject to more stringent regulations – and interpretations of regulations – than companies elsewhere.²⁸ As strong transatlantic industry partners,

²⁸ While it is extremely difficult to establish a dollar figure to measure potential harm to US arms sales, it nevertheless is possible that problems might arise from “unreliability in supply, the unilateral nature of export control measures, restricted access to foreign talent, and barriers to developing a foothold in emerging markets.” Moreover, it is also “apparent that US companies are already being constrained in supply

Germany and other European states are well positioned to engage their arms industries first to ascertain the mood of different sectors of the US defense industry with regard to an ATT, and second to seek its support for the UN process and a final treaty. Such a task would not be without self-interest for European firms, which both compete with US companies and are deeply involved in collaborative work with them. The ability to maintain smooth access to co-production, which could be already complicated by problems stemming from variation across national export control laws, would itself be an incentive for European industry to turn its attention to its American counterparts. Ensuring a level playing field with their American competitors after an ATT is signed is clearly another.

Certainly, the US defense industry would be a valuable ally and could be essential to gaining the support of any US administration. Globally, the United States dominates the arms export market. It could be a highly persuasive advocate of an ATT and, once a treaty is concluded, necessary to enacting an effective document. Domestically, the US arms industry lobby has long been a powerful force within both the legislative and executive branches of government. Industry interests are said to receive high priority in domestic politics, with considerable importance being granted to economic and national security considerations wrapped up in the production and export of armaments. With close ties to the state and the longstanding view that the health of the arms industry is vital to the economic and security wellbeing of the state, the support of the US arms industry could be a major – if not *the* – deciding factor in gaining the support of the US government.

Challenges Ahead

Existing support for the ATT process is broad, and state and NGO lobbying efforts have made tremendous and encouraging progress. Nevertheless, a number of substantial challenges remain, which will require political sensitivity from all parties and affect the process ahead. The primary concern facing ATT supporters will be in deciding whether to seek a treaty that attracts the largest number of signatories possible

chain choices by export control restrictions.” Institute for Defense Analysis, *Export Controls and the US Defense Industrial Base*, Vol. 1: Summary Report, January 2007, p. 4.

or one that may attract fewer supporters but is as strong as possible in its provisions. This fundamental question has the potential to create divides among ATT supporters, as well as between their domestic bases of support. For example, British industry wants to see a treaty supported by as many states as can be achieved, while British NGO groups insist on a strong treaty with meaningful export standards. The British government will have to find a balance between these two sides to maintain its broad base of domestic support and will face similar challenges as a lead state in the international arena. Identifying areas of common ground among states will be key in discovering where this balance lies and engaging in productive, goal-oriented discussions and negotiations.

Several other critical questions also remain. Upcoming ATT discussions will have to consider how – if possible – to effectively incorporate the viewpoints and concerns of states with varying relationships with their arms industries and the global arms market. In particular, some emerging or struggling producers will fear a loss of markets in areas denied exports under new criteria. Without these markets, they worry that their ability to develop and maintain their arms industry will suffer. To counter these concerns and to encourage adherence to export standards, more established producer states could consider broadening their trade and production relationships with these states. Other countries will have to be assured that their ability to defend themselves will not be compromised by an ATT, though how to achieve such assurances along side maintaining agreed-upon standards in practice is not clear. More broadly, it is important to include developing states actively in the process. There has been some suspicion among these states that an ATT is an initiative of the industrialized nations to work against the economic and military security of the developing world. As a result, both the clarification of objectives and active integration will be essential to gaining the support and trust of these countries. Providing state-to-state assistance to attend conferences and encouraging NGO-to-NGO assistance to mobilize civil society and provide information are two possible ideas to deal with this concern. Finally, enforcement and monitoring loom as practical and highly contentious difficulties facing future treaty negotiations. Investing resources and initiating discussions outside the formal process in the search for solutions now may therefore be prudent and useful.

Recommendations for German and European Policy

As a country wishing to maintain and grow its position as a global advocate of arms control, Germany can engage in a number of further activities to gather and maintain momentum on the ATT process now underway. Such activity from ATT supporters will be critical over the next two years, as the GGE meets and additional steps are taken toward beginning treaty negotiations. The cases discussed in this paper suggest four important and potentially fruitful avenues to start: (1) Work with state and non-state partners in international lobbying efforts; (2) broaden ATT support and establish common substantive ground amidst “yes states”; (3) discourage active US opposition; and (4) lobby the US arms industry as a key player in the global arms trade and a critical voice in future US policy-making.

In addition, the example that Germany and other large exporter ATT supporters set by their own practices will be important to show the value of strong export standards and their commitment to pursuing meaningful multilateral controls. With a tradition of high export standards, a commitment to arms transfer transparency, and active monitoring by German civil society,²⁹ Germany presents a compelling model for the ability to combine high export standards with an economically viable arms industry. Rigorous policy implementation is, of course, another important element of the equation.

Where Germany and other European states can make important outward improvements, however, is in EU-wide standards and, in particular, making the EU Code of Conduct legally binding. At present, the EU impasse at moving the Code from a politically to legally binding document visibly undermines the credibility of the EU and its member states as primary supporters of the ATT process. Revisions to the Code do not appear to be on the current policy agenda and were not discussed during Germany’s EU presidency in the first half of 2007. Yet, critics may argue, if the EU cannot agree upon legally binding standards, how does it expect to achieve success on similar initiatives on a global scale? While opposition within the EU on

amending the Code is limited and may simply be an attempt to use this specific document for political ends, it nevertheless looks bad for the credibility of the EU and its members as ATT supporters. Getting the EU Code back on the European policy agenda and working to finalize consensus on a legally binding document would be an important regional initiative to back up the ATT process globally.

Conventional arms control issues are diverse and politically sensitive, but the practical benefit of reducing irresponsible transfers in terms of development, societal and human security, and international stability are well worth the effort. The challenges facing the ATT process are considerable; however, as outlined above, there are concrete steps Germany and other supporter states can take to move the initiative forward and reduce potential problems down the road. In particular, Germany can play an important role in maintaining the momentum by working with its partners at home and abroad and by setting an example with its own export behavior. Most positively, overwhelming consensus now exists in the international community to tackle multilateral arms transfer standards: The biggest hurdle has already been cleared.

²⁹ The arms transfers working group of the Gemeinsame Konferenz Kirche und Entwicklung (GKKE), for example, is composed of a number of German scholars and NGO representatives with an interest in encouraging responsible German exports. It publishes an annual report of German arms transfers. See <<http://www.gkke.org>>.