



Considerations for Canadian Accession to the Arms Trade Treaty

Martin Butcher
Policy Advisor on Arms and Conflict
Oxfam

The Protection of Civilians, the achievement of sustainable socio-economic development, and the reduction of humanitarian harm in conflict all necessitate preventing irresponsible arms transfers. This is why Oxfam supported the negotiation of the Arms Trade Treaty and now supports universalisation and robust implementation of the Treaty with a view to reducing human suffering. For Oxfam it is important that:

- All States that have not yet done so should become Party to the Treaty, and incorporate it into national legislation. We therefore welcome the Canadian commitment to accede to the Treaty.
- States Parties must strictly comply with the Arms Trade Treaty, which can help protect civilians in even the most difficult situations by placing International Humanitarian and Human Rights Law at the centre of arms transfer decisions, giving only secondary concern to commercial considerations.

National Implementation of the Treaty

At the heart of national implementation of the ATT are the criteria against which the risk associated with each arms transfer will be judged. For Oxfam it is important that Governments follow a process of thorough risk assessment and then explicit decision whether or not to authorise transfer for **ALL** potential transfers, in line with Treaty obligations.

This can be done using a number of different instruments. For example, within the EU arms transfers are subject to the Intra-Community Transfers Directive, a lighter-touch regulation which takes account of the economic integration of the EU and the non-sensitive nature of most intra-EU arms trading. For wider transfers, the UK, for example, has a system of Open Licensing where, in cases where the combination of equipment and destination is considered “less sensitive”, multiple deliveries are permitted under a single licence. Companies using such licences are required to keep careful records and are subject to audit-upon-demand by Government. While we do have concerns in some cases regarding what the UK Government considers “less sensitive”, this does show it is possible to provide for risk assessment and licensing of arms sent to all destinations, in accord with the obligations of the ATT. This is also vital with regard to transparency and reporting, essential components of ATT effectiveness.

Also important is that the scope of the criteria is broad enough for robust Treaty implementation. Oxfam urges Canada to look to good models for criteria, and to apply them widely. The European Union criteria for risk assessment, detailed in the 2008 Common Position on Arms Exports, incorporated into UK law as the Consolidated Criteria, are a good start point for effective implementation of the risk assessment before granting an arms export license required by the Arms Trade Treaty. All 28 EU

Member States use this system for evaluating arms export risk, a quarter of current ATT States Parties. The Criteria considered whether the proposed export would:

- contravene the UK's international commitments
- be used for internal repression, or where there is a risk of serious violations of IHL or international human rights law, including Gender Based Violence
- provoke or prolong armed conflicts or aggravate existing tensions in the destination country
- be used aggressively against another country
- adversely affect the national security of the UK or allies
- be diverted or re-exported under undesirable conditions
- seriously undermine the economy
- seriously hamper the sustainable development of the recipient country

Noteworthy in this regard is that Canada has in fact formally aligned itself to the EU Common Position, which means that, in theory, it should already be applying these criteria—it would be interesting to know what alignment means in practice for Canada at this point.

Even excellent language in national law and regulation is insufficient if a government lacks the political will to properly implement the Treaty, and is not held to account by Parliament and the Courts. The UK is of interest here again, with the High Court last year affirming that Parliamentary Scrutiny is a vital part of an effective strategic exports control system.

Reporting and transparency in arms transfers are also vital to robust Treaty implementation. Oxfam welcomes the amendment to Bill C-47 on the “report to parliament” section of the EIPA that will require the Minister to provide a report to parliament on the export of military goods for the preceding year by May 31 of each year. However, the amendment says nothing about reporting on imports (also required by the ATT) or about the details that the parliamentary report will provide. We would urge that Canada’s arms transfer reports should contribute to the “highest possible common international standards” in ATT reporting. Good standards would include, for example, Canada reporting the details of both export authorizations (permits) and actual exports, currently reporting options under the Treaty. Reporting of imports should also be included. Proper reporting and the transparency it allows are vital to achieving the objectives of the Treaty. In particular, a clear line between the legal trade in arms and illicit or grey market transfers can only be drawn when the full scope of the legal market is known. Transparency makes the diversion of arms into the illicit market much harder, by ensuring that all legal transfers are done in the open. Canada has an excellent opportunity to place itself at the forefront of global reporting standards in the ATT.

The Role of the Committees on Arms Export Controls (CAEC) of the UK House of Commons

Oversight of arms sales is a job for Parliaments. This has been the case in the UK for the last 20 years or so. As the 1996 Scott Report into the arms-to-Iraq scandal noted a well-informed Parliament has a critical role to play in preventing executive excess. This was confirmed by the 2017 High Court decision in the judicial review brought by Campaign Against Arms Trade (CAAT) on arms to Saudi Arabia, which although currently subject to appeal found in favour of the Government, with the Court extremely reluctant to ‘overrule’ HMG when it comes to licensing decisions and arguing that this is much better a job for the legislature in general, and the CAEC in particular:

... the role of the Court can properly take into account that there is an expectation, consistent with democratic values, that a person charged with making assessments of this kind should be politically responsible for them .. ministers have appeared before the Parliamentary Committees on Arms Export Controls and the All-Parliamentary Group on Yemen; ministers have also spoken in parliamentary debates on Yemen, made oral and written statements, responded to urgent questions and answered a wide range of parliamentary questions and ministerial correspondence.

The seriousness of the case of arms supplies to Saudi Arabia during the Yemen conflict underlines that parliamentary scrutiny is most necessary in the most difficult cases. Where UK-supplied arms are being used by armed forces who lack the necessary training, targeting capabilities and self-analysis, the role of Parliament is vital.

Oxfam recommends that the Canadian Parliament establishes an appropriate Committee structure for the scrutiny of government arms transfer policy and practice.

In conclusion, from Oxfam's perspective as an organisation dealing with the human consequences of irresponsibly and illicitly traded arms, it is essential that Canada provide for transparent licensing of all arms exports in a robust manner, and for Parliamentary scrutiny of that system.