

Determining Criteria to Assess the Effectiveness of Conventional Arms Agreements

By Ian Richardson

Author's Note:

The following essay was written as part of a Mount Allison Independent Student Research Grant during the summer of 2021. When I was conducting the literature review and interviews for this project, I did not account nearly well enough for systemic level shocks in the international system. Perhaps that was foolish of me considering how long the Covid-19 pandemic has drawn on, constantly changing the way in which politics and international relations are conducted. Nevertheless, I was not counting on witnessing the start of a war in Europe and escalated tensions between Russia and NATO at any point soon. As my paper undergoes the peer review process for publication in the *ATLIS* journal, I think it is important to contextualize it in relation to the conflict in Ukraine. Major world powers, including Germany - which has widely been opposed to exporting conventional arms - have rushed to reinforce NATO countries surrounding Russia and have been dumping weapons into the hands of military and civilians in Ukraine. What does this mean for my research? On one hand I am tempted to rip up the paper and decide not to publish it, as we have clearly entered a world where anything goes in terms of weapons transfers. It would be foolish to be against the notion that Ukraine should have every right to arm itself against Russian imperial aggression. I am decidedly not opposed to the aid they have been receiving from NATO and the international community, militarily or otherwise. However, it is important to highlight how proxy wars and balance of power between the US and the Soviet Union were major contributors to the proliferation of small arms across Afghanistan, Africa, and South America. At this point, emergency weapons transfers may be the only option available to the West as we approach something that looks dangerously close to a cold war conflict. Yet, in the aftermath of this schism and as the balance of power shifts, perhaps this type of research will once again be valuable in view of human security. If human security concerns

take the backbench to traditional great power conflicts for now, one can only hope that the dust clears quickly.

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In the area of weapons proliferation there are several different types of treaties and agreements. The purposes of these types of agreements have changed throughout history as human technologies have evolved. It can be difficult to imagine that there were practices considered too brutal for rulers of the Dark Ages. However, weapons control was attempted as early as the Middle Ages when feuding kings and queens attempted to control the use of crossbows and other long-ranged weapons, which the Vatican viewed as being "too cruel for use against Christians."¹ Throughout history, weapons control also became a means for victorious nations to ensure their dominance following major conflicts. Napoleon famously disarmed the Prussians in 1815 as a means of asserting dominance over a state which he had conquered and to ensure that they would not revolt against the occupation of his armies.² In many ways, nineteenth century enforced disarmament was a strategy for extending military and imperial power. Throughout the latter half of the twentieth century, there was a significant change in the objectives of arms control. Rather than being forcibly implemented by the victors in major conflicts, the concern shifted to limiting the size and types of weapons in the nuclear arsenals of the United States and the Soviet Union. It is during this period that weapons proliferation became synonymous with nuclear proliferation, codified in the Nuclear Proliferation Treaty. However, since the 1990s, with treaties such as the Ottawa Treaty to Ban Landmines, there has been a renewed focus on limiting the spread or use of conventional weapons.

Former UN Secretary-General Kofi-Anan famously declared that small arms are “true weapons of mass destruction” as new norms began to emerge within the transfer, sale and destruction of conventional arms.³

The following paper is informed by a literature review relating to the Arms Trade Treaty and the Ottawa Convention to ban the use of anti-personnel landmines, and it is also supplemented with two interviews. A discussion with Dr. Jennifer Erickson, an expert on conventional arms exports and reputational damage, and an interview with a member of the Canadian Armed forces will be included to verify some of the claims made about the strategic uses for conventional weapons. This research is primarily qualitative. The central question of this paper is to identify at least one example of an effective conventional weapons control agreement, and to determine what attributes it possesses. Overarchingly, this study questions why certain arms trade agreements are more successful than others. In so doing, this article provides a strong criticism of proceeding by consensus in negotiation practices, which is widely considered to be a best practice. Overall, it will be demonstrated that there are three main criteria for an effective conventional arms control agreement. First, treaties must establish a clear norm for state behaviour. Second, agreements should not be watered down in search for unanimous consensus. Finally, there should be mechanisms by which meaningful reputational damage may be established for states which violate the clear norms of behaviour prescribed within a convention. Understanding what constitutes an effective agreement and the criteria which contribute to this effectiveness provides a new theory of how arms trade agreements may effectively achieve their purposes in the future.

The following paper will be subject to a few significant limitations to narrow its scope and focus. First of all, this paper will only consider treaties that focus primarily on the control of conventional weapons. Approaching a definition of conventional weapons is complicated. As it is apparent in the text of the Arms Trade Treaty (ATT) and subsequent criticisms of the text, it is often insufficient to limit a definition of conventional weapons to those items listed in the text of any particular agreement. Article 2 of the ATT details the scope of the agreement and provides specific examples of the types of weapons to be regulated.⁴ The choice to include or exclude specific terms in treaty text is debated by states par-

ties and can be used as a way of developing loopholes or circumventing agreements altogether. On the United Nations Office for Disarmament website, the definition of conventional weapons simply states that they are weapons “other than weapons of mass destruction.”⁵ In the context of this paper, this will be the generally accepted definition of conventional arms, and the following text will explicitly avoid mentions of nuclear, chemical and biological weapons which commonly fall into the definition of weapons of mass destruction, capable of causing world-ending or cataclysmic level damage.

The reason for this distinction is particularly relevant when considering the power of nuclear weapons. One of the central questions in the analysis of conventional weapons proliferation is the degree to which enforcement is possible considering the lack of formalized mechanisms. Nuclear weapons are an exceptional case when considering international agreements. In the absence of formalized treaties like the Non-Proliferation Treaty which limits the number of states which are allowed to legally possess nuclear arms, the destructive capacity of Weapons of Mass Destruction (WMD) creates the potential for self-enforced restrictions in ways that conventional weapons are not bound. For example, the doctrine of Mutually Assured Destruction implies that states will never use nuclear weapons against others out of fear of world-ending retaliation. Moreover, there is a distinction in how treaties governing nuclear and conventional weapons are created. Many nuclear treaties are negotiated bilaterally between the United States and the former Soviet Union, whereas conventional weapon agreements are usually multilateral and involve several member states. For these reasons, among others, it is unsuitable to compare agreements which discuss WMD and those which are concerned with conventional arms controls.

There is a lack of agreements that clearly deal with conventional weapons. The most obvious choice to study is the aforementioned Arms Trade Treaty which deals exclusively with the trade in legitimate conventional arms, including armoured vehicles and, importantly, small arms. The other agreement which will be evaluated is the Ottawa Convention to ban the use of anti-personnel landmines. These agreements are suitable for comparison for two main reasons. First of all, they both aim to reduce human suffering and address a humanitarian concern. The Ottawa Treaty explicitly achieves this goal by preventing the use of a hu-

manitarian threat, landmines. On the other hand, the ATT implicitly addresses humanitarian issues by attempting to reduce the acquisition of deadly weapons by undesirable actors. The preamble of the treaty makes reference to reducing human suffering as one of its main objectives.⁶ Moreover, the Ottawa Treaty provides a distinct example of a treaty which is generally accepted as successful. On the other hand, the ATT, has not yet proved whether it can directly reduce irresponsible arms transfers without formalized enforcement mechanisms, but it certainly has the potential.⁷ By identifying what works for the Ottawa Treaty and questioning whether those elements are present and functioning in the ATT, it is possible to address whether there are certain criteria which underline a successful conventional arms agreement.

Scholars tend to agree that the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, otherwise known as the Ottawa Treaty,⁸ is an example of a successful arms control agreement dealing with conventional weapons. The agreement builds upon the Convention on Certain Conventional Weapons, which eventually grew to include four protocols.⁹ The second protocol dealt with anti-personnel landmines. The argument for specific agreements relating to landmines stems from the fact that these types of weapons pose a direct humanitarian threat and kill indiscriminately.

Historically, landmines were often employed by a militarily and technologically inferior side to artificially inflate their offensive or defensive capabilities using minefields.¹⁰ Types of weapons which are capable of this are often referred to as force-multipliers. This tactic proved to be particularly successful in Iraq and Afghanistan, with 69% and 53% of combat wounded in each conflict attributed to IED usage by militant groups, respectively.¹¹ In Vietnam, the inability of the US military to achieve a foothold can be largely attributed to anti-personnel mine use by the Viet Cong.¹² However, the use of landmines has not been exclusively limited to militant groups or smaller states. By the 1980s, the United States military had developed the capacity to mine an area 200 by 300 meters by aircraft or deploy landmines via artillery (area-denial-artillery-munitions, ADAM).¹³ The threat posed by landmines is not limited to the time at which they are placed. A landmine planted in the mid twentieth century is equally deadly today. Many mines experience deterioration of core components

over time. On one hand, the detonators often erode, which indicates that the mines should be harmless as time passes. However, this is offset by the fact that nitroglycerin or other explosives will eventually “sweat out,” causing them to be highly susceptible to exploding at the slightest touch.¹⁴ Consequently, landmines can either be harmless or more dangerous than when they were planted, but there is no way of knowing which is the case.

The Landmine Monitor is responsible for reporting on the implementation of the Ottawa Treaty and Landmine casualties on a yearly basis. As of 2020, the monitor indicates that there are 66 states and areas contaminated by landmines. The states where mines are present include 34 states party to the agreement, 22 states not party and four “areas” which are larger regions that encompass several nations or are not recognized as formal state territories.¹⁵ In 2020, the Monitor’s Report indicated that in 2019, 2170 people were killed by landmines and 3537 were injured.¹⁶ It is important to note that among landmine injuries, many survivors are permanently disabled. For good reason, international NGOs focussed a significant portion of their campaign efforts to ban landmines on highlighting images of wounded individuals who were missing legs or other limbs. Moreover, of the casualties in 2019, 80% were civilian. Of those civilians injured or killed, 43% were children.¹⁷ Undeniably, landmines are a distinct type of weapon which pose a unique humanitarian problem in that most of their victims are innocent civilians.

In response to the indiscriminate effects of landmines, the United Nations first adopted the second protocol to the Convention on Certain Conventional Weapons (CCW) which dealt with landmine, “booby-traps” and “other devices on land.” Rather than outright banning the use of landmines, the CCW regulates the deployment of them. Article 3 generally outlines the restrictions on landmines and other weapons.¹⁸ This protocol prohibits directing landmine use towards civilians, prohibits the use of weapons designed to cause unnecessary suffering, and bans the “indiscriminate use” of these weapons by placing them in areas which are not dedicated military targets.¹⁹ Article 6 provides further clarification of the responsibilities of countries using mines. For example, states are expected to provide advance warning to civilian populations where the delivery of mines would affect them; however, this requirement is waived when “the circumstances do not permit.”²⁰

Considering the existence of the CCW, certain theories of international relations suggest that the Ottawa Treaty was unnecessary. On one hand, realists would argue that the widespread support from larger powers for the Treaty indicated that it was the only acceptable option, and that it had the greatest chance of succeeding. Neo-liberals would argue that there is no reason to deal with high transaction costs without providing ample opportunity for the CCW to prove its effectiveness.²¹ Yet, the Ottawa Treaty was developed almost immediately following the ratification of the CCW for several reasons. First of all, the CCW had no support from the UN Secretary-General from the outset, who called for a complete ban on mine use.²² Moreover, many critics of the CCW agree that protocol two actually legitimized the use of landmines, especially “smart” remotely detonated mines, rather than discouraging them.²³ The language concerning the “appropriate use” of landmines directly implies that there is an appropriate time and place for the deployment of landmines. While it is impossible to prove a causal link between the implementation of the CCW and increased landmine use, the notion that the treaty encouraged a legitimization of these indiscriminate weapons is supported by the fact that many egregious uses of landmines continued after its implementation. For example, mine usage went up in the 1980s in conflict ridden areas like Angola or Cambodia.²⁴ Moreover, scholars and member states directly criticized the treaty considering the lack of proper enforcement mechanisms and no scheduled review conferences. There were no clear mechanisms for reporting on the usage of mines, and there was a lack of consequences when states did not meet their obligations under the agreement. Cottrell argues that the replacement of the CCW was attributed to a lack of legitimacy for this first agreement, and perceived legitimacy for the Ottawa Convention.²⁵ Without protocol two, it is possible that calls to institute a complete ban would have fallen on deaf ears, considering the lack of evidence that landmines could be addressed in an international agreement.²⁶ In that context, overwhelmingly unsuccessful agreements can have some effectiveness if they form the basis for the emergence of a new norm. Moreover, the Ottawa Treaty provides an example of a norm cascade. The United States initially came to the bargaining table with very strong demands and reservations about the agreement. Much to their surprise, they were opposed by other major powers such as the UK and

France. The support of these other major powers indicates that landmine opposition was already beginning to be accepted as a new norm.²⁷

An interview with a member of the Canadian Armed Forces complicates the relationship between the government responsible for the Ottawa Treaty and its own application of it in practice. The Treaty does allow member states to retain a certain number of landmines for training purposes, which the Canadian military certainly does. In practice, the armed forces would not necessarily refrain from using landmines in a situation where the strategic benefits outweigh the potential costs. However, the strength of the norm against landmines can also be felt at the tactical military level. The interviewed member repeatedly stressed the fact that landmines would not be used as a first resort, and that it would be difficult to find a precise moment that warrants their use.²⁸

It is worth noting that the United States is still not a signatory to the Ottawa Treaty. By conventional wisdom, this would be a major blow to the potential efficacy of the agreement since the US undoubtedly possesses the greatest direct military power in the world. However, in practice, US opposition on the surface does not undermine the agreement’s efficacy in the ways one might imagine. Traditionally, arms control or trade agreements have been negotiated through the Conference on Disarmament (CD) in Geneva. The CCW was negotiated through this body, but the Ottawa Treaty was not. The external negotiation of the latter was a result of the strict consensus rules which exist in the operations of the CD. Since the United States would not support a complete ban on landmines, leading states such as Canada were forced to move negotiations to an informal process outside of the CD. Many scholars agree that proceeding by consensus is desirable. Common sense indicates that when all states agree to a treaty unanimously, that treaty must be in the best interest of all. Seemingly, an agreement which is palatable for all is likely to be effective since all states have a vested interest in its success. The second argument has been questioned by the CCW, which did possess large power support but was not strictly adhered to by any parties. By not acting through consensus, the Ottawa Treaty was able to achieve a loftier goal than what would otherwise have been thought possible, namely by initiating a complete ban on landmine use and proving that there was support for a norm banning landmines rather than regulating their use. Howev-

er, a ban on landmine use is effectively meaningless if it does not apply to large powers and they continue to use these types of weapons. It is here that the power of norm acceptance can be perceived when considering the actual support for de-mining initiatives from the United States. The United States generally leads global efforts to reduce the proliferation of anti-personnel landmines in terms of funding. The most recent report from the Landmine Monitor indicates that 72% of the financial support for de-mining activities was provided through the EU, UK, Norway, Germany and the United States.²⁹ The US alone remains the largest single donor of \$177 million which constitutes 32% of International Campaign to Ban Landmines de-mining initiative support, far outstripping the second largest donor, the EU, at only 14% of all contributions.³⁰ Whereas the United States has not signed the agreement, its continued support for its activities proves that on some level they have internalized the complete ban norm.

Dr. Erickson writes on how reputational damage can lead to commitment to conventional arms agreements. She shows how concern for social reputation has led states to at least commit to responsible arms trade practices on paper despite their reservations.³¹ One way that significant reputational damage may be achieved is through effective and transparent civil society and NGO integration. In the case of the Ottawa Treaty, the Monitor provides the transparency required for meaningful reputational damage. Dr. Erickson agreed in an interview that the Ottawa Treaty provides an example of an incredibly successful arms agreement.³² However, there is a disconnect between states' commitments to arms trade policies and the application of these agreements in practice. It is in this area that the ATT has yet to prove whether it will be able to urge meaningful compliance in the future.

Dr. Erikson's work also mentions the potential for some states to be more resilient to reputational damage than others. Specifically, consistent US support for the Arms Trade Treaty is uncertain.³³ This is most clearly demonstrated by the Trump Administration's decisions to "un-sign" the Arms Trade Treaty and resume the production of landmines.³⁴ On the surface, this demonstrates that the United States is immune to reputational damage. However, this is not the case in the long run, with the Obama administration initially deciding to sign the ATT as they feared that their reputation among the international community would suffer

as they stood seemingly in opposition to weapons transfer norms which were becoming widely accepted, at least on paper.³⁵ In the long run, the Biden administration is trying to undo the scandals that the previous government caused.³⁶

The Ottawa Treaty holds two criteria for effective agreement by demonstrating a specific norm that is internalized by member states and non-member states such as the United States. Also, the Treaty can ensure significant reputational damage by way of the oversight of the Landmine Monitor. First of all, the Treaty represents a clear normative ban on the use of landmines. Moreover, the link between global NGOs and the Landmine Monitor provides transparency and consistent updates on states' contributions to the dismantling of landmines. The visibility of funding, production, and destruction information provides the potential for reputational damage to occur for countries that do not conform to the widely accepted norm. The CCW had widespread support from powerful nations such as the United States, whereas its successor, the Ottawa Treaty, did not. Yet, the success of the Ottawa Treaty compared to the CCW demonstrates that consensus is not a necessary condition for effectiveness. Further analysis of the Arms Trade Treaty will demonstrate how consensus-building can hinder the impact of an agreement.

In 2013, the United Nations adopted the revolutionary Arms Trade Treaty. This agreement is the first multilateral effort to control the sale of conventional weapons. Whereas the effectiveness of the Ottawa Treaty is broadly accepted, the overall success of the ATT faces more debate. It establishes significant language concerning the need for states to ensure that the weapons they produce are not being used to assist in committing crimes against humanity. The treaty outlines specific prohibitions under Article 6.³⁷ There is significant literature concerning the significance of this Article. Brian Wood and Rasha Abdul-Rahim provide an analysis of Article 6, and Article 7 which outlines the need for proper export assessment mechanisms to determine the potential for weapons to be used in crimes against humanity. They refer to these two sections as the "heart of the ATT."³⁸ They argue that effective assessment mechanisms are integral to the functioning of the agreement.³⁹ Other scholars have built upon this work by analyzing the way that states have interpreted or ignored the requirement to assess the potential for weapons to be used for purposes which are in violation of International

Humanitarian Law (IHL). For example, Giovanna Maletta provides an overview of the attitudes and policies adopted by EU members concerning the enforcement of this treaty. Specifically, the UK and France have significantly diverged from their positions of promoting effective assessment practices in the context of their continued arms sale to Saudi Arabia.⁴⁰ It is no secret that Saudi Arabia is using weapons, which they have purchased from Western powers, to commit crimes against humanity and attack civilian targets in the ongoing Yemen Civil War. Yet, several Western member states of the ATT deny that they have found any evidence that weapons which they transfer are being used for this purpose. Srdjan Vucetic demonstrated that since the 1980s, 15% of Canada's, 10% of Sweden's and 14% of the Netherlands' arms exports were issued to states with very poor human rights records.⁴¹ Typically, these countries are represented as having progressive attitudes towards foreign policy. Canada ratified the ATT in 2019 but continued to implement a significant trade deal for the sale of Light Armoured Vehicles (LAVs) to Saudi Arabia in contravention of their responsibilities under the act.⁴² Overall, if one employs a definition of effectiveness that prioritizes quantifiable reductions in arms exports to situations where they would knowingly be used for human rights violations, the success of the ATT is unclear.

A recurring theme in relation to the ATT is the degree to which it employs "necessary evils" in the drafting process. Yasuhito Fukui concludes that language concerning safeguards and ambiguity were such necessary evils that are required to universalize the ATT agreement.⁴³ Fukui focusses on the role that the necessary consensus rule from the UN Conference on Disarmament played in delaying the adoption of an Arms Trade Treaty for a significant period of time.⁴⁴ The Conference on Disarmament, which exists to negotiate multilateral arms control agreements between states, operates by consensus.⁴⁵ The consensus procedures imply that any state may veto any actions by others. The rule of consensus also applies to procedural matters. Consequently, delegations have been able to block the conference from informing the United Nations as to whether it has reached an agreement on the text of important treaties.⁴⁶ Scholars like Jozef Goldblat raise the question as to whether the consensus rule should exist even for substantive matters.⁴⁷ During the negotiation of the ATT, the United States were able to delay the negotiation of the treaty text by

threatening to employ specific "redlines" which would result in a veto from them.⁴⁸ Laurence Lustgarden also questions the use of consensus in international proceedings as it can result in the dilution or sacrifice of aspects which would contribute to an effective treaty.⁴⁹ On the other hand, Lustgarden acknowledges that proceeding simply by majority, such as is the case in the general assembly, can often result in documents which major powers, such as the United States, oppose or ignore altogether.⁵⁰ The application of consensus is also a key consideration in the proceedings of the Conference of States Party (CSP) to the Arms Trade Treaty. The CSP is encouraged to "make every effort to achieve consensus on matters of substance."⁵¹ If it is impossible to achieve consensus on a substantial matter, there is a necessary 24-hour suspension of proceedings. If it is still impossible to achieve consensus after this period, then the conference may proceed by two-thirds majority vote.⁵²

Supporters of the Arms Trade Treaty highlight its very existence as a major step forward and have essentially deemed it a major success. For example, Nave highlights how the treaty is of importance for the implementation of Sustainable Development Goals.⁵³ More generally, proponents of this treaty agree that it provides a step forward in the development of norms around the transfer and control of conventional weapons.⁵⁴ Denise Garcia identifies several ways in which the Arms Trade Treaty contributes to the development of norms.⁵⁵ Specifically, the treaty sets standards on behaviour concerning the transfer of weapons that could be used to commit war crimes or atrocities.⁵⁶ Overall, the treaty seems to encourage states to adopt particular principles associated with international humanitarian law. The importance of norm diffusion for international organizations and agreements is explored in depth by Martha Finnemore and Kathryn Sikkink. They demonstrate that there is a "life cycle" for norms. The norm lifecycle is described as a three-stage process. First, norm emergence is supported by norm entrepreneurs (activists) who endeavour to have world leaders adopt standards of behaviour. Secondly, a norm cascade occurs by which states begin to imitate leaders who have adopted the new norms. Finally, norm internalization occurs when a new norm is taken for granted and no longer subject to public debate.⁵⁷ For proponents of the ATT, the agreement presents the opportunity for the beginning of a norm cascade in arms trade.

The scholarly response to the ATT demonstrates that the saving grace of the agreement is its potential for a norm cascade. Moreover, it clearly demonstrates how the search for consensus can lead to particularly important considerations being left out. The Ottawa Treaty in turn demonstrates that there is precedent for states assisting with the implementation of agreements despite lacking support on paper. US support for the Ottawa Treaty is indicative of how norms can be implemented without the need for a state to officially declare their support for an agreement. This short essay demonstrates that there are three main criteria for assessing the effectiveness of conventional arms agreements. First, an agreement must set clear norms of appropriate behaviour. Second, to set norms of appropriateness, negotiators should avoid watering down agreements in search of consensus. Last, agreements should involve mechanisms for independent monitoring such that they can ensure meaningful reputational damage for states that violate the prescribed norms of appropriateness. The Ottawa Treaty demonstrates how treaties with clear normative agendas and specifically defined appropriate behaviours can be effective at limiting arms use and exports in practice. States and civil society should seek to create further treaties which demonstrate clear norms of behaviour or participate in the cascade of those new norms. Moreover, those agreements should not be watered down. The response to the negotiation process of the Arms Trade Treaty highlights how agreements which are drafted by consensus can compromise along the lines of necessary evils. US support for the de-mining efforts of the Ottawa Treaty, despite not being a signatory, sets the precedent for state participation despite a lack of consensus on paper. Consequently, the search for consensus should be a secondary consideration to developing explicit norms. This is because it is most important to ensure meaningful reputational damage for states which do not follow the norms that they claim to follow. As Dr. Erickson's work indicates, states will respond to reputational damage incentives.⁵⁸ Agreements should prioritize the adoption of mechanisms for monitoring and reporting, such as the Landmine Monitor, which can hold states accountable. These three criteria support one another in that an effective agreement would have a strongly worded norm, and that divergence from this norm is most likely to be met with significant political or social scandal.

Endnotes

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