The Arms Trade Treaty and its implication for preventing child soldiers—an initial assessment

7 May 2013
Who are child soldiers?
Child Soldiers International considers the term child soldier to be equivalent to the following description of children associated with armed forces or groups:

A child associated with an armed force or armed group refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities.
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On 2 April 2013 the UN General Assembly adopted the Arms Trade Treaty (ATT) with 154 in favour, 3 against and 23 abstentions.\(^1\) The treaty will be opened for signature on 3 June 2013 and it will enter into force once fifty states have ratified it.

The ATT is the first treaty to attempt to regulate the global transfer of conventional arms (and ammunitions). Despite some flaws, it represents a milestone in the quest to prevent illicit and irresponsible transfer of arms to countries where they can be used for the commission of serious human rights and humanitarian law violations.

The adoption of the ATT represents the culmination of two decades campaigning by a significant number of human rights and humanitarian non-governmental organisations (NGOs) and those governments that champion it.\(^2\) Despite a growing consensus among governments of the need to regulate the international arms trade, negotiations were often difficult, at various points reaching almost breaking point. Final proof of that came with the failure of the Final United Nations Conference on the Arms Trade Treaty to reach consensus on the text.

Child Soldiers International welcomes the adoption of the ATT. Once entered into force and if effectively implemented, the ATT could prevent the flow of arms to armed actors who unlawfully recruit children or use them to participate in hostilities.

\(^1\) In favour: Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, El Salvador, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Suriname, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States, Uruguay, Zambia.

Against: Democratic People’s Republic of Korea, Iran, Syria.

Abstain: Angola, Bahrain, Belarus, Bolivia, China, Cuba, Ecuador, Egypt, Fiji, India, Indonesia, Kuwait, Lao People’s Democratic Republic, Myanmar, Nicaragua, Oman, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Swaziland, Yemen.

Absent: Armenia, Cape Verde, Dominican Republic, Equatorial Guinea, Kiribati, Sao Tome and Principe, Sierra Leone, Tajikistan, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Zimbabwe.

Indeed, the link between child soldiers and the transfer of arms, particularly small arms and light weapons, has been well established. More than 15 years ago Graça Machel, the UN Secretary-General’s expert on children and armed conflict, found that the proliferation of inexpensive and lightweight weapons made so widely available by the international arms trade was contributing to the unlawful recruitment of children and their use in hostilities. Since then, the UN Secretary-General and his Special Representative for Children and Armed Conflict (SRSG) have consistently pointed to the correlation between the easy availability of small arms and human rights abuses against children, including their recruitment and use as soldiers, and have repeatedly called for bans on the export or supply of small arms and military assistance to parties concerned. Interpreting the obligation of states parties under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), the Committee on the Rights of the Child has consistently held that states should prohibit the sale of arms when the final destination is a country where children are at risk of unlawful recruitment or use in hostilities.

Clearly it is too early to attempt a full analysis on how the ATT may contribute to the prevention of child soldiers’ recruitment or their use in hostilities. A lot will depend on the states that ratify it and the way it is interpreted and implemented. This briefing paper intends therefore only to summarise the main elements of the ATT and how it may improve the protection of children in armed conflict. It is a preliminary assessment, bound to be reviewed as the full implications of the ATT become apparent in the months and years to come.

Main features of the ATT and their potential implications to prevent child soldier recruitment and use in hostilities

Object and scope

The ATT sets as its object the establishment of international standards for the regulation of the international trade in conventional arms and prevent the illicit trade of these arms and their diversion (Article 1). The categories of conventional arms are spelled out in Article 2 and, of particular relevance for the prevention of the recruitment and use of child soldiers, are the “small arms and light weapons”. It also covers categories of ammunitions (Article 3) and parts and components (Article 4).

Prohibitions

States parties to the ATT shall prohibit any transfer of conventional arms (or ammunitions or parts) when such transfer would:

- violate obligations set out in UN Security Council resolutions under Chapter VII of the UN Charter, in particular in relation to arms embargoes;

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3 The Impact of Armed Conflict on Children, Report of the expert of the Secretary-General, Ms Graça Machel, submitted pursuant to General Assembly resolution 48/157 (known as the “Machel Report”), UN Doc. A/51/306, 26 August 1996.
• violate other international agreements to which they are party, particularly related to transfer of or illicit trafficking in conventional arms;
• be used in the commission of genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, attacks directed against civilians or civilian objects, or other war crimes (Article 6).

The third category of prohibitions was the focus of much of the negotiations. The language adopted requires knowledge at the time of the authorisation that the arms would be used to commit such crimes. Further, while not providing an exhaustive list of war crimes, it refers to war crimes as defined in international agreements to which the state is a party.

The treaty with the most comprehensive list of war crimes is currently the Rome Statute of the International Criminal Court. Negotiators of the ATT opted not to refer explicitly to customary international humanitarian law, which binds on all states and includes a number of war crimes. Under the Rome Statute and in customary international humanitarian law, conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities is a war crime both in international and non-international armed conflicts.5

Given the well established link between transfer of arms and child recruitment, the transfer of arms to parties which unlawfully recruit or use children in hostilities would, in most cases, fall within the scope of those transfers prohibited by Article 6 of the ATT.

This is particularly relevant given that children are recruited and used by both state forces and armed opposition groups in most contemporary armed conflicts.

Export Assessment

Exports of conventional arms not prohibited under Article 6 are subject to an assessment by the exporting state (with the cooperation of the importing state). Such assessment, which shall be conducted in an objective and non-discriminatory manner, shall assess, inter alia, whether the arms to be transferred could be used to commit or facilitate a serious violation of international humanitarian or human rights law (Article 7).

If after such assessment (and taking into consideration mitigating measures) the state determines there is an overriding risk that the arms would be used for the commission of such serious violations, it shall not authorise the arms export.

While the primary responsibility to conduct the assessment is with the exporting state, the importing state is required to provide relevant information to assist the assessment and, significantly, to regulate imports of conventional arms (Article 8). This is of particular relevance in view of the risks of diversion in the transfer of arms. Such risks and some of the measures required to address them are set out in Article 11.

Unlawful recruitment of children or their use in hostilities constitutes a serious violation of international human rights and humanitarian law. The UN Security Council resolutions on children and armed conflict have regularly condemned violations of international law related to the recruitment and use of child soldiers.

Hence, beyond prohibiting the transfer of arms to parties which recruit or use child soldiers when this falls under Article 6, the ATT will require states parties to assess whether any arms transfer could be used

to commit or facilitate the unlawful recruitment of children or their use in hostilities. This is particularly so, given the express requirement to take into account the risk that such arms transfer may facilitate violence against children. Child recruitment is often accompanied by the use, or threat of, armed violence.

In September 2012, Child Soldiers International published a global report, *Louder than Words – An agenda for action to end state use of child soldiers*, documenting the risk of child soldiers’ recruitment by armed forces and state-allied armed groups. The report argues that beyond situations of active armed conflicts, children are unlawfully recruited or at risk of such recruitment in a number of other countries and invariably these practices put them at risk of use in hostilities, should armed conflict erupt.

Based on such analysis, an assessment of the risk that arms transfer may be used to facilitate unlawful recruitment of children is necessary. However, laws and practices of exporting states are still wanting. According to the information gathered by Child Soldiers International, with three exceptions’ exporting states do not consider the record on child soldier recruitment and use by importing states in their decision-making processes. Indeed, for the most part they have neither the laws nor policies in place on which to base such decisions.

To assist in assessing where and why children are at risk of use in hostilities in armed forces for which states are responsible and to identify what measures can be taken to reduce these risks, Child Soldiers International developed a *Ten-Point Checklist to prevent the involvement of children in hostilities in state armed forces and state-allied armed groups*. This can be used by exporting states to assess the risk of child recruitment for the purposes of authorising arms transfer. Child Soldiers International believes that such an assessment of the risk of arms transfer, if effectively implemented, would represent a powerful tool to encourage importing states to adopt the necessary legislative and other measures to prevent underage recruitment and use.

**Implementation, record keeping, and reporting**

States parties to the ATT are required to maintain a national control system, including a control list. Such a system needs to be effective and transparent; the control list shall be shared with the Secretariat established to assist ATT implementation and with other states parties. States are encouraged (although not required) to make such list public (Article 5). States parties are also required to keep a record of its authorisations of arms transfers, with some level of detail of the quantity and scope of such transfers (Article 12). They shall annually report to the Secretariat on the measures taken to implement the ATT, including authorised exports and imports of arms. The thoroughness of such reports is partially weakened by a clause allowing states to exclude commercially sensitive or national security information from these reports (Article 13).

Child Soldiers International believes that monitoring and reporting is crucial for an effective application of the safeguards against illicit or irresponsible arms transfers, including those that may facilitate child soldiers’ recruitment or use. It is notorious how opaque, if not outright secret, arms transactions are. Child Soldiers International hopes that the implementation of the ATT will contribute to bringing about the needed transparency.

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7 To Child Soldiers International’s knowledge there are only three states – Belgium, Switzerland and the USA – that have enacted laws to condition arms exports specifically on a recipient country’s record on military recruitment and use of children. However, a lack of publicly available information on the application of these laws in Belgium and Switzerland means it is not possible to assess where they have been applied and with what effect. In the USA, decisions to waive application of the legislation mean that its potential impact remains largely untested.

International cooperation and assistance

National enforcement of the ATT is left to the discretion of states parties, with a requirement to take appropriate measures to enforce national laws and regulations (Article 14).

However, there is some emphasis on international cooperation, particularly with regards to exchanging information, assisting in investigations and prosecutions in relation to violations of national laws taken to implement the ATT (Article 15).

States parties may also seek assistance for the implementation of the ATT. This may include legal assistance, institutional capacity building, technical, material and financial assistance. Notably states parties in a position to provide such assistance are required (“shall”) to do so. Assistance may also be sought from the UN, other regional organisations or non-governmental organisations (Article 16).

Among the types of assistance identified in Article 16 some are particularly relevant to addressing and preventing child recruitment and use, notably disarmament, demobilisation and reintegration programmes, institutional capacity-building and model legislation. In particular, such assistance may cover reform of the armed forces and related institutions, including the regularisation and professionalisation of military forces, the improvement of civilian oversight, and the establishment of the legal and institutional frameworks necessary to achieve effective accountability of the military and other security forces. These often fall under the rubric of security sector reform (SSR).

Such provisions to seek and provide assistance also reflect the obligations of states, under the OPAC on the involvement of children in armed conflict, to cooperate in the support for the rehabilitation and social reintegration of child soldiers, and in the prevention of any activity contrary to its purposes, such as unlawful recruitment and use of children in hostilities.

Child Soldiers International believes that security sector reform assistance has a great potential of establishing or strengthening safeguards against child soldiers recruitment.

Conclusion

The adoption of the ATT represents a significant step in the efforts to regulate the international arms trade. The treaty has the potential to prevent the unlawful recruitment of children or their use in hostilities.

States parties shall prohibit the transfer of arms to armed actors who recruit or use child soldiers. Further, before any arms transfer, exporting states should review the risks that such arms may be used to facilitate the unlawful recruitment of children or their use in hostilities. Introducing child soldier prevention assessments would help to fill a legislative and policy gap in many exporting states.

Through the international cooperation and assistance envisaged in the ATT, states parties should be encouraged to adopt the necessary, concrete measures to prevent underage recruitment, such as those envisaged in Child Soldiers International’s *Ten-Point Checklist to prevent the involvement of children in hostilities in state armed forces and state-allied armed groups*. In particular, when seeking or providing SSR assistance, the strengthening of safeguards against unlawful child recruitment should be considered.

For these reasons, Child Soldiers International welcomes the adoption of the ATT and calls on all states to ratify it.